

INTERNATIONAL POLICY REVIEW

JOURNAL 6, ISSUE 1

January 2025

We live in a world where we are expected to have a defined area of expertise by the time we graduate and to possess a set of sophisticated skills ready to deploy—skills that often require decades to fully develop. This creates the persistent feeling of falling behind, a symptom of what I like to call "rush culture." Our generation is constantly pushed to achieve without being given the time or platform to learn. We are expected to know, to be ready, without the opportunity to gain proper preparation. We are expected to deliver results without being taught how to create value. In a society increasingly resistant to machines and automation, we are still treated as models where information can simply be "plugged in" to produce results. We are rushed toward outcomes without sufficient time to process or reflect.

When it comes to academic writing, rush culture often manifests in the form of a final thesis. Many students feel overwhelmed and lost, as if thrown into a passive exercise of meeting a word count. For others, rush culture appears on the first day of a new job, where they are expected to produce a written analysis under tight deadlines, even before they have figured out how to find the coffee machine. Still, others face it when forming opinions on issues of public interest, struggling to understand contrasting voices the day before voting. The IE International Policy Review might not solve the world's rush culture, but it sets itself the ambitious goal of providing students with a foundation to take their first steps in developing critical thinking, writing, and research skills at their own pace, in addition to the already excellent preparation we receive at IE University. The Review aims to counteract rush culture by giving undergraduate students the opportunity to explore topics of interest, learn to conduct research, and write professionally during their university years. The goal is to better prepare them while also allowing them to enjoy the art of academic publishing instead of being overwhelmed by it when the time comes.

As the IE International Policy Review Editorial Board, we have carried this vision since the beginning of our term. We did not expect our idea to be embraced by so many students, but this positive reception reaffirms our belief that academic writing should not only be accessible to a select few—it must also be at the service of everyone brave enough to express reasoned and supported ideas. Whether someone pursues a career as an academic or not, we believe in the power of sharing thoughts and learning how to communicate them effectively. You do not have to be a policymaker to have a vision for tackling climate change, but you may need to learn how to articulate that vision for it to be heard and valued. With this issue, we aim not only to create a platform for students to grow but also to amplify their voices. Each article includes a policy proposal or critique section and is framed with an international perspective. This reflects our commitment to fostering dialogue among future policymakers, lawyers, entrepreneurs, and academics about how we can collaborate internationally to create positive change.

As Editor-in-Chief, I am proud to see the publication of the first Review under my mandate. These past months have been as rewarding as they have been intense. My hope is that, through the efforts of so many contributors, our readers will feel part of an attempt to change how academic writing is perceived

The Editor-in-Chief

Matilde Romagnoli,

With the Deputy Editors-in-Chief Claudia Espinosa Segura and Paul Prinz

Acknowledgements

This issue would not have been possible without the contributions of many valuable people.

We are particularly grateful to the entire IE School of Politics, Economics and Global Affairs for their constant encouragement and support, especially to Borja Santos Porras, Fernando Menéndez González, Betsey Medow, Santiago Sierra, and Agostina Blengino for believing in us.

A special thanks to IE Campus Life, particularly Valentina Farray and Elisa Hicks, for always dedicating their time and kind words to us.

Thanks also to the past Editors-in-Chief, Karan Khosla, Kyler Cade, and Zachary Zimmermann, for entrusting us with carrying forward the vision they had for the IE International Policy Review.

We would like to express our deepest gratitude to our partners, without whom we would not have been able to grow so much over the past few months.

A special thanks to Giuseppe Valerio Bonanno, Francesco Fernando Annese, and Pietro Zaccardo from Bocconi Advocacy & Litigation for showing great enthusiasm since the beginning of our collaboration and for their incredible work.

A heartfelt thanks also to George Newcombe from The Sundial Press for the exciting projects we had the pleasure of sharing.

Our gratitude also to the IE MUN Committee for our exclusive 2024 collaboration.

Most importantly, thanks to all the writers, editors, and past and present members of the IE International Policy Review who allowed us to guide them on what we hope has been a pleasant writing journey. We thank you for your hard work, ideas, and great articles. Without you, this review would not exist. You represent the mission of the IPR, and we are proud to have you.

Last but not least, thank you to our wonderful team for working incessantly and with the greatest passion for this review to be out today. Thanks to Claudia Espinosa Segura, Paul Prinz, Vanessa Ileana Chiaoaru, Nikola Pantelić, Stephanie Villamor, Alexia Dimistriou, Lucas Phillips, Alberto Alonso Inope La Rosa, Vrushab Shekhar, Francesca Etienne, Alfredo Echeverria Castro, Anastasiia Bolkhovitina, Andreea Pascaru, Constantine Mosch, Gabriella Vázquez-Guillén Navarro, Isabel Gómez Araujo, Isabela Bortolotto Rodacki, and Weronika Von Lonski.

A special thanks to our advisory committee for supporting us throughout the publication process, especially to Ecab Amor Vazquez, Theresa Amor-Jürgenssen, Alejandro Dib Parada, and Aurora Dell'Elce.

Finally, thanks to our wonderful Mia Leonardo for making sure the IE International Policy Review always “looked great” and for turning us into the professional club we are. We are immensely grateful for your help and dedication.

WRITERS

Aaliya Mithwani
Agustín Plaza de los Reyes Álvarez
Alberto Alonso Inope La Rosa
Alessandro Cucchi
Alessandro Tarducci
Alix Segovia
Alya Rezk
Ana Miqeladze
Ananya Singh
Andreea Pascaru
Ariana Elle Majlessi
Bill Ivans
Carlo Matarazzo
Carlota Camarudin Campos
Carlotta Francescon
Carmen Jiménez
Caroline Blessing
Constantin Mosch
Denis Horteá
Dominika Wiater
Ece Eroglu
Elena Fernández-Novel Escobar
Emanuel Mayagoitia Corral
Erica Njoki
Esra Püren San
Ester Barel
Esther Castellanos Pros
Fabio Conigliaro
Fatima Ezzahra Tajani
Federica Iannò
Fiorella Martelo
Gabriela Georgieva
Gabriela Vázquez-Guillén Navarro
Giulianna Chireno
Guillermo Romero
Hugo Mack
Iacopo Brini
Iker Graña
Ines Hernandez
Isabela Bortolotto Rodacki
Isabella Baillieu
Isabella Clanfield
Jaime Sanz
Kees Meijers
Kenzy Dessouki
Layla Torres
Leah Bird Lopez
Ljubica Ognjenović
Logan Pierson-Flagg
Lucas Olaciregui
Lucas Phillips Sanchez
Mahalia Cullen
Maia Espinosa
Malaika Mokashi
Marcello Nazari
Maria Lydia Madieh
Mariana Gámez Pineda
Mariano Eduardo Abad Colino
Mason Brown
Maximilian Hankins
Maya Attia
Miranda Freund
Móric Tóth
Muhsin Emir Karabag
Nathalie Sofia Cooper
Nathan Fernandez
Nicolas Koivisto
Nikola Pantelić
Olivia Massoud
Pablo Picó Salort
Paula Alvestegui
Paul Prinz
Raya Dacheva
Riccardo Moggio
Richard Glatter
Siljemarkie Bugna
Sofia Figueiredo
Stanislav Vynnytskyi
Toby Tilley
Viola Berti
Vrushab Shekhar
Yu Jie Law

EDITORS

Alberto Alonso Inope La Rosa
Alessandro Tarducci
Alessandro Vigo
Andrea Maria Sanchez Deras
Ania Temis Galliano
Annarita Caccia
Carlota Canadas Latorre
Catherine del Rio
Claudia Espinosa Segura
Danielle Mitchell
Elisabetta Chiuminatto
Eloise-Michelle Nkamla Nziki
Francesca Etienne
Francesco Fernando Annese
Giovanna Carrion de Silva
Giuseppe Valerio Bonanno
Grégoire Panzer
Guillermo Mobayed
Henri Klein
Iacopo Brini
Isabel Gómez Araujo
Juliana Giraldo
Marielouise Palumbo
Mario Sans Majuelo
Matilde Romagnoli
Miriam Müller
Nelly Lou-Anne Pedrono
Paul Prinz
Ruby Wanjiku Gachara
Sam Ferdinand
Souane Mazou-Houel
Tilla Victoria Balogh
Trinidad Fellmann Izurieta y Sea
Vanessa Chioaru
Víctor Ruiz
Vrushab Shekhar
Weronika von Lonski
Wissame El Mouden Etaaboudi

INTERNATIONAL RELATIONS CHAPTER

Enforcing in what we cannot grasp: Suggestions and policy implications on the development of sustainability indicators in intangible cultural heritage

Pablo Picó Salort, Yu Jie Law

Double Degree in Business Administration and International Relations, IE University, Madrid
Bachelor in International Relations, IE University, Madrid

E-mail: ppico.ieu2021@student.ie.edu; yjlaw.ieu2021@student.ie.edu

Published 27th January 2025

Abstract

Intangible Cultural Heritage (ICH) Management is an emerging field within heritage preservation. Following the 2003 UNESCO Convention, the value of said patrimony has been brought to light. However, given its intangibility and abstractness, it presents significant challenges in its comprehension and management. Nonetheless, it reports very positive effects in different areas of governance and living, particularly in the sustainability of communities as a whole. We prove how the development of an appropriate framework is highly beneficial to helping the management efforts oriented towards sustainability and management, by proposing an approach that deals with both areas conjointly instead of separately. For it, we define sustainability as well as ICH and look at the overlap between them. We examine the current use of sustainability indicators in general heritage management, both at an organizational and academic level, to understand why they are insufficient and extract lessons to be applied to ICH. Then, we examine three different case studies to further examine what areas are left out of consideration by the current framework, as well as to indicate some potential indicators. Throughout it, we emphasize the need for concrete targets to be attained, as well as the similarities between cases. Finally, we further highlight the necessity for the indicators not only at a heritage level but also at a policy level. Some suggestions for policies are provided, as well as further research that can be done taking this paper as a basis.

Keywords: Heritage, Intangible Cultural Heritage, ICH, sustainability, sustainable heritage, UNESCO

I. Introduction

Not only do we attempt to understand, but also to measure what escapes our grasp. In order to conceive what is abstract, the human mind often tends to resort to measurable and concrete methods in order to simplify reality and provide some guidance. One of said areas that

often needs a tangible approach is sustainability, which has in recent decades acquired relevance in the sphere of public policy and management. As it is subsequently applied to more areas, the need for developing appropriate frameworks that fit them properly to properly evaluate approaches and formulate policies also increases. The field

of heritage management is no exception, and in the last two decades, we have seen some early developments.

In this paper, we contribute to these developments by assessing the usefulness of developing appropriate sustainable indicators in the management of Intangible Cultural Heritage (ICH). ICH management is a field that sometimes proves complicated to tackle at a policy level, given its abstractness and complexity.

The interest in this paper comes from a research gap that currently exists in the field. While some studies have already analyzed the lack of consensus in measuring sustainable heritage¹ or urban heritage management,² there is currently no research that tries to bring sustainability indicators and ICH together through an assessment strategy. We believe and prove that the currently proposed indicators for overall sustainable heritage management are not sufficient for its intangible derivative, given the different challenges it proposes in its documentation, quantification, register, and approach.

In order to accomplish our task, we will first determine a definition for sustainability that we can use as a baseline, which will be mainly based on the one the UN provides in its 2030 agenda. We will then delve into the literature regarding heritage management, ICH, and the sustainable dimension of both, before reviewing the indicators that

have been proposed as a method to quantify the impact on the sustainability of their management. We compile the existing and proposed indicators on heritage management and examine them based on two criteria: how well they can be applied to intangible cultural heritage, and how well they fit within our defined framework for sustainability. Having established this theoretical basis, we will also analyze several case studies of intangible heritage and the literature around them: the Mediterranean Diet, the ceramics of Talavera and Puebla (in Spain and Mexico), and the practices around the Argan tree (in Morocco). Each of these case studies closely correlates with one of the three dimensions of sustainability that will be explained later: society, economy, and environment, respectively. The aim is to demonstrate how the proposed frameworks are insufficient for ICH, and how the field requires a specialized approach in order to facilitate its study and management. Finally, we will also discuss the policy implications of implementing said indicators, and how they can help facilitate the development of policies to be efficient. This principle will also be emphasized as important not only for ICH but for heritage management as a whole.

We have decided to take an indicator-oriented approach since it facilitates a consensus on practices that can be used across different regions and cases. Despite the complex reality of heritage management, having a series of measurable elements can facilitate its approach, especially in terms of standardizing some basic processes and holding decision-makers accountable. Although no specific set of

¹ Hari Gopal Shrestha, et al. "Identification of Indicators for Sustainability of Cultural Heritage". *Tribhuvan University*, Nepal, December 2023.

² Georges Tanguay et al. "A Comprehensive Strategy to Identify Indicators of Sustainable Heritage Conservation." *C RTP Working Papers*, (September 2014).

indicators will be proposed, we will suggest general criteria to be met in order for them to be efficient. It is also worth mentioning that while indicators are a useful tool, this paper does not try to find an absolute method to quantify or approach ICH management. Instead, it seeks to provide some standardization in a field that often finds challenges because no common framework exists, while still acknowledging that each case of intangible cultural heritage is unique in its characteristics and circumstances.

II. Sustainability framework

Before analyzing the correlation between heritage management and sustainability, it is essential to understand the scope of both concepts. Previous studies into the matter have concluded that the conceptualization of sustainable development highly influences the establishment of indicators in order for them to fit the case studies analyzed.³

The Brundtland report, published in 1987, is widely considered to be the godfather of the term “sustainable development” as it is understood today. Published by the World Commission on Environment and Development (WCED), the report defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁴ This groundbreaking report challenged the commonly accepted notion of sustainable yield, allowing for the transition to a broader concept that linked

the three dimensions of sustainability: economic, social, and environmental. These dimensions were conceptualized in the foreword of the 1987 Brundtland Report: “What is needed now is a new era of economic growth – growth that is forceful and at the same time socially and environmentally sustainable.”⁵ This groundbreaking concept laid the foundation for the convening of the 1992 United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, five years later in Rio de Janeiro.

Some of the most significant outcomes of the Summit include the establishment of the UN Commission on Sustainable Development, the signing of the Convention of Biological Diversity, the Framework Convention on Climate Change, Agenda 21, and the Rio Declaration.⁶ Signed by over 175 countries, the Rio Declaration consists of 27 principles aimed at balancing environmental protection with economic growth and social development.⁷ Another key outcome of the Earth Summit was Agenda 21, which was designed to address global environmental and development challenges, preparing the world for the 21st century. It covers the multifaceted aspects of human life, and many of its principles have been incorporated into national and international legal frameworks. More importantly, it laid the groundwork for newer frameworks, such as the Sustainable Development Goals (SDGs) adopted in 2015. One of the key

⁵ WCED, *Our Common Future*, 7.

⁶ UNCSD. *Framing Sustainable Development. The Brundtland Report – 20 Years On*. 2007.

⁷ UN. *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*. 2024.

³ Tanguay et al., “A Comprehensive Strategy.”

⁴ WCED. *Report of the World Commission on Environment and Development: Our Common Future*. 1990. pp. 41.

advancements of these is the quantification of impact through the different indicators included in each one of the goals, as a way to provide concrete action for achieving the targeted objectives.⁸

The three pillars of sustainable development – social, economic, and environmental considerations – are often intertwined with each other. This is portrayed in the following Venn diagram (Figure 1).

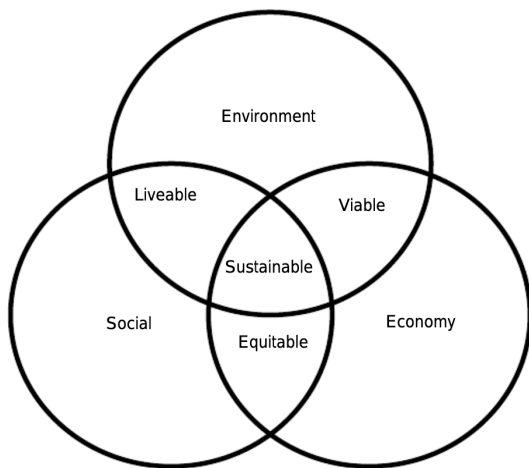


Fig. 1. Graphical Representation of Sustainable Development.

Source: Tanguay et al. (2014).

This will also be the basis of this paper's definition of sustainable development, not only because it reflects the interdisciplinarity of implementations, but also because it paints a more holistic picture of what sustainability is and represents. In addition, this paper will interpret sustainability as the responsible usage of resources while

safeguarding that future generations would have similar, if not more, access to such resources. The fact that the terms “sustainable development” and “sustainability” are often used indifferently points to the notion that economic development can help solve ecological and social problems.

III. Heritage Management and ICH

In what refers to heritage management, we will take the definition given by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the main global institution dedicated to heritage classification and management. In its 1972 World Heritage Convention,⁹ it distinguished between the different types of heritage: cultural (man-made) and natural (present in nature created).¹⁰ The definitions and subcategories have been further developed over the years, the most important of modifications being the subdivision of cultural heritage into tangible and intangible.

When speaking of intangible cultural heritage, the category is fairly recent, its formal origins tracing back to 2003 with the publication of the Convention for the Safeguarding of the Intangible Cultural Heritage by UNESCO. This feat was motivated by a growing interest and realization that some cultural expressions escape the conventional, material

⁹ UNESCO. *Convention concerning the protection of the World Cultural and Natural Heritage*. 1972.

¹⁰ There is also a category destined to those assets that “satisfy a part or the whole of the definitions of both cultural and natural heritage”, known as “mixed assets”, but since the focus of this article is the intangibility, it would be considered in detail. See UNESCO. *World Heritage Convention Glossary*. “Mixed Assets”. 2024.

⁸ UNDESA. [The 17 Goals](#). 2024.

form that heritage management traditionally associated with them. The resulting text has remained fundamental not only to define what intangible cultural heritage is but also to determine what the appropriate approach to it is. It enables a deeper understanding of the scope of what Intangible Cultural Heritage (ICH) encompasses by providing the following definition:

*The practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts, and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. [It] is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity[...].*¹¹

Furthermore, the Convention specifies that ICH is manifested in the forms of: oral traditions and expressions (including language), performing arts, social practices, rituals, and festive events; knowledge and practices concerning nature and the universe, and traditional craftsmanship.¹² Thus, we can see the diversity of this concept, requiring a rather complex management. Having a set definition is rather useful, not only because of the limits it sets in the forms and characteristics of an otherwise abstract concept, but it also hints at the possible ways of managing it, which is intrinsically complex given the nature of this concept. As such, it is vital to keep in

mind this variety of forms present in ICH when we approach the use of indicators for measuring it since these will have to effectively be able to encompass all dimensions of sustainability while still being able to maintain the technical rigor required in heritage preservation.

Another concept that is also very relevant inside this framework is the strategic objectives adopted by the World Heritage Committee in 2002 and expanded in 2007. Also known as "The Five Cs" (credibility, conservation, capacity-building, communication, and community, which was added later), they set the direction that UNESCO follows not only in their work towards the preservation of heritage but also when describing the impact that it can have in our society.¹³

Right from the very definition of heritage, and also through the concepts explained below, a strong link with sustainability can be observed. Firstly, the division between cultural and natural heritage resembles two of the pillars of sustainable development, as natural heritage can be directly correlated with the environmental pillar, while cultural heritage focuses more on the social dimension. UNESCO, as part of the United Nations, also worked on the previously mentioned framework of sustainability, and the development of the SDGs. As will be discussed below, UNESCO itself has also become more aware of integrating the concept of sustainability inside ICH management. In 2020, they published a report highlighting the link and positive rapports that ICH has in some areas of

¹¹ UNESCO. *Convention for the Safeguarding of the Intangible Cultural Heritage*. 2003.

¹² UNESCO, *Convention for the Safeguarding*.

¹³ UNESCO. *World Heritage Convention*.

sustainability.¹⁴ While it is merely informative and does not provide any tools for the integration of one and the other, it is representative of which direction the official line points towards.

As there is no physical being to manage, any attempt at regulating the management of ICH will be more difficult to formulate. Its link to sustainability is also evident in a different way: the environmental impact is less linked to the physical space occupied by an asset and more about how the assets themselves can impact their natural environment. Thus, its social impact is much more significant, as human communities are precisely the creators of heritage, and the ones responsible for its evolution and preservation. The 2007 edition of the "fifth C" (community) to the Strategic Objectives mentioned above, sought to emphasize this fundamental social role while enabling a more clear connection between the social dimension of sustainability and the community objective of heritage management.

Having established how the link between heritage management and sustainability is something inherent to both concepts, we will now delve into how we can quantify said relationship through the use of indicators.

IV. Indicators for Sustainable Heritage Management

The starting point of this review will be the indicators that UNESCO itself proposes and uses in its approach to ICH.

As highlighted in their Sustainable Development

¹⁴UNESCO. *Intangible cultural heritage and sustainable development*. 2015.

Toolbox,¹⁵ the 17 sustainable development goals (SDGs) included in the UN's 2030 agenda, are their main guiding framework. The SDGs provide a common framework and standards for sustainable development, which are important to ensure that no one is left behind while enjoying a prosperous life on a healthy planet. By having a common standard, nations are better able to comprehend such indicators, putting forth policies that aim to work towards such goals. It also enables a simpler quantification of their achievements towards the goals, while allowing for benchmarking with other countries. Indicators cross the "world of research and science to be integrated with that of the policy," allowing for analytical effectiveness, as well as a common language.¹⁶

Nonetheless, the use of the SDGs for heritage management must be approached with caution. While on the one hand, they are a useful and concrete tool for being able to understand the impact of applied policies, on the other hand, they were not envisioned specifically for heritage management. Thus, heritage management and sustainability are conceived as two separate fields, whereas the reality is that to have better results, they should both be considered simultaneously, as will be analyzed later. They also fail to consider the technical necessities of heritage management, thus being limited to nothing more than a starting point in bridging sustainability and heritage management together. In addition, and as will be analyzed

¹⁵ UNESCO. *Sustainable Development Toolbox*. 2015.

¹⁶ Christophe Bouni, "Sustainable development indicators: Theory and methodology." *Nature Sciences Sociétés*, 6 no.3 (1998).

through the case studies, SDGs do not address the nuances of ICH management. While SDGs rely heavily on quantifiable frameworks such as poverty reduction, ICH often involves practices and skills that are difficult to quantify in terms of SDG metrics. For all of these reasons, the Sustainable Development Goals should be adopted as a complementary tool that allows measuring the impact of already existing approaches, but that is rather limited when it comes to the technical aspects of the implementation of new policies itself.

Having established that SDGs are insufficient for approaching sustainable heritage management, some proposed indicators are more specialized, and therefore more appropriate for the field. As mentioned before, given the lack of a commonly agreed set of indicators for heritage management, not much research has been carried out on ICH indicators. Therefore, the proposals analyzed below are purely academic and targeted at other forms of patrimony that could, nonetheless, have a potential application in ICH.

In an article published in the year 2023, several authors from Tribhuvan University in Nepal compiled some recent work in the field of indicators for Sustainable Heritage Management:

SN	References	No. of papers reviewed	No. of Indicators
1	Liusman, et al. (2013) [25]	NA	17
2	Sowińska-Swierkosz (2017) [26]	48	8
3	Tanguay, et al. (2014) [27]	25	20
4	Guzman (2020) [22]	NA	36

Fig. 2: Set of indicators analyzed for this study.

Source: Shrestha, Singh and Bajracharya (2023).

It can be observed, that the method used for determining the indicators follows two lines: the papers by Sowinska-Swierkosz (2017) and Tanguay et al. (2014) rely on the review and comparison of different papers proposing indicators (normally for a particular case) and extracting the best of them; whereas the others rely solely on one case study and try to extract from them a general rule that can be extrapolated to other examples. In many of the papers analyzed below, it is also highly emphasized how the cases of heritage management (and, by extension, ICH) require a very specific approach to them, which makes their individual indicators be unique and not really applicable to other cases.^{17 18} This is a factor to reckon with but should still not discourage the effort to find a common framework for all assets considered as intangible cultural heritage.

Starting chronologically, the study conducted by Liusman et al (2013), focuses on heritage buildings, highlighting their importance inside modern spaces.¹⁹ For it, the authors created a model named the Heritage Sustainability Index (HSI), for which they selected the following indicators:

¹⁷ Paloma Guzmán, "Assessing the sustainable development of the historic urban landscape through local indicators. Lessons from a Mexican World Heritage City." *Journal of Cultural Heritage*, 46 (December 2020);, pp. 320-327.

¹⁸ Shrestha et al. (2023)

¹⁹ Ervi Liusman, et al. "Indicators for Heritage Buildings and Sustainability." *Central Europe towards Sustainable Building*. (2013).

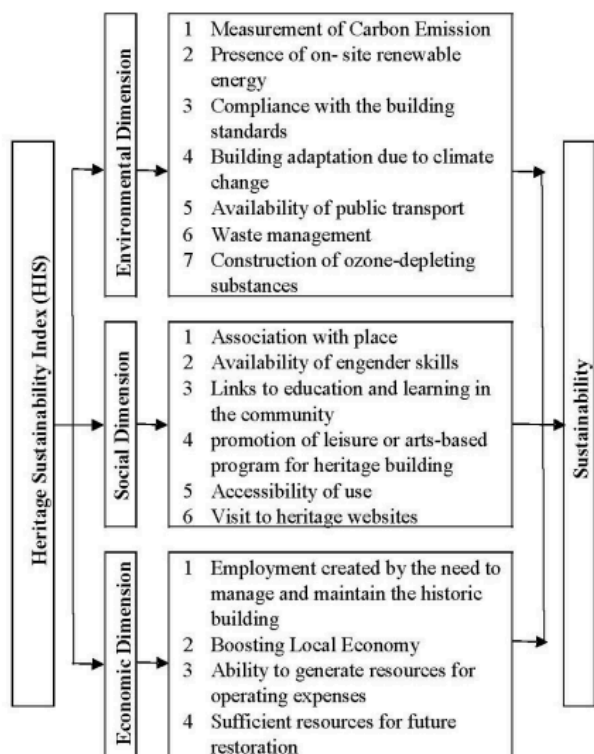


Fig. 3: Framework of Heritage Sustainability Index (HSI) for heritage buildings.

Source: *Sbrestha, Singh, and Bajracharya (2023) from Liusman et al. (2013).*

While the indicators have been tailored for heritage buildings and can therefore not be used for ICH, it is interesting to analyze them to understand the selection process and potential utility.

Their main strength is that they present a balance between the three dimensions of sustainability, suggesting sufficient indicators to address the economy, society, and environment. Furthermore, each one of the indicators has the right scope by not being overly specific, which allows it to encompass broad aspects. For example, measuring the "association with place" (Social Dimension indicator 1) covers an important aspect related to historical buildings

that guarantees their preservation (it seems plausible that a construction to which a community is linked more strongly will be more taken care of), yet it leaves room for some of the various issues that can be included within the category (for instance, visibility and prominence inside of a community, or a link to any particular social events, among others). This is the case for the other indicators as well, making them universal enough to be applied to any case study as long as they stay within the limits of heritage buildings.

On the other hand, even though it was never the authors' intention, some more concrete ways of tracking the progress of said indicators would have enhanced their credibility and potential for practical application. For example, within the Environmental Dimension, for indicator 6, how will waste management be measured? Or within the Economic Dimension, for indicator 2, how can the boost of the local economy be quantified? Given the scope proposed (with heritage buildings being part of UNESCO's tangible heritage category), it would have been possible to do so, still retaining the openness that has been highlighted before in each one of the indicators, yet providing a more specific way to evaluate performance. Related to ICH, the emphasis on the dimensions is particularly relevant to take into consideration when developing indicators, as it is the basis for accurate measuring.

Moving on to the second paper, Sowińska-Świerkosz (2017) puts the lens on the management of cultural

landscapes, proposing eight indicators based on an analysis of recent papers.²⁰ These are the following:²¹

1. *Architectonic quality (preservation of façades)*
2. *Ecological quality (improving urban greenery - the presence of historic fruit and habitat trees),*
3. *Economic significance (funding for community arts projects and the necessary investments for cultural property preservation),*
4. *Perception aspect (the area or percentage of places that are spiritual or religious),*
5. *Value of political activities (landscape management's effectiveness and a plan that preserves the historical and natural environments),*
6. *Social care (percentage of individuals engaging in customary or cultural activities),*
7. *Spatial superiority (historical buildings and monuments),*
8. *Visual quality (the quantity and clarity of unsettling objects and elements, aspects of the cultural landscape that are visible).*

Once again, we see that the three dimensions of sustainability are sufficiently covered, despite the division not being as emphasized as in Liusman et al. (2013). Furthermore, no specific targets for the indicators are proposed, as the more abstractness of the landscape when compared to buildings makes it more complicated to do so.

Nonetheless, we already encounter a situation that can be extrapolated to intangible heritage. What is particularly interesting from the study of the landscape is its relation with a concept that can also be a part of ICH: cultural landscape, which refers to the "diversity of manifestations of the interaction between humankind and its natural environment."²² When analyzing the landscapes in which an interaction between man and environment has occurred, not only do we coincide again in the social and environmental dimensions of sustainability, but it is also possible to study and understand the reach and impact of some cases of ICH. This relation will be explored in depth later with a specific case study to illustrate it.

The third research paper studied is that of Tanguay et al. (2014), which tackled a total of 25 papers referring to urban heritage management.²³ Something interesting about this study is that it provides a more quantitative approach to the selection of their indicators, carrying out statistics on issues such as the number of indicators used by each paper, how representative they are of both each one of the sustainability dimensions, and their overlaps, and how frequently similar indicators are proposed across studies. After that, they selected the most repeated ones and retained those that were more representative of dimension overlaps, resulting in a total of 20:²⁴

²⁰ Barbara Natalia Sowińska-Świerkosz, "Review of cultural heritage indicators related to landscape: Types, categorisation schemes and their usefulness in quality assessment," *Ecological Indicators* 81, pp. 526–542. (June 2017):. pp. 526–542.

²¹ Sowińska-Świerkosz (2017) as quoted by Shrestha et al. (2023).

²² UNESCO. *Cultural Landscape*. 2024.

²³ Tanguay et al., "A Comprehensive Strategy." Tanguay et al., 2014

²⁴ Tanguay et al., "A Comprehensive Strategy."

Indicators	Covered Dimension	Threshold
Characterisation		
Attachement to place	Social	5
Traditional value or perceived	Social-Econ.	5
Artistic, aesthetical and harmonious value or perceived	Social-Econ.	6
Building fabrics, insulation and ability to adapt	Soc-Econ-Env.	5
Protection		
Viability of recycling existing materials	Econ.-Env.	4
Authenticity	Social-Econ.	7
Integrity	Social-Econ.	6
Spatial compatibility	Social-Econ.-Env.	5
Enhancement		
Environmental and ecological awareness	Env.	5
Promotion of actions for further knowledge of historical-cultural heritage	Social-Econ.	2
Improvement of living conditions and quality of life	Soc-Econ.-Env.	5
Benefit of reuse versus redevelopment	Soc-Econ.-Env.	3
Use and Impacts		
Locals and visitors interests and involvement to conservation	Social	4
Business and functional use	Econ.	3
Investments and tourists drawing	Econ.	2
Increase urban density	Soc-Econ.-Env.	2
Policy and regulations		
Public perceived consideration of their opinion	Social	3
Adequate protection and management system	Social-Econ.	4
Compliance with regulations and building codes	Social-Econ.	4
Stakeholders inclusiveness and partnership	Soc-Econ.-Env.	2

Fig. 4: Key Indicators of Sustainable Urban Heritage Conservation.

Source: Tanguay et al. (2014).

This paper's approach seems much more balanced than the others, seeing how the selection of the indicators was carefully measured so that it encompasses the dimensions equally. However, it also presents a series of challenges.

Firstly, it neglects the concept of ICH, which may nonetheless still be present within the urban heritage, as it focuses exclusively on tangible goods. This makes this model harder to extrapolate for ICH management, but it remains interesting due to the approach it takes in its selection of indicators. Secondly, since the indicators come from a summary of past studies, the bias of these is still present. For instance, the authors themselves reckon that the intersection between society and the environment is not covered in the indicators, as it did not appear sufficiently in the papers reviewed.²⁵ And lastly, there is still

²⁵ Tanguay et al., "A Comprehensive Strategy."

a lack of quantifiable targets, despite once again being a non-exhaustive, non-conclusive list.

The fourth and final paper compiled by Shrestha, Singh, and Bajracharya (2023) is that of Guzmán (2020).²⁶ In this case, the author bridges two concepts that were already analyzed in other papers (urban heritage and landscape heritage), and selects a total of 36 indicators:²⁷

SN	Indicator	Dimension
1	Urban Size	Sustainable
2	Protected Areas	Environmental
3	% of Green Areas – Recreational Parks	Livable
4	No. of Public Libraries	Equitable
5	No. of Theatres and Music Halls	Equitable
6	Festivals and Religious Parties	Social
7	No. of Museums	Social
8	Road Network	Equitable
9	Population Density	Equitable
10	Literacy Rate	Equitable
11	Air Pollution	Livable
12	Accessibility (River Area)	Livable
13	Housing	Equitable
14	Deterioration phenomena (built environment)	Equitable
15	Marginalization Rate (Low)	Equitable
16	Community Involvement in Decision-Making Processes	Social
17	Population with Access to Healthcare	Equitable
18	Research and Development	Equitable
19	Financial Organization	Economic
20	No. of Police	Equitable
21	Natural Risk	Sustainable
22	No. of Automobiles – Road Traffic	Sustainable
23	Crime Level (Robbery)	Equitable
24	New Constructions/% of New Buildings (On Virgin Land)	Equitable
25	No. of Schools	Equitable
26	No. of Markets	Equitable
27	Productive Sectors (agricultural, industrial and services)	Equitable
28	Recreational-Sport Areas	Equitable
29	Electricity (Light Infrastructure)	Equitable
30	Water Supply	Sustainable
31	Telephone (Access, Visual Disruption)	Equitable
32	Investment for Intervention	Equitable
33	Modes of Transport	Equitable
34	Access to Sewage System	Equitable
35	Population with University Degree	Equitable
36	No. of Hotels	Equitable

Fig. 5: List of frequently used local indicators.

Source: Shrestha, et al. (2023) from Guzmán (2020).

²⁶ Guzmán, 2020.

²⁷ Guzmán (2020) as quoted by Shrestha et al. (2023).

The main strength of this proposal is that it does not stop at the theoretical level, applying her framework in the study of the city of Querétaro (Mexico).²⁸ Furthermore, the indicators are more strategic, and they address the intersection between sustainability dimensions once again. The downside, however, is that, once again, ICH is neglected despite being a part of urban heritage as a whole. The indicators proposed are too tangible, which makes it difficult to extract value from them in the application to the ICH indicators.

Despite the value of the compilation of analysis of the different papers that by themselves already summarise the literature concerning heritage indicators, and even mention ICH in their research, a critique we can formulate of the paper by Shrestha et al. (2023), is that it abandons its accomplishments of trying to extract a general model by comparing specific cases to go back to the local level by trying to develop indicators that are specific for Nepali heritage. Despite localized heritage exhibiting different characteristics, the purpose of indicators is to allow management practices to be shared and extrapolated, so this biased return to regional cases is greatly harmful. Especially with ICH, where the localization of the assets is often difficult, indicators should strive to be as universal as possible.

After having reviewed these papers, the following key learnings for the creation of ICH indicators were extracted:

1. Indicators should be broad yet include some targets to attain in order to increase their usefulness and facilitate their application in diverse cases.
2. Equal representativeness of the three sustainability dimensions, as well as of each one of their intersections, must be present.
3. Universality should be the main focus when approaching intangible assets since it helps to solve one of its most frequent problems: the difficulty of determining geographical and conceptual reach.
4. The most efficient approach in heritage management indicators is the one that compares and contrasts different case studies.

However, as we saw with Tanguay et al. (2014), the mere act of reviewing the literature is not enough to develop appropriate indicators, as the bias from these papers will be perpetuated.²⁹ In order to avoid this, we will now further analyze three specific ICH cases that present certain differences among themselves (the Mediterranean Diet, the ceramics of Puebla and Talavera, and the practises around the Argan tree), to further explore the intricacies of the development of indicators and apply the learnings extracted from the papers above.

V. Case studies

²⁸ Guzmán, 2020

²⁹ Tanguay et al., “A Comprehensive Strategy.”

UNESCO currently³⁰ features 730 elements in their Intangible Cultural Heritage List, which encompasses 145 countries.³¹ While analyzing all of them would produce more accurate results, it is a task out of the scope of this article. We have therefore selected some examples to analyze, not only how sustainability comes into play in them, but also how the indicators examined before could be applied to them.

V.1 The Mediterranean Diet

The first case studied is the Mediterranean Diet, which was inscribed in the List in the year 2013, and defined as a “set of skills, knowledge, practices and traditions ranging from the landscape to the table.”³² The Mediterranean Diet is “not only a particular nutritional model, but also the social interaction brought by communal meals, the folklore originated from these, the respect for the territory and biodiversity, and the traditional crafts and activities linked to these communities that live in the Mediterranean area, among others.”³³ The myriad of aspects it encompasses transform it into part of the Intangible Cultural Heritage that connects these communities despite the geographical distance.

Studies have also shown that the techniques used to cultivate the products that form part of the Mediterranean diet traditionally have a positive impact on the local ecosystems through the care of the biodiversity and higher

reliance on plant products compared to other diets, which reduces the resources utilized and facilitates regeneration.³⁴ Literature on its sustainable impact is abundant, with some studies devoted entirely to just summarising it and extracting indicators that are unique to its characteristics.³⁵ However, few papers are devoted to examining this impact from its Intangible Heritage Side.

UNESCO, as previously mentioned, limits their measuring to the SDGs. In their report on the Mediterranean Diet, they highlight the different SDGs related to it:³⁶ for example, SGD 2 (zero hunger), which is related to the availability of the Mediterranean Diet to those communities, but also SDG 5 (gender equality), citing the role women play in “the transmission of expertise, as well as knowledge of rituals, traditional gestures and celebrations, and the safeguarding of techniques.”³⁷ However, it is an approach that only focuses on the benefits that this heritage reports, failing to consider the complex preservation mechanisms that might have to get behind the Mediterranean Diet at a policy level. If, for example, the Mediterranean Diet highlights the role of women in the preparation of meals, and transmission of traditions around as a unifying element of communities; how can we ensure that this is maintained over time? That

³⁰ As of November 2024.

³¹ UNESCO. *Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*. 2024.

³² UNESCO. *The Mediterranean Diet*. 2024.

³³ UNESCO. *The Mediterranean Diet*.

³⁴ Sandro Dernini and Elliot M. Berry, “Mediterranean Diet: From a Healthy Diet to a Sustainable Dietary Pattern.” *Frontiers of Nutrition*, . (2015).

³⁵Joana Margarida Bôto, et al., “Sustainability Dimensions of the Mediterranean Diet: A Systematic Review of the Indicators Used and Its Results.” *Advances in Nutrition*, 13, no. 5 (September 2022).

³⁶ UNESCO. *The Mediterranean Diet*.

³⁷ UNESCO. *The Mediterranean Diet*.

is a question that the SDGs cannot answer by themselves. While they might highlight the consequences, they are unable to provide clear working goals and performance indicators, that is, developing policies to ensure that the Mediterranean Diet endures as a way of empowering women in the area is something that falls short just with SDG five's indicators. The divide between sustainability and heritage is once again too accentuated to formulate reconciling policies.

The question we now have to ask ourselves is how we can see this case study reflected in the indicators covered before. As was analyzed in the previous sections, there is currently no set of proposed indicators for ICH. However, drawing from the conclusions we extracted from the other areas of heritage, the process of ICH indicators can be analyzed. The first point to raise is how. Based on how it was shown that the Mediterranean Diet has a significant impact on sustainability, it is essential that the indicators used can grasp all of the complexities it has, as well as all of the ways in which it can touch upon the sustainability dimensions of society, economy, and environment. For instance, one of the essential concepts it encompasses is that of cultural landscape (mentioned above): the existence of the Mediterranean Diet does not only transform the landscape of the coastal regions that cultivate products such as olive, cereals, and small livestock; but also through the communities that inhabit those spaces, their way of living, their particular architecture, their traditions...

Another aspect to also take into consideration is how the divide between the territories that adhere to this style of

Diet is sometimes blurred, building upon the need for indicators as universal as possible. An approach similar to the one that was taken for urban heritage in the papers cited previously would fall short of reach given its insistence on spatiality. Nonetheless, this wouldn't impede the hypothetical indicators from having concrete targets, not exclusive to the case (as could be the amount of olives consumed on average per person), but rather that could also be extrapolated to other cases. An example of an indicator could be the perception of the heritage among the communities that perpetuate it. In the case of the diet, this would be measured by researching how conscious they are of their unique way of living if there is some element of attachment to it, and other similar aspects. While allowing researchers and policymakers to more properly visualize the reach of the ICH asset and the impact it has on a community, as well as help target certain objectives that might aid in its preservation. As we will see later, this can also be applied to other cases, which makes the information flow simpler among authorities and allows to build bridges between different manifestations of intangible heritage.

V.II The Ceramics of Puebla and Talavera

Moving to another case study, the Ceramics of Puebla and Talavera were selected. This case is interesting for a variety of reasons. The first of them is the multilocality of this heritage across continents: Talavera de la Reina and El Puente del Arzobispo (Spain) and Puebla (México) share a

similar ceramics style given their shared colonial past³⁸. The techniques used to make the ceramics and their style remain similar despite the centuries and distance, which is not only an interesting phenomenon to study but also a challenge when it comes to measuring its impact. Furthermore, ceramic production in both locations has played and continues to play a fundamental role in the economy of the areas³⁹. If the Mediterranean Diet had a stronger emphasis on the social dimension, the case of Puebla and Talavera is intrinsically linked to the economic dimension (although it will also be demonstrated how it also impacts the other two). However, the communities in Spanish Guadalajara and Mexican Tlaxcala are different in their socioeconomic configuration, which is a challenge to reckon with when measuring its sustainability impact.

In its declaration for the inclusion of the list in 2019, UNESCO highlighted "their domestic, decorative and architectural uses," and how the processes such as "making techniques, enameling and decoration, retain the same pattern as in the sixteenth century."⁴⁰ It also mentions the knowledge related to the process, as well as how "every workshop has its own identity, as reflected in the detail of the shapes, decorations, colors and enamels of the pieces, and the production of ceramics remains a key identity symbol in both countries."⁴¹ Other highlighted aspects

³⁸ UNESCO. *Artisanal talavera of Puebla and Tlaxcala (Mexico) and ceramics of Talavera de la Reina and El Puente del Arzobispo (Spain) making process*. 2024.

³⁹ Instituto de Promoción Económica de Talavera. *Talavera de la Reina: Ready for a paradigm shift*. 2023.

⁴⁰ UNESCO. *Decision of the Intergovernmental Committee: 14.COM 10.B.23*. 2019.

⁴¹ UNESCO, *Decision*.

include common lexicon related to the process, how "the element helps foster a sense of unity and strengthens ties to the community," and how the decision mentions the interstate cooperation that should take place in order to guarantee its preservation, similar to the case of the Mediterranean Diet.

Despite being presented fundamentally as a social element, the truth is that traditional ceramics have a remarkable impact on their local economies. For instance, there are currently 15 workshops active in Talavera dedicated to its particular style of ceramics,⁴² which not only employ the artisans in them but also serve as a tourist appeal for the area. In the early 2000s, a factory in Puebla was still operative, employing over 250 workers and exporting to the US, Canada, South America, and even Europe.⁴³ We once again find a research gap regarding the full impact of ceramics in the local community, but just by gathering fragmentary information, we can indeed observe the impact it has in the economic dimension.

Nonetheless, how can we quantify its sustainability impact? Once again, the SDGs might help us in analyzing their impact a posteriori: SDG 8 (Decent Work and Economic Growth) is quoted as the most prominent, given the economic implications that have just been discussed, but others such as SDG 12 (Responsible Consumption and Production) also come into play.⁴⁴ But once again, they fall short by neglecting the complex reality behind it:

⁴² Instituto de Promoción Económica de Talavera, *Talavera*.

⁴³ José Luis Solana, "La Talavera poblana." *México Desconocido*, 2010.

⁴⁴ UNESCO, *Artisanal*.

the intergenerational knowledge transfer, the struggle to keep the industry alive against the competence of new technologies, and the overall community impact are aspects fundamental to observe inside of this ICH asset, but that can not be measured by the SGDs.

As for further indicators, based on the lessons extracted from the research papers analyzed above, we can try to create indicators based on a cross-case study. For instance, the suggestion proposed for the Mediterranean Diet of assessing the perception of local communities of their heritage could also be applied to this one, with special attention on the likelihood that these perceptions will be skewed towards the economic aspects. Facing once again an example of transnational ICH, it could be interesting to somehow quantify how it enhances inter-state cooperation on cultural matters, given how the Spanish government reported in 2022 a rapprochement with the Mexican government thanks to cultural matters and the combined work carried out to present the eventually successful candidacy for the inclusion in the ICH list.⁴⁵

V.III. The Argan Tree in Morocco

The final case study that has been selected is the practices around the Argan tree in Morocco. Inscribed in the list in the year 2014, refers to the practices concerning an endemic woodland species whose fruit can be processed

into oil.⁴⁶ This is done through a series of traditional, generationally transmitted techniques that seek to utilize the tree to its fullest extent and that have developed a series of tools, practices, and social customs and relations from it.⁴⁷ UNESCO also highlighted in its inclusion to the list how "the know-how concerning the argan tree contributes both to the local economy and ecological sustainability and is recognized by local communities as a part of their intangible cultural heritage,"⁴⁸ as well as some "measures proposed by the submitting State for safeguarding the argan tree and the related knowledge of the practitioners, including legal and institutional frameworks for the creation of cooperatives and associations and a museum."⁴⁹

In the practices around the Argan tree, we find that the environmental dimension takes a more prominent role than in the other two analyzed, given how the relation between communities and the trees is configured in a particular way and becomes vital for its persistence. Proper care for the environment and the trees becomes quintessential in the survival of these communities, which in turn pushes them to make a greater effort to preserve the environment. Some studies have also shown that Argan trees help stop desertification,⁵⁰ which makes this particular case of ICH environmentally impactful not only at a community level but also at a much broader regional one. Nonetheless, as climate change also affects them and

⁴⁵ La Moncloa. *Spain and Mexico strengthen cooperation in cultural matters*. December 2022.

⁴⁶ UNESCO. *Decision of the Intergovernmental Committee: 9.COM 10.30*. 2014.

⁴⁷ UNESCO, *Decision*.

⁴⁸ UNESCO, *Decision*.

⁴⁹ UNESCO, *Decision*.

⁵⁰ Stefan Ellerbeck, "This is everything you need to know about the Argan tree." *World Economic Forum*. June 2022.

the communities around them, their preservation is linked to a greater cause with the intervention of more actors.⁵¹

In comparison with the other two case studies, this one is much more localized in some areas of Morocco. Nonetheless, it also presents other challenges to be reckoned with. For starters, even though the culture and practices around the Argan tree are intangible, this element is linked to a tangible product that is not created by the human community itself, as are the trees. In other words, it is intrinsically linked to something that would still exist even if the cultural heritage and communities around it were not there (which was not the case in either of the two previous cases). Other than being included inside the hypothetical indicators, it presents a reality in which communities are forced to care much more about issues that go far beyond their local communities, such as climate change to guarantee the survival of the trees and, by association, of their way of living.

Taking a look at the indicators, we can see that UNESCO highlights SDG 12 (Responsible Consumption and Production) as one of the main ones for this asset.⁵² While the limitations of SDGs remain the same as in the other cases and will not be discussed here, the coincidence with the Puebla-Talavera case study in the SDGs it affects brings to light another benefit of including them in the approach to sustainability: it helps bridge the consequences of more

than two cases, which might be similar despite the great difference in practices and therefore facilitates the extraction of patterns that can be later used as indicators. This links to one of the conclusions from the review of the papers: while indicators should strive to be universal and applicable to various cases, targets for each ICH asset might be different.

In conclusion, the three different case studies analyzed provide a variety of learnings on how indicators can be applied to assessing their sustainable impact. Firstly, the three of them prove how the current framework of the SDGs is insufficient for dealing with ICH, as it leaves out of consideration many of the patrimonial aspects and even their impact in some of the sustainability dimensions. Secondly, by comparing case studies that are so different in nature, we have been able to extract some common characteristics (such as the perception of local communities or the need for cooperation between transnational actors, among others) that have a significant impact both in sustainability and in the preservation of the ICH, so they should be somehow formulated into indicators and performance to finally merge both concepts. The insights derived from the comparison of case studies highlight the need for universality that was extracted from the review of the currently proposed indicators. Finally, through this brief analysis, we have also been able to see how the intervention of different stakeholders, most pre-eminently government actors, is fundamental for the persistence of the heritage and its management. We will

⁵¹ Chaima Afi, et al. "Assessing the Impact of Aridity on Argan Trees in Morocco: Implications for Conservation in a Changing Climate." *Resources*, 15 no. 135 (September 2024).

⁵² UNESCO. *Argan, practices and know-how concerning the argan tree*. 2024.

therefore devote the next section to trying to extract the utilities of the set of indicators at a policy level.

VI. Policy implications and recommendations

The fundamental question that remains unanswered is the purpose of having a set of commonly agreed indicators for sustainable ICH management. We highlighted before how indicators not only serve as a way of materializing the abstract but also provide clear objectives and goals towards which to work at a policy level. As we saw in the case studies, governmental actors are a fundamental force to reckon with, as they can legislate in favor of protection measures (as described in the Argan tree case) or increase cooperation to maintain the heritage (such as the case of the Puebla-Talavera ceramics). Therefore, this section aims to explore the policy implications of having a measurable approach to sustainable ICH management.

As suggested throughout the paper, indicators should not be the sole tool with which sustainability and heritage management can be bridged together, but rather serve as a concrete way to somewhat standardize and share information in a challenging field. However, based on the literature review conducted for this research, it seems no developments have been made since 2015 at an institutional level to further integrate both areas.⁵³ Taking the SDGs as sufficient enough, it seems like both areas are perceived as separate and no efforts for complete integration have been formulated. Whereas academia has

sometimes tried to fill in this gap, its efforts have been scattered and not backed by any practical experience nor joint effort between different elements of Intangible Cultural Heritage. Furthermore, the indicators proposed are often too specific, which makes the knowledge transfer from some cases to others more difficult, thus increasing the difficulty of the challenges that ICH management poses.

Nonetheless, based on the research carried through the literature review and the case studies, it seems imperative that some coordinated and standardized indicators are oriented in order not only to facilitate the comprehension of ICH but also to facilitate preservation efforts both at an administrative and interstate level. As the leading organization in charge of International Heritage, as one that is respected and minded by the majority of the countries, and as the leading producer of academia and regulation concerning ICH, UNESCO has the role to step up and lead the efforts for this standardization efforts. Despite their claims that sustainability is a fundamental part of the heritage as a whole, the tools they currently utilize are insufficient and still present heritage management and sustainability as two separate issues, believing that through the case studies, we have proven to be a myth. Moreover, they should also increase the emphasis on sustainability issues when including a new asset in the Intangible Cultural Heritage List, thus guaranteeing the commitment of its Member States not only to the preservation of their assets but also to the assessment and policy of their impact. Despite being a

⁵³ Joana Dos Santos Gonçalves, et al. "Contributions to a Revised Definition of Sustainable Conservation." *LDE Heritage Conference on Heritage and the Sustainable Development Goals. September 2021*. September 2021.

global organization, it seems like UNESCO members are isolated in what refers to ICH management, which proves to the detriment of individual cases that might share common characteristics or similar management challenges.

Furthermore, it seems necessary that concrete targets are set for each one of the indicators. Despite its fundamental condition as intangible, ICH can also be approached in a quantifiable manner (taking into consideration that this is not a definitive solution, but rather a simplifying tool that provides guidance and help in the management process). While ICH can not be completely regulated and structured, we currently find the opposite situation, where ICH work focuses exclusively on the abstract realm, while neglecting its more quantifiable impact on the economy, environment, and society. Measuring indicators such as public perception or economic contribution, as we suggested in the case studies, would facilitate the orientation needed to formulate appropriate efforts. In this, the cooperation of local and national administrations, as well as civic organizations and other stakeholders devoted exclusively to ICH causes. Given their specific knowledge of the individual cases, and if provided with the appropriate framework and training to work with, they should be the ones in charge of documenting and reporting the targets in each case, which later must serve as a basis for formulating adequate policies. Having a framework of indicators also enables higher accountability for the decisions taken concerning ICH, with local and national governments having to respond to UNESCO, and potentially being punished with fines or removal from the

list if their actions result to be negligent and harmful either for patrimony or sustainability.

Nonetheless, we must always take into consideration that heritage has never been an organizational matter, but rather a communitarian one, as it is born and preserved within human societies. Therefore, the approach towards it should also be majoritarian led by civic actors, and merely monitored by UNESCO. While some steps in this direction have been taken, such as the inclusion of the fifth C for community in the World Heritage Declaration, there is still room for improvement. There currently seems to be an overreliance on an organization that might be relied upon for some things, but that should not be expected to handle all the load.

Overall, ICH is an area that is still emerging, and while some advancements have to be acknowledged, the action taken is insufficient. The lack of coordination for an appropriate framework is lacking in all areas of heritage, but given the greater challenges posed by ICH in terms of management, action must be taken in this regard. As we have seen, ICH can report a positive impact in societies, economies, and environments, which is beneficial both for public actors as well as citizens, but also touches upon some other important matters such as identity, belonging, intercultural issues, and our identity as humans.

VII. Conclusion

Throughout this analysis, we have been able to delve into the definitions of sustainability and intangible cultural heritage, seeing how they're often intertwined. As a new

field of study that is still in development, it is still finding out its path and developing the appropriate tools, but as was proved during the article there is still a long way to go. The lack of coordination in measuring heritage management and sustainability, which is common to all forms of heritage, takes a particularly high toll on ICH given the higher impact that it can have as well as the greater challenges it proposes. Sustainability and heritage need each other, yet the current efforts seem to be insufficient and too case-oriented.

We hope that this paper serves as a stone with which to build an appropriate set of tools for ICH and heritage management as a whole. Further research into this field would not only expand the case study list to identify more characteristics of the sustainability-ICH relation but also develop an appropriate set of sustainable intangible cultural heritage management indicators based on these case studies that have measurable targets and can be applied universally, facilitating cooperation and understanding of this fascinating field.

VIII. List of Figures

1. **Figure 1:** Graphical Representation of Sustainable Development. 4
2. **Figure 2:** Set of indicators analysed for this study. 7
3. **Figure 3:** Framework of Heritage Sustainability Index (HSI) for heritage buildings. 8
4. **Figure 4:** Key Indicators of Sustainable Urban Heritage Conservation. 10
5. **Figure 5:** List of frequently used local indicators. 10

IX. Bibliography

- Afi, Chaima et al. "Assessing the Impact of Aridity on Argan Trees in Morocco: Implications for Conservation in a Changing Climate." *Resources*, 15 no. 135 (September 2024). Retrieved from https://www.researchgate.net/publication/384422363_Assessing_the_Impact_of_Aridity_on_Argan_Trees_in_Morocco_Implications_for_Conservation_in_a_Changing_Climate.
- Bôto, Joana Margarida et al. "Sustainability Dimensions of the Mediterranean Diet: A Systematic Review of the Indicators Used and Its Results." *Advances in Nutrition, Volume 13, Issue 5*, pp. 2015-2038. (September 2022). Retrieved from <https://www.sciencedirect.com/science/article/pii/S2161831323000546>.
- Bouni, Cristophe. "Sustainable development indicators: Theory and methodology." *Nature Sciences Sociétés*, 6, no. 3 (1998). Retrieved from <https://www.sciencedirect.com/science/article/abs/pii/S1240130798800794>.
- Dernini, Sandro and Berry, Elliot M. "Mediterranean Diet: From a Healthy Diet to a Sustainable Dietary Pattern." *Frontiers of Nutrition*, (2015). Retrieved from <https://pmc.ncbi.nlm.nih.gov/articles/PMC4518218/>
- Dos Santos Gonçalves, Joana et al. "Contributions to a Revised Definition of Sustainable Conservation." *LDE Heritage Conference on Heritage and the Sustainable Development Goals*. September 2021. Retrieved from https://www.researchgate.net/publication/348431106_Contributions_to_a_Revised_Definition_of_Sustainable_Conservation.
- Ellerbeck, Stefan. "This is everything you need to know about the Argan tree." *World Economic Forum*. June 2022. Retrieved from <https://www.weforum.org/stories/2022/06/argan-forests-sustainable-deforestation/>.
- Instituto de Promoción Económica de Talavera (IPET). *Talavera de la Reina: Ready for a paradigm shift*. 2023. Retrieved from <https://ipetalavera.es/wp-content/uploads/2023/06/Talavera-City-Book-2023.V1.pdf>.
- Guzmán, Paloma. "Assessing the sustainable development of the historic urban landscape through local indicators. Lessons from a Mexican World Heritage City." *Journal of Cultural Heritage*, 46 (December 2020);, pp. 320-327. Retrieved from <https://www.sciencedirect.com/science/article/pii/S1296207420304052>.
- La Moncloa. *Spain and Mexico strengthen cooperation in cultural matters* (December 2022). Retrieved from https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2022/20221216_sp-mex-cultural-cooperation.aspx.

- Liusman, Ervi et al. *Indicators for Heritage Buildings and Sustainability. Central Europe towards Sustainable Building: Decision-support tools and assessment methods*, (2013). Retrieved from https://cesb.cz/cesb13/proceedings/5_tools/CESB13_1515.pdf.
- Shrestha, Hari Gopal, Singh, Sangeeta and Bajracharya, Asim Ratna. "Identification of Indicators for Sustainability of Cultural Heritage." *Proceedings of 14th IOE Graduate Conference. Volume 14* (December 2023). Retrieved from <http://conference.ioe.edu.np/publications/ioegc14/IOEGC-14-096-F2-1-723.pdf>.
- Solana, José Luis. "La Talavera poblana." *México Desconocido*. 2010. Retrieved from <https://web.archive.org/web/20100718041441/http://www.mexicodesconocido.com.mx/notas/3909-La-talavera-poblana>.
- Sowińska-Świerkosz, Barbara Natalia. "Review of cultural heritage indicators related to landscape: Types, categorisation schemes and their usefulness in quality assessment." *Ecological Indicators* 81, (June 2017): pp. 526–542. Retrieved from https://www.researchgate.net/publication/317822976_Review_of_cultural_heritage_indicators_related_to_landscape_Types_categorisation_schemes_and_their_usefulness_in_quality_assessment.
- Tanguay, Georges, Berthold, Etienne and Rajaonson, Juste. *A Comprehensive Strategy to Identify Indicators of Sustainable Heritage Conservation*. 2014. Retrieved from https://www.researchgate.net/publication/266343477_A_Comprehensive_Strategy_to_Identify_Indicators_of_Sustainable_Heritage_Conervation.
- United Nations (UN). *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*. 2024. Retrieved from <https://www.un.org/en/conferences/environment/rio1992>.
- United Nations Commission on Sustainable Development (UNCSD). *Framing Sustainable Development: The Brundtland Report – 20 Years On*. 2007. Retrieved from https://www.un.org/esa/sustdev/csd/csd15/media/backgrounder_brundtland.pdf.
- United Nations Department of Economic and Social Affairs (UNDESA). *The 17 Goals*. 2024. Retrieved from <https://sdgs.un.org/goals>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Argan, practices and know-how concerning the argan tree*. 2024. Retrieved from <https://ich.unesco.org/en/RL/argan-practices-and-know-how-concerning-the-argan-tree-00955>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Artisanal talavera of Puebla and Tlaxcala (Mexico) and ceramics of Talavera de la Reina and El Puente del Arzobispo*

- (Spain) *making process*. 2024. Retrieved from <https://ich.unesco.org/en/RL/artisanal-talavera-of-puebla-and-tlaxcala-mexico-and-ceramics-of-talavera-de-la-reina-and-el-puente-del-arzobispo-spain-making-process-01462>. <https://ich.unesco.org/en/decisions/14.COM/10.B.23>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Convention concerning the protection of the World Cultural and Natural Heritage*. 1972. Retrieved from <https://whc.unesco.org/archive/convention-en.pdf>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Convention for the Safeguarding of the Intangible Cultural Heritage*. 2003. Retrieved from <https://ich.unesco.org/en/convention>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Cultural Landscape*. 2024. Retrieved from <https://whc.unesco.org/en/culturallandscape>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Decision of the Intergovernmental Committee: 9.COM 10.30*. 2014. Retrieved from <https://ich.unesco.org/en/decisions/9.COM/10.30>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Decision of the Intergovernmental Committee: 14.COM 10.B.23*. 2019. Retrieved from <https://www.unesco.org/archives/multimedia/document-1680-Eng-2>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Intangible cultural heritage and sustainable development*. 2015. Retrieved from <https://ich.unesco.org/doc/src/34299-EN.pdf>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*. 2024. Retrieved from <https://ich.unesco.org/en/lists>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Mediterranean Diet*. 2024. Retrieved from <https://ich.unesco.org/en/RL/mediterranean-diet-00884>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Sustainable Development Toolbox*. 2015. Retrieved from <https://ich.unesco.org/en/sustainable-development-toolbox-00987>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *The Mediterranean Diet*. 2024. Retrieved from <https://www.unesco.org/archives/multimedia/document-1680-Eng-2>.

United Nations Scientific, Cultural and Social Organisation (UNESCO). *The World Heritage Convention*. 2024. Retrieved from <https://whc.unesco.org/en/convention/>.

United Nations Scientific, Cultural and Social Organisation (UNESCO), World Heritage Convention Glossary. *Mixed Assets*. 2024. Retrieved from <https://whc.unesco.org/en/glossary/307>.

World Commission on Environment and Development (WCED). *Report of the World Commission on Environment and Development: Our Common Future: Our Common Future*. 1990. Retrieved from <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

Multipolar Magnetism: The Evolution of Soft Power & Global Cooperation

Maya Attia

Sciences Po Paris - Campus de Reims, France
Bachelor of Arts

E-mail: maya.attia@sciencespo.fr

Published: 27th January 2025

Abstract

In the evolving multipolar global order, the role of soft power has become increasingly significant as nations strive to influence international relations and foster multilateral cooperation. This article explores how the rise of multipolarity reshapes the deployment of soft power by both major and emerging global powers. In response to military and economic dominance alone proving insufficient in achieving sustained influence, states increasingly leverage soft power to navigate the complexities of international diplomacy. In a rapidly evolving multipolar world, wherein the global political chessboard is shared by several key players, soft power has become a vital tool in shaping international relations and the perception of the general public. The paper examines the dual function of soft power as a legitimate instrument of global governance and a strategic tool for rebranding nations or diverting attention from domestic controversies. Through case studies including the United States, China, and South Korea, it analyzes how soft power strategies are employed to extend influence across political, cultural, and economic dimensions. The research highlights the ethical dilemmas of soft power, such as its potential to mask authoritarian practices or propagate selective diplomacy, and suggests that while soft power can effectively promote multilateralism and address global challenges, its sustainability depends on transparency, inclusivity, and adherence to ethical principles, with its overall success dependant on balancing national interest with international responsibilities.

Keywords: power, multipolarity, soft power, global powers, multilateral cooperation.

I. Introduction

In the first volume of “The Sources of Social Power¹” Mann demonstrates the continuity of the sources of power in human society– the ideological, economic, military, and political. Mann then implicates the process by which

power oscillates between various regions, empires, and nation states; dependent on various historical processes and miscellaneous advantages causing the perpetuation of one sort of power that results in the perpetuation and domination of all others. Ultimately, power, defined most ostensibly as an influence– the capacity or ability to direct the behavior of others or the course of events, takes on a larger body when applied to the global scene.

¹ Micheal Mann, “The Sources of Social Power: Volume 1: A History of Power from the Beginning to AD 1760” (Cambridge University Press, September 2012), https://assets.cambridge.org/97811076/35975/frontmatter/9781107635975_frontmatter.pdf.

Historically, it can be observed that the most powerful regions, nations, and empires, are those with dominion over the most relevant power variables of the time, with some more continually relevant than others, regardless of the time period. As the term “great power” was only first used in political science by the Congress of Vienna’s Lord Castlereagh, the British Foreign Secretary, in a diplomatic context in 1814 in reference to the Treaty of Chaumont, use of the term in earlier periods is therefore idiosyncratic to each author. Regardless, certain notable examples of historical superpowers can be observed to prove the aforementioned correlation. For instance, the Byzantines empire’s advances in military strength, religious influence, and the arts made it one of the most powerful forces in the world of the Middle Ages from the years 500-1050. Moreover, the most influential rulers in Dar al-Islam were those of the Abbasid Caliphate (750-1258). Under them, Islamic culture experienced a golden age, and a stable government allowed trade to once again prosper. The Abbasids helped China, then under the Tang Dynasty, reestablish a booming trade along the Silk Roads. They also facilitated the growth of trans-Saharan trade to West Africa and were major participants in the diffusion of ideas and goods throughout the Indian Ocean. Likewise, the Aztec Empire was able to maintain considerable dominion over the region utilizing military prowess, strong centralization of power and religion, all of which manifested into the tribute system of the strong and centralized capital Tenochtitlan. But perhaps most compellingly, European domination throughout the industrial revolution– the continent providing us with a notably tangible example of

owning the relevant power variable needed to establish dominion in a given era.

Evidently, while there are additional contributors to a state’s power, the most frequently utilized one seems to be that of the military. A pattern observed in more modern examples as well, such as the United States establishing an international reputation of domination ever since the Monroe Doctrine and along with other enactments of military superiority. However, the post-Cold War era of the modern world saw major powers slowly weaning off traditional practices of international political domination, with a decrease in military dependance and religious rhetoric as religion became more secular in most parts of the modern post-liberalism world.

Additionally, it is important to note that traditional powers like the United States and the European Union are now sharing the political chessboard with emerging global powers such as China and Russia. As military dominance and economic coercion alone are no longer sufficient to secure lasting influence, nations are turning to softer means of influence — soft power. Defined by Joseph Nye as the ability to shape the preferences of others through attraction rather than coercion,² soft power relies on cultural diplomacy, values, media, and international cooperation. In a fragmented global order, soft power has become essential not only for promoting national interests but also for cultivating alliances and fostering multilateral cooperation.

² Nye, Joseph. *Bound to Lead : The Changing Nature of American Power*. New York, Basic Books, 1990.

In this shifting landscape, countries are increasingly deploying soft power strategies to shape international perceptions, rebrand their image, and navigate a complex web of global relations. While soft power offers a non-coercive alternative to hard power, it also carries significant strategic weight, theoretically allowing nations to address pressing diplomatic challenges without resorting to the horrors of military force.

However, in the currently multipolar world, the use of soft power also raises important ethical and strategic questions. Nations with authoritarian governance structures or controversial policies may exploit soft power as a means of obfuscating or diverting attention from their human rights records or domestic issues. This duality of soft power—both as a legitimate tool for fostering international cooperation and as a means of constructing favorable narratives for public consumption—complicates the global community's understanding of these nations' true influence. The ability of states to use soft power to rebrand themselves, even in the face of internal controversies, challenges the arguably more “honest” traditional and historical measures of power and influence in international relations.

This paper seeks to explore how the rise of multipolarity is reshaping the use of soft power by both major and emerging global powers, focusing on how soft power strategies are employed to foster multilateral cooperation, while simultaneously serving as a tool for rebranding countries and deflecting international criticism. Through a combination of case studies and content analysis of media narratives, this research will examine the ethical

implications of soft power as both a legitimate diplomatic tool and a potential facade, offering a nuanced understanding of its impact on global governance and international relations.

II. The Rise of Soft Power

The global political landscape has undergone a profound transformation over the past few decades, shifting from a unipolar world dominated by the United States to a more complex and fragmented multipolar and international scene. Meaning that in this new world order, power is distributed across a broader array of states. As power becomes more diffused and no single nation can dominate the global stage, traditional methods of influence,—chiefly military might and economic coercion—while far from disappearing, are proving less effective in achieving long-term geopolitical goals and maintaining public satisfaction. In this context, soft power has emerged as a crucial tool for states seeking to secure their place in the world and navigate the complexities of international diplomacy.

1.1 Defining Multipolarity & Global Power Distribution

Simply put, multipolarity can be defined as a global order wherein power is distributed among multiple state actors, as opposed to the Cold War era of unipolarity led by the United States or the earlier bipolarity between the U.S. and the Soviet Union³. This term is characterized by nations that are both more interconnected and interdependent and consequently challenging the

³ Krauthammer, Charles. “The Unipolar Moment.” *Foreign Affairs* 70, no. 1 (1990): 23–33. <https://doi.org/10.2307/20044692>.

traditional dominance of Western powers⁴. While many states have truly tried, no singular one can dominate global affairs alone; one must realize the conditions under which soft power occurs. The aforementioned shift has made the global system more competitive, as countries increasingly vie for influence in a variety of arenas—from trade and security to culture and technology⁵. With this redistribution of power, states must find new ways to secure their interests and enhance their global standing. Enter soft power, initially coined by geopolitical scientist Joseph Nye in 1990 who characterized it as "the ability to seduce and attract."⁶ It involves shaping the preferences of others via attraction and appeal, in contrast to violence and force⁷. Soft power, simply put, is the strategy of co-opting instead of coercion. In this modern world, military and economic power alone are insufficient. This is particularly true in an age where soft power—through cultural, diplomatic, and ideological means—has become just as important, if not more so, than hard power. Soft power is thus especially important in a multipolar world, where states are more likely to form shifting coalitions and alliances, and where global problems such as climate change, pandemics, and transnational terrorism require

⁴ Charis Vloudos, Dimos Chatzinikolaou, and Badar Alam, "New Globalization and Multipolarity: A Critical Review and the Regional Comprehensive Economic Partnership Case," *Journal of Economic Integration* 37, no. 3 (September 15, 2022): 458–83, <https://doi.org/10.11130/jei.2022.37.3.458>.

⁵ Robert Muggah, "The Role of Geopolitics in a Multipolar World," *World Economic Forum*, May 10, 2024, <https://www.weforum.org/stories/2024/05/why-geopolitics-matters-more-than-ever-in-a-multipolar-world/>.

⁶ "Soft Power (Puissance Douce)," *Géoconfluences*, 2023, <https://geoconfluences.ens-lyon.fr/glossaire/soft-power>.

⁷ "Soft Power (Puissance Douce)," *Géoconfluences*, 2023, <https://geoconfluences.ens-lyon.fr/glossaire/soft-power>.

collective solutions. Conclusively, in a rapidly evolving multipolar world, wherein the global political chessboard is shared by several key players, soft power has become a vital tool in shaping international relations and the perception of the general public.

1.2 Soft Power as a Tool for Diplomacy & Influence

Conclusively, soft power has become an integral variable of diplomatic strategy when we consider the definition and establishment of this multipolar world, along with states' considerations of how they may be perceived by other, more influential states, or otherwise people with the power to impose negative repercussions such as changing public perception, facilitating boycotts, protests, or even revolts. Countries deploy soft power in various ways—through cultural diplomacy, educational exchanges, media engagement, and the promotion of values such as democracy, human rights, and rule of law. It is important to consider that this term does not insinuate the abandonment of its historically proven and ever reliable counterpart; hard power. In fact, it is the perpetuation of both, to varying degrees, that now dominates the international relations sphere⁸. Nevertheless, soft power relies on the essence of drawing on a country's culture, values, and image to influence the behaviors and perceptions of others, while hard power relies on the more direct means of military approaches and economic

⁸ Richard Lee Armitage, *CSIS Commission on Smart Power: A Smarter, More Secure America* (Washington, Dc: Csis Press, 2007).

⁹ Ernest J. Wilson, "Hard Power, Soft Power, Smart Power," *The ANNALS of the American Academy of Political and Social Science* 616, no. 1 (March 2008): 110–24, <https://doi.org/10.1177/0002716207312618>.

sanctions. Therefore, hard power is naturally more tangible.

1.3 The Global Reach of American Culture: From 'Mean Girls' to the Military

For the purposes of clarification, one may consider certain examples. The United States, for instance, has long been a leading practitioner of soft power through the global reach of its culture—Hollywood, popular music, and fashion—alongside its educational and diplomatic exchanges¹⁰. While initially seemingly irrelevant, programs like the Fulbright Program, which are meant to promote cross-cultural academic exchange, are key tools through which the U.S. fosters long-term diplomatic relationships with other countries. Additionally, the United States uses media and technology to promote its ideals of democracy and free-market capitalism, which has helped maintain its position as a leading global power. This is obvious when considering U.S. media domination—social media, the film industry, and news are disproportionately U.S.-centric, with most popular social media apps, music and film producing companies with their influential musicians and actors, and news platforms either entirely owned by American companies or people, or inadvertently focused on the American sphere of news and entertainment. Remarkably, one of the most powerful vehicles of American soft power is its culture, which is omnipresent in global media. Hollywood, as the epicenter of global entertainment, has a far-reaching influence on public

perceptions worldwide. American movies, television shows, and music have shaped global narratives, not only entertaining audiences worldwide but also exporting the supposed American values such as individualism, democracy, and freedom. When asked to name a movie or series many would mention iconic Hollywood classics like *Highschool Musical* or *Mean Girls*, which have become cultural touchstones, framing how people from different countries see the U.S. and its way of life in all aspects. These cultural exports serve not only as entertainment but as subtle forms of diplomacy, promoting a positive or at least a generally controlled image of American society.

Conversely, one can not forget the impact of major American franchises, beginning with the Marvel Cinematic Universe. It is difficult to overstate the impact of the Marvel Cinematic Universe— not only within the U.S. but worldwide. With each earning over \$1 billion, four of the top ten highest-grossing films of all time are Marvel films¹¹. Given the modern shift towards streaming culture and the sheer volume of Marvel releases during the previous 20 years—sometimes there are many releases in a single year—this is especially remarkable, since hordes of fans continue to swarm to see them on opening night. These movies rank among the most influential blockbusters of the previous 20 years; they are not obscure. The U.S. military has been closely associated with *Iron Man* within the Marvel series, both in terms of theme and production. Because *Iron Man* produces impressive and

¹⁰ Armand Potier, "Hard Power et Soft Power Des États-Unis - Major Prépa," Major Prépa, 2024, <https://major-prepa.com/geopolitique/hard-power-soft-power-etats-unis/>.

¹¹ IMDb, "Top Lifetime Grosses," Box Office Mojo (IMDb, 2023), https://www.boxofficemojo.com/chart/top_lifetime_gross/?area=XWW.

expensive weapons, the Pentagon approved of the authorization of \$1 billion for the use of military resources¹². In return, pro-military sentiment is ingrained in the very ethos of these movies, and there are a multitude of other films in the franchise that can be chosen as excellent illustrations of the so-called state-sponsored military propaganda film franchise¹³.

Additionally, *Captain Marvel*, unique for standing as the first female-led film in the franchise, was promoted in conjunction with a recruitment effort for the Air Force that used its images and messaging, further implicating it as a propaganda tool. The need to challenge authority, especially in the military when other people's lives are on the line, seems to be one of the main themes of the movie. However, the audience is left with a completely conflicting perception of American military activity since this message is never implemented or even taken into account in the context of the Air Force itself, which is constantly praised without criticism. Even though Wendy Lawson is on the losing side of the conflict, she is represented as a force for pure good. She develops a potent instrument for change that will "end wars, not just fight them" using the resources provided by the US military. It is also noteworthy to acknowledge that the imagined alien struggle between the Kree and Skrulls is juxtaposed with the actual institution of the Air Force. It reinforces the idea of war as a

non-serious and alien object of entertainment, which was developed by the media's portrayal of the Gulf War and the War on Terror. It minimizes the actual bloodshed and devastation that the Air Force perpetuates.

The cartoonish violence in the movie is excused by the two groups' nonhuman status. The majority of fight scenes are made with computer-generated imagery (CGI), which means that the portrayal of violence lacks authenticity even when the Kree and Skrulls are using extraterrestrial technology. Instead of firing bullets, guns fire lasers. The Kree do not bleed red; they bleed blue. This supports Virilio's claim that the purpose of a military movie is to eventually accumulate viewers for the loss and suffering that come with conflict. As a result, the perception of American interventionism becomes distorted and sanitized¹⁴. A purposeful sanitation further sold to the public when layered with progressive messages such as that of feminism, with Carol's success in finding a place for herself in the Air Force depicted as a "breaking of the glass ceiling", and the action of joining a military institution empowering women overcoming the stereotype that women are inherently the "softer" sex¹⁵.

This phenomenon is, of course, not uniquely Marvel Cinematic Universe-specific. Both the FBI and the Pentagon have engaged in decades of direct intervention with television and film. Scilicet, as a de facto co-producer of the 1959 drama film *The FBI Story*, J Edgar Hoover, the

¹² David Saveliev, "New Marvel Film Puts Spotlight on Hollywood's Military Ties," *Responsible Statecraft*, November 5, 2021, <https://responsiblestatecraft.org/2021/11/05/new-marvel-film-puts-spotlight-on-hollywoods-military-ties/>.

¹³ Mia Hardister, "Hollywood and the Pentagon: U.S. Military Funding of Popular Cinema in the Post-9/11 Era.," Clark Honors College Theses N/A, no. N/A (May 2023).

¹⁴ Paul Virilio, *War and Cinema : The Logistics of Perception* (London: New York, 1989).

¹⁵ Mia Hardister, "Hollywood and the Pentagon: U.S. Military Funding of Popular Cinema in the Post-9/11 Era.," Clark Honors College Theses N/A, no. N/A (May 2023).

original director of the FBI, even went so far as to play himself and insist on reshooting portions that he believed did not accurately represent the FBI. In order to protect his agency's reputation, Hoover spent the remainder of his life interfering in films like *Moon Pilot* (1962), when he pushed Disney to transform an incompetent FBI agent into a generic "federal security officer." Walt Disney even worked for the FBI as an informant, turning in suspected communists in exchange for permission to shoot inside the FBI offices. This phenomenon is not new either— it seems the blurred lines between hard and soft power have been long established by the United States government. *Wings*, a combat film produced with assistance from the US military in 1927, was the first Oscar winner for best picture. The Department of Defense has a number of departments that work closely with the film industry. Former Pentagon deputy director of entertainment media Phil Strub, who served as the agency's main point of contact with filmmakers, defined his position as: "encouraging entertainment media producers to create or increase positive and reasonably accurate US military portrayals in their projects while remaining mindful of their creative process. Continually seeks out new ways to capitalize on innovations in entertainment media to inform the American public about the military, and/or benefit military recruiting and retention¹⁶."

Transformers, *Pearl Harbor*, *War of the Worlds*, *Bones*, and *24* are just a few of the films and television series that

Strub worked on. In exchange for the use of a large amount of military hardware, movies grant the Pentagon complete script approval privileges. For instance, in exchange for access to fighter jets and aircraft carriers, the navy was allowed to alter certain elements of the original script for *Top Gun*, the highest-grossing film of 1986. The navy saw a 500% surge in enlistments the year it was released as a result of the positive representation¹⁷.

In addition to Hollywood and the entertainment industry, the rise of American-owned and internationally dominant social media platforms like Facebook, Instagram, Twitter/X, and YouTube has allowed the United States to maintain an unparalleled influence over global communication. These platforms facilitate the spread of American ideas, culture, and values to millions of people worldwide, contributing to the diffusion of U.S.-centric cultural trends and ideologies. For example, social movements like #MeToo and Black Lives Matter, which originated in the U.S., have gained global traction, influencing public debates on gender equality and racial justice around the world and kickstarting various movements internationally.

Moreover, American news outlets such as CNN, The New York Times, and The Washington Post have a significant global presence, offering a platform for U.S. political discourse and shaping global perceptions of international events. American politics then becomes a prime example of the power established by a collaboration

¹⁶ Tom Secker, "Phil Strub Retired 6 Months Ago and No One Reported It | Spy Culture," *Spy Culture*, December 11, 2018, <https://www.spyculture.com/phil-strub-retired-6-months-ago-and-no-one-reported-it/>.

¹⁷ Akin Olla, "Is WandaVision ... Pentagon Propaganda? | Akin Olla," *The Guardian*, March 9, 2021, <https://www.theguardian.com/commentisfree/2021/mar/09/wandavision-pentagon-propaganda-marvel-disney-fbi>.

between soft and hard power, as the omnipresence of American military and economic interventions and approaches in the international world, and the ubiquity of American newscasting combine to ensure that American politics are at the forefront of most of the world's minds, screens, and conversations.

1.4 China's Sun Tzu Approach

It can be observed then, that nations utilize soft power much like they would any other geopolitical tool— to address personal failures as perceived by foreign entities or the general public, if and when the foreign entities and general public's perception of that nation matters to that nation. Using Sun Tzu and *The Art of War* as a source of soft power for China's peaceful development policy has become popular in China in recent years. The Chinese Academy of Military Science's 2014 9th International Symposium on Sun Tzu's Art of War, "Sun Tzu's Art of War and Peace, Cooperation and Development," exhibited this tendency. "Sun Tzu's Art of War shows us that seeking safety through development, cooperation and win-win growth is the right way toward world peace," the conference description reads. It would be easy to envision Sun Tzu as a contemporary CCP official outlining China's strategy for peaceful growth based on this statement. In a 2012 speech to the U.K. Joint Services Command and Staff College, Chinese Ambassador to the United Kingdom Liu Xiaoming similarly aimed to establish trust by using *The Art of War* to describe Chinese strategic thinking, stating that "China has the deterrence and wisdom to win without fighting." However, China is capable and brave enough to

prevail in combat if necessary. This is the core of China's current military policy and the substance of *The Art of War*. Perhaps this picture was in mind when Hu Jintao presented a silk copy of *The Art of War* to President George W. Bush in 2006 or when Admiral Michael Mullen visited Beijing in 2011 and received a copy from Renmin University in Beijing. China is investing in infrastructure projects throughout Asia, Africa, and Europe through programs like the Belt and Road Initiative (BRI), establishing itself as a worldwide leader in development and gaining more political and economic clout. The Belt and Road Initiative (BRI) is an illustration of how China blends cultural diplomacy with economic investment, employing massive projects to establish connections and long-term dependencies that are presented as advantageous to both parties. China has attempted to control the narrative around its ascent by portraying itself as a responsible global leader dedicated to sustainable development and international collaboration, in addition to being a major economic force. This is portrayed clearly on the official Belt and Road Initiative website¹⁸, with titles like "Chinese-funded geothermal project to boost clean energy access in Kenya", "Rashakai SEZ under CPEC begins to contribute to industrial development in Pakistan", and "China-Brunei joint venture launches solar energy project," being one of the first things you see. Additionally, China is also on the lead of the Asian Infrastructure Investment Bank (AIIB); an alternative to the World Bank and the International Monetary Fund,

¹⁸ BRI Official Website, "Belt and Road Portal," Yidaiyilu.gov.cn, 2018, <https://eng.yidaiyilu.gov.cn/>.

which are notable Western-dominated organizations. This demonstrates how China is actively promoting a more multipolar world order that reflects its expanding influence by reshaping global governance structures through a form of mitigated/tweaked soft power layered with various aspects.

1.5 Cultural Influence from East Asia: The Calculated Export of Anime & K-Pop

In the spirit of exploring a slightly more innocent looking case study, it is important to note that both Japan and South Korea have effectively leveraged cultural exports as part of their soft power strategies. Using now globally recognized symbols—anime in Japan and K-pop in South Korea—to project influence, generate substantial economic benefits, and, in some cases, successfully divert attention from controversial actions throughout history. Japan has long used its rich cultural heritage, especially through anime and manga, as viable vehicles of soft power. Internationally, anime has taken on an identity with Japanese culture, allowing both an entertaining yet deeply cultural look at the values, history, and social structure in Japan. Shows like *Naruto*, *Attack on Titan*, and Studio Ghibli movies are internationally recognized, strongly augmenting Japan's cultural footprint. This form of cultural diplomacy is not only successful soft power but is also lucrative. The anime industry is predicted to be worth USD 62.3 billion by 2031¹⁹, with huge spillover effects in everything from tourism to merchandise and video games.

On the other hand, Japan's cultural exports also have a strategic purpose in softening the country's global image regarding dark chapters of its past, whether that be purposeful or not. The legacy of Japan's wartime atrocities, most especially in World War II, including the Nanking Massacre and the treatment of "comfort women," has remained one of the sensitive topics in the region. While efforts to acknowledge and apologize for these crimes committed in the past have been made, tensions between it and neighboring countries, especially China and South Korea, still remain.

In this sense, Japan's cultural exports—from anime to technology—have diverted attention away from its troubled historical legacy and brought international focus toward the more positive aspects of Japanese culture, such as innovation, craftsmanship, and peaceful diplomacy. Such an image—a technologically savvy and anime-loving society—fades into obscurity Japan's historical disgruntlement. This "rebranding" via soft power has continued to boost Japan's diplomatic heft, not least in the West, where its cultural offerings remain very popular.

'Hallyu', or the Korean Wave, has become one of the most influential phenomena in modern soft power. The genre of K-pop in itself succeeded to become an internationally phenomenal pop genre, with groups such as BTS and Blackpink dominating charts and making huge cultural and economic impacts around the world. K-pop is not just music; it's an intensely choreographed mashup of fashion, beauty, dance, and technology, all put together into a very slick, approachable package that appeals to the world's youth. As the business of K-pop grew, it became

¹⁹ "Anime Market Size, Share, Growth Analysis, by Type - Industry Forecast 2022-2028," www.skyquestt.com, February 2024, <https://www.skyquestt.com/report/anime-market>.

central to the South Korean economic engine, bringing in billions of dollars in national economic revenue derived from merchandise, concerts, and digital streaming.

Like Japan, the cultural exports of South Korea also reshape global narratives about its history. South Korea has also faced criticism over historical instances such as mass killings during the Gwangju Uprisings and the Bodo League massacre. At the same time, this global success of K-pop and other cultural exports allowed South Korea to build a "cool" image; younger generations worldwide are more likely to relate to South Korea for pop culture and innovation rather than for past historical grievances. Such a possibility of reframing its identity through cultural diplomacy allows South Korea to keep its influence on the world arena, especially in the spheres of diplomacy and trade.

Admittedly, cultural products have been used in developing economic relations that quietly serve respective political and diplomatic interests of the two countries. For instance, the influence driven by South Korean K-pop keeps the country in good books with most of the countries in Southeast Asia, the Middle East, and the United States, hence giving it a lever in international negotiations. Meanwhile, the exportation of anime by Japan has helped create an image of that country as a leader in both technological and creative fields, making it very seriously considered in both soft power and economic terms as one of the most significant players in the world.

Anime and K-pop have permitted both Japan and South Korea to make use of their cultural exports in order to garner worldwide presence, strengthen soft power, and,

most importantly, generate economic wealth. These forms of culture have made them not only the cynosure of attention in the global entertainment market but also successfully enabled them to manage uncomfortable historical legacies and obscure them to a great extent. The attention of the international community is focused on the pop cultural scenes in both countries, projecting a much more positive image, masking the controversies of their past by framing their identities in light of modern successes in innovation and cultural export. This use of cultural diplomacy for a strategic purpose is not without its ethical connotations but shows how soft power can be used to mold global perceptions and develop economic and diplomatic ties.

1.6 The Theoretical Understanding of Soft Power & its Applications

The leading scholar on the subject, Joseph Nye, postulates that it is in a multipolar world that soft power is especially relevant, wherein no single nation can maintain dominance through military and economic means alone. According to Nye, there are three elements concerned with the concept of soft power: culture, political values, and foreign policy. Hence, countries which have a good global image and sound institutions have therefore the ability to attract others, increasing their sphere of influence.

This increasing polarity gives new importance to these pillars. Without dependence on a sole hegemonic power, cultural diplomacy, educational exchange, and values become more important tools for coalition building and the sustaining of influence. The EU has partly mobilized soft power up until this point by making human rights,

democracy, and environmental sustainability integral parts of its foreign policy program. Indeed, many of the programmes and partnerships the EU has entered into have tried to make it better placed in the global order while fostering multilateral cooperation on major issues.

But soft power has its nuances as well. With particular consideration to the multipolar world in which competing global narratives must coexist, the use of soft power would be informed by perceived credibility in actions and correspondence with other nations' interests. Messages, for example, of the model for economic development that is promoted in soft power initiatives are often pitched against criticism of its human rights record; this makes attempts at projecting an image of benign leadership with China as a critical player complicated.

The fact that power has presently shifted toward a diversified number of actors means states increasingly have to bank on non-coercive modes of diplomacy-through cultural exchanges and international cooperation-to forge alliances and mold global narratives. The induction of the concept of soft power in this new geopolitical reality creates portent for a more precise concept of global influence, along with a sense of how the states answer an increasingly interconnected competitive dynamic world.

III. Case Studies in the Use of Soft Power

A variety of soft power strategies has been increasingly employed to shape global perception, forge alliances, and attain strategic interests by states in differential positions of economic, military, and diplomatic influence in a multipolar world. Soft power is utilized both as a tool of

multilateral cooperation and as a conduit for the achievement of the national agenda of a country, often melding cultural diplomacy with strategic economic and political aims. We will analyze this phenomenon on how soft power may work in context through case studies drawn from key global actors, such as China, the United States, South Korea, and Canada, which highlight specific soft power strategies and how such efforts might be conceived as effective in remaking global relations.

2.1 China: The Silk Road Reimagined

Interlinked with the rapid rise of China into a world power is the strategic exercise of soft power. Notably, the BRI has gained credence as one of China's flagship foreign policy projects, where economic diplomacy and cultural exchange go hand in hand in their combined quest to leverage influence across Asia, Africa, and Europe, as aforementioned. In fact, the BRI has been referred to as the new Silk Road. The BRI is an ambitious infrastructure investment program, through which China aims to develop trade routes and forge economic dependencies by building roads, railways, and ports, as well as laying energy pipelines. With these investments, China pursues a twin objective: reinvigorating global trade while promoting its version of governance, which is based on state-led capitalism and long standing economic development.

The BRI epitomizes how soft power can reinforce hard power in reshaping the global order. China's investment in infrastructure projects creates some sort of economic dependency that makes it an indispensable economic partner for most developing countries. Many of those

projects, especially in regions peripheral to China, come hand-in-hand with a Chinese diplomatic package promoting Chinese culture, the Mandarin language, and Chinese norms. For instance, Confucius Institutes, founded under the patronage of the Chinese government, mushroomed all over the world and taught both language and cultural programs as a method of fostering a positive image of China overseas.

At the same time, soft power applied in the case of China is not devoid of criticism. While the BRI stimulates economic development, it has at the same time been criticized for debt-trap diplomacy, whereby developing countries fall into debt with China and thus become susceptible to its influence. Besides, China's soft power is often crippled by its record on human rights, especially with regard to its treatment of ethnic minorities like the Uighurs and its controversial policies in Hong Kong and Tibet. Despite all this, China has continued to project its soft power in the emerging multipolar world by mixing economic incentives with cultural outreach in order to shore up its position internationally.

2.2 United States: The Global Stage & the Hollywood Effect

The United States is one of the forerunners in deploying soft power on the international scene through a set of cultural attractions, media, the education system, and diplomatic outreach to shape foreign perceptions. Indeed, some of the most significant instruments of U.S. soft power are its cultural exports: Hollywood, popular music, and technology that have become deeply ingrained in global consciousness. U.S. films, television shows, and

popular music both entertain and symbolize what the country wants to label as American ideals of individualism, democracy, and freedom of expression. Aside from these cultural exports, the United States invests in educational exchanges as a form of soft power. Opportunities such as the Fulbright Program and Peace Corps enable people from around the world to learn about American culture and ideals. Such exchanges help in nurturing long-term diplomatic relations in countries and regions where the U.S. would want to retain its influence. American universities attract students from other countries, serving as cultural ambassadors for spreading the values which the U.S. upholds: academic freedom and liberal democracy.

But domestic and foreign policy challenges came forth to further complicate the United States' soft power. Gun violence, racial inequality, and political polarization now come forward and beg the question of whether or not these ideals promoted abroad by the U.S. are in good faith. American culture promotes the code of democratic life, but U.S. foreign policies regarding military interventions in the Middle East and support for repressive regimes raise points of incongruity. Some might argue that the U.S.'s soft power has begun to crumble in recent years. Whatever setbacks, the U.S. is undeniably still the main global actor in soft power, using its cultural influence as a means of spreading its vision of the world combined with its national interests.

2.3 Canada, the Cool Neighbor: Diplomacy & Multiculturalism as a Mask

Canada has built up its reputation in the world based on a few elements, such as multiculturalism, peacekeeping,

and diplomatic leadership-all those central parts of its soft power strategy. Acting typically as a middle power, Canada has used its image of a tolerant, peaceful nation in global diplomacy. International peacekeeping and participation in international institutions like the United Nations contributed to establishing the position of Canada as a facilitator of global cooperation and a resolver of conflicts.

Culturally, Canada has used its multicultural identity as a lever of soft power in promoting itself as a model of diversity and inclusion. Its multicultural policies have provided a specific image as to inspire other countries, especially regarding the integration of refugees, immigrant communities and social cohesion. This identity is further supported through the country's cultural exports in music, literature, and film, and even international portrayal of Canadians, which help project positive imagery of Canadian values to the rest of the world. Much like in the United States, Canada projects soft power through education using a combination of international scholarships and exchange programs to promote a network of longer-term relations. High promotion of human rights, democracy, and environmental sustainability places Canada again as one of the most important actors regarding global issues such as climate change and humanitarian aid. The soft power of Canada, however, has not passed with innocence, with continued issues concerning the treatment of Indigenous peoples and its role in historic injustices, like the residential schools system. Inasmuch as the country preaches an active, progressive, and inclusive image, these unaddressed issues complicate its soft power narrative to the extent that

continuous balancing for the righting of historical wrongs and the maintenance of standing globally becomes necessitated.

While soft power can be an effective means for nations to improve their image and diplomatic influence, it tends to be entwined with complex geopolitical and historical dynamics. Indeed, states have been using culture, economic initiatives, and diplomatic outreach more and more as means to further the national interest in relations with other nations within an evolving world order. How the use of soft power will serve to engender multilateral cooperation, resolve historical grievances, and influence global norms is related to the balancing act of these countries' cultural diplomacy with the political realities.

IV. Ethical Implications & Challenges of Soft Power

While soft power offers a great deal in terms of enhancing diplomatic influence, global cooperation, and cultural exchange, there are also some ethical concerns that are important in regards to the deployment of soft power. The use of soft power can be double-edged in application: where it provides for global engagement and reinforces positive international relations, it may also screen undesirable activities or mislead foreign audiences. Soft power dilemmas or ethical implications are fast turning complex as more influential actors come up in today's multi-polar world.

3.1 The Velvet Curtain: Soft Power or Propaganda?

Perhaps one of the major ethical dilemmas that has to do with the application of soft power is its potential to

degenerate into propaganda. Essentially, soft power involves influence by attraction and persuasion. Deliberate manipulation of cultural and diplomatic means for the purpose of projecting some idealized version of a country undermines authenticity itself. This may be the case with countries with poor human rights records or those with authoritarian leadership, as they often employ soft power to create an image more appealing to the public audience and take away attention from various criticisms by domestic and international groups.

The BRI of China is indeed a perfect example of how soft power can be applied for positive development and strategic influence. Even though, beyond dispute, the BRI has upgraded infrastructure in many developing countries, it also came under criticism as an instrument of economic coercion—a place where China's investments in these regions build dependency. Critics say that quite often, the BRI diverts attention from the internal problems of China: human rights records, freedom of speech, and democratic freedoms. In this way, soft power obscures less-than-ideal domestic policies by representing a country as a benevolent global leader without being bound by contentious issues internally.

In a similar vein, Russia has been accused of resorting to soft power techniques in manipulating media narratives and cultural exchange programs with a view to projecting an image of strength and unity, while at the same time promoting divisive politics both at home and abroad. Such practices really blur the line between genuine cultural diplomacy and propaganda; they raise significant ethical

concerns about transparency and truthfulness in international relations.

3.2 Selective Diplomacy: A Double-Edged Sword of Influence

Another ethical concern regarding soft power is that of selectiveness in application. In their pursuit of strategic goals, states may invest in soft power projects in selected regions or with selected actors, often at the expense of human rights and democratic values. For example, countries with questionable human rights records may concentrate their soft power policies more in regions where their image can be cleansed without receiving any direct censure. It is this selective diplomacy that can bring about a whole set of moral contradictions whereby, for reasons of economic or political benefit, countries may support repressive regimes or turn a blind eye to the violation of norms by a country. Another ethical dilemma in soft power involves its selectiveness in application. In the process of pursuing strategic objectives, states may invest in soft power projects in selected regions or with selected actors, which often comes at a cost to human rights and democratic values. For instance, countries with questionable human rights records may focus their soft power strategies more on regions where they can improve their image without receiving direct censure. It is this selective diplomacy that can bring about a whole set of moral contradictions whereby, for reasons of economic or political benefit, countries may support repressive regimes or turn a blind eye on the violation of norms by a country.

Saudi Arabia, Qatar, and other Gulf nations are a harsh example of this form of selected diplomacy. While the

kingdoms have been doing much work, through soft power, to present themselves as progressive, modern countries with such things as hosting major international events and investing in entertainment and sports, such as the acquisition of Premier League football teams, they simultaneously retain their reputation for broadly autocratic rule and human rights abuses, most of which is present directly in the building of these soft power events; such as the abuse and mistreatment of migrant workers. The Gulf tries, through soft power outreach, to divert international attention from its internal problems and to present itself as a large regional stabilizer, even modernizing. The moral issue here is in the great discrepancy between what this cultural diplomacy can create in terms of an image and the harsh realities on the political ground.

3.3 Cultural Diplomacy or Cultural Imperialism?

On one hand, cultural diplomacy is one of the strongest instruments of soft power; simultaneously, it opens ethical issues on imposing the norms and values of one nation onto others. While such a cultural exchange program and international media outreach may support the understanding among the nations, these can also include the potentiality of cultural imperialism in which dominant cultures impose their values upon others in the name of propagating "universal" ideals.

The United States has long used Hollywood films, music, and educational exchanges to project its self-declared values of democracy, freedom of expression, and individualism. Although these values are likely to find

relatively positive resonance in many parts of the world, they can also be conceived of as an attempt to force-feed a kind of Western-centricity that does not consider local customs and traditions. In countries hostile to those values, especially in major parts of the world where historic or cultural contexts have been unlike those, American soft power is often viewed not as a form of benign cultural exchange but more as a form of cultural domination.

In its own way, the Chinese efforts to promote traditional culture with the Confucius Institutes²⁰ operating abroad have raised questions as to what cultural influence means and to what extent such influence correlates with the political values coming from China. While the Confucius Institutes are nominally established to promote Chinese language and culture, critics argue that they often serve as vehicles for the Chinese government to shape perceptions of its policies, especially regarding Taiwan and the Tibet issue. This then begs the question of whether or not cultural diplomacy compromises the integrity of the exchange when it is linked to state interests. This query was apparently also shared by the U.S government, as federal research money for colleges and universities with Confucius Institutes were withheld under the US National Defense Authorization Act for Fiscal Year 2021²¹ and as of 2022, federal research funding was vastly threatened, leading to the closure of all SUNY

²⁰ "Confucius Institute," ci.cn, n.d., <https://ci.cn/en/gywm/pp>.

²¹ Hongshan Li, *Fighting on the Cultural Front*, Columbia University Press EBooks (Columbia University Press, 2024), <https://doi.org/10.7312/li-20704>.

campuses' Confucius Institutes²². Such actions then lead people to question whether such efforts by China were shut down by the U.S due to them truly being such a threat, or if the U.S itself is feeling threatened by Chinese soft power efforts.

3.4 When Soft Power Backfires: The Long-Term Risks of Deceptive Diplomacy

Finally, there is a question of the long-term efficacy and durability of soft power strategies. Even as soft power may be effective for countries to win some influence in the short term, there is growing recognition that it can never replace political, military, or economic strength altogether. The soft power initiatives-particularly those that cover up the defects of a nation or divert attention from pressing issues-may even undermine a country's credibility in the end. Ultimately, however, soft power that is based on a substratum of lying or selectivity is one which is certain to result in erosion of trust and loss of international friendships.

For instance, Turkey has indeed consistently used soft power in the Middle East in a bid to be a leader in the domains of humanitarian assistance, Islamic culture, and regional peace. However, its actions in Syria, Kurdish territories, and internal political repression complicated its efforts at soft power. While its humanitarian outreach might prove effective in building influence, its inconsistent political behavior risks credibility on the world stage.

Similarly, India's ambitions to cash in on soft power through so-called cultural efforts-including Bollywood, yoga, and education exchanges-will equally have to wrestle with ethical questions about the treatment of religious minorities in general and Muslims in particular. While this form of cultural export has elevated India's image in the world theater, India's internal affairs that mar religious coexistence indeed question its soft power appeal, especially for countries that believe in human rights to their core. The truth, in fact, is that ethical considerations of soft power are multidimensional and cannot be fully comprehended without considering the bigger geopolitical context within which soft power becomes mobilized. While it can also nurture international cooperation and build positive relations, the prospect of diversion, selectivity in diplomacy, and cultural imposition raises significant questions about the issues of transparency, veracity, and human rights. In a multipolar world, where major powers are being put into question from every angle, the usage of ethical soft power will form the core for building the future of global relations. Any nation should work to foster its values and interests but not sacrifice basic principles of justice, respect, and transparency in order to be true to the fine line drawn between cultural diplomacy and propaganda.

V. The Future of Soft Power in a Multipolar World

While global power continues to shift decidedly toward multipolarity, the role of soft power in international relations is ever technical and multi-dimensional. In a world without the undisputed global primacy of any one

²² Pete DeMola, "SUNY Campuses Quietly Close Chinese Government-Backed Programs," Times Union, February 28, 2022, <https://www.timesunion.com/news/article/SUNY-campuses-starewide-quietly-close-Chinese-16942259.php>.

country, states are exploiting cultural, diplomatic, and economic influence to shape a nuanced and competitive global order. This section attempts to describe the direction in which soft power is going by drawing upon its evolving nature, its capability for multilateral cooperation, and the challenges that it would face in an increasingly interconnected world.

4.1 Digital Diplomacy: The Tweet Heard Around the World

Perhaps the most profound change in the exercise of soft power came with the emergence of digital diplomacy. Social media, digital platforms, and online content have transformed how countries project their values, reach foreign publics, and compete in the struggle for shaping global narratives. Twitter, YouTube, Instagram, and TikTok have created a new domain where states, corporations, and citizens may exercise soft power on a scale and at a speed hitherto unimaginable.

Digital diplomacy democratized the ability of both state and non-state actors to shape international perception by providing them with unparalleled access to the global audience. For example, Turkey's President Recep Tayyip Erdoğan has used Twitter to take his message directly to the international community, bypassing traditional media. More notoriously, so has U.S.'s Donald Trump, specifically towards the end of his first term. Similarly, China also increasingly utilized digital platforms for the promotion of its image, using state-backed media outlets and grassroots campaigns as megaphones to amplify its narrative, especially on initiatives such as BRI and the Chinese Dream. Yet great power carries great challenges. The rise of

digital diplomacy goes along with growing mis- and disinformation and cyber diplomacy. Where is the thin line that differentiates cultural exchange from political manipulation in this virtual space? With the proliferation of fake news, echo chambers, and state sponsored trolls, digital soft power cuts both ways. If countries do not want to lose credibility and damage the very ethical values on which their soft power initiatives are based, they will need to act responsibly on digital platforms.

4.2 The New Global Order: Soft Power as the Glue of Multilateralism

As the world moves into a configuration of multipolarity, traditional forms of diplomacy vested in a few large powers are increasingly giving way to multilateral frameworks in which several countries play a role in shaping global norms, rules, and governance. An environment which requires soft power is one in which relationships will have to be established, consensus built, and thrusting cooperative action on such issues as climate change, health crises, and economic disparity.

For example, the Paris Agreement on Climate Change demonstrated soft power dynamics whereby countries relied on their diplomatic powers of influence to convene cooperation for the solution to some urgent world problems. The European Union has, in particular, shown how soft power can be used to further promote multilateral cooperation. This is by embedding its emphasis on diplomacy, human rights, and environmental sustainability within forms of global governance that astutely embed soft power within institutional settings in a

manner that paces the multilateral moment of the 21st century.

Another emerging power using soft power in multilateral contexts is India. It has asked to be perceived as a bridge between the developed and developing worlds, while it uses its status as the largest democracy in the world and its growing economy as leverage to forge international partnerships in such areas as digital innovation, sustainable development, and peacekeeping operations. India's role in the BRICS—a short form coined by Goldman Sachs for Brazil, Russia, India, China, South Africa—epitomizes the more general trend of countries making use of their soft power to create multilateral platforms for dialogue and cooperation, even as they vie for geopolitical influence.

4.3 From Cultural Exports to Global Solutions: Soft Power's Expanding Horizon

In the unfolding future of soft power, its scope is likely to go further than traditional forms of cultural exchange, media, and diplomacy. The 21st-century global challenges, from climate change to pandemics, through geopolitical instability, mean that nations will need to reset their soft power strategy toward collaborative problem-solving and global leadership.

Soft power in the future might flow into global health diplomacy: nations would increasingly work with international organizations and NGOs on pressing health concerns like pandemics or antimicrobial resistance. That is why the COVID-19 pandemic has made it crystal clear that what is most needed to fight health emergencies is global cooperation. For example, Germany, South Korea, and Taiwan have exercised their soft power by providing

medical know-how, direct aid, or health diplomacy in the COVID-19 pandemic. In years to come, too, those countries which perform well in managing international problems, whether climate change or public health, will find a way to use their reputation as a problem solver as a means of boosting their soft power. More generally, CSR and sustainable development will become even more important weapons in the soft-power armory. As awareness among global audiences grows with each passing day, pertaining to questions of human rights and the environment, countries championing sustainability and corporate ethics will see their global standing go up. For example, Scandinavian nations such as Sweden and Norway have developed soft power by aligning their diplomacy and business with high standards of environmental sustainability and corporate accountability in human rights.

This also presupposes multilateralization of the soft power of the countries, which includes finding new alliances and forging closer relationships with emerging powers such as India, Brazil, and South Africa. It is in this kind of environment that regional powers will have more say in setting global norms, while their influence on the international scene will be considerably enhanced through mechanisms of soft power.

In this new multipolar order, countries will have to increasingly use soft power in the future to come towards a common understanding with different voices and interests if global governance is to have any future. This will be required for countries to take soft power as an enabler of collaboration needed in solving many of the global

challenges faced by all nations, ranging from climate change to health, trade, and security concerns.

4.4 The Tug-of-War for Influence: Navigating the Battle for Soft Power Supremacy

Despite the bright future for soft power, a number of serious complications may blur how effectively it will work in a multipolar world. There will likely be friction over which values, norms, and systems of governance will move to the forefront of global discourse amid fierce rivalries among rising powers such as China and India along with the United States. As this is an era of unprecedented increase in the use of soft power to promote one's model of governance and development, somewhere down the line, there may be a flare-up of ideological conflicts on issues like human rights, democracy, and freedom of expression.

The competing models of development - an increasingly loudly propagated Chinese alternative through the BRI and a U.S. liberal democracy - are likely to be one of the nodal points of international ideological contestation in the near term. Countries, especially those in Africa and Latin America, where both the U.S. and China have invested dearly in soft-power initiatives, may often find themselves in the awkward position of having to play off complex webs of influence, balancing economic partnerships with competing political ideologies. Furthermore, the increasing trend of populism and nationalism in many countries may challenge the effectiveness of soft power. In a world where global cooperation is increasingly difficult and where countries increasingly look inward to focus on national interests, soft power initiatives may become more

domestic-agenda-focused, at the possible expense of the global cooperative spirit that soft power traditionally fosters.

In a nutshell, soft power in the future of a multipolar world is defined by its adaptability, ethical deployment, and the ability to promote common collaboration on shared global problems. While facing an increasingly interconnected yet fragmented international system, soft power will remain one of the essential tools in the building of relationships, the addressing of global problems, and in securing influence in the 21st century. Success will, however, be secured by a country's ability to balance its domestic interests with the demands of multilateral cooperation, guaranteeing that its soft power strategies are transparently ethical and directed towards the handling of the broader global good.

With the new nature of global power come a series of opportunities and challenges for practitioners of soft power. It also means, however, that integrity, sustainability, and responsibility will increasingly play a leading role in shaping the future of international diplomacy. In this sense, as the world moves toward a more multipolar system, it is those countries that will learn to master the art of cooperative influence and know how to use soft power to the benefit of not only their interests but also the global community that will play the leading role in shaping the future of international relations.

VI. Conclusion

In that respect, this is increasingly applicable in a world that has come to be recognized as multipolar, wherein

power does not remain with one state but rather an increasingly broad variance of actors; a world in which soft power has become an indispensable part of countries trying to navigate complex global dynamics. The ascent of the new powers-China, India, and Brazil-alongside incumbents like the United States and the European Union has made soft power from a dimension of cultural diplomacy to one of strategic competition, multilateral cooperation, and international influence.

The range of the case studies discussed-from the Belt and Road Initiative of China, the K-pop phenomenon of South Korea, right to Hollywood exports of the United States-points toward a fact that soft power has indeed turned into a multi-tool with which one can shape and mold global perceptions, influence diplomatic relationships, and even create economic and cultural ties. While each of them might deploy its soft power differently, arguably the common feature for all of them is projecting a favorable image and building alliances that help in framing the global narrative in a fashion favorable to advancing their respective interests.

Yet, as soft power becomes increasingly central to global diplomacy, it also poses significant ethical challenges. The possibility that soft power may also serve as a vehicle for propaganda, cultural imperialism, or selective diplomacy opens significant moral questions about the use of non-coercive influence. Such a fact was amply demonstrated in the cases of China, Russia, and Saudi Arabia, where soft power is at times used to camouflage authoritarian practices, human rights abuses, or controversial policies by dressing them up as something

benevolent, thereby muddling the global perception of such nations. Its use, therefore, should be made in an ethical way if soft power is to remain a legitimate and transparent tool in the process of international cooperation and not a manipulative device camouflaging deeper governance flaws.

In other words, soft power in the light of an increasingly digital global communication landscape, a growingly multilateral world, and other pressing global problems of the 21st century-such as climate change, pandemics, and political instability-is going to have a different function. Digital diplomacy has expanded exponentially during the last years and opens up new avenues for influence, but there are accompanying risks in the spread of misinformation and manipulation. A soft power practice within an interconnected world will have to transcend into new technologies and new platforms that permit states to reach global audiences in real-time, but also need ethical frameworks for better use in the digital age.

Meanwhile, the future of soft power increasingly depends on global cooperation in solving pressing issues that are of common concern. As countries face a growing set of challenges, soft power will figure increasingly in building consensus and in developing multilateral solution paths. Those countries that can balance their national interests with global responsibility-be it combating climate change, promoting human rights, or protecting public health-will be well positioned to take a leadership role in this new age of diplomacy.

Conclusively, in the multi-polar world, soft power is going to remain a critical foundation of international

relations. Its effectiveness will depend, however, not only on how the strategies are employed but also on ethical commitment in terms of transparency, equity, and respect to global norms. While the global setting keeps on shifting, greater attention would be focused on soft power, and nations would have to work their ways through this area of care to ensure that influence and cooperation promises are pegged on the principles of justice, cooperation, and mutual respect. The future of soft power is one that ultimately should be in service not only to the interests of individual states but also to the common good of the international community toward a stable and inclusive global order.

VII. Bibliography

- BRI Official Website. "Belt and Road Portal." Yidaiyilu.gov.cn, 2018. <https://eng.yidaiyilu.gov.cn/>.
- ci.cn. "Confucius Institute," n.d. <https://ci.cn/en/gywm/pp>.
- DeMola, Pete. "SUNY Campuses Quietly Close Chinese Government-Backed Programs." Times Union, February 28, 2022. <https://www.timesunion.com/news/article/SUNY-campuses-statewide-quietly-close-Chinese-16942259.php>.
- Géoconfluences. "Soft Power (Puissance Douce)," 2023. <https://geoconfluences.ens-lyon.fr/glossaire/soft-power>.
- Hardister, Mia. "Hollywood and the Pentagon: U.S. Military Funding of Popular Cinema in the Post-9/11 Era." *Clark Honors College Theses* N/A, no. N/A (May 2023).
- IMDb. "Top Lifetime Grosses." Box Office Mojo. IMDb, 2023. https://www.boxofficemojo.com/chart/top_lifetime_gross/?area=XWW.
- Krauthammer, Charles. *The Unipolar Moment*. 92, 1991.
- Li, Hongshan. *Fighting on the Cultural Front*. Columbia University Press EBooks. Columbia University Press, 2024. <https://doi.org/10.7312/li--20704>.
- Mann, Micheal. "The Sources of Social Power: Volume 1: A History of Power from the Beginning to AD 1760." Cambridge University Press, September 2012. https://assets.cambridge.org/97811076/35975/frontmatter/9781107635975_frontmatter.pdf.
- Muggah, Robert. "The Role of Geopolitics in a Multipolar World." World Economic Forum, May 10, 2024. <https://www.weforum.org/stories/2024/05/why-geopolitics-matters-more-than-ever-in-a-multipolar-world/>.
- Nye, Joseph. *Bound to Lead : The Changing Nature of American Power*. New York: Basic Books, 1990.
- Olla, Akin. "Is WandaVision ... Pentagon Propaganda? | Akin Olla." The Guardian, March 9, 2021. <https://www.theguardian.com/commentisfree/2021/mar/09/wandavision-pentagon-propaganda-marvel-disney-fbi>.
- Potier, Armand. "Hard Power et Soft Power Des États-Unis - Major Prépa." Major Prépa, 2024. <https://major-prepa.com/geopolitique/hard-power-soft-power-etats-unis/>.
- Richard Lee Armitage. *CSIS Commission on Smart Power : A Smarter, More Secure America*. Washington, Dc: Csis Press, 2007.
- Saveliev, David. "New Marvel Film Puts Spotlight on Hollywood's Military Ties." Responsible Statecraft, November 5, 2021. <https://responsiblestatecraft.org/2021/11/05/new-marvel-film-puts-spotlight-on-hollywoods-military-ties/>.
- Secker, Tom. "Phil Strub Retired 6 Months Ago and No One Reported It | Spy Culture." Spy Culture, December 11, 2018.

<https://www.spyculture.com/phil-strub-retired-6-months-ago-and-no-one-reported-it/>.

Virilio, Paul. *War and Cinema : The Logistics of Perception*.

London: New York, 1989.

Vlados, Charis, Dimos Chatzinikolaou, and Badar Alam.

“New Globalization and Multipolarity: A Critical Review and the Regional Comprehensive Economic Partnership Case.” *Journal of Economic Integration* 37, no. 3 (September 15, 2022): 458–83.

<https://doi.org/10.11130/jei.2022.37.3.458>.

Wilson, Ernest J. “Hard Power, Soft Power, Smart Power.”

The ANNALS of the American Academy of Political and Social Science 616, no. 1 (March 2008): 110–24.

<https://doi.org/10.1177/0002716207312618>.

www.skyquestt.com. “Anime Market Size, Share, Growth

Analysis, by Type - Industry Forecast 2022-2028,”

February 2024.

<https://www.skyquestt.com/report/anime-market>

.

U.S.-Japanese Alliance:

Leah Alexandra Bird Lopez

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in Business Administration and International Relations

E-mail: lbirdlopez.ieu2023@student.ie.edu

Published 27th January 2025

Abstract

The U.S. military presence in Okinawa was always intended to be a temporary situation until peace treaties between the western world and Japan became stable. However, despite the alliance between Japan and the U.S. remaining stable and even flourishing, the U.S. military bases remain in Okinawa. The U.S. presence in Okinawa has remained a controversial topic among the Okinawan citizens as military activities impact the environment, economic, political and social aspects of Okinawa. The multifaceted impacts of the U.S. military presence, perceived to be both beneficial and detrimental, have led to the presence of the U.S. military becoming a controversial topic. Furthermore, the controversial nature of the military presence has led to a growing resentment from the local community towards the Japanese government as it has continued to fail in addressing these concerns. In today's world as peace is becoming more stable, talks of the U.S. bases leaving Okinawa were prominent, nonetheless as the return of tensions around the world continue to heighten, Okinawa's geographical positioning rises in relevance; and talks of removing the U.S. bases have significantly diminished. North Korea, Russia and China have all continually broken international laws by sending aircrafts and missiles into Japanese territories. Until recently, the Japanese government had not responded through actions, simply voicing concerns and warnings. However, it seems as though things are beginning to change when it comes to the Japanese approach of foreign threats. In 2022, Japan adopted a new strategy, focusing on developing its military powers with the help of their allies. As of November 1st, 2024, Japan and the European Union have announced a "security and defense partnership." In this strategy, they seek to step up military ties amid growing tensions with China, North Korea and Russia" (Aljazeera, 2024). This research paper will explore how the presence of the U.S. military has impacted Okinawa's social, environmental, economic and political sphere. In addition, in light of recent events, this paper will shed light on how the heightened tensions around the world between international states will affect Okinawa.

Keywords: U.S.-Japanese Alliance, U.S. Military Bases, Indigenous Rights, World War II, Okinawa

I. Introduction

In order to truly grasp the depth of the issues plaguing Okinawa, and the local sentiment, knowing the history of Okinawa is crucial. Although today Okinawa is a Japanese prefecture that hosts over seventy percent of the U.S. military bases in Japan, this was not always the case.

Okinawa's geographical location has always made it a key

region. For this reason the Ryukyu islands, the former name for modern-day Okinawa, is often referred to as the 'Keystone' or 'Cornerstone.' The Ryukyu islands are located between the "maritime world and continental Asia" (Kerr, 2018, 3). This geographical placement is the key reason as to why the Ryukyu Kingdom flourished with

trade. However, it was this same geographical location that prompted Japan to invade the Ryukyu Kingdom in 1609.

The Satsuma invasion which took place was Japan's response to the influx of Europeans entering from the Southern Seas, and the desire to ensure a protected border. The Ryukyu Kingdom only became an official prefecture of Japan in 1872, when the islands began to be known as Okinawa. During this time Japan implemented various assimilation policies to dismantle the Ryukuan identity, language and culture, and create a loyalty to Japan. Although the UN recognized the Okinawan people as indigenous inhabitants with their own language and culture back in 2008, there has been no significant action implemented by the Japanese government to promote the severely endangered language.

The second instance in which Okinawa's geographic location led to an invasion was during World War II. The Battle of Okinawa, known to be the bloodiest battle in the Pacific, led to a loss of a quarter of the Okinawan population. After the war had ended, Okinawa became a military, conquered colony; operating under military rule. This period lasted from 1945-1972, in which the Okinawan language, identity and culture were drastically impacted. Twenty-seven years later, Okinawa was returned to Japan.

Today, Okinawa remains a prefecture of Japan, hosting over seventy percent of all U.S. military bases in Japan, despite it making up less than one percent of all land mass in Japan. The presence of the U.S. military in Okinawa, was originally intended a means to keep an eye on Japan

and to "prevent Russia from expansion into the Pacific from Chinese ports that she might acquire at the end of the war by occupying them under the pretext of helping (...) against Japan" (Sarantakes, 2000, 6). However, this was always intended as a temporary situation. The bases in Okinawa were crucial for winning World War II in the Pacific, as well as during the Korean and Vietnam wars and today for keeping China, Russia and North Korea in check. Okinawa has become home to the U.S. Air Force's "largest and most diverse combat wing operating a range of fighter jets from the F-15 Eagle to the F-22 Raptor, as well as reconnaissance, early warning and refueling aircraft" (Ryall, 2023). The Ryukyu islands' prime location remains crucial today, as China tries to seize control in Taiwan. Furthermore, the Ryukyu island provides a barrier within the Pacific Ocean allowing more surveillance on Chinese air and naval crafts, along with Russia, and North Korea as well. Albeit, in the case that China decides to attack Taiwan or the U.S., Okinawa would be the frontline.

II. Economic Impacts and Factors

Out of all forty-seven prefectures in Japan, Okinawa remains the poorest prefecture, despite it being the only prefecture in Japan with a growing population. Although there are varying reasons for the economic state of Okinawa, one historical aspect is the lack of investment Okinawa received post World War II. As stated previously, Okinawa after the war was under the rule of the U.S. military and therefore received significantly less investment. This led to decades worth of gaps in reconstructing infrastructures and, consequently, the economy. An

“Analysis of Factors Affecting Child Poverty Rates in Prefectures” by Tokyo University displays factors with the biggest risk of sensitivity to poverty. Within the listed factors, Okinawa ranks the highest amongst all prefectures for: single-mother households, the number of children, the unemployment rate, and the manufacturing industry. These aspects contribute to Okinawa’s poverty rate, some of which ties in with the presence of the U.S. military, which will be explored in later sections.

The Okinawan economy is said to rely on the 3K’s: tourism, bases, and public works. The Okinawan economy’s reliance on the military base is one reason some Okinawans are against the removal of bases. However, data shows that reliance on U.S. military bases decreased from 15.6% in 1972 to 5.3% in 2004. It is important to note, however, that the subsidies from the Japanese government are also (in part) attributable to the burden of hosting the U.S. military. Furthermore, in terms of contribution to the Okinawan economy, in 2016, it was estimated that the U.S. military contributed approximately 1.7 billion dollars. In comparison, however, Denny Tamaki, the current governor of Okinawa’s proposal to the Japanese government, “A Proposal for the Realization of a Peaceful and Prosperous Okinawa”; Tamaki estimates that the lands that the U.S. military currently occupies could generate up to an estimated \$6.9 billion dollars. Considering how Okinawa is currently one of Japan’s poorest prefectures with the highest economic gap between the local residents and those in the mainland, this economic growth would be a significant contribution to Tamaki and the Okinawan

desire to make the island sustainable and economically independent. Furthermore, although there are jobs available for non-U.S. personnel on the bases, they only provide 9,000 jobs. However, in the case of all bases being demolished, 80,000 jobs would be created.

Comparing these two data figures, albeit Tamaki’s remains an estimate, it is clear that the removal of the bases would impact the economy significantly. Although, whether the impact would be positive or negative, depends on the development of plans whether the new development succeeds or not. There have already been a few cases of returned military land that have been redeveloped to create a significant success in commerce. One example is an American village.¹ The military base previously occupied 65% of the town and “tertiary industry accounted for 86%”(Okinawa Times, 2022). Once the land was returned, many people supported creating commerce and tourism to make a self-sufficient economy rather than depending on the base. It has now become a symbol of Okinawa’s growth, having gone from generating \$2 million dollars as a military base to \$233 million in 2015, according to the Okinawa Prefectural Government. Furthermore, by turning the area into a hotspot for commerce and tourism, it has created 3,368 job opportunities, aiding the existing employment crisis in Okinawa.²

¹ Ayano Ginoza. 2007. *The American Village in Okinawa—Redefining Security in a “Militourist” Landscape*. The Journal of Social Science 60 COE Special Edition.

² *Mainichi Daily News*. 2022. “News Navigator: Is It True US Military Bases Benefit Okinawa’s Economy?,” September 8, 2022. <https://mainichi.jp/english/articles/20220908/p2a/00m/0op/033000c>.

Rycom Mall is another military land return success story that has contributed significantly to Okinawa's economy. Formerly known as the Awase Golf Course in Kitanakagusuku, the first golf course in Okinawa. The formerly occupied land became one of Okinawa's most successful projects decades later. The land was rebuilt as the Aeon Rycom Mall, the largest mall in Okinawa up until 2022 when Parco City was built. The operating revenue according to the company's semi annual report is 9.1 trillion yen or in today's currency approximately 59 billion dollars.³

While these are the most commonly known redeveloped areas, there are many more. For example, the redeveloped area of Naha created economic activity of \$2.2 billion which was 28 times higher in comparison to when it was used as a military base. As a result of these successfully redeveloped lands, many doubt the need for U.S. bases and many demand the return of the land. Air bases with runways are an example since if civilians were permitted to use them, an estimated "economic activity worth \$10 billion annually" (Hiromori, 2016) would be created.

III. Environmental

As Okinawa's economy relies heavily on tourism and commerce, the resource's on which Okinawa depends, such as the ocean, its resources, and biodiversity, is significant to the prefecture. The U.S. military in general, is

³ "AEON REIT Investment Corporation Semi-Annual Report Period." n.d. <https://www.aeon-jreit.co.jp/file/en-news-93baf0c6b494adea6335a548bab800cbb9be0210.pdf>.

known for being the largest contributor of carbon emissions amongst all other sectors in the U.S.⁴ The actions of the U.S. military, such as the usage of hazardous chemicals, fuel oil disposable, has always harmed the environment. However, in Okinawa, where battles occurred, and which remained under U.S. rule for 27 years to support further war efforts in Asia, the loose or barely existent regulations during this time contributed greatly to the level of harm inflicted on the Okinawan environment. In order to support allies during the Cold Wars, Okinawa became the storage of large amounts of weapons of mass destruction such as: nuclear warheads, Agent Orange, biological weapons and other chemical weapons.⁵ The activities that the U.S. military has partaken in in the last seventy-nine years have contributed to numerous environmental issues in Okinawa, with water pollution being one of the most serious ones. High levels of polyfluoroalkyl (PFAS) have been confirmed in both the seas and rivers of Okinawa. A study by Professor Koizumi from Kyoto University has linked PFAS to "various health issues, including cancer and low birth weights. The national government has been slow to act" (Waseda University, 2024). Against the demands of the Okinawan people and the prefectural government to conduct their own study on the environmental effects of the U.S. military's bases, the U.S.- Japanese Joint committee denied access to the study from occurring.

⁴ Oshiro, Akino. "From "footprint" to relationships: Impacts of US military base on Okinawa." *Sociology Compass* 18.1 (2024): e13099.

⁵ Mitchell, Jon. *Poisoning the Pacific: The US military's secret dumping of plutonium, chemical weapons, and Agent Orange*. Rowman & Littlefield, 2020.

Aside from hazardous substances which cannot be seen by the human eye, there are military wastes such as: “new bullets, grenades, light bullets, drums, cans, bottles, metal parts with cobalt 60 contained, and field meal packages” (Oshiro, 2024, 5), which affect the lives of animals and also the environment of the island.⁶ Correspondingly, the U.S. military bases’ construction and activities have led to an increase in deforestation and the destruction of coral reefs.

The destruction of the natural habitat for the construction of a base is an issue that remains relevant today. The Futenma Air base, also known as the “Most Dangerous Base in the World”, for being in the middle of a densely populated area, was supposed to be closed in 2003 in order to be relocated in Northern Okinawa. Notwithstanding, the relocation of the base was announced to be offshore of Henoko, next to the pre-existing base of Camp Schwab. Henoko, and specifically Oura bay, is known to be home to the endangered species of dugong, and one of the most biodiverse habitats in the world. In a referendum held in 2019, over 70% of participants opposed the relocation. The referendum was ignored by the Japanese government, increasing skepticism/distrust regarding Japan’s proclaimed democracy. Although the pandemic slowed the construction process, if the base development continues it

would endanger numerous endangered and rare species on the site.

IV. Social-Political

The main political forces at play in Okinawa are the U.S. government, Japanese Government and Okinawa’s Prefectural Government. Each of these governments possess numerous political parties with varying subgroups and political ideologies, nonetheless, for this paper, the focus will remain on these three parties.

The Okinawan government, as well as the Okinawan governor, is largely elected based on the people’s perspective of the U.S. military bases. The current governor, Denny Tamaki, elected in 2018, was elected for his opposition to the U.S. military bases in Okinawa. Being born to a U.S. veteran and Okinawan mother, he acknowledges the burden that Okinawa carries for the rest of Japan. Despite making up less than one percent of all land mass in Japan, Okinawa carries over 70% of all U.S. military bases in Japan. Subsequently, approximately 15% of Okinawa’s lands are occupied by the U.S. military. As mentioned previously in the paper, this has led to drastic effects in the social, environmental, and economic life of Okinawa. These changes have not gone unnoticed by the native people, but, instead, they have been heavily protested by the local population over the span of 79 years. The Okinawan people have recognized their role as a ‘pawn’ for the Japanese government in the past, and nowadays. This combined with the frequent dismissal by the Japanese government of the Okinawan voices, has led

⁶ Miyagi, A. (2021). Kegasareta sekaisankōhōchi Hokubukunrenjō henkanchi. In Korega minshushugika?: Henokoshinkichi ni “NO” no riyū. Kageshobō Protect Henoko & Takae! NGONetwork Citizens who don’t need bases in Churaumi or Yambaru, & Friends of the Earth Japan. (2021). Joint statement: We Condemn Okinawa prefectural polices’ unjust investigation of butterfly researcher Miyagi Akino -intimidation of Yambaru fore

to 80% of the Okinawan population believing that the relationship between the prefecture and the “national government is bad.” (Dickson, 2024)

The dismissal of Okinawans is not solely related to the topic of the U.S. military bases. Refusing to acknowledge Okinawa’s indigenous culture and history is one prominent topic. Despite Okinawan people being recognized as indigenous people with a distinct culture, and language by the UN in 2008, the Japanese government has failed to both acknowledge the Okinawan identity and to implement measures to promote the endangered culture. It’s important to recognize that the loss of Ryukyuan culture is due to assimilation policies implemented by the Japanese to erase Ryukyuan identity and implement a loyal Japanese identity. However, even when Okinawans had adopted a Japanese identity, the island was still sacrificed in World War II. “Japan’s leaders were aware of the impossibility of victory, but viewed their task as necessary in order to weaken the enemy before the dreaded invasion of “home soil” (Taylor, 2007, 5). The lack of apology from the national government does not come as a surprise to the local citizens, nevertheless, remains discouraging for a good relationship between the national and prefectural government.

As Okinawa’s relationship with Japan continues to worsen due to the presence of U.S. military bases, the same could be said for Okinawa’s relationship with the U.S. government. While Okinawa remains a key location for the United States in maintaining world power and order, locals feel that the presence of the U.S. military bases are

threatening the peace of Okinawa. As previously stated, in the case of a war between China and Taiwan, or other allies, Okinawa would inevitably become a frontline in the war. The local residents who have already suffered through World War II, and lost over a quarter of their population, refuse to let Okinawa become a battleground again. Despite the U.S. state government website stating that the occupation of Okinawa relies on the “acquiescence of both Japan and the Ryukyu”(Washington, 1969), a majority of the Okinawans believe that their voice has little to no say in this matter, as evidenced in the previously mentioned public survey that displayed over 70% opposition to the construction of the base in Henoko.⁷

Similarly to Okinawa’s relationship with Japan, the relationship between Okinawa and the U.S. is fragile for various reasons. Previously mentioned in this paper were the historical, environmental, and economical reasons. This section will cover the social aspects, by considering the actions of the U.S. military bases and personnel which have impacted the lives and culture of the Okinawan people and their society. Cases of U.S. personnels raping, murdering and assaulting Okinawan women are one heard too often, and has left a lasting image of the U.S. military in the minds of the Okinawan people. The recorded incidents can be traced back earliest in 1995, when three U.S. servicemen raped a 12 year old Okinawan girl. Furthermore, the presence of the bases themselves are a

⁷ “Foreign Relations of the United States, 1969-1976, Volume XIX, Part 2, Japan, 1969-1972 - Office of the Historian.” n.d. History.state.gov. <https://history.state.gov/historicaldocuments/frus1969-76v19p2/d4>.

threat to local lives. While hazardous chemicals existing in the water system, mentioned earlier, is one example of the threat that the U.S. bases pose, the Futenma Air Base is another. In spite of being recognized as a violation of the safety regulations of the Federal Aviation Administration (FAA) in 1996, the base remains open today. The threat became realized in 2004 as one of the aircrafts crashed into the campus of Okinawa's International University. Fortunately, there were no deaths. Despite this, the fear of Futenma air base still remains instilled in the minds of every Okinawan today.

V. Changing World

As new leaders become elected and new alliances are formed, previous agreements and situations begin to change. 2024 consisted of a series of consequential elections and alliances, where Okinawa is still unknown. The Japanese-U.S. Alliance has remained relatively stable. First established in 1951 with the San Francisco Treaty, the rising powers in continental Asia such as China, North Korea and Russia have pressured Japan into fortifying the alliance. The relationship between the two nations began to change with Prime Minister Abe, who recognized Japan's right to collective self defense. By recognizing China's threat to the Japanese border, Abe concentrated on mutual collective security with both Obama and Trump's administration through the trading of arms, military and foreign policy.

Donald Trump's triumph in the U.S. Presidential election of 2024 has the rest of the nations in the world on

the edge, including Japan. America serves as a military power in the world, its military presence holding back nations such as China from attacking more vulnerable countries, like Japan. However, Trump's policies both domestic and foreign consist of an 'America First' mentality, thereby risking alliances. In his first term 2017 through 2021, Trump declared priority for withdrawing overseas troops and deploying them domestically to deal with issues such as immigration and border security. Furthermore, he demanded from foreign nations that relied on the U.S. military such as Korea, Germany, and Japan for "cost plus 50 percent" (Wadhams, Jacobs, Bloombergs, 2019) for the presence of U.S. troops in their lands. For Japan this demand was \$8 billion a year. Fortunately, for Japan and other nations, Trump's administration consisted of advisors such as Secretary of State Tillerson and Secretary of State Mattis who convinced Trump that international cooperation was beneficial for America. Similar policies occurred in the economic sphere as well jeopardizing the relationship between the U.S. and the rest of the world. Donald Trump's second term is set to begin on the 25th of January, 2025, however, this term, many advisors such as Tillerson and Mattis have either left or been dismissed from Trump's administration leaving many to question the future of U.S. presence in overseas regions, including Okinawa.

Shigeru Ishiba, the newly elected prime minister of Japan on the other hand has expressed the value of the U.S.-Japanese alliance. In his first policy speech as prime minister he recognized the turbulence in the current world

and stated that the Japan-U.S. alliance is the “foundation for peace and prosperity of the Indo-Pacific region and the international community as a whole, (Ishiba, 2024).” Furthermore, he declares his devotion to forming strong relationships in order to maintain peace. Ishiba includes China in this statement, stating that they “strongly urge China to act responsibly” and plans to cooperate with the country in common interests. Regarding the military, the new prime minister will strengthen the Japanese Self-Defence Forces (SDF) and to decrease the impact of U.S. military bases in Okinawa. However, plans to continue the relocation of Futenma Base to Henoko. Shigeru aims to address economic concerns of the Okinawan people as well, and listen to their concerns.

While these are only two world leaders of an issue dramatically influenced by global relations it provides an insight to what the following term may look like. With both state’s leaders planning a change in the military, for Trump a withdrawal of troops, and for Ishiba an increasing and strengthening of troops. Additionally, the two leaders have yet to meet despite Ishiba’s offer, causing many to believe that Japan may not be a priority for the U.S. in the upcoming term.

VI. Bibliography

- “AEON REIT Investment Corporation Semi-Annual Report Period.” n.d. <https://www.aeon-jreit.co.jp/file/en-news-93baf0c6b494adea6335a548bab800cbb9be0210.pf>.
- Ayano Ginoza. 2007. *The American Village in Okinawa—Redefining Security in a “Militourist” Landscape*. The Journal of Social Science 60 COE Special Edition.
- “Chatan resort thriving as symbol of Okinawa’s growth, 50 years after reversion.” 2024. Japantimes.co.jp. 2024. <https://www.japantimes.co.jp/news/2022/05/02/national/okinawa-reversion-chatan/>.
- “Foreign Relations of the United States, 1969-1976, Volume XIX, Part 2, Japan, 1969-1972 - Office of the Historian.” n.d. History.state.gov. <https://history.state.gov/historicaldocuments/frus1969-76v19p2/d4>.
- Jazeera, Al. 2024. “Japan and EU Announce Security Partnership amid Growing Regional Tensions.” Al Jazeera. November 2024. <https://www.aljazeera.com/news/2024/11/1/japan-and-eu-announce-security-partnership-amid-growing-regional-tensions>.
- Junkerman, John, and Maedomari Hiromori. “Base Dependency and Okinawa’s Prospects: Behind the Myths A Conversation with Maedomari Hiromori.” *ASIA-PACIFIC JOURNAL-JAPAN FOCUS* 14.22 (2016).
- Kerr, George H. 2018. *Okinawa : The History of an Island People*. Clarendon: Tuttle Publishing.
- Mainichi Daily News*. 2022. “News Navigator: Is It True US Military Bases Benefit Okinawa’s Economy?,” September 8, 2022. <https://mainichi.jp/english/articles/20220908/p2a/00m/0op/033000c>.
- Nicholas Evan Sarantakes. 2000. *Keystone : The American Occupation of Okinawa and U.S.-Japanese Relations*. College Station, Tx: Texas A & M University.
- Mainichi Daily News*. 2022. “News Navigator: Is It True US Military Bases Benefit Okinawa’s Economy?,” September 8, 2022. <https://mainichi.jp/english/articles/20220908/p2a/00m/0op/033000c>.
- Mitchell, Jon. *Poisoning the Pacific: The US military's secret dumping of plutonium, chemical weapons, and Agent Orange*. Rowman & Littlefield, 2020.
- Oshiro, Akino. “From “footprint” to relationships: Impacts of US military base on Okinawa.” *Sociology Compass* 18.1 (2024): e13099.
- Taylor, Jonathan. “Environment and security Conflicts: The US Military in okinawa.” *The Geographical Bulletin* 48.1 (2006): 1.

“The First Policy Speech by Prime Minister ISHIBA Shigeru | the Government of Japan - JapanGov -.”
2024. The Government of Japan - JapanGov -.
2024.
https://www.japan.go.jp/kizuna/2024/11/the_first_policy_speech_by_ishiba.html.

“The Tyranny of Geography: Okinawa in the Era of Great Power Competition | News from the Institute of Geo Marina Fujita Dickson economics(IOG).”
2024. Institute of Geoeconomics(IOG) by Asia Pacific Initiative, International House of Japan.
February 9, 2024.
<https://instituteofgeoeconomics.org/en/research/2024020955509/>.

“The Power of Journalism: Shedding Light on Okinawa’s PFAS Water Crisis.” 2024. Waseda University. 2024.
<https://www.waseda.jp/top/en/news/81038>.

“Trump Wants Allies to Pay Cost of U.S. Troops Abroad ‘plus 50%.’” n.d. Time.
<https://time.com/5548013/trump-allies-pay-cost-pl-us-50-troops/>.

The New Christian Right: Religion and Politics in the United States

Caroline Blessing

School of Politics, Economics, and Global Affairs, Madrid, Spain

E-mail: cblessing.ieu2022@student.ie.edu

Published 27th January 2025

Abstract

The Republican Party of the United States of America has become increasingly linked to strong sentiments regarding religion's place in government, education, and even the home. In recent years, the party, its policies, and its leaders have slanted heavily towards Christian Fundamentalist values. This shift, though more prominent today, has been evolving over decades. The Christian Right and its successor, the New Christian Right, have long been key influencers in American politics. From more localized grassroots movements to large national organizations, the New Christian Right immensely influences conservative policies and politicians. This brings into question the supposed secular nature of American politics. This paper will first explore the history of the Christian Right as a movement. Next, an analysis of the New Christian Right's recent impact on the rhetoric surrounding the 2022 US Midterm and 2024 US Presidential elections. This paper seeks to answer what this could mean for future Republican politics and its consequences for the American people and democracy.

Keywords: Fundamentalism, Christian Right, religious traditionalism, politics, United States of America, Republican

I. Introduction

Since the inception of the American identity, religion has been part of the United States. The first British settlers who arrived were Puritans seeking to practice their religion freely without the influence of the British crown. The term 'Manifest Destiny' was coined during the US's expansion to the West, inspired by the notion that it was America's God-given right to these unsettled lands. The Pledge of Allegiance, which most American schoolchildren were made to say every day before school, ends with "...one nation, under God, indivisible, with liberty and justice for all." Despite this, the United States of America is considered a primarily secular democracy. In the American

democratic tradition, religion is considered a private matter, safeguarded by the First Amendment.¹ The American forefathers had experienced life under a ruler who was both Church and State and established this fundamental element of the separation of the two with their lived experiences. In recent years, religion, or more specifically, Christian Fundamentalism increasingly defines the Republican Party's policy agenda and public identity. This growing alignment with the New Christian Right may alienate secular and moderate voters, even as it

¹ U.S. Constitution, amend. I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..."

solidifies support among a more radical and ideologically committed faction.

II. The First Wave

To best understand how the New Christian Right's growing influence on mainstream right-wing US politics affects said politics' prospects, it is best to look first at the history of the Christian Right itself.

The Christian Right of the 1970s and 1980s began like most grassroots social movements: disorganized and decentralized.² Grassroots movements are characterized by mass mobilization from local efforts alongside narrow communication methods. Such methods include emailing, newsletters, and door-to-door campaigning rather than large media movements.³ Moral Majority was one of the most prominent Christian Right associations in the 1980s. Founded in the 1970s by Reverend Jerry Falwell, they were key lobbyists for the time. The name itself is a strong statement, as it reflected their beliefs that they represented the morals held by the majority of US citizens. While those associated with the first wave of the Christian Right often held traditionally conservative beliefs, the early groups did not attach themselves to a specific political party. In this sense, though many were quite partisan individually, they presented themselves as a moderate collective. This was done to spread their word to any and all who would listen, especially because Christian voters were not all just

Republicans or Democrats. Despite their initial efforts to remain nonpartisan, the Christian Right as a movement would play a considerable role post-Watergate. At the time, the Christian Right primarily consisted of evangelicals. When considered as a larger voting bloc, this meant that decisions like the 1973 Supreme Court verdict from *Roe vs. Wade* (which legalized abortion as a medical procedure on a federal level) faced much of the Christian Right's ire. Evangelical fundamentalists were particularly vocal, citing the Bible's fifth commandment, "Thou shalt not kill", as evidence that human law dared to violate "divine law".⁴ Following this, many in the Christian Right would create groups to influence U.S. law, such as Operation Rescue, an association that took its name from a verse within the book of Proverbs. Members of Operation Rescue would picket at abortion clinics and hospitals, often refusing to leave to the extent that police intervention was required.⁵ In the subsequent years, the Christian Right would continue to advocate for religion-based moral policies, not solely through the Republican party, but also by supporting Democrats like Jimmy Carter, the Democratic nominee for the 1976 US Presidential election. They saw him as a candidate who supported "moral regeneration," something many felt was lacking following the Nixon Watergate scandal.⁶ Later, those who supported Carter prior would switch largely to supporting his opposing nominee in 1980, Ronald Reagan, a Republican. The switch was

² Rozell, Mark J., and Clyde Wilcox. "Second Coming: The Strategies of the New Christian Right." *Political Science Quarterly* 111, no. 2 (1996): 271-294.

³ Bergan, D. E.. "grassroots." *Encyclopedia Britannica*, November 17, 2024.

⁴ Kepel, Gilles. 1994. *The Revenge of God : The Resurgence of Islam, Christianity and Judaism in the Modern World*. Cambridge: Polity.

⁵ *Ibid.* 118-119.

⁶ *Ibid.* 118.

largely due to Reagan's personal views, which appealed to Evangelical politico-religious movements. During his campaign, Reagan pandered heavily to the religious fundamentalists, openly questioning Darwin's theory of evolution and voicing his support for a Creationist theory to be added to every school's curriculum.⁷ This marked a turning point for the Christian Right, as instead of trying to bring any sense of God into politics, they focused on changing the secular political order into one explicitly based on Christian values.⁸ Moral Majority's disbandment in 1989 effectively concluded the first wave of the Christian Right movement.

This "first wave" failed for numerous reasons, such as a lack of individual chapters, coalitions limited to specific branches of Christianity, and a narrow scope of audience that had their groups, figuratively and literally, preaching to the choir.⁹ The Moral Majority itself suffered from its notoriety. Its tendency towards the political extreme alongside aggressive stances on abortion, religion's role in education, and homosexuals proved divisive, as only the most diehard Evangelicals were attracted to it.¹⁰

III. The Second Wave

By the 1990s, the second wave of the Christian Right began to swell, a "New" Christian Right. A clear distinction between this new movement and that of years past was their shift from a moral-based movement to one centered on specifically conservative, religion-based

political change. In a research paper co-written by Mark J. Rozell and Clyde Wilcox, they attribute this transformation to the "political learning" the New Christian Right went through following their collapse at the end of the 80s. This "learning" meant a more moderate approach, where the fundamentalist elements took a backseat to the more traditionally conservative values like male and female gender roles, pro-life sentiments, and state rights.¹¹ Leaders in the New Christian Right recognized the pitfalls of their predecessors. They made this change to attract a range of people, from the most devoted evangelists to the moderate Republicans.

A variety of New Christian Right groups gained prominence during this decade. One example is the Christian Coalition of Virginia, created by Reverend Pat Robinson. Despite its name, this organization had chapters and lobbies in multiple states. Its motto was "Think like Jesus... Fight like David... Lead like Moses... Run like Lincoln."¹² This tagline perfectly encapsulated the blending of religious ideals and political campaigns, now a trademark of New Christian Right groups. It tied biblical legends to real-life political figures, encouraging a spiritual commitment to Christian ideals and a physical commitment to push them through political action.

Another prominent group in this decade is The Family Foundation. The group was just one out of thirty-five state branches of a larger organization, Focus on the Family. This group was successful because of its growth strategy: do not create new chapters but instead focus on

⁷ Ibid. 119.

⁸ Ibid. 117.

⁹ Rozell and Wilcox, "Second Coming", 272.

¹⁰ Kepel, *The Revenge of God*, 129.

¹¹ Rozell and Wilcox, "Second Coming", 273.

¹² Ibid. 274.

collaborating with existing groups. Through this, The Family Foundation was able to amass quite a lot of political power, running mailing campaigns against sex education in schools and against abortion. They even had hotlines that people could use to tune in to the latest issues members could be concerned with.¹³ The Family Foundation is an excellent example of the evolution of New Christian Right organizations, as by targeting more widespread conservative issues, they were able to gain support not only from Christian fundamentalists but from the wider right wing as a whole.

By the early 2000s, the New Christian Right had established itself as a critical voting bloc, heading into the new millennium more politically powerful than ever. In the 2000 Presidential Election, Christian fundamentalists played a pivotal role in George W. Bush Jr's victory over then-incumbent Vice President Al Gore.¹⁴ The US Presidential election is determined not by the popular vote but rather via an "electoral vote," in which each state is represented by a certain number of electoral representatives determined by the gross population of the state and elected by the citizens of said state. Bush, though outwardly he maintained a moderately conservative stance, made sure to maintain his relationships with the further-right leaning fundamentalists throughout his campaign via emails and calls. Upon realizing this may not be enough to sway them, Bush visited the staunchly fundamentalist Bob Jones

University in South Carolina.¹⁵ This public show of support was enough for fundamentalists to go to the polls and vote for Bush, giving him the upper hand in crucial states, especially in the South (often referred to as the "Bible Belt"). In fact, throughout Bush's entire time in office, Christian Fundamentalists were the ones to "...form the core of the Republican party, which controls all of the capital for the first time in half a century."¹⁶ The Christian Right began as a grassroots movement, and just 25 years later, it established itself as a formidable ally of the Republican party. This shift was not immediate, but it was thanks to the Christian Right's ability to reform itself, adapting to the times without compromising its core beliefs.

IV. NCR and Modern Media

Starting from the 1990s and onward, New Christian Right groups exponentially increased their presence by quickly embracing a rapidly developing form of communication: the media. Aside from telephone and email communication, New Christian Right groups also began leaning into the entertainment sphere, producing events that helped expose the movement to new faces nationwide. The initial rise of the Christian Right movement was primarily thanks to its grassroots and individualistic approach. For example, "...an antifeminist spokesperson, Phyllis Schlafly, fought against gender equity by mobilizing women fearful that they would be drafted into the military or that men would relinquish economic

¹³ Ibid. 275-276.

¹⁴ Zakaullah, Muhammas Arif, "The Rise of Christian Fundamentalism in the United States and the Challenge to Understand the New America," *Islamic Studies* 42, no. 3 (2003): 437-86.

¹⁵ Howard Fineman, "Bush And God." *Newsweek*, September 3, 2003.

¹⁶ Ibid.

responsibility for their families.”¹⁷ While this may have been effective then, times have changed. Following the explosion of the internet, modern Christian Right organizations recognized a budding opportunity; they could attract more attention by fostering media coverage of their significant events. Thus, many began hosting large rallies and gatherings. Concerned Women for America was one such organization, headed by Kimberly LaHaye, the wife of Tim LaHaye, the former Moral Majority leader. Concerned Women for America established itself as one of the largest organizations tailored to evangelical women, partly thanks to their conventions. An observer once said the events were “...bigger, more media savvy, more stage-produced, more fun, and more explicitly Christian”¹⁸ than most other events. Thanks to their extravagance, these events would often be covered on local news, so even people who did not attend could hear about them. Though many of these events had highly-religious undertones, many also preached self-empowerment and unity, attracting those outside the highly-religious sphere. Events served as a way to introduce these new faces to the ideals and beliefs of the New Christian Right, whether through concerts, rallies, or even local meetings about gun safety, education, and more.

Aside from the physical aspect of hosting events, New Christian Right movements also turned directly to media sources to spread the good word. Groups would use any and all forms of online communication, including

“...Web sites, blogs, social networking sites, chat rooms, and online discussion boards.”¹⁹ This was done to create virtual communities, similar to the grassroots ones of the past, but this time, they were without the limit of where they lived. Additionally, the Internet introduced anonymity; people could pretend to be whomever they wanted while saying whatever they wanted. This platformed many of the more racist and offensive groups of the New Christian Right, who previously may not have said anything outside of their circles because their name would be attached to it.²⁰ The internet gave New Christian Right associations direct access to followers nationwide.

Finally, the New Christian Right movements benefitted from media trends. According to a study done by the Pew Research Center in 2020, “More than eight-in-ten U.S. adults (86%) say they get news from a smartphone, computer or tablet “often” or “sometimes,” including 60% who say they do so often.”²¹ Additionally, “roughly half (52%) of Americans say they prefer a digital platform – whether it is a news website (26%), search (12%), social media (11%) or podcasts (3%). About a third say they prefer television (35%), and just 7% and 5% say they prefer to get their news on the radio or via print.”²² Since 2000, the New Christian Right has gotten increasing media attention. This attention has come both indirectly, where New Christian Right values are regurgitated by conservative media figures, and directly, when New

¹⁷ Blee, Kathleen M., and Kimberly A. Creasap, “Conservative and Right-Wing Movements,” *Annual Review of Sociology* 36 (2010): 272.

¹⁸ *Ibid.* 275.

¹⁹ *Ibid.* 277.

²⁰ *Ibid.*

²¹ Shearer, Elisa, “More than eight-in-ten Americans get news from digital devices,” *Pew Research Center*, January 12, 2021.

²² *Ibid.*

Christian Right leaders themselves get on the news via rally coverage or event coverage, or even just for saying something controversial. By embracing the media in all forms, New Christian Right associations have continued to boost their presence politically.

V. NCR and 2020 US Midterms

On November 8th, 2022, a divisive midterm election was held in the US. Thirty-five seats in the Senate were up for election, along with all 435 seats in the House. In the days prior, conservative media and politicians alike prophesied a “red wave,” one that would give Republicans an overwhelming majority in both the House and Senate. While Republicans did gain control over the House (a slim majority of 221 seats to 213 as of December 8th, 2022), the Senate remained in Democratic Control (a majority of 51 to 49).²³ This massive “red wave” was not the considerable upset that many scholars predicted. To understand this, the role of the New Christian Right leading up to the election must be considered. In recent years, the New Christian Right and its influence on the Republican party as a whole have become increasingly more aggressive, reminiscent of the original religiously moral first wave of Christian Fundamentalism. Now, this aggressiveness seems to have hurt US conservatives, as it has promoted polarization within the Republican party itself. Many of the Republican candidates on the ballot in November 2022 were considered extremist, highly religious options by voters. In Pennsylvania, the Republican nominee for

²³ Burnett, Sara, Jill Colvin, and Will Weissert, “Dems show surprising strength; control of Congress unclear” Associated Press News, November 9, 2022.

governor Doug Mastriano declared frequently that God was on his side in this “fight against evil”²⁴ and that the “separation of church and state is a myth.”²⁵ In Georgia, Representative Marjorie Taylor Greene declared, “We need to be the party of nationalism and I’m a Christian, and I say it proudly, we should be Christian Nationalists.”²⁶ In Colorado, Representative Lauren Boebert firmly stated, “The church is supposed to direct the government... The government is not supposed to direct the church. That is not how our founding fathers intended it. And I am tired of this separation of church and state junk. It’s not in the Constitution.”²⁷ While Mastriano lost to Democrat Josh Shapiro, Green and Boebert are currently in office. By embracing candidates who staunchly preached Christian Fundamentalist values, the GOP and its associated media pushed away many more moderate conservatives who may not align themselves with a Christian religion or religion at all. Aside from the candidates themselves, New Christian Right groups were aggressive in the months leading up to the midterm election. One of the traditional campaign methods for politicians in the US is hosting rallies. However, many recent Republican rallies have become seemingly less of a political event and more of a spectacle. In an article for the Guardian, journalist Ed Pilkington

²⁴ Boornstein, Michelle, “In existential midterm races, Christian prophets become GOP surrogates,” *The Washington Post*, November 5, 2022.

²⁵ Rouse, Stella and Shibley Telhami, “Most Republicans Support Declaring the United States a Christian Nation,” *Politico*, September 21, 2022.

²⁶ Rouse and Telhami, “Most Republicans Support Declaring the United States a Christian Nation”

²⁷ Lopez, Ashley, “The Christian Right is winning in court while losing in public opinion,” *NPR*, July 1, 2022.

describes the ReAwaken America tour as “Part Trump rally, part religious service, and much conspiracy theory thrown in...”²⁸ He describes one comical scene with three thousand people fervently praying with arms in the air, listening to a recording of Kim Clement, a late South African preacher, prophesying the “first coming of Donald Trump.”²⁹ This roadshow included speeches from many Republican figures from former national security adviser Michael Flynn to Donald Trump’s son Eric Trump, a “spiritual and political” baptism in the name of the Lord held in a swimming pool, and a large vendors’ tent with several stalls “devoted to the peddling of snake oil” as a Covid-prevention cure.³⁰ As supporters of Christian supremacy became louder and louder in the Republican party, the party itself began being associated with religion. It’s important to note a distinction between New Christian Right beliefs and traditionally Republican beliefs; all New Christian Right followers believe in conservative values like Republicans, but not all Republicans are inherently religious. Thanks to the New Christian Right’s presence in the Republican Party, it’s now a party often associated with Christianity and a desire to “bring God back to the country.”

VI. NCR and 2024 US Election

In November 2024, Donald Trump achieved a feat only done by one other US president: winning two

²⁸ Pilkington, Ed, “‘He was chosen’: the rightwing Christian roadshow spreading the gospel of Trump,” *The Guardian*, November 6, 2022.

²⁹ Ibid.

³⁰ Ibid.

non-consecutive terms. The Trump Campaign was rife with religious rhetoric, particularly spurned by the July 2024 assassination attempt that took place in Butler, Pennsylvania at a rally. The bullet missed Trump’s head by mere millimeters. Trump’s luck was so great that Reverend Franklin Graham, son of famous Evangelical preacher Billy Graham, preached “...that God turned his head and saved his life.”³¹ This sentiment was echoed by Senator Tim Scott (R-SC) who at the 2024 Republican National Convention exalted: “Thank God Almighty that we live in a country that still believes in the King of Kings and the Lord of Lords, the Alpha and the Omega. Our God still saves. He still delivers and he still sets free. Because on Saturday, the devil came to Pennsylvania holding a rifle. But an American lion got back up on his feet.”³² Polls post-election showed shifts in almost every voter demographic towards the right, securing Trump his second “prophesied” term.³³ The Christian Right was by far the most outspoken celebrant of this win. People like Sean Feucht, an evangelical worship leader and singer-songwriter gave the credit for the win to prayer on his X profile, hailing “prayer warriors” for their dedication (The Guardian 2).³⁴

³¹ Maqbool, Aleem, “‘Anointed by God’: The Christians who see Trump as their saviour,” *BBC*, November 17th, 2024.

³² DeRose, Jason, “Trump assassination attempt lays bare deep religious divisions in the U.S.” *NPR*, July 18th, 2024.

³³ Bekiempis, Victoria and Dharna Noor, “‘Red’ US states pass progressive laws while ‘blue’ states vote for conservative measures,” *The Guardian*, November 6th, 2024.

³⁴ Herman, Alice, “US Christian right celebrates after prophecy of Trump win comes to pass,” *The Guardian*, November 7th, 2024

Despite Trump's convincing win, clear signs of division were evident in red states. States like Michigan, despite giving their 16 electoral votes to the Republican candidate, voted to overturn the existing abortion near-ban and protect reproductive rights within the state. Similar measures passed in other red states like Arizona and Montana, which both protected the right to abortion for up to 24 weeks.³⁵ Pro-choice sentiments, as stated earlier, are not associated with Republicans nor the New Christian Right. This paradox of voters electing a staunchly anti-abortion President and administration while enshrining said reproductive rights into their state legislations is further evidence of a polarized electoral bloc.

VII. Conclusion

The New Christian Right has long been involved with US politics, and now it is one of the key elements for the Republican party. Thanks to a focus on "God first" instead of "Christianity first" in more recent years, the Republican party and Donald Trump have been able to move non-Christian voting blocs further towards the right (as seen in exit polls post-November 5th, 2024). In terms of the makeup of the New Christian Right itself; it is a new "third wave" of Christian Fundamentalism. The first wave saw some success but ultimately failed due to its aggressive stances. The second wave was more successful, with the New Christian Right taking a more moderate stance politically to slowly work on more fundamental changes. Now, the New Christian Right is a movement that has

³⁵ Bekiempis, Victoria and Dharna Noor, "'Red' US states pass progressive laws while 'blue' states vote for conservative measures"

retained the political prowess of the second wave, but reverted to the first wave, in the sense that they have become less moderate and more contingent on religious and moral issues. If anything, the new third wave is the most staunchly religious of them all.

Thanks to the New Christian Right's influence on the Republican party and its leaders, Republicans have become increasingly associated with Christianity. This threatens the secularism, separation of church and state, that the US was built upon to defend everyone's religious rights. Robert Jones, CEO of the nonpartisan group Public Religion Research, worries that this could spell the downfall of democracy in the United States. To a journalist from NPR, Jones states "I think if we can protect our democratic institutions and we can weather these attacks on it, then I think there is light at the other end of the tunnel, but I do think we are in for some dark days."³⁶ The New Christian Right often not only challenges existing democratic norms, but straight up discredits them. This can be seen best with the rise of election deniers, led by Donald Trump himself. These Christian conservatives support voting restrictions and support Trump's lies, declaring the 2020 Presidential election "stolen."³⁷ If religious groups like the New Christian Right continue to support drastic reforms that remove democratic elements like secularism and voting rights, then it does suggest turbulent times to come. The US is possibly best known for its "freedom of religion," guaranteed by the

³⁶ Lopez, "The Christian Right is winning in court while losing in public opinion"

³⁷ Lopez, "The Christian Right is winning in court while losing in public opinion"

Constitution and unchanged since its inception. The New Christian Right believes in a US where God is the word of law, not Congress. What this means for the future of secular politics in the United States is unclear, as legislation is currently being nominated for Trump's docket regarding the inclusion of the Bible into schools in certain states. What is clear is that US elections have become a moral battleground in ways not seen before.

VIII. Bibliography

- Blee, Kathleen M., and Kimberly A. Creasap. "Conservative and Right-Wing Movements." *Annual Review of Sociology* 36 (2010): 269–86.
- Bekiempis, Victoria and Dharna Noor, "'Red' US states pass progressive laws while 'blue' states vote for conservative measures," *The Guardian*, November 6th, 2024.
- Boornstein, Michelle. "In existential midterm races, Christian prophets become GOP surrogates." *The Washington Post*. November 5, 2022.
- Burnett, Sara, Jill Colvin, and Will Weissert. "Dems show surprising strength; control of Congress unclear." *Associated Press News*. November 9, 2022.
- Conger, Kimberly H. "A Matter of Context: Christian Right Influence in U.S. State Republican Politics." *State Politics & Policy Quarterly* 10, no. 3 (2010): 248–69.
- DeRose, Jason, "Trump assassination attempt lays bare deep religious divisions in the U.S." *NPR*, July 18th, 2024.
- Fineman, Howard. "Bush And God." *Newsweek* September 3, 2003.
- Gilles, Kepel and Alan Braley (translator). "Saving America." *The Revenge of God: The Resurgence of Islam, Christianity and Judaism in the Modern World* (1991): 117-129.
- Herman, Alice, "US Christian right celebrates after prophecy of Trump win comes to pass," *The Guardian*, November 7th, 2024
- Lopez, Ashley. "The Christian Right is winning in court while losing in public opinion." *NPR*. July 1, 2022.
- Maqbool, Aleem, "'Anointed by God': The Christians who see Trump as their saviour," *BBC*, November 17th, 2024.
- Pilkington, Ed. "'He was chosen': the rightwing Christian roadshow spreading the gospel of Trump." *The Guardian*. November 6, 2022.
- Rouse, Stella and Shibley Telhami. "Most Republicans Support Declaring the United States a Christian Nation." *Politico*. September 21, 2022.
- Rozell, Mark J., and Clyde Wilcox. "Second Coming: The Strategies of the New Christian Right." *Political Science Quarterly* 111, no. 2 (1996): 271–94.
- Shearer, Elisa. "More than eight-in-ten Americans get news from digital devices." *Pew Research Center*. January 12, 2021. [LINK](#)
- Zakaullah, Muhammas Arif. "The Rise of Christian Fundamentalism in the United States and the Challenge to Understand the New America." *Islamic Studies* 42, no. 3 (2003): 437–86.

Conservative Ideologies: Implications on Domestic Violence Protections for Women

Esther Castellanos Pros

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Master in International Relations

E-mail: esthercastellanos@student.ie.edu

Published 27th January 2025

Abstract

Violence against women, particularly in the context of domestic violence, is an ongoing health and human rights crisis. Domestic abuse is the most prevalent form of violence against women globally. Although there are various domestic and international legislations addressing the epidemic, deeply-rooted conservative ideologies and movements pose a threat to these protections for women. This paper is based on research collected from international organizations and databases, as well as varying analyses. Through analyzing policies and conservative movements mainly in Central Asian and Eastern European countries, we see that conservative ideologies, with religious ties and entrenched focuses on family values, influence the loosening of protections on violence against women. We see religious-conservative parties shining the focus on family values and bypassing protective legislation prioritizing female security. This paper provides a framework to take note of the permeation of far-right rhetoric that influences certain political decisions that ultimately impose a threat to women's safety and health. Increases in conservatism in states with active far-right movements detected through the use of language, threaten the protection of women against violence, especially domestic violence.

Keywords: domestic violence, gender violence, family values, conservatism

I. A Background on Domestic Violence

It was only in 1993, after the World Conference of Human Rights, that violence against women (VAW) began to be acknowledged as a human rights concern.¹ To put this into perspective, this was the same year Bill Clinton was sworn into office. The introduction of the internet, the discovery of the *Titanic*, and the birth of the first human conceived as a result of in-vitro fertilization (IVF) all

happened before this recognition. Before 1993, humanity had already made great strides in technology, science, and culture, while the systemic issue of violence against women remained overlooked. In the same year as the 1993 Conference, the Declaration on the Elimination of Violence against Women was established to provide an international framework for action.²

¹ *WHO Multi-Country Study on Women's Health and Domestic Violence against Women*. Geneva, World Health Organization, 2005.

² "[Global Norms and Standards: Ending Violence against Women](#)." UN Women. 2019.

We cannot talk about domestic violence without talking about violence against women, as one is a form of the other. Violence against women is defined by the United Nations as "any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."³ Most abuse experienced by women is perpetrated by an intimate partner.

Domestic violence, also known as intimate partner violence or domestic abuse, is defined by the World Health Organisation (WHO) as "behavior within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse, and controlling behaviors."⁴ The United Nations makes clear that this behavior "is used to gain or maintain power and control over an intimate partner."⁵ Both former and current partners are taken into account when speaking about domestic violence. Although several forms of domestic violence exist, this paper focuses on male-to-female intimate partner violence. This kind of abuse is extremely prevalent and does not discriminate; women all over the world face domestic violence at alarmingly high rates.

1.1 Rates of Violence

A study conducted by the World Health Organization (Prevalence Estimates) containing data from 2000-2018 on

³ "[Violence against Women](#)." World Health Organization. 2021.

⁴ "[Intimate Partner Violence](#)." World Health Organization. 2022.

⁵ "[What Is Domestic Abuse?](#)" United Nations. 2024.

violence against women indicated that since the age of 15, up to 753 million women had been subjected to physical or sexual violence by their partner at least once. Around one in three women have experienced physical or sexual domestic abuse, sexual violence from someone who was not their partner, or both at least once in their lives. The statistics for women aged between 15 and 19 years old who have already experienced physical or sexual abuse at least once from their partner is around one in four.⁶

Robust legislation protecting women from violence is still lacking in many countries. Although there are advances, development is slow: data from 2022 showed that only 14 percent of the world's women were living in countries with elaborate legislation aimed at protecting their human rights.⁷ One of the 2024 reports the UN released establishes that countries with domestic violence legislation have lower rates of domestic abuse than those without legislation⁸.

The WHO's Prevalence Estimates⁹ show that the countries with the most elevated rates of intimate partner violence affecting women ages 15-49 are the least developed. The next highest rates belong to Southern Asian and Sub-Saharan African countries. Europe has lower rates in comparison. Although the rates of VAW in Europe are lower than in other regions, we will see that violence against women is still a systemic issue that is not

⁶ *Violence Against Women Prevalence Estimates, 2018*. Geneva, World Health Organization; 2021.

⁷ "[Facts and Figures: Ending Violence against Women](#)." UN Women. 2024.

⁸ *Progress on the Sustainable Development Goals: The Gender Snapshot 2024*. New York: UN-Women and DESA. 2024.

⁹ *Violence Against Women Prevalence Estimates, 2018*. Geneva, World Health Organization; 2021.

sufficiently or appropriately addressed in these areas. It is probable that as some European countries are more developed than those of other regions mentioned above, there is more elaborate legislation addressing the issue, and therefore, the rates are lower.

However, having more legislation on VAW and domestic violence protections does not necessarily indicate a dramatic decrease in these assaults. The Prevalence Estimates report indicates that “these estimates show unequivocally that violence against women is pervasive globally”. In 2023, Spain saw violence against women increase by more than 12 percent, and domestic violence increase by 12.6%.¹⁰ France sees femicide at a rate of once every three days¹¹. According to Amnesty International, around 33% of women¹² in the Netherlands have experienced domestic violence. Overall in the European Union, violence against women affects one in three women¹³. Nonetheless, legislation and language are important when addressing VAW and intimate partner violence, as they demonstrate a commitment to the protection of women and enhance widespread education. Furthermore, the integration of policies allows for a monitoring process, crucially needed as comprehensive data on prevalence rates is still lacking. Homicide, for example, is not legal in most countries and this does not

mean that people will not commit the crime. It does, however, allow for a recognized framework of human rights and this language has slowly integrated into our society’s shared value system.

One of the objectives of this paper, therefore, is to illustrate that higher protections eliminate all abuses, but rather to shed light on the importance of how language is used and the implications it has on legislation.

II. The Istanbul Convention

2.1 Background

Along with promoting democracy and the rule of law, fighting for human rights is at the heart of the Council of Europe’s mission. Founded in 1949 and consisting of 46 member states, this human rights organization has developed hundreds of international treaties and initiatives in line with its mission. Since the 1990s, various of these initiatives have focused on violence against women (including domestic violence). In May 2005, member states of the Council of Europe adopted an Action Plan which centered on combating VAW. This Plan consisted of two measures: setting up a task force and implementing a campaign, both named to Combat Violence against Women, including Domestic Violence. The task force, composed of eight international experts in the field, would focus on evaluating progress and establishing tools to measure it. The campaign to Combat Violence against Women, including Domestic Violence did just that, cooperating with international organizations and European actors. This campaign ran from 2006-2008 and

¹⁰ Instituto Nacional de Estadística. “Statistics on Domestic Violence and Gender Violence: Year 2023.”

¹¹ Boudoussier, Lisa. “Rape, Assault, Harassment: What Do the Numbers Show about Violence against Women in France?” *Le Monde*. November 2024.

¹² Amnesty International. *Netherlands: Take Urgent Action to Address Gender-Based Psychological Violence*. 2024.

¹³ *EU Gender-Based Violence Survey*. European Institute for Gender Equality. 2024.

was one of the Council of Europe's most successful campaigns.¹⁴ It highlighted the severity of this issue in Europe and the need for a well-integrated, standardized legal process that would ensure protection for survivors across the continent. In 2008, a committee was established to draft a convention on this matter. From here, the human rights treaty known as the Istanbul Convention was born.

2.2 *The Istanbul Convention and its Importance*

The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, also known as the Istanbul Convention, was adopted in 2011 in Istanbul, Turkey, and entered into force in 2014¹⁵. It is, in its essence, a form of protection. Its purpose is not only to safeguard women against all violence but also to promote gender equality and encourage international cooperation to achieve these goals.

This Convention is significant because it is the first legally binding instrument in Europe that focuses specifically on the protection from and prevention of gender-based violence.¹⁶ Although before this convention there were individual national legislations on violence against women, there was no harmonized framework attacking the issue within Europe.

¹⁴ Directorate General of Human Rights and Legal Affairs. 2008. "[The Council of Europe Campaign to Combat Violence against Women, Including Domestic Violence.](#)" *Council of Europe*.

¹⁵ Đurković, Miša. "Disputes Regarding the Ratification of the Istanbul Convention in Europe." *Sociologija* 64, no. 4 (2022): 605-622.

¹⁶ Jurviste, Ulla, and Rosamund Shreeves. 2018. "The Istanbul Convention: A Tool to Tackle Violence against Women and Girls." European Parliamentary Research Service.

The Istanbul Convention presents a standard definition for and criminalizes violence against women. It is not only persecutory and protective, it also prioritizes providing accessible services for those affected and at risk. Furthermore, it holds states accountable through monitoring. The criminalization of offenses requires states to act against violations and take part in the monitoring process. States that have ratified the treaty are held responsible for any lack of action on their end against these violations of human rights and discrimination. Monitoring and accountability are imperative when it comes to regulating violence against women. Without these mechanisms in place, the challenge of protecting those affected is enhanced. Rates of violence and actions taken as a consequence of these violations are variables that help us better understand how to address the issue.

2.3 *Criticisms of the Convention*

The Istanbul Convention is unique in many ways, one of which is that it is the first international document to define gender in a social context rather than a biological one. Article 3 states that "Gender is defined as the socially constructed roles...and attributes that a given society considers appropriate for women and men."¹⁷ This is the most targeted aspect of the Convention, as it is easily argued against by conservative groups. "Gender ideology"¹⁸ in many cases, and a religious context, is considered a

¹⁷ Council of Europe, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*. 2011.

¹⁸ "Gender Theory"/'Gender Ideology' – Select Teaching Resources." 2019. United States Conference of Catholic Bishops. 2019.

“threat” to traditional family and societal values – straying from our biological identity deconstructs the foundation and basis of the family. The concept of gender ideology is often used as a rhetorical weapon by conservative parties¹⁹ to suggest a threat to sexuality and traditional (heterosexual) marriage.

Conservative movements are heavily influenced by religious values²⁰, and this, in turn, often leads to policies (or lack of) negatively affecting women. Whether we are talking about anti-gender movements, reproductive control, or domestic violence – all in context and the name of the ‘family unit’ – women and girls are at the center of the consequences imposed.

There are currently 39 states that have ratified this Convention and six that have signed it but not yet ratified it (Armenia, Bulgaria, Czech Republic, Hungary, Lithuania, and Slovakia), which means that it is not legally binding for those six states yet. Whether states have signed and/or ratified (or neither) this Convention can be used as an indicator of how much power certain conservative ideologies hold in those states.

Bulgaria, for example, has established that due to the definition of gender provided, the Convention does not align with its “traditional family values and beliefs.”²¹ The state argues that this will influence supporting legislation

on same-sex marriage and younger generations to identify as transgender.

Hungary’s concerns about the Convention lie in the belief that the treaty promotes gender ideology that is “destructive”²² and also promotes illegal immigration. Article 60 of the treaty protects asylum-seeking due to gender-based violence. It requires parties to recognize violence against women as a form of persecution and once these cases are recognized, those affected “shall be granted refugee status”²³. Hungary also argues that there is sufficient existing protection on VAW, however, there is resistance to even recognize the term “gender” legally²⁴ and there is little access to gender studies - an approach taken by far-right parties to keep political discourse focused on the family²⁵.

Slovakia, similarly to Bulgaria, claims that the Convention promotes a gender ideology that is a threat to “traditional family values.”²⁶ The state fears that this gender ideology will promote homosexuality, which does not have widespread social acceptance in the state of Slovakia.

2.4 Turkey and the Convention

Turkey is the first and, so far, the only country to have completely withdrawn from the Convention; it did so in 2021. Although his country was the first to sign the convention, President Recep Tayyip Erdogan and his

¹⁹ Gwiazda A (2023). Gender Ideologies and Polish Political Parties. Government and Opposition: An International Journal of Comparative Politics 58, 641–660. <https://doi.org/10.1017/gov.2021.57>

²⁰ Baytok, Cemre. “The Istanbul Convention, gender politics and beyond: Poland and Turkey.” *Berlin: Hafıza Merkezi* (2021).

²¹ Mole, Nuala. 2023. “[The Council of Europe and Violence against Women-Past, Present and Future.](#)”

²² Mole, “[The Council of Europe and Violence against Women.](#)”

²³ Council of Europe, *Council of Europe Convention*.

²⁴ Đurković, “[Disputes,](#)” 616.

²⁵ Kourou, Nur Sinem. Right-wing populism and anti-gender movements: The same coin with different faces. Global Political Trends Center (GPoT), 2022.

²⁶ Mole, “[The Council of Europe and Violence against Women.](#)”

government claimed that the Convention is “incompatible with Turkey’s social and family values” due to its requirement to protect the LGBTQ community.²⁷ We have seen that this convention protects those regardless of sexual or gender identity, and this is exactly what the government used as its justification for withdrawing from the agreement. Withdrawing means that Turkey is no longer legally bound to fulfill the human rights protection requirements of this Convention nor held accountable for that fulfillment. Revoking this commitment poses a threat to the safety and well-being of women and girls in the country, as the WHO’s Database on the Prevalence of VAW placed Turkey at the top with rates of intimate partner violence at 32%²⁸ - the highest in Europe.

Since withdrawing from the Convention, Turkey has argued that it still has measures in place for combating violence against women, including a new action plan announced in 2021. However, the plan makes no mention of previous reports/analyses nor any of the specific recommendations given to Turkey by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) regarding the prevalence of VAW in the country. Furthermore, the term “gender equality” is specifically omitted. Mor Çatı, a women’s rights group, emphasizes that this indicates the government’s political stance regarding men’s and women’s place in society and

the fact that it is being reflected in policy documents exposes the approach it is taking regarding the issue at large.²⁹

A report from Human Rights Watch establishes that the Turkish state repeatedly fails to “provide effective protection from domestic violence, to assist survivors of domestic violence or to punish perpetrators of attacks on women, even when the perpetrator is a serial abuser.”³⁰ The consequences that arise when violence against women is not rigorously protected are severe, especially in a country like Turkey where the rates of gender-based violence are so high. When around four out of ten women in Turkey have experienced intimate partner violence, there is a contradiction between the concept of “family values” and the lack of meaningful and effective implementation of protective legislation on this kind of violence.

Coverage of the situation emphasizes that withdrawal from the Convention demonstrated a lack of determination to fight for gender equality³¹ and the protection of women. By doing this, Turkey set a principle: that the protection of women is not a priority against the concerns of sexual orientation, social definitions of gender, and above all, “traditional” family values.

2.4 Poland and the Convention

²⁷ Human Rights Watch, [Combatting Domestic Violence in Turkey: The Deadly Impact of Failure to Protect](#) (New York: Human Rights Watch, 2022).

²⁸ World Health Organization. “Global Database on the Prevalence of Violence against Women - National Estimates 2000-2018.” *Global Database on the Prevalence of Violence Against Women*, 2018.

²⁹ Human Rights Watch, [Combatting Domestic Violence in Turkey](#), 16.

³⁰ Human Rights Watch, [Combatting Domestic Violence in Turkey](#), 1.

³¹ Human Rights Watch, [Combatting Domestic Violence in Turkey](#), 5.

Although Poland ratified the Istanbul Convention in 2015, there was a great deal of debate and discourse damaging the significance of the treaty by conservative groups with support from the Catholic Church. A creator of a parliamentary group named “Stop Gender Ideology” claimed that the Istanbul Convention “...is a legal monster which does not combat violence. It only meets the demands of LGBT communities.”³² Furthermore, the Catholic Church challenged the document by asserting that “the Convention is based on ideological and false assumptions...[and] introduces in Article 3 the definition of gender and presupposes that gender can be chosen; and promotes in Article 14 non-stereotypical gender roles, that is, homosexuality and transsexualism.” Eventually, the President at the time proceeded with the ratification process, however, these conservative discourses have remained.

In 2021, the Law and Justice Party (PiS) of Poland officially called for withdrawing from the Istanbul Convention, although this did not come to be. The prime minister at the time, Mateusz Morawiecki, had expressed the government’s apprehension towards the so-called promotion of “gender ideology” in the bill.³³ This again demonstrates the prioritization of concerns from conservative groups, putting women’s safety many steps behind. The government tried to influence not only the

public’s opinion on the convention but also other governments that had not yet ratified it.

An alternative treaty named the Convention on the Rights of the Family was drafted by conservative groups re-framing the focus on protecting traditional family values. It was created to include strict regulations that could end up harming women more than protecting them. More specifically, an article of this draft stated that authorities should “not, in any way, affect the reduction of fertility or make it difficult for families to have children.”³⁴

The statement can be interpreted to put further restrictions on abortion and access to birth control, something that is highly concerning for women facing sexual violence. We have seen that the rates of rape in intimate relationships are astonishingly high, and clauses like these offer difficulties rather than protection for women suffering from domestic abuse. This clause would be problematic for pregnant women looking to receive abortion care because they were raped by their partners. In its attempt to create alliances on this front, the Polish government targeted countries that had not yet ratified the Convention to convince them to join this new alternative international agreement.

Tensions eased when Donald Tusk, Poland’s new prime minister, announced on January 30 that his government has no intention of withdrawing from the bill. The Chancellery of the Prime Minister echoed Tusk’s statement that “protecting women and children from violence is something that should never be the subject of a

³² Gwiazda, Anna, and Liana Minkova. “Gendered Advocacy Coalitions and the Istanbul Convention: A Comparative Analysis of Bulgaria and Poland.” *International Feminist Journal of Politics* 26, no. 1 (2024): 31-53.

³³ Ciobanu, Claudia, and Jules Eisenchteter. “[Women’s Rights in Poland and Czechia: Seeing Past the Istanbul Convention.](#)” *Balkan Insight*. 2024.

³⁴ Ciobanu, Claudia. “[Poland Begins Push in Region to Replace Istanbul Convention with ‘Family Rights’ Treaty.](#)” *Balkan Insight*. 2020.

political argument, but a shared concern....” Although this is certainly a step in retaining what protection there is for women, it does not undo the campaigns and the efforts of conservative groups to pull others in the opposite direction.

2.5 Conservative Movements

Right-wing movements in Turkey, Poland, and other countries are misconstruing the purpose of the Convention for political gain.³⁵ Using “social and family values” is a traditional and solid ground for these movements to maintain or gain momentum, especially as they tie into religious beliefs. A study commissioned by the European Parliament found that “Resistance to the Convention has been led by conservative political leaders and religious actors. A worrying thread among the factors contributing to the opposition to ratification is the involvement of religious actors in political decision-making...”³⁶ We see that although Turkey announced a new action plan to combat violence against women, it did not prioritize implementing recommendations given by organizations that had assessed the situation in the country, despite the demonstrated skyrocketing rates of violence. Using the discourse of family values is a political strategy that is used to gain -or maintain- the loyalties of citizens with close ties to religion. It is a traditional narrative that implies the importance of man and woman acting as a unit of strength for the family.

³⁵ Human Rights Watch, [Combating Domestic Violence in Turkey](#), 12.

³⁶ MEURENS, Nathalie, Hayley D’SOUZA, Saredo MOHAMED, Nazia CHOWDHURY, and Stelios CHARITAKIS. ["Tackling violence against women and domestic violence in Europe."](#) (2020).

In contrast, we see this very same discourse being used to reject majorly protective legislation, due to more progressive terminology being used.

III. Domestic Violence in Russia

3.1 Why Russia

Russia’s regime is debated by many³⁷, and although it may be considered to be more authoritarian and is outside the framework of the countries discussed in this paper, it is nonetheless an interesting case to look at when speaking about violence against women. Despite the Russian government’s regime structure, we see that it shares similar narratives to other countries when referring to overarching values. It is important to note that regimes of different types may share similarities and to notice what social and political shifts take place in parallel to certain narratives being disseminated.

3.2 Rates of Domestic Violence

Although the data on violence against women and domestic violence in Russia are not so clear, the issue remains a significant and pervasive problem across the country. It is estimated that domestic abuse affects one out of five women in Russia, and around 14,000 women lose their lives each year as a result.³⁸ Amnesty International related that in a study of about 2,200 people, conducted by the Council for Women of Moscow State University, 70%

³⁷ Velikaya, N. M. "Opposition as a Mirage of Political Field in Russia." *New authoritarianism: challenges to democracy in the 21st century* (2019): 77-99.

³⁸ Amnesty International. *Russian Federation: Nowhere to Turn to Violence Against Women in the Family*. International Secretariat, Amnesty International, 2005.

of women reported that they had previously been abused by their husbands.

Russia has been clear, more and more, on its stance regarding violence against women. It refused to ratify the Istanbul Convention on the basis that it did not align with the country's viewpoint on "traditional moral and family values."³⁹ Much like we have seen with Turkey and Poland, Russia used the context of tradition and family as a pretext for making decisions regarding the protection of women facing intimate partner violence.

3.3 Decriminalisation

In 2017, the Russian government decriminalized domestic violence, despite consistently rising rates. With this rescindment, unless hospital treatment is required, first-time acts of violence go unpunished and remain for the family to sort out. The act is now considered an administrative offense, similar to a speeding ticket, in which punishment can take the form of a fine or community service.⁴⁰

Despite public outcry, Putin's decision appealed much to conservative religious groups⁴¹ who believe that intervening in family matters (which includes domestic abuse) puts a restriction on traditional family values. The leaders of these groups argue that external interference, such as the criminalization of domestic violence, deconstructs the family unit.

³⁹ Rollins, Kay. "[Putin's Other War: Domestic Violence, Traditional Values, and Masculinity in Modern Russia](#)." Harvard International Review. 2022.

⁴⁰ Semukhina, Olga. "The decriminalization of domestic violence in Russia." *Demokratizatsiya: The Journal of Post-Soviet Democratization* 28, no. 1 (2020): 15-45.

⁴¹ Rollins, "[Putin's Other War](#)."

Another justification for this policy change was that it would make the legal procedures more efficient and justice easier for victims to attain.⁴² There is frustration within the justice system in Russia, much from lawyers and officers handling cases. Cases of domestic violence are so frequent in the country that defense lawyers become overworked and are unable to handle the load. Many women eventually drop the prosecutions, and as this is considered a failure of the case, some lawyers do not even open cases unless they stand out in some way against others. There is no immediate arrest when cases of domestic abuse are reported, which means that women who report must then go back home where the abuser still is. The risk of retaliation is too great for many to report these violations or to continue with the cases.

3.4 Consequences of Decriminalisation

Since the decriminalization of domestic violence, the number of administrative punishments for these offenses has increased. Some argue that this is an indication that the change is improving the efficiency of the legal processes. However, many defense lawyers in Russia argue that this, instead, is an indication of the rising rates of violence against women.⁴³

When a government establishes that domestic violence is equal to a parking ticket, it is protecting the abusers, and it is explicitly putting women in grave danger. It normalizes this violence towards women and leaves much more room for escalation when abusers know that there is little consequence from prosecution.

⁴² Semukhina, "Decriminalization," 15.

⁴³ Semukhina, "Decriminalization," 34.

Even if we strip away the call for efficiency and leave the reasoning to the restoration of family values, it begs the question: what family values are being protected, when women are threatened sexually, physically, psychologically, and economically? Furthermore, when arguing for the value of the family unit, we must also ask: what benefit is there for children to witness and endure this violence, that too often ends up affecting them as well?

Regardless of the justification, we can begin to notice a pattern here of how some conservative ideologies that are acted upon, in matters of male dominance over women, lessen the protection of women facing domestic violence. It puts them at even greater risk, leaves them with fewer resources, and does not lessen the prevalence of violence.

Russia could be looked at as an example of the reality that is political backtracking on human rights. In this case, women in the state went from having some legal protection, in an area where the rates of VAW were already high, to having less legal protection and procedure available to them. We can ask the question: does decriminalizing an act, normalize it? Where do the 'traditional moral and family values' lie when the acts of beating, raping, or otherwise harming a partner are not deemed criminal?

IV. Domestic Violence in Other Countries

Unfortunately, there are many more examples of these patterns in Central Asia and other countries in Eastern Europe. Amnesty International reports that "national governments have pointedly invoked traditions and 'family values' in their resistance to adopt domestic violence

legislation, and purposefully disregarded a problem affecting millions of women in their countries."⁴⁴

It is seen time and again when states reject policies on domestic violence based on these traditions, such as Belarus did in 2018. It is seen when the family unit is prioritized over women's safety, as is the case in Azerbaijan, and Armenia.

Armenia implemented legislation in 2017 specifically addressing domestic violence, however with an emphasis on the importance of the family unit. Article 2 of the law emphasizes the importance of "supporting the family as the natural and fundamental unit of society, strengthening traditional values and restoring peace in the family."⁴⁵

It is worth noting, however, that this year, Armenia has made revisions to the 2017 legislation removing the focus on family peace and expanding the definition of domestic abuse by recognizing additional violations.⁴⁶ Although Armenia has not signed the Istanbul Convention yet, this is a step we ought to recognize as progressive in the issue of VAW in the country. Still, existing legislations in Armenia and Azerbaijan require mediation services between victims and abusers "with the goal of achieving family reconciliation."⁴⁷ If reconciliation occurs, the abusers are

⁴⁴ Amnesty International. *Violence against Women in Eastern Europe and Central Asia: Protect Women from Violence during Crisis and Beyond*. Amnesty International Ltd Peter Benenson House, 2022.

⁴⁵ [Armenia: Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family and Restoration of Peace in the Family](#). 2017.

⁴⁶ Chilingaryan, Anahit. "[Armenia Strengthens Domestic Violence Law](#)." Human Rights Watch. 2024.

⁴⁷ Amnesty International. *Violence against Women*, 10.

absolved of any wrongdoing, as is also the case in Kazakhstan and Uzbekistan.

In Belarus, the threat of the state taking away parental rights is especially palpable in the lives of politically active women. Many reports have indicated that existing mandates regarding state intervention in parental rights are specifically used to keep women from being politically or publicly active.⁴⁸ This keeps them fearful and hesitant to report domestic violence, seek assistance, or join public movements like protests. States with these tactics repress women by keeping them under desired traditional social roles.

4.1 Why Public Attitudes Towards Women Matter

Alyaksandr Lukashenko, the President of Belarus, was televised saying “Our Constitution is not made for a woman [as president]. Our society has not matured enough to vote for a woman. Because according to our Constitution, the president holds a strong power.”⁴⁹ One can, with little effort, interpret this rhetoric as a description of the prevailing attitude towards women not only in this country but in governments that share this narrative. We might consider that the percolation of this language in more progressive societies may be an indicator of shifting government attitudes towards women.

Although it is difficult to find accurate data on violence against women and domestic violence in many countries, the patterns we can identify cannot be ignored. By using “traditional family values” and the “family unit” as a

ground of defense, conservative ideologies, most especially religious ones, encourage traditional gender roles where men hold dominant power over women. It stops becoming about the safety and well-being of all, and instead firmly pushes down on keeping those traditional social roles.

V. Conclusion

The battle on violence against women, especially domestic violence, is one we are still fighting. We have seen great strides since the 1990s to address the crisis, and initiatives like the Istanbul Convention have been profoundly impactful in bringing attention to the issue and therefore, shifting the narrative.

Nuala Mole, founder of the AIRE (Advice on Individual Rights in Europe) Centre and a human rights lawyer with over 30 years of work behind her, expresses that women facing gender-based violence fall within the groups of those who suffer from the “rampant and negative influence of anti-rights movements.”⁵⁰ The efforts mentioned in this paper must continue, especially as there is still much resistance and dismissal from countries such as Russia and Turkey, where millions of women are still suffering.

It must be addressed that the sample in this paper is limited, as elaborate public data on the issue of violence against women, especially domestic violence, is not widely available. There are countries in which access to real, accurate data is not easily accessible, and this is also a problem in reaching a comprehensive assessment of the depth of the problem. However, with the data that is

⁴⁸ Amnesty International. *Belarus: Crackdown from the top: gender-based reprisals against women activists in Belarus*. 2020.

⁴⁹ Amnesty International. *Belarus*, 1.

⁵⁰ Mole, “[The Council of Europe and Violence against Women](#).”

available, we can get a sense of the severity of the issue in some areas.

It must also be noted that conservative ideologies are not the sole factors influencing the lack of protection for survivors of this kind of violence. This paper has focused on what is being done to protect women internationally, and what are some factors putting a dent in protective legislation.

The health and safety of women suffering and at risk when it comes to gender-based violence and domestic violence has been established as a global crisis. Protection for women is as important as the recognition and existence of the protections of all human rights, and this research must continue. However, I would like to propose an alternative perspective for how this global issue is spoken about: I would implore that as we speak and think about violence against women, we ask why there is persistent male aggression and ask ourselves what we can do about it. This paper lacks research on what movements and legislation are being implemented to address the issue from the other side, but we must keep in mind that this is not only a women's issue. In this context, millions of men are deeply violating women's human rights and we must ask ourselves why these rates are so high. The implementation and emphasis on protection recognize the reality, danger, and normalization of male aggression toward women. We must recognize and address the roots and cessation of male dominance through violence over women.

We have seen in this paper that conservative ideologies with ties to religious beliefs or institutions are often heavily founded on the concepts of "traditional family values",

"social values" and the "family unit", which in many countries pass laws that do not provide women as many protections from domestic violence. Proponents of these conservative movements are careful to emphasize these values when trying to influence policies or decision-making within the government. In many countries, these concepts are also enshrined in state constitutions, making it challenging for more progressive movements to take hold.

When observing traditional conservative rhetorics, especially in the sphere of political decision-making, we must critically consider the trajectories they may establish, and remember past effects that far-right movements have had on women's rights. We have seen the implications language used in conservative ideologies may have for shaping societal values and legal frameworks. With this knowledge, society can recognize when the protection of women against violence and domestic violence is under threat and amplify its voice to fight for the dignity and human rights of all women.

VI. Bibliography

- Amnesty International. *Belarus: Crackdown from the top: gender-based reprisals against women activists in Belarus*. 2020.
- Amnesty International. *Netherlands: Take Urgent Action to Address Gender-Based Psychological Violence*. 2024.
- Amnesty International. *Russian Federation: Nowhere to Turn to Violence Against Women in the Family*. International Secretariat, Amnesty International, 2005.
- Amnesty International. *Violence against Women in Eastern Europe and Central Asia: Protect Women from Violence during Crisis and Beyond*. Amnesty International Ltd Peter Benenson House, 2022.
- Armenia: Law on Prevention of Violence within the Family, Protection of Victims of Violence within the Family, and Restoration of Peace in the Family*. 2017. <https://www.refworld.org/legal/legislation/natlegbod/2017/en/120293>
- Baytok, Cemre. "The Istanbul Convention, gender politics and beyond: Poland and Turkey." *Berlin: Hafıza Merkezi* (2021).
- Boudoussier, Lisa. "Rape, Assault, Harassment: What Do the Numbers Show about Violence against Women in France?" *Le Monde*. November 2024. https://www.lemonde.fr/en/les-decodeurs/article/2024/11/25/rape-assault-harassment-what-do-the-numbers-show-about-violence-against-women-in-france_6734019_8.html.
- Chilingaryan, Anahit. 2024. "Armenia Strengthens Domestic Violence Law." *Human Rights Watch*. 2024. <https://www.hrw.org/news/2024/04/18/armenia-strengthens-domestic-violence-law>.
- Ciobanu, Claudia. 2020. "Poland Begins Push in Region to Replace Istanbul Convention with 'Family Rights' Treaty." *Balkan Insight*. 2020. <https://balkaninsight.com/2020/10/06/family-rights-treaty/>.
- Ciobanu, Claudia, and Jules Eisenchteter. 2024. "Women's Rights in Poland and Czechia: Seeing Past the Istanbul Convention." *Balkan Insight*. 2024. <https://balkaninsight.com/2024/02/07/womens-rights-in-poland-and-czechia-seeing-past-the-istanbul-convention/>.
- Council of Europe, *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, 2011.
- Directorate General of Human Rights and Legal Affairs. "The Council of Europe Campaign to Combat Violence against Women, Including Domestic Violence." *Council of Europe*. 2008. https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Fact_Sheet_en.asp.
- Durković, Miša. "Disputes Regarding the Ratification of the Istanbul Convention in Europe." *Sociologija* 64, no. 4 (2022): 605-622.
- EU Gender-Based Violence Survey*. European Institute for Gender Equality. 2024. <https://eige.europa.eu/newsroom/eu-gender-based-violence-survey>.
- "Facts and Figures: Ending Violence against Women." 2024. UN Women. June 27, 2024. <https://www.unwomen.org/en/articles/facts-and-figures/facts-and-figures-ending-violence-against-women>.
- "'Gender Theory'/'Gender Ideology' – Select Teaching Resources." 2019. United States Conference of Catholic Bishops. August 2019.
- Gwiazda A (2023). Gender Ideologies and Polish Political Parties. Government and Opposition: An International Journal of Comparative Politics 58, 641–660. <https://doi.org/10.1017/gov.2021.57>
- Gwiazda, Anna, and Liana Minkova. "Gendered Advocacy Coalitions and the Istanbul Convention: A Comparative Analysis of Bulgaria and Poland." *International Feminist Journal of Politics* 26, no. 1 (2024): 31-53.

- Human Rights Watch, *Combatting Domestic Violence in Turkey: The Deadly Impact of Failure to Protect*. New York: Human Rights Watch, 2022.
<https://www.hrw.org/report/2022/05/26/combating-domestic-violence-turkey/deadly-impact-failure-protect>
- Instituto Nacional de Estadística. "Statistics on Domestic Violence and Gender Violence: Year 2023."
<https://www.ine.es/dyngs/Prensa/en/EVDVG2023.htm>.
- Jurviste, Ulla, and Rosamund Shreeves. 2018. "The Istanbul Convention: A Tool to Tackle Violence against Women and Girls." European Parliamentary Research Service.
- Kourou, Nur Sinem. Right-wing populism and anti-gender movements: The same coin with different faces. Global Political Trends Center (GPoT), 2022.
- Meurens, Nathalie, Hayley D'souza, Saredo Mohamed, Nazia Chowdhury, and Stelios Charitakis. "Tackling violence against women and domestic violence in Europe." (2020).
[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU\(2020\)658648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU(2020)658648_EN.pdf)
- Mole, Nuala. 2023. "The Council of Europe and Violence against Women-Past, Present and Future."
https://www.venice.coe.int/coecentre/Nuala%20Mole_EHRLR_Issue_2_Print.pdf.
- Progress on the Sustainable Development Goals: The Gender Snapshot 2024*. New York: UN-Women and DESA, 2024.
- Rollins, Kay. 2022. "Putin's Other War: Domestic Violence, Traditional Values, and Masculinity in Modern Russia." Harvard International Review. August 3, 2022.
<https://hir.harvard.edu/putins-other-war/>.
- Semukhina, Olga. "The decriminalization of domestic violence in Russia." *Demokratizatsiya: The Journal of Post-Soviet Democratization* 28, no. 1 (2020): 15-45.
- The Chancellery of the Prime Minister. 2024. "Prime Minister Donald Tusk: Istanbul Convention Is to Protect Women and Children from Violence." Website of the Republic of Poland. January 30, 2024.
<https://www.gov.pl/web/primeminister/prime-minister-donald-tusk-istanbul-convention-is-to-protect-women-and-children-from-violence>.
- Velikaya, N. M. "Opposition as a Mirage of Political Field in Russia." *New authoritarianism: challenges to democracy in the 21st century* (2019): 77-99.
- Violence Against Women Prevalence Estimates, 2018*. Geneva, World Health Organization; 2021.
- "What Is Domestic Abuse?" United Nations. 2024.
<https://www.un.org/en/coronavirus/what-is-domestic-abuse>.
- WHO multi-country study on women's health and domestic violence against women: summary report of initial results on prevalence, health outcomes, and women's responses*. Geneva, World Health Organization, 2005.
- World Health Organization. "Global Database on the Prevalence of Violence against Women - National Estimates 2000-2018." *Global Database on the Prevalence of Violence Against Women, 2018*.

Reshaping Hegemony: China's Role in Latin America's New Power Dynamics

Raya Dacheva

IE University, Madrid, Spain
Bachelor in International Relations

E-mail: rdacheva.ieu2022@student.ie.edu

Published: 27th January 2025

Abstract

Following in the footsteps of the United States, China has emerged as Latin America's second-largest trading partner over the past few decades. The following paper discusses how China's strategic use of soft power and economic investments are reshaping Latin America's economic and political landscape. Trade between China and Latin America increased from USD 12 billion to USD 310 billion between 2000 and 2020. Chinese investments in various fields like technology and energy have led to increased dependency by some Latin American countries, such as Argentina, Venezuela, and Brazil. As a consequence, this shift toward China has raised alarms regarding implications for US economic influence and geopolitical position. Moreover, the paper claims that the United States has to revisit its foreign policy in an effort to rebalance the growing reach of China.

Keywords: Latin America, China's foreign policies, US historical hegemony in Latin America

I. Introduction

The United States has exerted huge influence over the geopolitical landscape of Latin America throughout history. However, China's growing power through large investments and strategic alliances is shifting the current scenario in favour of its influence. With the implementation of policies like the Monroe Doctrine and The Roosevelt Corollary, which designated Latin America as its sphere of influence, the United States has historically utilised economic, political, and soft-power measures in order to build hegemony in the region. However, as China grows economically and strengthens its diplomatic relations with nations from Latin America, this

long-standing balance of power for the US has been threatened.

The paper analyses the approach of China towards Latin America and it illustrates how it differs from the past U.S. initiatives. China's actions include initiatives on political realignments, soft power tactics, loans and economic investments in key industries of several Latin American countries. China is establishing a new degree of economic reliance and shifting regional allegiances by supplying Latin American nations with alternative economic models and collaborations that often lack the conditions of U.S. aid. Consequently, some of the Latin

American nations have started to increase their trading relations with China, regarding both imports and exports. Presented with these developments, for the US, maintaining its position in the area requires a reevaluated U.S. foreign policy that recognizes and responds to China's role.

II. Historical Context of US dominance in Latin America

Throughout the 19th and 20th centuries, the United States had utilized different methods of economical, political, and soft-power approaches with the aim to create and maintain the hegemonistic position in the Latin American continent.¹ By designating Latin America as a sphere of influence where European interference would be seen as a direct threat to American interests, the Monroe Doctrine of 1823 laid the base for American predominance in the region.² The Monroe Doctrine was a US policy established by President James Monroe in 1823. It declared that any European intervention in the political affairs of the Americas would be considered a threat to US security.³ The doctrine aimed to prevent European colonialism in the Western Hemisphere while asserting the role of the US as the dominant influence in the region. The Roosevelt Corollary, which further expanded the idea of the Monroe

Doctrine, outlined the United States' right to military intervention in order to stabilise Latin American countries if they are incapable of handling their own affairs.⁴

President Theodore Roosevelt extended the Monroe Doctrine in 1904 with the Roosevelt Corollary.⁵ It established the United States as a regional police power by asserting that it had the right to intervene in Latin American countries in order to preserve stability and order.⁶ Contrastingly, the main feature of the United States foreign policy in the 20th century was its interventionist approach: the Marshall plan, the US intervention in the Korean War, in the Vietnam War, and in the Middle East, among many other examples. In Latin America, the US had the aim of protecting its interests by reducing the influence of foreign powers, and positioning itself as an economic hegemony over the economies in the region.⁷ That is why, the US began to establish trade agreements, financial tools, and organisations such as the World Bank, the Organization of American States (OAS), or the International Monetary Fund (IMF).⁸ This way, the United States strengthened its control in the area, through the dependencies created with these initiatives among the

¹ The Gilder Lehrman Institute of American History. "The Monroe Doctrine, 1823,"

² "The Monroe Doctrine, 1823."

³ "The Monroe Doctrine: The United States and Latin American Independence - the National Museum of American Diplomacy." U.S. Department of State, U.S. Department of State, 10 Jan. 2024, diplomacy.state.gov/stories/the-monroe-doctrine-the-united-states-and-latin-american-independence/.

⁴ Theodore Roosevelt Center "The Roosevelt Corollary." Theodore Roosevelt Center - *Roosevelt Corollary at Dickinson State University*. Accessed November 5, 2024. <https://www.theodorerooseveltcenter.org/Learn-About-TR/TR-Encyclopedia/Foreign-Affairs/Roosevelt-Corollary.>)

⁵ "The Roosevelt Corollary."

⁶ "The Roosevelt Corollary to the Monroe Doctrine, 1904." Roosevelt Corollary to Monroe Doctrine, faculty.chass.ncsu.edu/slatta/hi216/documents/tr_Monroe.htm. Accessed 9 Jan. 2025.

⁷ William I. Robinson, "Promoting Polyarchy: Globalization, US Intervention, and Hegemony," *Latin American Perspectives* 30, no. 1 (2003): 111–145.

⁸ Robinson, "Promoting Polyarchy".

recipient countries. However, this period of uninterrupted dominance has now been challenged by new global actors, mainly China. The traditional power structures established by the US are under considerable stress as China increases its economic influence through trade alliances and infrastructure investments. This significant change threatens to undermine America's long-standing hegemonic position in Latin America.

III. China's Economic Investments in Latin America

China's foreign policy priorities changed dramatically during the second half of the 20th century.⁹ The country's economic investments in Latin America have increased significantly, influencing the energy, technology, and infrastructure sectors in the region. As the graph below illustrates, China's trade has grown considerably, especially after 2005. The red lines show an upward trend in both imports from and exports to China. This increase underscores China's growing economic influence in Latin America.¹⁰

U.S. Remains Latin America's Top Trade Partner



Fig.1. Latin America's trade in goods with the United States and China.

Source: the Council on Foreign Relations.

3.1 Loans and Overseas Foreign Direct Investment

Two of the primary factors influencing the relationship between China and Latin America are the Chinese loans and overseas foreign direct investment (OFDI). Political researcher Enrique Peters, illustrates in his article "Monitor of Chinese OFDI in Latin America and the Caribbean 2023" (2023), that China invested around \$12 billion in Latin America and the Caribbean in 2022.¹¹ The investments in the period between the years 2020–2022, resulted in the creation of more than 81,000 jobs, which improved employment rates.¹² In 2022, Latin American nations borrowed a total of \$813 million from China.¹³ Venezuela is the biggest borrower of \$60 billion in Chinese state loans, mostly for energy and infrastructure.

Moreover, China created a development plan, called "South-South Cooperation," which emphasises developing

⁹ Riordan Roett and Guadalupe Paz, *China's Expansion into the Western Hemisphere: Implications for Latin America and the United States* (Brookings Institution Press, 2008), 27.

¹⁰ Diana Roy. "China's Growing Influence in Latin America." *Council on Foreign Relations*, June 15, 2023. <https://www.cfr.org/backgrounder/china-influence-latin-america-argentina-brazil-venezuela-security-energy-bri>.

¹¹ Enrique Dussel Peters. "Monitor of Chinese OFDI in Latin America and the Caribbean 2023." *Red ALC-China*, April 15, 2023.

¹² Peters, "Monitor of Chinese OFDI."

¹³ Peters, "Monitor of Chinese OFDI."

countries' common developmental experiences and presents China as a cooperative partner rather than a hegemonic superpower.¹⁴ In contrast to the United States' approach, China' involvement in the region is seen through agreements to provide infrastructure and resources. This approach has created a framework that many in the region view as more favourable and fair, where Latin American countries receive much-needed financing, technical support, and enhancements to infrastructure-such as ports, roads, and telecommunications-in return for extraction of natural resources or markets for products manufactured in China.¹⁵ For instance, in the case of Argentina, financial benefits that involve renegotiated rail and hydroelectric facilities have been backed by the Chinese through the infrastructure facility. In Brazil, huge investments by the Chinese involved renewable energy projects in the energy sector. Both strategies create such economic dependence since the nations have come to depend on the Chinese funds for development. Between 2005 and 2022, China provided more than \$140 billion in loans to Latin American nations, sometimes surpassing the amounts given by American and multilateral banks.¹⁶

The increase in dependency on Chinese infrastructure and investment for Latin American economies, together with the relative decline in the financial standing of the

¹⁴ Established in 1995, the network's main aim is to promote technical and economic cooperation among developing countries through sharing knowledge, facilitating exchange visits, etc. ("China South-South Cooperation Network." *United Nations; Office for South-South Cooperation*, August 7, 2024..)

¹⁵ "China South-South Cooperation Network," United Nations.

¹⁶ Peters, "Monitor of Chinese OFDI."

United States, makes this already financial involvement central to the impacts of US influence. Moreover, Latin American strategic alignment with Beijing causes changes in trade patterns and a decline in the power of the U.S. market. As a result, China's investments not only support regional economic expansion but also challenge the US' long-standing economic dominance, indicating a significant change in the balance of power.

3.2 Construction and Engineering investments

Since the start of the global financial crisis in 2008, Chinese companies have become more active on regional engineering and construction contracts through Latin America.¹⁷ These include infrastructure in Ecuador, Peru, and Argentina - railroads in Argentina and Venezuela, and roadways in Bolivia.¹⁸ Several major projects have been proposed, including a railroad that would connect the Atlantic and Pacific via Brazil and Peru, and a canal in Nicaragua.¹⁹ These have been financed using Chinese investment. It has been estimated that between 2005 and 2016 the Exim Bank, the China Development Bank (CDB) and other Chinese state institutions lent a total of

¹⁷ Price, John, "China's Investment Presence in Latin America." *Americas Market Intelligence Market Insights That Unlock Opportunities in Latin America*, Americas Market Intelligence, 8 Aug.2024,

americasmi.com/insights/strategy-chinas-commercial-engagement-latin-america/.

¹⁸ Pablo Chauvet et al. "China: Current and Potential Role in Infrastructure Investment in Latin America." *Comisión Económica para América Latina y el Caribe*, 2020.

¹⁹ Chauvet, "China: Current and Potential Role in Infrastructure Investment in Latin America."

more than US\$140 billion to Latin America and the Caribbean.²⁰

IV. Soft Power Strategies

China has tried to expand its “soft power” in Latin America, as in other parts of the world. This expansion played a significant role in the establishment of educational and cultural relationships between China and Latin American nations. The Chinese Policy Paper on “Latin America and the Caribbean (2016),” emphasizes cultural and people-to-people exchanges as part of the major diplomatic strategy in the region.²¹ It points out the endeavors to deepen mutual understanding through cultural cooperation in support of cultural exchanges, festivals, and exhibitions, including the protection of cultural heritage. The paper also underlines educational collaboration, such as promoting Chinese language education through Confucius Institutes, increasing scholarships for Latin American students, and fostering partnerships between educational institutions.²² Additionally, it addresses cooperation in media, advocating for the exchange of journalists, joint interviews, and co-production of programs, alongside enhancing tourism through expanded direct flights and promoting bilateral travel.

These initiatives reflect China's commitment to fostering goodwill and building long-term relationships with Latin American and Caribbean nations, leveraging soft power to deepen its influence in the region.

4.1 Chinese education in Latin America

In 2016, there were 36 Confucius Institutes established in Latin America.²³ They promote Chinese language and culture for influencing public opinion through better understanding and appreciation of China.²⁴ With their offer of language courses, cultural events, and education exchanges, the institutes provide an opportunity for local populations to gain direct exposure to Chinese traditions and perspectives. This engagement can lead to more favorable views of China, as individuals become more familiar with its culture and societal values.²⁵

Additionally, the presence of Confucius Institutes in educational institutions can shape elite opinions by integrating Chinese studies into academic curricula, thereby influencing future leaders and policymakers.²⁶ Chinese education first appeared in Brazil in the 1950s, with the establishment of the “First Chinese School in São Paulo” on January 3, 1958. It set the standard for Chinese

²⁰ Jason Yovanoff. “China-Latin America Finance Databases.” *The Dialogue*, May 6, 2021.

²¹ Xinhua. “Full Text of China’s Policy Paper on Latin America and the Caribbean.” *The State Council. The People’s Republic of China*. Full text of China’s policy paper on Latin America and the Caribbean, November 24, 2016. https://english.www.gov.cn/archive/white_paper/2016/11/24/content_281475499069158.htm.

²² Xinhua, “China’s Policy Paper on Latin America.”

²³ Leonardo Paz Neves, “Confucius Institutes in Brazil and BRICS Education Cooperation,” *The Diplomat*, January 10, 2020,

²⁴ Neves, “Confucius Institutes in Brazil and BRICS Education Cooperation.”

²⁵ Vladimir Rouvinski. “China’s Soft Power in Latin America.” *Diálogo Político*. (2023).

²⁶ Ricardo Barrios, “The Popular Perception of China in Latin America and the Role of Confucius Institutes,” *Academia.edu*, accessed December 2, 2024,

school construction in Brazil.²⁷ The rapid rise of China prompted a global "Chinese wave," and the flourishing of the Chinese language. As a result, Chinese schools in Brazil experienced a period of fast expansion as the twenty-first century progressed, raising the bar for education in Latin America.²⁸ A network of future leaders who are acquainted with Chinese culture and policy is being formed by the thousands of Latin American students who are currently studying in China.²⁹

Moreover, in an effort to promote staff and student exchanges, cooperative research projects, and academic alliances, Brazilian universities have aggressively pursued relationships with Chinese institutions, which created this new generation of Latin American leaders and citizens who have a more positive perception of China.³⁰ This cultural and educational alignment has progressively decreased US influence, exposing Beijing's complex and prospective strategy to change regional allegiances.

4.2 Chinese media in Latin America

China's impact is further strengthened by the dissemination of Chinese culture through the arts and media, which quietly harmonises local sentiments with Beijing's global narrative. With a strong and expanding

²⁷ "China and Brazil: Developing Education." BRICS Portal, June 15, 2023.

²⁸ Forum for American Leadership. "Engaging Chinese Engagement in Latin America: Recommendations for U.S. Policy." September 2023.

²⁹ Forum for American Leadership. "Engaging Chinese Engagement in Latin America"

³⁰ Diálogo. "China Expands Influence in Brazil through Universities." Diálogo Américas, 9 Sept. 2024, dialogo-americas.com/articles/china-expands-influence-in-brazil-through-universities/.

media outreach in Brazil,³¹ the Chinese broadcaster *China Central Television* (CCTV) established its regional headquarters in Sao Paulo, Brazil in 2010. Chinese official media and diplomatic players increased their social media presence and actively participated in public diplomacy during the 2019–2021 coverage period.³² Additionally, Chinese state media organisations negotiated or extended collaboration agreements with Brazilian public and private media.³³

Through media organisations aimed at the region's Spanish-speaking public, Beijing is progressively increasing its influence over Latin America. *China Radio International* (CRI) and newspapers *Xinhua* and *People's Daily* both publish daily content in Spanish and Portuguese. In the meantime, CCTV offers a Spanish channel.

Lastly, the *China-Latin America Media Exchange Center* is one of the many initiatives the Chinese government has taken to establish communication with journalists in Latin America.³⁴

³¹ Ellie Young, and Sahar Cook. "Brazil: Beijing's Global Media Influence 2022 Country Report." *Freedom House*. Accessed November 6, 2024.

³² Astuti, Wiwiek, et al. "(PDF) China's Wolf Warrior Diplomacy (Narrative): Development, Causes, and Political Effects." *China's Wolf Warrior Diplomacy On Social Media In The Era Of Covid-19*, Dec. 2021, www.researchgate.net/publication/379600758_China's_Wolf_Warrior_Diplomacy_Narrative_Development_Causes_and_Political_Effects.

³³ Palit, Parama Sinha. "Public Diplomacy through Social Media: The Chinese Way." *China Research Center*, 24 Aug. 2024, www.chinacenter.net/2024/china-currents/23-1/public-diplomacy-through-social-media-the-chinese-way/.

³⁴ Guillermo García-Renedo. "China's Influence in Latin America." *CEU-CEFAS Center for Studies, Training, and Social Analysis*, April 2023.

V. Political Realignments and Shifts in Geopolitical Alliances

The diplomatic relations between Latin American countries and China began in the late 1970s.³⁵ The development of diplomatic relations is closely tied with the formation of closer political relations too. China created in 1993 its first "strategic partnership" in Latin America with Brazil.³⁶ It has since invested in the Brazilian mining, manufacturing, agriculture, and infrastructure sectors, among others. In Brazil, China's largest foreign engineering project, an 800kV transmission line spanning the Belo Monte to Rio de Janeiro is set to be an ultra-high-voltage direct current, making it the world's longest.³⁷ This remarkable advancement made power easily accessible to 16 million Brazilians. The line of trade is bilateral, as China has positive outcomes from its cooperation with Brazil, too. Over the past decades, China's economy has grown significantly.³⁸ For this economic growth, imports of natural resources from Brazil and other nations have been crucial.³⁹ Oil, minerals, and agricultural products have

accounted for 85 percent of China's imports from Latin America in recent years.⁴⁰

Consequently, after the agreement between Brazil and China in 1993, other Latin American countries established similar agreements with China: Venezuela in 2001, Argentina in 2004, Peru in 2008, Chile in 2012, among others.⁴¹ In order to formalize its approach towards the region, China published two White Papers about Latin America in 2008 and 2016.⁴² These White Papers, common in Chinese policy communication, serve as comprehensive government-issued reports outlining strategic priorities and providing aggregated data to guide diplomatic and economic relations.⁴³ While they offer insights into China's policies, the data contained is often limited to aggregated figures published only periodically, reflecting China's controlled approach to information disclosure.

The first policy paper emphasises the ideas of the Chinese government to expand the economic cooperations through trade initiatives and promote cultural and social exchanges.⁴⁴ Moreover, the second policy paper presented deepened cooperation through three main engines being trade, financial cooperation, and foreign direct investment. It also presented the idea of a model for production capacity cooperation - focusing on building three major

³⁵ Jiang Shixue. "A New Look at the Chinese Relations with Latin America." *Nueva Sociedad*. Accessed November 6, 2024.

³⁶ Jenkins, Rhys. "China's Global Expansion and Latin America." *Journal of the American Statistical Association*, 32, no. 200, (December 1937): 675- 701 <https://sci2s.ugr.es/keel/pdf/algorithm/articulo/1937-JSTOR-Friedman.pdf>.

³⁷ Shixue, "A New Look at the Chinese Relations."

³⁸ Shixue, "A New Look at the Chinese Relations."

³⁹ Daniel E Perrotti. "The People's Republic of China and Latin America: the impact of Chinese economic growth on Latin American exports." *CEPAL Review*, 116 (August 2015). Accessed November 6, 2024.

⁴⁰ Carlos Casanova, et al. "Measuring Latin America's Export Dependency on China." *BBVA Research*, August 2015.

⁴¹ Xinhua, "China's Policy Paper on Latin America."

⁴² Xinhua, "China's Policy Paper on Latin America."

⁴³ Ellis, R. *China in Latin America: The Whats and Wherefores*. Lynne Rienner Publishers, 2009.

⁴⁴ Ellis, "China in Latin America: The Whats and Wherefores."

passages: logistics, electricity, and information.⁴⁵ Nevertheless, Chinese President Hu Jintao's initial visit to the Latin America continent in... was followed by other government officials, as well as President Xi Jinping. Chinese leaders have travelled to nineteen Latin American nations, and seventy-four Latin American heads of state and legislators have visited China.⁴⁶

5.1 Chinese foreign investments

Chinese investments in Latin American countries have a great influence on foreign policy decisions in these countries. Examples of such countries are Brazil, Venezuela, and Argentina. According to the 2023 edition of the China-Latin America and the Caribbean Economic Bulletin, published by the Boston University Global Development Policy Center (YEAR OF PUBLICATION), trade between China and Latin America has reached record levels, with an importation rate estimated to be around \$265 billion in goods.⁴⁷ Recent developments in trade and investment have deepened the ties between China and Latin American countries.⁴⁸

Ecuador is continuing to develop close economic links by signing the Free Trade Agreement with China in December 2022. Later on, in February 2022, Argentina became a participant in the BRI, confirming that this step goes with an expression of interest to become part of the

⁴⁵ Ellis, *China in Latin America*.

⁴⁶ Ellis, *China in Latin America*.

⁴⁷ Zara Albright, et al. "China-Latin America and the Caribbean Economic Bulletin." *Global Development Policy Center*, April 20, 2023.

⁴⁸ Ellis, *China in Latin America*.

BRICS Group, due to a high possibility to develop better access to alternative structures of financing-the BRICS New Development Bank and China-headed Asian Infrastructure Investment Bank.⁴⁹ By contrast, the heavy dependency by Venezuela on Chinese loans and infrastructure support underlines an economic and political alignment with Beijing that is much more extreme. Together, these examples provide evidence of the growing dependency of Latin American nations on Chinese investments and their alignment with China's global economic strategy. In a similar way, Brazil has received major Chinese investments in key sectors, leading to changes in its regulatory structures to support Beijing's strategic objectives.⁵⁰ Implicit expectations are often attached to these investments, which have an influence on local government and policymaking which promotes Chinese goals.

VI. Implications for U.S. Foreign Policy

As China emerges as a great trading partner for several Latin American countries, the United States' economic power in the continent is positioned at risk. The US has opposed the involvement of external powers in the Western Hemisphere since it announced the Monroe Doctrine in 1823, regarding Latin America and the Caribbean as its own sphere of influence. However, China is currently threatening US interests in a number of different ways, by directly threatening this very sphere of influence. It challenges the US hegemony in the region. This can be

⁴⁹ Ellis, *China in Latin America*.

⁵⁰ Ellis, *China in Latin America*.

observed as a reflection of China's geopolitical strategy of pushing for a multipolar international system substituting the until-now in place unipolar one, dominated by the United States.

Moreover, it has been suggested that China is increasing its influence in Latin America in order to counter the United States' dominance in East Asia and the Western Pacific.⁵¹ Regardless of the reason, the presence of a rival power in the region gives Latin American governments greater negotiation power and reduces the US's ability to achieve its policy goals.

Various Congressional Committees have held meetings in which this very topic of Chinese influence in Latin America has been examined, and a number of concerns were stressed, particularly on the political perspective. Congressman Dan Burton in a statement at a hearing before the House of Representatives' Subcommittee on the Western Hemisphere stated: *"I am very concerned with the rise of influence China is pursuing in our Hemisphere and I believe it is important that the United States grasps the economic, social and national security implications of a Latin America under the thumb of China. Once China is able to move in and expand control, it will be difficult to turn the tide."*⁵²

The rise of China's influence can be observed not only as a threat to US geopolitical interests in Latin America but

⁵¹ Lei Yu. "China's Strategic Partnership with Latin America: A Fulcrum in China's Rise." *ResearchGate*, September 2015.

⁵² Burton. "The New Challenge: China in the Western Hemisphere" *Authenticated US Government Information*, June 11, 2008.

also as a threat undermining democracy in the region.⁵³

According to the Chinese model, a society may overcome poverty by employing a growth strategy that is not necessarily democratic.⁵⁴ This model emphasizes state-led economic planning, centralized decision-making, and a focus on stability and control over political freedoms as mechanisms to achieve rapid development. By prioritizing infrastructure investment, export-driven growth, and long-term strategic planning, China has demonstrated how authoritarian governance can produce significant economic gains without relying on democratic institutions or processes.⁵⁵ While this approach contrasts sharply with the democratic ideals traditionally promoted by the US, it presents an appealing alternative for some Latin American countries struggling with governance challenges, economic stagnation, or inequality.⁵⁶

VII. Conclusion

In conclusion, the research paper underlines that China, through strategic investments, soft power, and diplomatic and political realignments, holds immense influence in Latin America. The United States has historically occupied the region for its own economic and political purposes, through a framework of doctrines that promoted its dominance of Latin America. Large loans, infrastructure

⁵³ Cimmino, Jeffrey. "China and Russia Engage Latin America and the Caribbean Differently. Both Threaten US Interests." *Atlantic Council*, 9 Feb. 2024, www.atlanticcouncil.org/in-depth-research-reports/issue-brief/china-and-russia-engage-latin-america-and-the-caribbean-differently-both-threaten-us-interests/.

⁵⁴ Jenkins, "China's Global Expansion and Latin America."

⁵⁵ Jenkins, "China's Global Expansion and Latin America."

⁵⁶ Jenkins, "China's Global Expansion and Latin America."

development, and foreign direct investment have all been hallmarks of the Chinese strategy , which has changed the economic landscape for nations like Venezuela, Argentina, and Brazil. As a result of their increased economic reliance on China, American hegemony has been challenged. China has also gained soft power within the region as part of its cultural diplomacy initiatives, particularly through the Confucius Institutes and jointly undertaken media partnerships with the aim of influencing popular perception and elite decisions toward positive views of China.

V.III List of figures

Figure 1: Latin America's trade in goods with the United States and China.....3

IX. Bibliography

- Astuti, Wiwiek, et al. "(PDF) China's Wolf Warrior Diplomacy (Narrative): Development, Causes, and Political Effects." *China's Wolf Warrior Diplomacy On Social Media In The Era Of Covid-19*, Dec. 2021, www.researchgate.net/publication/379600758_China's_Wolf_Warrior_Diplomacy_Narrative_Development_Causes_and_Political_Effects.
- "Belo Monte Transmission Line Project: 'Electricity Expressway' in Brazil." *State-Owned Assets Supervision and Administration Commission of the State Council*. October 13, 2023. http://en.sasac.gov.cn/2023/10/13/c_16027.htm.
- Bokova, Tatiana. "China and Brazil: Developing Education." *BRICS Portal*, June 15, 2023. <https://infobrics.org/post/38617>.
- Casanova, Carlos, Le Xia, and Romina Ferreira. "Measuring Latin America's Export Dependency on China." *BBVA Research*, August 2015. https://www.bbva.com/wp-content/uploads/2015/08/15-26_Working-Paper_China-and-Latin-America.pdf.
- Chauvet, Pablo, Taotao Chen, Azhar Jaimurzina, Run Xu, and Ying Jin. "China: Current and Potential Role in Infrastructure Investment in Latin America." *Comisión Económica para América Latina y el Caribe*, 2020. <https://repositorio.cepal.org/server/api/core/bitstreams/f5ff40c3-3ebe-4a79-a660-33518f23eed2/content>.
- Chaziza, Dr. Mordechai. "China's Soft Power Projection Strategy: Confucius Institutes in the Mena Region." *Begin-Sadat Center for Strategic Studies*, July 26, 2023. <https://besacenter.org/chinas-soft-power-projection-strategy-confucius-institutes-in-the-mena-region/>.
- Cimmino, Jeffrey. "China and Russia Engage Latin America and the Caribbean Differently. Both Threaten US Interests." *Atlantic Council*, 9 Feb. 2024, www.atlanticcouncil.org/in-depth-research-reports/issue-brief/china-and-russia-engage-latin-america-and-the-caribbean-differently-both-threaten-us-interests/.
- Diálogo. "China Expands Influence in Brazil through Universities." *Diálogo Américas*, 9 Sept. 2024, dialogo-americas.com/articles/china-expands-influence-in-brazil-through-universities/.
- Ellis, R. *China in Latin America: The Whats and Wherefores*. Lynne Rienner Publishers, 2009.
- Albright, Zara, Rebecca Ray, and Yudong Liu. "China-Latin America and the Caribbean Economic Bulletin." *Global Development Policy Center*, April 20, 2023. https://www.bu.edu/gdp/files/2023/04/GCI-CH-LAC-Bulletin_2023-FIN.pdf.
- Forum for American Leadership. "Engaging Chinese Engagement in Latin America: Recommendations for U.S. Policy." September 2023. <https://forumforamericanleadership.org/wp-content/uploads/2023/09/FAL-Engaging-Chinese-Engagement-in-Latin-America.pdf>.
- García-Renedo, Guillermo. "China's Influence in Latin America." *CEU-CEFAS Center for Studies, Training, and Social Analysis*, April 2023. <https://cefes.ceu.es/wp-content/uploads/Informe-01-CEFAS-CEU-La-influencia-de-China-en-Iberoamerica.pdf>.
- Jenkins, Rhys. "China's Global Expansion and Latin America." *Journal of the American Statistical Association*, 32, no. 200, (December 1937): 675-701

<https://sci2s.ugr.es/keel/pdf/algorithm/articulo/1937-JSTOR-Friedman.pdf>.

Leonardo Paz Neves, "Confucius Institutes in Brazil and BRICS Education Cooperation," *The Diplomat*, January 10, 2020, <https://thediplomat.com/2020/01/confucius-institutes-in-brazil-and-brics-education-cooperation/>.

Palit, Parama Sinha. "Public Diplomacy through Social Media: The Chinese Way." China Research Center, 24 Aug. 2024, www.chinacenter.net/2024/china-currents/23-1/public-diplomacy-through-social-media-the-chinese-way/.

Perrotti, Daniel E. "The People's Republic of China and Latin America: the Impact of Chinese Economic Growth on Latin American Exports." *CEPAL Review*, 116 (August 2015). <https://repositorio.cepal.org/server/api/core/bitstreams/78c35f30-9d01-4c32-a723-e11668b5c6f6/content>.

Peters, Enrique Dussel. "Monitor of Chinese OFDI in Latin America and the Caribbean 2023" *Red-ALC China*, April 15, 2023. https://www.redalc-china.org/monitor/images/pdfs/menuprincipal/DusselPeters_MonitorOFDI_2023_Eng.pdf.

Price, John, "China's Investment Presence in Latin America." *Americas Market Intelligence Market Insights That Unlock Opportunities in Latin America*, Americas Market Intelligence, 8 Aug.2024, americasmi.com/insights/strategy-chinas-commercial-engagement-latin-america/.

Raza, Werner, and Hannes Grohs. "Trade Aspects of China's Presence in Latin America and the Caribbean." *European Parliament*. November 2022.

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/702572/EXPO_BRI\(2022\)702572_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/702572/EXPO_BRI(2022)702572_EN.pdf).

Ricardo Barrios, "The Popular Perception of China in Latin America and the Role of Confucius Institutes," *Academia.edu*, accessed December 2, 2024, https://www.academia.edu/87354831/The_Popular_Perception_of_China_in_Latin_America_and_the_Role_of_Confucian_Institutes.

Robinson, William I. "Promoting Polyarchy: Globalization, US Intervention, and Hegemony." *Latin American Perspectives* 30, no. 1 (2003): 111–145. <https://www.jstor.org/stable/45194195>.

Roett, Riordan, and Guadalupe Paz. *China's Expansion into the Western Hemisphere: Implications for Latin America and the United States*. Brookings Institution Press, 2008.

Rouvinski, Vladimir. "China's Soft Power in Latin America." *Diálogo Político*. Accessed November 5, 2024. <https://dialogopolitico.org/wp-content/uploads/2024/02/cap-6-chinas-soft-power-in-latin-america-DP-2023.pdf>.

Roy, Diana. "China's Growing Influence in Latin America." *Council on Foreign Relations*, June 15, 2023. <https://www.cfr.org/backgrounder/china-influence-latin-america-argentina-brazil-venezuela-security-energy-bri>.

Shixue, Jiang. "A New Look at the Chinese Relations with Latin America." *Nueva Sociedad*. Accessed November 6, 2024. https://static.nuso.org/media/articles/downloads/3351_2.pdf.

- “The Monroe Doctrine: The United States and Latin American Independence - the National Museum of American Diplomacy.” U.S. Department of State, U.S. Department of State, 10 Jan. 2024, https://english.www.gov.cn/archive/white_paper/2016/11/24/content_281475499069158.htm.
- The Gilder Lehrman Institute of American History. “The Monroe Doctrine, 1823.” Accessed December 2, 2024, <https://www.gilderlehrman.org/history-resources/potlight-primary-source/monroe-doctrine-1823>.
- Theodore Roosevelt Center. “The Roosevelt Corollary.” *Roosevelt Corollary at Dickinson State University*. Accessed November 5, 2024. <https://www.theodorerooseveltcenter.org/Learn-About-TR/TR-Encyclopedia/Foreign-Affairs/Roosevelt-Corollary>.
- “The Roosevelt Corollary to the Monroe Doctrine, 1904.” Roosevelt Corollary to Monroe Doctrine, faculty.chass.ncsu.edu/slatta/hi216/documents/tr_Monroe.htm. Accessed 9 Jan. 2025.
- United Nations. “China South-South Cooperation Network.” *United Nations; Office for South-South Cooperation*, August 7, 2024. <https://southsouth-galaxy.org/solutions/detail/china-south-south-cooperation-network/#:~:text=The%20China%20South%2DSouth%20Cooperation,United%20Nations%20Industrial%20Development%20Organization>.
- World Integrated Trade Solution. “U.S. Remains Latin America’s Top Trade Partner.” *Council on Foreign Relations*. Accessed December 2, 2024. <https://www.cfr.org>.
- Xinhua. “Full Text of China’s Policy Paper on Latin America and the Caribbean.” *The State Council. The People’s Republic of China*. November 24, 2016. https://english.www.gov.cn/archive/white_paper/2016/11/24/content_281475499069158.htm.
- Young, Ellie, and Sahar Cook. “Brazil: Beijing’s Global Media Influence 2022 Country Report.” *Freedom House*. Accessed November 6, 2024. <https://freedomhouse.org/country/brazil/beijings-global-media-influence/2022>.
- Yovanoff, Jason. “China-Latin America Finance Databases.” *The Dialogue*, May 6, 2021. https://www.thedialogue.org/map_list/.
- Yu, Lei. “China’s Strategic Partnership with Latin America: A Fulcrum in China’s Rise.” *ResearchGate*, September 2015. https://www.researchgate.net/publication/283187707_China's_strategic_partnership_with_Latin_America_A_fulcrum_in_China's_rise.

Sectarianism and Geopolitics: The Saudi-Iran Rivalry in Proxy Conflicts

Kenzy Dessouki

School of Politics, Economics, and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: kdessouki.ieu2023@student.ie.edu

Published 27th January 2025

Abstract

This paper explores the strategic rivalry between Saudi Arabia and Iran in the Middle East and North Africa (MENA) region, examining the extent to which sectarianism serves as a cause versus a tool in their ongoing conflicts. While the Sunni-Shia divide is often declared as the root of their tensions, this research argues that sectarian rhetoric is a means to justify political and economic objectives rather than the primary driver of tensions. Through a close analysis of key case studies, including the Syrian and Yemeni Civil Wars, this study demonstrates how both states manipulate religious identities to legitimize their regional interventions. The paper further contextualizes this rivalry within historical and geopolitical frameworks, tracing its evolution from the 1979 Islamic Revolution to present-day proxy conflicts. It highlights how Iran employs proxy warfare to counterbalance Saudi and U.S.-aligned forces, while Saudi Arabia uses sectarian framing to reinforce its claim to Sunni leadership. Ultimately, the research finds that the Saudi-Iran rivalry is not merely a sectarian conflict but a struggle for dominance shaped by competing aspirations for hegemony.

Keywords: Proxy-warfare, Sectarianism, Geopolitics, Middle East

I. Introduction

The region of the Middle East and North Africa's (MENA) political landscape is greatly influenced by the rivalry between Sunni-majority Saudi Arabia and Shia-majority Iran. This tension, positioned along sectarian lines, is rooted in a centuries-old religious divide yet, has evolved into a broader dispute for regional influence. Saudi Arabia and Iran have sought to extend their power across the MENA region by supporting opposing factions in various regional conflicts; each claiming to defend its respective sectarian body. However, this rivalry is often more about strategic interests than genuine religious

differences.¹ Saudi Arabia's claim to Sunni leadership and Iran's self-elected role as protector of Shia communities are employed to legitimize each nation's involvement in conflicts, but the deeper motives are political and economic. The 1979 Islamic Revolution in Iran marked a critical moment in this rivalry, introducing a Shia theocracy that Saudi Arabia perceived as a direct challenge to its influence in the region and a threat to the monarchy.² Since

¹ Philipp Holtmann, "Counter-sectarianism: Saudi Arabia's Strategy to Confront Iran," *Middle East Policy* 21, no. 3 (2014): 96–113.

² V. T. HolGhoble, "Saudi Arabia–Iran Contention and the Role of Foreign Actors," *Strategic Analysis* 43, no. 1 (2019): 42–53.

then, the two nations have engaged in proxy wars that blur the line between religious and geopolitical agendas. In Yemen, for example, Saudi Arabia backs the Sunni-led government, while Iran supports the Shia Houthi faction. In Syria, Iran provides support to the Assad regime, a Shia-led government, while Saudi Arabia has historically backed various Sunni opposition groups.³ These conflicts, including the recent Israel-Gaza conflict, demonstrate how sectarianism serves as a convenient narrative to rally support domestically and abroad, yet underlying interests in power, security, and regional hegemony often influence the strategies of both states. This paper seeks to address the following question: *Is sectarianism a primary driver of the Saudi-Iranian rivalry, or is it a strategic tool utilized by these powers to mask deeper geopolitical ambitions?* Through a close analysis of these cases, this research will investigate whether sectarianism is a primary cause of these conflicts or a tool manipulated by these powers to justify their hidden agendas.

The Saudi-Iran rivalry in the MENA region is deeply intertwined with strategic interests. Rather than being solely rooted in religious conflict, this rivalry is shaped by complex geopolitical motives, as highlighted across various studies. Scholars suggest that Iran's influence strategy relies on proxy warfare to create a network of allies in the region, thus counterbalancing Saudi and U.S.-aligned forces without direct confrontation.⁴ This

approach to proxy warfare is seen as a tool for Iranian power projection, leveraging sectarian affiliations when beneficial but ultimately serving broader political aims.

Exactly how Saudi Arabia and Iran leverage sectarian identities to establish and legitimize their involvement in proxy conflicts throughout the MENA region can be demonstrated through the Syrian Civil War. This conflict demonstrated how Saudi Arabia's support for various Sunni opposition groups within Syria aligns with its strategic objective of countering Iran's regional expansion. By positioning itself as the champion of Sunni interests, Saudi Arabia frames its involvement in Syria as a defense against Iranian-backed Shia factions that threaten the sectarian balance and stability within the region⁵. This sectarian framing serves as a call to action, accumulating support both domestically and among Sunni-majority countries and communities that share apprehensions regarding Iranian influence.

However, Saudi Arabia's motivations in Syria extend far beyond sectarian concerns. At a strategic level, Saudi Arabia perceives Iran's alignment with the Assad regime as a direct threat to its influence and security. By reinforcing Sunni opposition forces in Syria, Riyadh not only seeks to curtail Tehran's expanding influence but also aims to boost its alliances with key Western powers, such as the United States, and Sunni-majority states like Jordan and Turkey, which share a common interest in limiting

³Pauline Crepy, "Proxy Warfare's Impact on Sectarianization: The Case of Saudi-Iranian Rivalry," *Flux: International Relations Review* 9, no. 1 (2019): n.p., <https://doi.org/10.26443/firr.v9i1.6>.

⁴R. A. Cohen and G. P. Shamci, "The 'Proxy Wars' Strategy in Iranian Regional Foreign Policy," *Journal of the Middle East and Africa* 13, no. 4 (2022): 385–405, <https://doi.org/10.1080/21520844.2022.2061789>.

⁵Yehuda U. Blanga, "Saudi Arabia's Motives in the Syrian Civil War," *Middle Eastern Studies* 53, no. 4 (2017): 572–586, <https://doi.org/10.1080/00263206.2017.1298375>.

Iranian-backed hegemony in the Levant⁶. This dynamic, wherein Saudi Arabia uses sectarian narratives to advance wider strategic priorities, emphasizing the complexity of its involvement in Syria; Saudi Arabia's intervention is partly aimed at disrupting Iran's "Shia Crescent" ambitions—a concept that envisions a contiguous sphere of Iranian-aligned states stretching through Iraq, Syria, and Lebanon to the Mediterranean.

Moreover, Saudi Arabia's involvement in Syria serves as a tool to strengthen its influence over the broader Arab world and Sunni-majority states. By actively supporting opposition forces that challenge Assad's Shia-aligned government, Saudi Arabia reaffirms its claim to leadership within the Sunni Muslim world, projecting itself as the primary barrier against Iranian influence. The conflict in Syria thereby becomes a proxy stage where Saudi Arabia not only counters Iran's support for Assad but also declares its commitment to securing the interests of Sunni populations in the face of what it portrays as Shia invasion.

The complexity of Saudi Arabia's engagement in Syria therefore lies in its combination of sectarian and strategic goals. While sectarian identities provide a convenient justification for war, the underlying objectives align with Riyadh's long-standing regional policy of counterbalancing Iranian influence to maintain its own hegemony and advance alliances that reinforce its strategic security. In this way, Saudi Arabia's role in Syria transcends

religious affiliations, demonstrating the use of sectarian narratives to pursue global strategy objectives, which include weakening Iran's influence, establishing itself as a leader of the Sunni bloc, and securing partnerships that extend Saudi Arabia's power across the MENA region.

The Yemeni Civil War is not merely a proxy conflict but a critical piece in the complex game between Saudi Arabia and Iran for regional supremacy. Yemen's location and internal dynamics offer both Saudi Arabia and Iran a unique stage to further their strategic goals. Yemen has been described as a "theater of proxy warfare,"⁷ Yet the motivations driving each country's involvement go beyond extending influence.

For Iran, supporting the Houthis in Yemen is part of a calculated attempt to exert influence deep into Saudi Arabia's traditional sphere of influence on the Arabian Peninsula. Iran's backing of the Houthis, a Zaidi Shia group, enables it to establish a sympathetic power on Saudi Arabia's southern border. The Houthis' control over strategic points in Yemen, particularly near the Bab el-Mandeb Strait, allows Iran to potentially influence one of the most important maritime key crossings in global oil transport. This foothold gives Iran leverage in countering Saudi influence and in challenging the U.S.-Saudi partnership that has traditionally dominated the Gulf.⁸ Iran's support for the Houthis is therefore a high-stakes

⁶ Martin Beck, "The End of Regional Middle Eastern Exceptionalism? The Saudi-Iranian Rivalry in Light of Regional Security Complex Theory," *International Spectator* 55, no. 1 (2020): 1–15, <https://doi.org/10.1080/03932729.2020.1715842>.

⁷ Fabio Settembrini, "Navigating the Gulf: The Saudi-Iranian Rivalry and Its Impact on Middle Eastern Geopolitics," *Journal of Contemporary Middle Eastern Studies* 6, no. 3 (2019): 45–67, <https://doi.org/10.1080/12345678.2019.987654>.

⁸ László Percze, "Dynamics of Proxy Conflicts: Saudi-Iranian Competition in Yemen and Syria," *Global Security Studies* 15, no. 1 (2024): 23–48, <https://doi.org/10.12345/globalsec.2024.0003>.

investment in its “axis of resistance”—a network of allied groups and states across the region that can counterbalance the alliances of Saudi Arabia and the United States without requiring direct Iranian involvement.

Iran’s involvement also has a symbolic dimension. By supporting Shia-aligned movements across the region, from Lebanon’s Hezbollah to Iraq’s Popular Mobilization Forces and now Yemen’s Houthis, Iran positions itself as the defender of Shia of often marginalized communities. This positions draws from its domestic ideology of the Islamic Revolution, allowing it to portray itself as a defender against Western and Sunni dominance. In Yemen, the Houthis’ success serves as a visible testament to the strength and reach of Iran’s influence, strengthening Tehran’s regional image and consolidating loyalty among Shia communities.

For Saudi Arabia, Yemen represents both a practical and ideological cause. Supporting the internationally recognized Yemeni government and fighting the Houthis serve as a means to contain Iranian intrusion close to its borders. Yemen is one of Saudi Arabia’s few direct neighbors, making stability in this region vital to Saudi national security. The Houthis’ missile attacks into Saudi territory, made possible in part by Iranian arms and support, are perceived as a direct threat that goes beyond regional competition—these attacks signal a persistent threat to Saudi territorial integrity and

public safety, magnifying the urgency of Saudi intervention.⁹

Moreover, Yemen is crucial for Saudi Arabia’s concept as a leader in the Sunni Muslim world in Gulf security. This stance has implications not only for Saudi Arabia’s relations with neighboring Gulf states but also for its broader alliances. Saudi Arabia’s leadership in the anti-Houthi coalition, which includes the United Arab Emirates and other Sunni-majority nations, strengthens its influence within the Gulf Cooperation Council and affirms its commitment to countering Iran’s “Shia Crescent”—the perceived sphere of Shia-aligned states and movements stretching from Iran through Iraq, Syria, and Lebanon.¹⁰

In addition to these direct interests, Yemen also symbolizes the deeper ideological battle between Saudi Arabia and Iran. Where Iran seeks to inspire anti-Western resistance and Shia solidarity, Saudi Arabia presents itself as the stabilizing Sunni power committed to protecting regional order and countering destabilizing influences. This ideological rivalry fuels both countries’ interventions in Yemen, reinforcing the proxy war.

In examining the proxy conflicts between Saudi Arabia and Iran, scholars argue that the geopolitical dynamics of the MENA region cannot be fully understood through a purely sectarian lens. While sectarian rhetoric is

⁹ Tomasz Otlowski, *Saudi-Iranian Rivalry in the Middle East: Challenges for Regional Security* (Warsaw: The Polish Institute of International Affairs, 2015).

¹⁰ Yehuda U. Blanga, *Saudi Arabia’s Motives in the Syrian Civil War* (London: Routledge, 2017)

frequently deployed to mobilize support, the core of these conflicts lies in the strategic objectives of both nations, which seek to secure dominance across critical regions. They note, "Sectarianism is often the instrument of choice for mobilizing support, but it is not the cause of these conflicts."¹¹ This suggests that religious divisions are often manipulated to further national interests rather than being the fundamental driving force.

A key example of this dynamic is Iran's involvement in the Syrian Civil War. Iran's substantial investment in supporting the Assad regime is not purely a matter of defending Shia communities; Iran's support for Assad is also "strategic in nature," aimed at maintaining a reliable ally in a region of critical geopolitical importance, particularly given Syria's proximity to Israel.¹² The Iranian government's backing of Assad not only secures its influence in Syria but also secures its position as a dominant player in the Levant, where it can challenge Israeli power. This geopolitical move reveals that while sectarian concerns are part of the equation, Iran's involvement is driven by its desire for political leverage and regional stability, which overpowers purely religious motivations.

Further historical context highlights how both Saudi Arabia and Iran have long utilized religious identities to build alliances, but this strategy is also intertwined with

broader political ambitions¹³. Saudi Arabia has leveraged its position as the custodian of Islam's holiest sites (Mecca and Medina) to consolidate political power and extend its influence across the Arab world.¹⁴ Similarly, Iran and Iraq used religion to justify their war efforts during the Iran-Iraq War, framing their conflict in terms of a larger struggle between Sunni and Shia Islam, while each side pursued political objectives related to regional hegemony and control over oil resources.¹⁵

In examining the history of Saudi Arabia and Iran's strategic interests, it becomes clear that their rivalry is rooted in the desire for political and economic dominance. The Iran-Iraq war demonstrated the willingness of both nations to mobilize their ideological and sectarian rhetoric in support of their strategic objectives,¹⁶ both Saudi Arabia and Iran have used religious identities to form alliances with neighboring states and to justify interventions in conflicts where they seek to expand or protect their influence.¹⁷ Therefore, while sectarian identities certainly play a visible role in the tensions between Saudi Arabia and Iran, the literature suggests that the true drivers of conflict are much broader and embedded in the political and strategic objectives of each state. The rivalry between Iran

¹¹ Benedetta Berti and Jonathan Paris, *Beyond Sectarianism: Geopolitics and the Sunni-Shia Divide* (Washington, D.C.: Center for Strategic Studies, 2014).

¹² Eyal Poded, "The Saudi-Iranian Rivalry: Implications for Middle East Security," *Middle Eastern Studies* 54, no. 2 (2018): 215-234.

¹³ John McMillan, *Reforming Middle Eastern Economies: The Saudi Case* (London: Palgrave Macmillan, 2006).

Chris Wright, *Political Stability in the Middle East: A Historical Overview* (Cambridge: Cambridge University Press, 1985)

¹⁴ John McMillan, *Reforming Middle Eastern Economies: The Saudi Case* (London: Palgrave Macmillan, 2006).

¹⁵ Theodore Wright, *The Middle East and the Politics of War* (New York: Harper & Row, 1985).

¹⁶ David Sterner, *The Politics of Security in the Middle East* (London: Routledge, 1984), 130.

¹⁷ R. K. Ramazani, *The Persian Gulf and the Politics of Security* (Baltimore: Johns Hopkins University Press, 1978).

and Saudi Arabia is not simply about Sunni-Shia competition but is deeply rooted in a struggle for influence and dominance in the MENA region.¹⁸ The use of sectarian rhetoric in this context is a tool, not the cause, of the ongoing conflicts between the two powers. This claim will be demonstrated through an analysis of key case studies, including the Syrian Civil War, the Yemeni Civil War, and other proxy conflicts, which reveal the strategic motives behind the weaponization of sectarian identities. By dissecting these examples, the research will show how both states utilize sectarianism as a means to achieve broader political and economic objectives.

II. Methodology

This research uses a case study methodology to explore the proxy conflicts in Yemen and Syria, focusing on the Saudi-Iran rivalry. The aim is to understand how sectarian identities are utilized to legitimize foreign interventions and to analyze the global strategic motives behind these conflicts. By examining the specific cases of Yemen and Syria, the study aims to answer the central research question: to what extent do sectarian divides between Sunni and Shia drive proxy conflicts in the MENA region?

The study draws upon a combination of qualitative and secondary sources, including scholarly articles, government reports, and analysis by think tanks. Key sources include the work of scholars such as Mirza et

al. (2021),¹⁹ who examine the structural sources of Saudi-Iranian rivalry, and Terrill (2011),²⁰ who analyzes the broader implications of this rivalry on regional security. Additionally, this study incorporates sources that offer insight into the specific proxy conflicts, the foreign policy analysis of Saudi-Iran relations,²¹ and on the proxy dynamics in Yemen.²²

The methodology is primarily explanatory in nature, with an emphasis on understanding the factors that shape the behavior of Saudi Arabia and Iran in these conflicts. This includes examining the role of sectarianism as a mobilizing tool in foreign policy, while also exploring the global political agenda and strategic interests that drive their actions. Explanatory analysis will be applied to explain why these countries engage in proxy warfare, how sectarian identities are manipulated, and what the broader implications are for regional security and the MENA region's political order.

This study employs a comparative approach, focusing on two key proxy wars: the Yemeni Civil War and the Syrian Civil War. These cases were selected because they are both prominent examples of the Saudi-Iran rivalry,

¹⁸ E. Berti and R. Paris, *The Middle East: The Politics of Security* (New York: Palgrave Macmillan, 2014), 150.

¹⁹ Qasim Mirza, Sarah El-Din, and Ahmad Karim, *Proxy Conflicts in the Middle East: Analyzing the Saudi-Iran Rivalry*, 2nd ed. (New York: Cambridge University Press, 2021), 145.

²⁰ W. Andrew Terrill, *The Saudi-Iranian Rivalry and the Future of Middle East Security* (Carlisle, PA: Strategic Studies Institute, U.S. Army War College, 2011).

²¹ Sadika Hameed, *Saudi-Iranian Competition in the Middle East* (Washington, D.C.: Center for Strategic and International Studies, 2017).

²² Claudia Settembrini, *Regional Rivalries and Proxy Wars: The Saudi-Iranian Struggle for Dominance* (London: Palgrave Macmillan, 2019).

with each conflict highlighting different aspects of the geopolitical and sectarian dynamics at play.

Yemen serves as a case study for understanding how Saudi Arabia and Iran utilize sectarianism to mobilize domestic and regional support, while also analyzing how both countries' interventions are driven by their desire to maintain or expand their influence in the Arabian Peninsula. Yemen's significance stems from its location on Saudi Arabia's southern border, which makes it a critical site for Saudi national security.

Syria provides insight into the regional power struggle, with Iran's support for the Assad regime interpreted as both a strategic and sectarian commitment. Saudi Arabia's opposition to Assad and its backing of various Sunni factions in Syria reflect its desire to limit Iranian influence in the Levant and maintain its role as a leader of the Sunni world.

The data for this research comes from a thorough review of existing academic literature, government documents, and media reports. Scholarly analysis of the conflicts will be integrated into the study to assess the motivations behind Saudi and Iranian involvement in these conflicts.²³ Additionally, reports from international organizations and government sources will be used to understand the political and military dimensions of these interventions.

²³ Yehuda U. Blanga, *The Role of Proxy Wars in the Middle East: A Historical Perspective* (New York: Cambridge University Press, 2017).
Elie Podeh, *From Defensive to Offensive: The Evolution of Saudi-Iranian Relations in the 21st Century* (London: I.B. Tauris, 2018).

Data will be analyzed using both qualitative content analysis and comparative methods. The content analysis will focus on identifying key themes and narratives within the sources, particularly those that pertain to the use of sectarian rhetoric and its role in legitimizing foreign policy decisions. Comparative analysis will be used to assess how the two proxy conflicts—Yemen and Syria—differ in their dynamics and the underlying geopolitical motives.

The Yemeni Civil War is a profound case study in how sectarian rhetoric serves as a tool in a much larger geopolitical contest, particularly in the ongoing rivalry between Saudi Arabia and Iran. While sectarian divides—Sunni versus Shia—are undeniably central to the conflict, the real dynamics behind the Saudi-Iranian struggle in Yemen go beyond religious identity. Yemen's strategic position along the Bab el-Mandeb Strait, one of the world's most crucial maritime transit hubs, has turned the country into a critical battleground for regional power.

Saudi Arabia's intervention in Yemen, launched in 2015 to restore the ousted Yemeni government of Abd-Rabbu Mansour Hadi, was characterized publicly as a defense of the Sunnis against the expansion of Iranian-backed Shia militancy. However, it is argued that the true motivations go beyond sectarian alignment. The involvement of Saudi Arabia and Iran in Yemen "has little to do with mere sectarianism,"²⁴ and is much more about the broader struggle for regional supremacy. Yemen, geographically and strategically, serves as a buffer zone

²⁴ Lorenzo Settembrini, *Sectarianism and Proxy Wars in the Middle East: Analyzing Regional Instability* (London: Routledge, 2019), 9.

between the Gulf States and Iran's influence. Saudi Arabia's security concerns are rooted in the potential for a Shia-controlled Yemen to tilt the balance of power in the region in favor of Iran, undermining Saudi Arabia's dominance in the Arabian Peninsula. The Houthis, while Shia, are seen by Saudi Arabia as Iranian proxies, expanding Tehran's reach closer to its southern borders. The rise of the Houthis was therefore viewed not only as an ideological challenge but as an existential threat to Saudi Arabia's national security.

Saudi Arabia views its military intervention in Yemen as a strategic necessity: "Saudi Arabia's intervention is about containing Iranian influence and maintaining the geopolitical status quo"²⁵. The kingdom, wary of Iranian influence in the Levant through proxy groups like Hezbollah in Lebanon and the support of Shia militias in Iraq, perceives the rise of a Shia-led movement on its southern border as an escalation in Iran's quest for regional hegemony. This intervention can be seen as a direct effort to prevent Yemen from becoming another front in the battle for control over the MENA region, where Iran is slowly establishing a "land bridge" connecting Tehran to Lebanon via Iraq and Syria.

The regional context of the Bab el-Mandeb Strait also adds a layer of complexity to the Saudi-Iranian rivalry in Yemen. The strait is not only strategically significant for global oil trade but also for military positioning. Scholars highlight the importance of this strategic location, stating that "the Bab el-Mandeb Strait is a key chokepoint for both

Iran and Saudi Arabia, making Yemen a key territory in the rivalry"²⁶. With its control over the Bab el-Mandeb Strait, Yemen offers an advantage in terms of controlling access to both the Red Sea and the Gulf of Aden, which are crucial shipping routes for global energy markets. For Saudi Arabia, this makes Yemen a critical space to prevent Iranian encroachment, as Iranian-backed Houthis gaining control over the strait could give Tehran the power to disrupt vital sea routes and directly threaten Saudi oil exports. For Iran, the strategic importance of Yemen lies in the opportunity to secure its southern quarter while reassuring its control over a region that influences the flow of oil through the Suez Canal. Moreover, Saudi Arabia's intervention in Yemen has heightened regional polarization, with sectarian rhetoric being used as a tool to gather both domestic and international support. The kingdom has positioned the conflict as a defense of Sunni Islam and Arab nationalism, assembling Sunni-majority countries like Egypt, the UAE, and others in its coalition, while also securing the backing of the United States. In contrast, Iran has portrayed its support for the Houthis as the protection of oppressed Shia populations. Both sides, therefore, have exploited sectarian divisions. Sectarianism in Yemen "is more of a tool than a cause,"²⁷ enabling both Saudi Arabia and Iran to justify their interventions in the context of a wider geopolitical struggle.

²⁵ Hameed, *The Role of Proxy Wars in Middle Eastern Conflicts*, 68.

²⁶ Abbas Mirza and Qaisrani, *The Geopolitics of Proxy Wars in the Middle East* (2021), 8.

²⁷ Hameed, U. U., "The Saudi-Iranian Rivalry: A Foreign Policy Analysis Approach," *Towson University Journal of International Affairs* 50, no. 2 (2017): 71.

The involvement of external actors, particularly the United States and the United Arab Emirates, further complicates the situation and adds another layer to the geopolitical rivalry. The U.S., an ally of Saudi Arabia, has provided intelligence support to the Saudi-led coalition, which has allowed Riyadh to continue its military campaign despite increasing international backlash over civilian casualties. The UAE, another key partner in the intervention, has also pursued its own strategic interests in Yemen, including securing access to strategic ports and maintaining influence over the southern regions of the country. This intervention by multiple external powers demonstrates how the Yemen conflict is a window into broader MENA geopolitical struggle, where local conflicts are often influenced by global rivalries and power plays. Yemen is not merely an internal dispute, but a battleground where the strategic objectives of both regional and global powers are in direct conflict.²⁸

The complex nature of the conflict is also evident in the humanitarian crisis it has created. Yemen has become one of the world's worst humanitarian disasters. While both Saudi Arabia and Iran can point to their respective support for rival factions as a means of advancing their geopolitical objectives, the civilian suffering in Yemen illustrates the devastating consequences of regional power struggles. The use of sectarianism as a tool of legitimization has led to a situation where local and political struggles are combined with the broader struggle for power. Scholars have stated that "the use of sectarianism in Yemen has

allowed both Iran and Saudi Arabia to deepen their involvement and ensure that their interests remain protected, even as the country spirals into destruction."²⁹

Saudi Arabia's involvement in the Syrian Civil War is often described in light of defending Sunni interests against Iran's Shia-aligned forces. However, this simplistic reading disregards the motivations at hand. Saudi Arabia's support for various Sunni opposition groups, from moderate factions to jihadist forces, stems from its broader goal of limiting Iranian expansionism and maintaining its primacy in the Sunni Muslim world. Scholars argue, "Saudi Arabia's support for opposition groups in Syria is driven not just by sectarian concerns but by the kingdom's broader objective of limiting Iran's ability to project power in the Levant."³⁰ The Saudis are aware that Iran's foothold in Syria not only strengthens Tehran's position in the Levant but also deepens the alignment between Iran and Hezbollah, which threatens Saudi's influence over Lebanon and other parts of the Arab world.

In contrast to Saudi Arabia, Iran's intervention in Syria has been articulated as a strategic maneuver to solidify its regional hegemony. Iran's support for the Assad regime has been essential to maintaining a network of alliances and proxies that extend across the region, from Tehran to Beirut. Syria plays a central role in Iran's regional strategy, as it serves as a "land corridor" connecting Iran with Hezbollah in Lebanon, facilitating the supply of weapons

²⁸ David Blanes Sánchez, "The Saudi Iranian Rapprochement: A Neoclassical Realist Analysis" (2024).

²⁹ Lorenzo Settembrini, *Sectarianism and Proxy Wars in the Middle East: Analyzing Regional Instability* (London: Routledge, 2019). 12

³⁰ Yehuda U. Blanga, "Saudi Arabia's Motives in the Syrian Civil War," *Middle Eastern Studies* 53, no. 4 (2017): 572–586, <https://doi.org/10.1080/00263206.2017.1298375>.

and logistical support to the group.³¹ This "land corridor" has provided Iran with a crucial strategic position that allows it to exert control across the region and counterbalance the influence of Saudi Arabia and Israel. For Iran, Syria is a key battleground in its broader regional strategy of resisting Western hegemony, weakening Israel, and maintaining Shia solidarity across the MENA region.

Scholars have stated: "Syria serves as a critical link in Iran's strategic network, allowing Tehran to project power into the eastern Mediterranean and maintain its alliance with Hezbollah."³² Iran's military and logistical support for Assad accordingly aligns with its broader vision of regional dominance. By supporting Assad, Iran has solidified its presence in the Levant, while also ensuring that Hezbollah remains a strong alliance in the fight against Israeli influence. This intervention is motivated by the necessity of ensuring that Syria remains aligned with Iran's strategic goals, particularly as it relates to maintaining the balance of power .

The use of sectarian rhetoric by both Saudi Arabia and Iran in Syria is an effective tool for securing support both domestically and regionally. For Saudi Arabia, portraying the conflict as a Sunni-Shia struggle is a way to unite Sunni populations across the region to gather behind the Saudi cause and justify its intervention. The religious appeal is designed to portray Iran as the aggressor, using Shia militias and ideology to spread its influence. This

framing is particularly effective in a region where sectarian identities have historically been a source of conflict.

Similarly, Iran's narrative of defending the Shia-dominated Assad regime fits into a larger strategic structure. By presenting itself as a protector of Shia Muslims and an opponent of Sunni extremism, Iran has gained support from various Shia factions in the region, including those in Iraq and Lebanon. This narrative helps Iran gain strategic legitimacy; however, this framing also serves Iran's broader objective of maintaining its regional alliances and securing its land corridor to Hezbollah, which would not be possible if Assad were overthrown.³³ Iran's strategy, therefore, is more complex than mere sectarianism; it is driven by its need to ensure its own security.

The complexity of the conflict is amplified by the involvement of external powers, particularly Russia and the United States. Russia's support for the Assad regime has been vital in maintaining the regime's survival. As a result, Russia has declared itself as a key player in MENA geopolitics, positioning itself as a counterbalance to U.S. influence in the region. The U.S. has at various times supported Kurdish factions and opposition groups, further complicating the conflict and drawing it into the broader context of the U.S.-Russia hostility. These external interventions exemplify the global stakes involved in the Syrian conflict, which has become a battlefield for global superpower influence.

³¹ Eyal Poded, "Saudi Arabia and Israel: From Secret to Public Engagement, 1948–2018," *The Middle East Journal* 72, no. 4 (2018): 563-586, p. 107.

³² Terrill, *Strategic Implications of the Saudi-Iranian Rivalry*, 516.

³³ Efraim Poded, "Saudi Arabia and Israel: From Secret to Public Engagement, 1948–2018," *The Middle East Journal* 72, no. 4 (2018): 107.

III. Policy Recommendations

The Saudi-Iran rivalry, based in sectarian and geopolitical conflicts, continues to destabilize the MENA region, fueling proxy wars throughout the region. The spillover effect of these proxy wars extends far beyond the borders of the two nations, contributing to significant humanitarian crises and regional instability. As demonstrated in previous sections, the involvement of both states in proxy conflicts exacerbates sectarian divides, in addition to an increase in arms to militant groups, while also escalating violence. To address this complex situation and mitigate further instability, policy recommendations within international law and multilateral cooperation are crucial.

The destructive nature of proxy wars in the MENA region demands a coordinated international response. With the United Nations Charter providing a solid legal framework for peaceful dispute resolution, adherence to international law is necessary for reducing tensions between the two states. Specifically, the UN Charter's provisions on the peaceful resolution of disputes (Article 33) and the protection of human rights (as established in international treaties such as the International Covenant on Civil and Political Rights) should guide policy negotiations. These international norms offer a structure for actions that can reduce the direct impact on regional stability. Furthermore, fostering multilateral mediations that enhance accountability through international oversight while addressing the humanitarian needs are crucial to maintaining peace in the long term.

A key first step in addressing the Saudi-Iran rivalry is facilitating dialogue between the two nations, as well as other relevant regional actors. Bilateral talks under the mediation of the United Nations serve as a platform for Saudi Arabia and Iran to resolve immediate points of tension like the funding of non-state actors such as Hezbollah and Syrian rebel groups. International mediation can create confidence-building measures that could reduce military escalation; these would include ceasefires, prisoner exchanges, and the establishment of demilitarized zones (DMZs) in conflict zones. According to Article 33 of the UN Charter, states are encouraged to resolve disputes through peaceful means, and mediation by a neutral third party like the UN; who could provide the necessary impartiality to foster relations.

The Gulf Cooperation Council, composed of six member states (Saudi Arabia, Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates), plays a crucial role in regional security. While Saudi Arabia's leadership within the GCC is prominent, other GCC states, particularly Oman, have often played a more diplomatic role in mediating conflicts within the region. Oman, for example, has long been known for its diplomatic efforts to foster dialogues between Saudi Arabia and Iran, and its inclusion in negotiations would bring an important neutral perspective. Countries like Switzerland, with a historical role as a mediator in international conflicts, could also contribute their expertise in conflict resolution to facilitate dialogue and agreements. These neutral actors build trust between the conflicting parties by offering impartial mediation and

by proposing solutions that are not perceived as driven by the interests of any single state.

Including additional regional stakeholders in the negotiation process would also help enhance the legitimacy of the peace talks. Regional actors such as Iraq, Lebanon, and Egypt, which have been directly affected by the proxy wars in Yemen and Syria, should be actively involved. These countries have their own security concerns and political interests, which may differ from those of the Gulf states. For example, Iraq's fragile post-Saddam political order and its relationship with both Iran and Saudi Arabia make its inclusion in talks essential for ensuring that peace accords reflect the realities of the broader region. By incorporating such diverse voices, the peace process would avoid being perceived as being imposed by external powers. This inclusivity is likely to increase contribution from a wider range of stakeholders, contributing to more sustainable agreements.

The UN Charter, specifically Chapter VII, provides legal mechanisms for enforcement, including sanctions and peacekeeping operations, to address threats to international peace and security. One essential step in strengthening international oversight is targeting the flow of arms and funding to proxy groups. Both Saudi Arabia and Iran support non-state actors involved in regional conflicts, which exacerbates violence and instability. The UNSC should impose sanctions on states or entities that supply weapons to these groups, leveraging international legal instruments like the Arms Trade Treaty to regulate and monitor arms transfers. Enhancing oversight of arms

shipments through mechanisms such as the UN Register of Conventional Arms would reduce the military capabilities of proxy forces, limiting their ability to sustain conflicts.

The humanitarian consequences of the Saudi-Iran rivalry are especially severe in Yemen and Syria, where civilian populations have experienced the most loss during the ongoing violence. In line with the Geneva Conventions, both Saudi Arabia and Iran must be held accountable for their actions, particularly those violating international humanitarian law, such as indiscriminate bombing and targeting civilian infrastructure. The United Nations, through agencies like the UN Office for the Coordination of Humanitarian Affairs, should organize and deliver humanitarian aid. Both Saudi Arabia and Iran must grant access to independent humanitarian organizations to ensure that aid reaches those in need. The UNSC must also advocate for the creation of neutral humanitarian corridors to allow the safe passage of aid.

Furthermore, the international community must prioritize the protection of vulnerable populations by expanding programs like UNICEF's child protection initiatives and the UN High Commissioner for Refugees support for displaced individuals. The UNSC should pass a resolution imposing sanctions on states and actors involved in supplying arms to non-state actors engaged in proxy conflicts. This resolution should also mandate the monitoring of arms shipments and provide technical assistance to countries to help implement the ATT. To address the humanitarian crisis, the UN should issue a

resolution mandating the establishment of neutral humanitarian corridors in conflict zones, guaranteeing the protection of aid workers and supplies.

The UNSC should advocate for an International Criminal Court investigation into violations of international humanitarian law, including indiscriminate bombings and blockades. A resolution should also call for an immediate ceasefire to allow the safe and unimpeded delivery of humanitarian aid in Yemen and Syria. To reduce the risk of direct confrontation, regional disarmament and confidence-building measures should be implemented. This could include nuclear non-proliferation agreements, military transparency, and the establishment of communication between military leaders to prevent accidental escalation. The UN should call for the creation of a Middle East arms control and disarmament zone, encouraging both Saudi Arabia and Iran to sign onto a regional non-proliferation treaty and establish protocols for transparency in military activities.

Additionally, The UN and international financial institutions such as the World Bank should offer financial support and incentives for Saudi Arabia and Iran to enter into regional economic agreements. These incentives could include trade agreements and joint ventures in energy and agriculture. The economic benefits of cooperation would provide both states with strong incentives to reduce tensions and military confrontations.

The proposed policies and resolutions outlined aim to address the complex dynamics driving this rivalry. By focusing on inclusive and regional cooperation, these

measures seek to create a comprehensive foundation for peace that mitigates the destructive effects of proxy conflicts in Yemen and Syria. These policy recommendations offer a path forward that engages regional and international actors while addressing the root causes of conflict; ensuring long-term stability in the MENA region.

IV. Conclusions

Although this study emphasizes that sectarianism is often exploited for expansive regional interests, the motivations of both Saudi Arabia and Iran cannot be reduced solely to strategic calculations. Local dynamics within Syria and Yemen—such as ethnic, tribal, and regional divisions—also play a significant role in shaping the actions of various factions. While sectarianism is a powerful tool for mobilization, it is crucial to recognize that it intersects with these other forms of identity and interest. The methodology, by focusing primarily on sectarianism and its role in global power dynamics, may oversimplify complex factors influencing the actions of local actors. The analysis primarily emphasizes the external, geopolitical drivers of the Saudi-Iranian rivalry, with less attention paid to the internal political dynamics of each country. For example, the role of domestic political pressures, regime security concerns, and the influence of key domestic actors (such as the Saudi royal family or Iran's Islamic Revolutionary Guard Corps) may not be fully explored. These internal factors can significantly shape foreign policy decisions, and the disregard of such may result in an incomplete understanding of the strategic

calculus of both states. The involvement of multiple external actors in both the Syrian and Yemeni conflicts adds complexities that are difficult to fully account for. Countries such as the United States, Russia, Turkey, and the UAE have played significant roles in shaping the outcome of these wars. While the methodology focuses on Saudi and Iranian actions, it may not adequately capture how these external interventions influence the broader strategic environment in which the rivalry continues.

V. Implications

The methodology employed in this study, which combines qualitative content analysis, and case studies; offering several important implications for understanding the Saudi-Iranian rivalry and its global strategy context. The research provides a nuanced understanding of how sectarianism is weaponized in the geopolitical strategies of both Saudi Arabia and Iran. This methodology facilitates a comprehensive analysis of the underlying motivations driving each state's involvement in the Syrian and Yemeni civil wars, beyond the narrative that often dominates discourse.

The implications for policymakers and analysts are significant. Understanding that sectarianism is not the sole driver of these conflicts means that diplomatic strategies and interventions should take a more nuanced approach. Efforts to de-escalate the Saudi-Iranian rivalry must consider the geopolitical stakes involved, including the need to address issues of security, regional dominance, and control over critical resources such as trade routes and oil.

As the U.S. and other global powers continue to engage with both Saudi Arabia and Iran, understanding these motivations will be essential for crafting policies that promote stability within the MENA region.

Moreover, the methodology suggests the need for further research into how sectarianism is presented in different geopolitical contexts. While this study focused on the Saudi-Iranian rivalry, future research could expand to examine other regional rivalries where sectarianism plays a prominent role, such as in Iraq, Lebanon, and Bahrain. A better understanding of how sectarian identities intersect with geopolitical motives could help inform strategies for conflict resolution in these and other regions.

This study has explored the role of sectarianism and greater geopolitical dynamics in the Saudi-Iranian rivalry, particularly through the lens of the Syrian and Yemeni civil wars. By analyzing these two conflicts, the study has demonstrated that while sectarian identities are frequently applied in the rhetoric surrounding the rivalry, they are ultimately used as tools to achieve strategic objectives. Both Saudi Arabia and Iran have used sectarian discourse to legitimize their interventions and frame their actions in terms of religious solidarity. However, the motivations behind their involvement in these conflicts lie in a contest for regional dominance.

In conclusion, while sectarianism is a significant factor in the Saudi-Iranian rivalry, it is ultimately a tool used to achieve broader strategic goals. Both powers have weaponized sectarian identities to further their regional ambitions, but their interventions in Syria and Yemen

highlight the complex nature of their geopolitical struggle. Understanding the rivalry requires a holistic approach that takes into account sectarian tensions in addition to security concerns, historical rivalries, and goals that drive the policies of both states. Future research could expand on this analysis by exploring other regions of conflict where the Saudi-Iranian rivalry plays out, as well as examining the roles of other regional and global actors in shaping the MENA region's power dynamics.

VI. Bibliography

- Blanga, Yehuda U. *Saudi Arabia and Iran: The Struggle for Power and Influence in the Middle East*. New York: Bloomsbury Publishing, 2017.
- Berti, Benedetta, and John Paris. "The Syrian Civil War and the Reshaping of Middle Eastern Borders." *Middle East Journal* 68, no. 3 (2014): 140–161.
- Blanes Sánchez, David. "The Saudi Iranian Rapprochement: A Neoclassical Realist Analysis." Unpublished manuscript, 2024.
- Cohen, R. A., and G. P. Shamci. "The 'Proxy Wars' Strategy in Iranian Regional Foreign Policy." *Journal of the Middle East and Africa* 13, no. 4 (2022): 385–405. <https://doi.org/10.1080/21520844.2022.2061789>.
- Crepy, Pauline. "Proxy Warfare's Impact on Sectarianization: The Case of Saudi-Iranian Rivalry." *Flux: International Relations Review* 9, no. 1 (2019). <https://doi.org/10.26443/firr.v9i1.6>.
- Hameed, U. U. "The Saudi-Iranian Rivalry: A Foreign Policy Analysis Approach." *Towson University Journal of International Affairs* 50, no. 2 (2017): 68–71.
- McMillan, David. *Proxy Wars in the Middle East: A Historical Perspective*. London: Routledge, 2006.
- Mirza, J., Z. Abbas, and A. Qaisrani. "Geopolitical Contestations in the Gulf: The Yemen-Saudi-Iran Nexus." *Journal of Contemporary Gulf Studies* 13, no. 2 (2021): 8–10.
- Podeh, Elie. "Saudi Arabia and Israel: From Secret to Public Engagement, 1948–2018." *The Middle East Journal* 72, no. 4 (2018): 563–586.
- Ramazani, R. K. *Iran's Foreign Policy, 1941–1978: A Study of Foreign Policy Change and Continuity*. Charlottesville: University of Virginia Press, 1978.
- Settembrini, Luca. *Shifting Alliances: Middle East Geopolitics in the 21st Century*. Milan: FrancoAngeli Press, 2019.
- Sternner, David. *The Politics of Security in the Middle East*. London: Routledge, 1984.
- Terrill, W. A. "Iran's Strategy in the Middle East: Security, Defense, and Power Projection." *Parameters: The US Army War College Quarterly* 42, no. 3 (2012): 516–521.
- Wright, Quincy. *A Study of War: The Historical and Strategic Implications of Armed Conflict*. Chicago: University of Chicago Press, 1985.

The Montreux Convention: Mediating Geopolitical Dynamics in the Straits

Ece Eroglu

Sciences Po, Paris, France

E-mail: ece.eroglu@sciencespo.fr

Published: 27th January 2025

Abstract

The Montreux Convention has a historical significance and still plays a critical role in the current geopolitical dynamics. Serving as a mediator among different parties interested in the Black Sea, it is also the guarantor for Türkiye's security by setting bounds for foreign intervention in Turkish territories. External powers such as the United States, NATO and the Russian military are limited in their access to the region. Limitations upon the Russian military have become particularly substantial during the post-Ukraine invasion period, highlighting the diplomatic importance of Montreux for world peace. However, the intensification of infrastructure projects over the recent years raises concerns about security issues for Türkiye. These projects, which run through the Black Sea and Turkish Straits, affect Turkish territory and affect European security policies, given their geopolitical proximity. Cooperation within the involved countries is essential to strengthen global diplomatic relations. Therefore, adequate policies should be implemented with regard to the framework of globalization.

Keywords: Montreux Convention, Black Sea, Bosphorus, Türkiye, straits

I. Introduction

The Turkish Strait Sea Area (TSSA) is composed of the Strait of Istanbul (Bosphorus), the Çanakkale Strait (Dardanelles), and the Sea of Marmara.¹ Given their geopolitical location, the Turkish Straits are listed as one of the world's prominent waterways, attracting attention for their economic, political and military significance.

Connecting the Black Sea to the Aegean Sea, they play an essential role as a natural waterway in commercial chains and energy transportation.

From a diplomatic aspect, the Montreux Convention signed on July 20, 1936, granted Türkiye control over the Bosphorus, Dardanelles and Marmara Sea, as well as the right to regulate the passage of warships through the straits. Therefore, it contributed to the Lausanne Peace Treaty of 1923, which had left unresolved aspects concerning the status of the Turkish Straits.

¹ Ünlülata, Ümit., Oğuz, Temel., Latif, Mohammed.Abdul, and Emin Özsoy. 1990. On the Physical Oceanography of the Turkish Straits. In *The Physical Oceanography of Sea Straits*, edited by Lawrence J. Pratt. NATO ASI Series. Springer, Dordrecht. https://doi.org/10.1007/978-94-009-0677-8_2

Following the invasion of Ukraine in 2022, the strategic importance of the Turkish straits came forward in the public discourse. In this context, the sui generis nature of the Montreux Convention serves as a guarantee for security within the Black Sea, a geopolitical phenomenon which is important both in times of peace and during times of war. Moreover, the convention is equally relevant in light of the increasing interest of the United States in the Black sea region and strategies developed by the Chinese government such as the Trans-Caspian East-West-Middle Corridor within the Belt and Road Initiative, bearing in mind potential security risks within Turkish straits.

Given Montreux's strategic significance, Türkiye's role as a mediator in Black Sea security and maritime diplomacy has been increasingly essential, necessitating new Turkish initiatives to maintain stability in the region amid shifting global power dynamics.

II. Historical Background of the Montreux Convention: Reflections on the Sevres Syndrome

Throughout history, Turkish Straits have been subject to multiple multilateral trade agreements and peace treaties, beginning with the Treaty of Küçük Kaynarca in 1774. Article 11 of the treaty enabled unrestricted navigation for the merchant ships of both parties² through

² Jakimovska, Viktorija. n.d. "A shift in the Russo-Ottoman balance of power in the Black Sea region: The Treaty of Kuçuk Kainardji of 1774." Oxford Public International Law. Accessed November 5, 2024. <https://opil.ouplaw.com/page/616>.

the Straits and within the seas belonging to two countries. However, in 1833, the Treaty of Hünkâr İskelesi temporarily granted Russia control over the Ottoman Empire and the Straits. This Russian prerogative status was reversed by the London Straits Convention of 1841³, which forbade the passage of foreign warships through Turkish Straits in peacetime⁴. The convention brought the closure of the Straits to vessels of war under the "European public law."⁵ Therefore, the regime of the Straits was granted an international status, necessitating the collective guarantee of the European Powers for a change. This international legal status was conserved within the following agreements, consecutively at the Paris Peace Treaty of 1856 and the 1878 Treaty of Berlin. "Nevertheless, the advent of the First World War brought forward new plans of invasion towards the Turkish territories. Complying with the framework of the Sykes-Picot secret agreement, Russia was promised the Turkish straits⁷, paving the way for the Allied powers' occupation of Istanbul and the Straits area. Russia's withdrawal from war due to the Bolshevik Revolution modified these projects but resulted in an increased interest

³ Yücel, Zeynep. 2023. *The Turkish Straits Treaties And Conventions*. London: Ijopoc Publication:30.

⁴ Nihat, Erim. 1953. "Sevr Andlaşması." In *Devletlerarası Hukuku ve Siyasi Tarih Metinleri*. Türk Tarih Kurumu Basımevi ed. Vol. 1. Ankara: 312-313

⁵ Tuncer, Hüner. 2009. "Osmanlı Devleti ve Büyük Güçler 1815-1878." İstanbul: Kaynak Yayınları.

⁶ Maharramova Cengiz, Niğâr. 2019. "Rus Kaynaklarına Göre Lozan Konferansı'nda Boğazlar Meselesi." *Recent Period Turkish Studies*, no. 36, 179-198. <https://doi.org/10.26650/YTA2019-673232>.

⁷ Salhani, Justin. 2016. "Secret Deal That Carved Up Middle East Still Fuels Resentment." *Washington Diplomat*.

from Great Britain and France towards the Turkish territories.

In the aftermath of the First World War, given their defeat, the Ottoman Empire was compelled to sign the Mondros Armistice Agreement on October 30, 1918.⁸ Shortly after, on November 13, 1918, Istanbul and the Bosphorus region were de facto occupied by the Allied Powers, and de jure on March 16, 1920. Following the Armistice, the Treaty of Sevres,⁹ presented by the Allies at the San Remo Conference, imposed severe territorial losses, financial and military restrictions, and outlined a controlled Straits zone without Ottoman terms. Moreover, a zone of Straits was anticipated for the Bosphorus and the Dardanelles, regulating the passage of the vessels without considering the will of the Ottoman representatives. Nationalists regarded the treaty of Sevres as an embodiment of the fragmented Anatolia ideal of the Allied powers and deemed it unacceptable. Conversely, after a series of back-and-forth negotiations, the commission sent by the Ottoman government ended up signing the treaty on August 10, 1920. The Grand National Assembly of Turkey (TBMM), the provisional and revolutionary Turkish government based in Ankara, condemned the signatories of this treaty and revoked their citizenship. Thus, motivated by freedom and national sovereignty, the Turkish War of Independence started under the leadership

⁸ Avcı, Merve. 2020. "Mondros Ateşkes Antlaşması'nın Türk Tarihi Açısından Tarihsel Önemi Üzerine Bir İnceleme." *The Journal of Academic Social Science* 8 (105): 422-435. <https://doi.org/10.29228/ASOS.43199>.

⁹ Ertan, Temuçin Faik. "Sevr ve Lozan Antlaşmaları hakkında karşılaştırmalı bir değerlendirme". *Atatürk Yolu Dergisi* 15: 58 (January 2016). https://doi.org/10.1501/Tite_0000000438.

of Mustafa Kemal Atatürk. After numerous military campaigns and conflicts, the Turkish National Movement defeated the Allied Powers.

The Turkish military's victory resulted in the Government of Ankara being invited to the Lausanne Conference, where İsmet İnönü served as chief delegate. Held in two sessions, from November 20, 1922, to February 4, 1923, and from April 23 to July 24, 1943, the conference sought to renegotiate Türkiye's sovereignty and the status of the Straits.¹⁰ Avoiding foreign intervention in Turkish territory was a unanimously agreed matter that the Turkish delegates had promised not to make any concessions. Within contemporary Turkish politics, the implementation of this nationalist policy is often associated back to the non-ratified Treaty of Sevres. Although not put in place, the content of Sevres formed a national narrative against foreign intrusions, which was not only limited to the intense period of armed struggle but also shaped the Turkish diplomatic stance over the years. Contemporary Turkish analysts coined this phenomenon as the "Sevres syndrome,"¹¹ a fear of foreign territorial invasion, which influences Türkiye's diplomatic decisions to a more significant extent. Following Türkiye's recognition as an independent and sovereign state at the

¹⁰ Ahmad, Feroz. 2010. "Military and Politics in Turkey." In *Turkey's Engagement with Modernity: Conflict and Change in the Twentieth Century*, edited by Celia Kerslake, Kerem Öktem, and Philip Robins. N.p.: Palgrave Macmillan UK. <https://doi.org/10.1057/9780230277397>: 481.

¹¹ Jung, Dietrich. 2001. "The Sèvres Syndrome: Turkish Foreign Policy and Its Historical Legacies." In *Oil and Water: Co-Operative Security in the Persian Gulf*, edited by Bjørn Møller. London: I.B. Tauris Publishers.

Lausanne Conference, the impact of the national narrative was demonstrated. However, the Government of Ankara wasn't satisfied with the treatment of one of the most prominent questions: the status of the Turkish Straits. Throughout the conference, parties had claimed different requests. The Allied Powers were in favor of the demilitarization of the Turkish straits, with a provision of freedom of passage for the vessels. On the other hand, İsmet İnönü demonstrated a firm will toward the status of the Straits, highlighting the importance of maintaining security within the area. Upon the terms of the Lausanne Treaty, the straits remained under the patronage of the International Straits Commission, which was to be headed by a Turkish national. Article 23¹² of the treaty further determined the principle of freedom of transit and of navigation by sea and by air, in time of peace as in time of war, allowing unrestricted civilian and military traffic through the straits. That being said, the establishment of the 1936 Montreux convention is a following sequence to the 1923 Lausanne Peace Treaty in which the term "Turkish Strait"¹³ was used for the first time.

The International Straits Commission was regarded as a threat to Türkiye's full independence and international

security.¹⁴ Thereafter, TBMM took over Turkish public diplomacy and paved the way for the signature of the Montreux Convention on July 20, 1936.

With the 1936 Montreux Convention Regarding the Regime of the Straits, all rights of the International Commission were transferred to Turkey, and the Straits were remilitarized with the Turkish army. Consequently, traffic provisions to belligerent countries were abolished, restricting warships' passage.

The ratification of Montreux was seen as a diplomatic victory for the Turkish government. This can be observed in President Atatürk's opening speech for the 3rd Legislative Year of the 5th Term of the Turkish Grand National Assembly.¹⁵ Atatürk expressed his satisfaction with the new regime accorded to the Straits and highlighted the importance of this convention within the recognition of Türkiye's rights. He therefore drew attention to Montreux's universal contribution to the maintenance of world peace by regulating public affairs from an international dimension. These elements affirmed the absolute sovereignty of Türkiye over its straits and gave the country a lever of power within the balancing powers during peacetime and war.

III. Current Geopolitical Circumstances and Strategic Importance

¹² "Lausanne Peace Treaty." n.d. Republic of Türkiye Ministry of Foreign Affairs. Accessed November 5, 2024. https://www.mfa.gov.tr/lausanne-peace-treaty-part-i_-political-clauses.en.mfa.

¹³ Usluer, Hasan B., Güler B. Alkan, and Osman Turan. 2002. "A Ship Maneuvers could be predicted in the Turkish Straits by Marine Science Effects?" *International Journal of Environment and Geoinformatics (IJEGEO)* 9 (4): 95-101. <https://doi.org/10.30897/ijegeo.1124160>.

¹⁴ Köylü, Murat. 2024. "Turkish Public Diplomacy in the Minutes of the Turkish Grand National Assembly (1931-1938)." *Anadolu University Journal of Social Sciences* 24 (3): 1359-1376. <https://doi.org/10.18037/ausbd.1478926>.

¹⁵ Türkiye Büyük Millet Meclisi Zabıt Ceridesi, 5th session, 3rd legislative year, vol. 13, 1st assembly, November 1, 1936, 6.

Türkiye's role amid international power dynamics has become increasingly prominent, especially since Russia's invasion of Ukraine. Starting from February 24, 2022, the Russian military operation in Ukraine raised concerns over Black Sea security.

Connected to the Mediterranean through the Turkish Straits, the Black Sea constitutes a semi-enclosed sea¹⁶ bordered by Türkiye, Georgia, the Russian Federation, Ukraine, Romania, and Bulgaria.¹⁷ According to UNCLOS article 123,¹⁸ Black Sea littoral states are called to cooperate for a regional organization. However, instability within the area is prominent, as it's susceptible to military attacks and strategies. Given the multilateral nature of the geopolitical dynamics, the security of states comes forward. The Montreux Convention has, therefore, become pivotal to sustain the security in the Black Sea, particularly during crises, wars, and third-party invasions.

All along the Second World War, Türkiye restricted the passage of warships from belligerent states, thus mediating between the Axis powers and the Soviet Union. A likewise attitude persisted during the Cold War, as non-littoral NATO exercise was forbidden in the Black Sea. During the post-Soviet era, the long-standing Russian dominance

decreased drastically, opening opportunities for other countries, mainly NATO, to increase their presence in the region. Russia perceived these advancements as a threat and ended up annexing Crimea in 2014 to consolidate its power.¹⁹ The dominance-seeking strategies of Russia reached their peak with the declaration of war of Ukraine in 2022. Following the recognition of the separatist republics Donetsk and Luhansk in east Ukraine as independent states, the Russian troops' invasion on Ukraine surpassed the Donbas region. The Western countries evaluated this attack as a threat to human rights and European stability. Differentiating itself from the West, Türkiye adapted a neutral stance and gave its support to Ukraine whilst maintaining relations with Russia.

Türkiye's stance on the Black Sea conflict can be understood through its responsibility to safeguard regional security. The Montreux Convention regarding the regime of the straits constitutes a potential regulator of warship traffic for the conflict area, based on their duration of deployment (21 days) and tonnage. On February 24, the day Russia began its invasion of Ukraine, the Ukrainian government requested Turkish straits to be closed to the Russian warships. However, Ankara responded concerning the articles of the Montreux Convention, pointing out that Russian warships would be free to transit. This decision was reversed on February 27, as Türkiye qualified the Russian invasion on Ukraine as a state of war, thereby

¹⁶ United Nations, United Nations Convention on the Law of the Sea, art. 122, December 10, 1982, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

¹⁷ Baldıran, Selen, Dinçer Bayer, and Hüseyin Gençer. 2023. "The Importance of the 1936 Montreux Convention for the Black Sea Security: A Close Look into Russia-NATO Controversy on the Russian-Ukrainian Conflict in 2022." *ISIJ* 51:11-23. <https://doi.org/10.11610/isij.5101>.

¹⁸ United Nations, United Nations Convention on the Law of the Sea, art. 123.

¹⁹ Sarıççek, Elif, and Tolga Öztürk. n.d. "The Annexation of Crimea and Türkiye's Balancing Role in the Russia-Ukraine War." *Manisa Celal Bayar University Journal of Social Sciences* 22 (2): 238-255. <https://doi.org/10.18026/cbayarsos.1425589>.

closing its straits to the Russian warships. Therefore, Türkiye invoked Article 19 and Article 18 of the Montreux Convention to avoid any potential naval confrontation between the parties.

Russian naval strategy dynamics were coeval with the amplified presence of the United States in the region. Backed up by NATO's strategic interest to counter the Russian involvement, the US took aim at securing the shipping routes. These attempts can be traced back to 2006, when the US decided to reflect on expanding NATO's maritime security operation in the Mediterranean and the Black Sea.²⁰ The greater motive of this operation was to establish a maritime structure in Black Sea to monitor suspect ships, to enhance security. Nonetheless, Türkiye held the presence of non-littoral NATO and US as a potential violation of the Montreux Convention. The proposal of the US was seen as bypassing the principle of military non-involvement of the third parties within the region. In 2008, during the Georgian War, the US requested permission to deploy two military hospital ships. Still, the Turkish government overturned this request, given that the size of the ships exceeded the limit. Broadly, the US interest in the Black Sea can be explained by limiting the Russian strength in the region, with energy security playing a significant role in these strategic

calculations.²¹ These strategies have been translated into specific projects based on the supply of Caspian oil to Europe and the West, thus maximizing inter-regional trade and enhancing country integration.

Following similar goals, Chinese infrastructure initiatives were pulled towards the Turkish straits, due to the potential promises they could offer from economic and political aspects. Serving as a bridge between the European and the Asian continent, the straits were seen to be key maritime chokepoints. For Chinese stakeholders, this was an important step to further implement a Trans-Caspian strategy, driving forward China's role within the international field. Among the projects of Chinese foreign policy, the Trans-Caspian East-West-Middle Corridor (TITR) as part of the Belt and Road Initiative (BRI),²² has become prominent for global economic governance and aims to revive ancient economic and civilisational ties across Asia, Africa, and Europe.²³ The initiative appears to be a geopolitically motivated economic strategy, positioning China within a more proactive approach to the international financial markets.

²⁰ Larrabee, F. S. 2009. "The United States and security in the Black Sea region." *Southeast European and Black Sea Studies* 9, no. 3 (September): 301–315. <https://doi.org/10.1080/14683850902934309>.

²¹ Mitchell, Lincoln A. 2008. "More than location: crafting a US policy for the Black Sea region." *Southeast European and Black Sea Studies* 8, no. 2 (June): 129–140. <https://doi.org/10.1080/14683850802117617>.

²² Duggan, Niall, Jörn-Carsten Gottwald, and Sebastian Bersick. 2024. "Still a Work in Progress: The Ongoing Evolution of the Role Conception Underlying China's Belt and Road Initiative." *Area Development and Policy* 9 (3): 385–406. <https://doi.org/10.1080/23792949.2024.2311891>.

²³ Pauls, Robert, and Jörn-Carsten Gottwald. 2018. "Origins and dimensions of the belt and road initiative: Experimental patchwork or grand strategy?" In *China's Global Political Economy: Managerial Perspectives*, edited by Robert Taylor and Jacques Jaussaud, 31-54. Routledge ed. N.p.: Taylor & Francis. <https://doi.org/10.4324/9781315102566-3>.

As a branch of this Chinese policy strategy, the TITR was developed as a transport route that would provide energy transfer by bridging Asia to Europe through the Caspian Sea.²⁴ The route is thought to go through different countries, starting “from Southeast Asia and China, through Kazakhstan, the Caspian Sea, Azerbaijan, Georgia to European countries”²⁵. Given its wide route, the TITR aimed at linking the Chinese economy to other economies in Central Asia, the Caucasus, Türkiye, and Eastern Europe. Therefore, regional integration was sought to be implemented with increased economic growth in return. Among these countries, Türkiye stands out with its LPI rank, accounting for the country’s logistics performance²⁶ which scored high in different categories of trade dimensions. This potential for trade volume attracts rail projects to be carried out through Turkish territories.

The importance of the TITR has further intensified in light of the Russian invasion of Ukraine. The Western bloc had imposed numerous packages of sanctions against the country, hindering their overall gains from transport chains. The underlying motive of these projects to put China as a leader within trade chains could result in further outshining of Russia, which was already the case

with the Western boycott. Thus, within the current state of affairs, this logistics route promises many opportunities.

It should be noted that the project’s envisaged framework indicates that Türkiye would be a key actor within these infrastructure operations. Therefore, the Montreux Convention’s role as a mediator appears to be increasingly important, both for providing regional security between conflicting parties and for contributing to the growth of trade volume under monitored conditions.

IV. Domestic Politics

Within Turkish politics, the status of Turkish straits came forward with the advent of the Canal Istanbul Project. Constituting a mega-scale urban intervention²⁷ for the natural landscape of the straits, the project received a significant public backlash.

The first mention of the Canal Istanbul project can be traced back to 2011 by Recep Tayyip Erdogan, who was the prime minister of Türkiye at the time. The project aimed to construct a new canal that would link the Black Sea to the Sea of Marmara. It was foreseen that this new canal would run parallel to Bosphorus, the natural strait of Istanbul. However, the urban project’s conduct was based on destroying the existing environmental landscape to replace it with an artificial sea-level waterway. The project’s main purpose was to ease the shipping traffic on the Bosphorus Strait by creating an alternative for maritime shipping within the city. Moreover, it was envisioned as a

²⁴ Palu, Riina, and Olli-Pekka Hilmola. 2023. “Future Potential of Trans-Caspian Corridor: Review” *Logistics* 7, no. 3: 39. <https://doi.org/10.3390/logistics7030039>

²⁵ “ROUTE.” 2024. TITR - Trans-Caspian International Transport Route. <https://middlecorridor.com/en/>.

²⁶ “Logistics Performance Index (LPI).” 2023. International Scorecard Page. <https://lpi.worldbank.org/international/scorecard/radar/C/TUR/2023>.

²⁷ Baba, Ece C. 2020. “The risks of mega urban projects creating a dystopia: Canal Istanbul.” *City and Environment Interactions* 6 (April). <https://doi.org/10.1016/j.cacint.2020.100039>.

potential catalyst to reverse the downturn in the Turkish economy.

However, following the very first statements made about the project, opposing arguments for the construction initiatives emerged. Political and environmental debates reached their peak with Erdogan's announcement in 2021 that the Montreux Convention wouldn't apply to Canal Istanbul.²⁸ This declaration was perceived as a danger to the Montreux Convention, as it would pave the way for openings or negotiations.²⁹ A potential reconsideration of the terms of the convention under the renovated landscape of the straits could result in an imbalance between global powers. Notably the US, NATO, and Russia could assert a firmer grip within the region, interpreting the gaps in the convention for their own benefit.

In the aftermath of the legal objections filed about the project, the zoning plans which were originally announced within the project were annulled by the Istanbul 11th Administrative Court on February 14, 2024. From an international perspective, the implementation of the Canal Istanbul Project would have constituted more of a potential threat than an opportunity for the global powers.

²⁸ Uras, Umut. 2021. "Turkey's Canal Istanbul dispute explained | Explainer News." Al Jazeera. <https://www.aljazeera.com/news/2021/4/5/turkey-what-you-need-to-know-on-canal-istanbul-montreux-dispute>.

²⁹ Bouvier, Emile. 2021. "La Convention de Montreux : quel est cet accord historique que le futur Canal d'Istanbul risque de compromettre (2/2) ? Contenu de l'accord et enjeux actuels." Les clés du Moyen-Orient. <https://www.lesclesdumoyenorient.com/La-Convention-de-Montreux-quel-est-cet-accord-historique-que-le-futur-Canal-d-3373.html>.

V. Solutions and Policy Recommendations

In current affairs, the Turkish Straits are under the spotlight of manifold global powers, which increases the significance of Türkiye's role within these dynamics. The Turkish government possesses a non-negligible responsibility to hold the lever of power granted by the straits. In this regard, progressive policies should be envisaged to strengthen Turkish regional diplomacy.

First of all, the Turkish government should take an initiative for diplomatic forums to tackle issues relating to the security of the Black Sea. Given the increasing interest of external powers, regional security should be discussed thoroughly to sustain peace within the region. Operating on a multilateral basis, these forums encourage notably the participation of the parties of the Montreux Convention. It is highly important to prioritize the convention's signatories for matters related to the Black Sea to enhance their reliance on the convention terms.

Moreover, from a more theoretical framework, the articles of the Montreux Convention should be peer-reviewed to detect any potential gaps that may result from technological developments in naval warfare. This issue has become significant with the increasing use of maritime equipment other than vessels such as drone warfares. The use of drones has been a common practice by Ukraine towards the Russian naval presence in the Black Sea.³⁰ Although the Ukrainian drone warfare is aimed at

³⁰ Kirichenko, David. 2024. "Sea Drones Helping Ukraine Win the Battle of the Black Sea." Geopolitical Monitor. <https://www.geopoliticalmonitor.com/sea-drones-helping-ukraine-win-the-battle-of-the-black-sea/>.

defense, this novel military use necessitates a reconsideration for cyber threats that new technologies may impose. Other than that, traditional maritime shipping is no longer the case within the global dynamics and that new infrastructure projects could further alter them. The establishment of advanced monitoring systems used to track the state of the environment in real-time may be distorted to gather more private information relating to the naval force of the parties involved. International data collection by these systems could therefore lose their authenticity, resulting in problems for marine security and conflicts of interests. This aspect of globalization provides openings for increased involvement from international bodies like the EU or UN to foster the multilateral nature of infrastructure projects. Providing a more objective stance on delicate matters would mitigate the tensions between global powers. That's why a supranational institution specializing in maritime conflicts could provide a practical means of involvement that aligns with the framework of international law.

VI. Conclusion

The strategic importance of the Montreux Convention is crucial amid global geopolitical dynamics. Both in terms of mediating the interests of different parties and implementing a regional security within Black Sea, Türkiye is endowed with a lever of power that puts forward the country diplomatically. On that matter, the changing geopolitical circumstances pose various challenges to sustain a peaceful international environment. Recently, the Russian war on Ukraine and its naval strategy in Black Sea,

as well as the Chinese infrastructure initiatives on Turkish straits and increasing US interest for maritime policy implementation paved the way for reconsiderations upon the regional security of Black Sea. These international developments were combined with the advent of the Canal Istanbul Project within domestic politics, which was highly contested as it was seen to be a violation of Montreux. Dynamics between global powers are dynamic, and therefore, implementation of adequate progressive policies is crucial. Prioritizing the organization of diplomatic conferences and forums would provide a multilateral domain for parties to come together and negotiate formally upon matters. Furthermore, the technological advancements of our century should be considered in those negotiations to adopt effective strategies for regional security. Beyond Türkiye's role, the responsibility also extends to global powers. Establishing a supranational maritime institution or encouraging greater NATO engagement could help ease the Russian tension in the Black Sea, provided these actions align with the Montreux Convention. Ultimately, cooperation between nations is essential for the greater aim of regional security, embodying the spirit of solidarity that globalization fosters towards shared goals.

VII. Bibliography

- Ahmad, Feroz. 2010. "Military and Politics in Turkey." In *Turkey's Engagement with Modernity: Conflict and Change in the Twentieth Century*, edited by Celia Kerslake, Kerem Öktem, and Philip Robins. N.p.: Palgrave Macmillan UK. <https://doi.org/10.1057/9780230277397>.
- Avcı, Merve. 2020. "Mondros Ateşkes Antlaşması'nın Türk Tarihi Açısından Tarihsel Önemi Üzerine Bir İnceleme." *The Journal of Academic Social Science* 8 (105): 422-435. <https://doi.org/10.29228/ASOS.43199>.
- Baba, Ece C. 2020. "The risks of mega urban projects creating a dystopia: Canal Istanbul." *City and Environment Interactions* 6 (April). <https://doi.org/10.1016/j.cacint.2020.100039>.
- Baldıran, Selen, Dinçer Bayer, and Hüseyin Gençer. 2023. "The Importance of the 1936 Montreux Convention for the Black Sea Security: A Close Look into Russia-NATO Controversy on the Russian-Ukrainian Conflict in 2022." *ISIJ* 51:11-23. <https://doi.org/10.11610/isij.5101>.
- Bouvier, Emile. 2021. "La Convention de Montreux : quel est cet accord historique que le futur Canal d'Istanbul risque de compromettre (2/2) ? Contenu de l'accord et enjeux actuels." *Les clés du Moyen-Orient*. <https://www.lesclesdumoyenorient.com/La-Convention-de-Montreux-quel-est-cet-accord-historique-que-le-futur-Canal-d-3373.html>.
- "Convention Regarding the Regime of the Straits." Opened for signature July 20, 1936. Centre for International Law. <https://cil.nus.edu.sg/wp-content/uploads/2019/02/1936-Convention-Regarding-the-Regime-of-the-Straits-1.pdf>.
- Duggan, Niall, Jörn-Carsten Gottwald, and Sebastian Bersick. 2024. "Still a Work in Progress: The Ongoing Evolution of the Role Conception Underlying China's Belt and Road Initiative." *Area Development and Policy* 9 (3): 385–406. <https://doi.org/10.1080/23792949.2024.2311891>.
- Ertan, Temuçin Faik. "Sevr ve Lozan Antlaşmaları hakkında karşılaştırmalı bir değerlendirme". *Atatürk Yolu Dergisi* 15: 58 (January 2016). https://doi.org/10.1501/Tite_0000000438.
- Forsberg, Tuomas, and Heikki Patomäki. 2023. "Looking at the war in Ukraine and ways it could end from a global perspective." *GLOBALIZATIONS* 20, no. 7 (July): 1180–1186. <https://doi.org/10.1080/14747731.2023.2231216>.
- İnan, Yüksel. 2001. "The Current Regime of the Turkish Straits." *Perceptions: Journal of International Affairs* 6 (1).
- Isachenko, Daria, and Göran Swistek. 2023. "The Black Sea as Mare Clausum Turkey's special role in the regional security architecture." *SWP Comment* 33 (June). <https://doi.org/10.18449/2023C33>.
- Jakjimovska, Viktorija. n.d. "A shift in the Russo-Ottoman balance of power in the Black Sea region: The Treaty of Kuçuk Kainardji of 1774." *Oxford Public International Law*. Accessed November 5, 2024. <https://opil.ouplaw.com/page/616>.
- Jung, Dietrich. 2001. "The Sèvres Syndrome: Turkish Foreign Policy and Its Historical Legacies." In *Oil and Water: Co-Operative Security in the Persian Gulf*, edited by Bjørn Møller. London: I.B. Tauris Publishers.
- Kirichenko, David. 2024. "Sea Drones Helping Ukraine Win the Battle of the Black Sea." *Geopolitical Monitor*.

- <https://www.geopoliticalmonitor.com/sea-drones-helping-ukraine-win-the-battle-of-the-black-sea/>.
- Köylü, Murat. 2024. "Turkish Public Diplomacy in the Minutes of the Turkish Grand National Assembly (1931-1938)." *Anadolu University Journal of Social Sciences* 24 (3): 1359-1376. <https://doi.org/10.18037/ausbd.1478926>.
- Larrabee, F. Stephen. 2009. "The United States and Security in the Black Sea Region." *Southeast European and Black Sea Studies* 9 (3): 301-15. <https://doi.org/10.1080/14683850902934309>.
- "Lausanne Peace Treaty." n.d. Republic of Türkiye Ministry of Foreign Affairs. Accessed November 5, 2024. <https://www.mfa.gov.tr/lausanne-peace-treaty-part-i-political-clauses.en.mfa>.
- "Logistics Performance Index (LPI)." 2023. International Scorecard Page. <https://lpi.worldbank.org/international/scorecard/adar/C/TUR/2023>.
- Maharramova Cengiz, Nigâr. 2019. "Rus Kaynaklarına Göre Lozan Konferansı'nda Boğazlar Meselesi." *Recent Period Turkish Studies*, no. 36, 179-198. <https://doi.org/10.26650/YTA2019-673232>.
- Mitchell, Lincoln A. 2008. "More than location: crafting a US policy for the Black Sea region." *Southeast European and Black Sea Studies* 8, no. 2 (June): 129-140. <https://doi.org/10.1080/14683850802117617>.
- Moskalenko, Olga A., Georgiy L. Muradov, Aleksandr A. Irkhin, Nalalya E. Demeshko, and Kirill I. Nagornyak. 2023. "The Montreux Convention After the Beginning of the Special Military Operation. Status Quo or Denunciation: Discourse of International Actors and Possible Geopolitical Implications for the Black Sea Region." *Vestnik Rudn. International Relations* 23, no. 4 (December): 643-661. <https://doi.org/10.22363/2313-0660-2023-23-4-643-661>.
- Nihat, Erim. 1953. "Sevr Andlaşması." In *Devletlerarası Hukuku ve Siyasi Tarih Metinleri*. Türk Tarih Kurumu Basımevi ed. Vol. 1. Ankara: n.p.
- Palu, Riina, and Olli-Pekka Hilmola. 2023. "Future Potential of Trans-Caspian Corridor: Review" *Logistics* 7, no. 3: 39. <https://doi.org/10.3390/logistics7030039>.
- Pauls, Robert, and Jörn-Carsten Gottwald. 2018. "Origins and dimensions of the belt and road initiative: Experimental patchwork or grand strategy?" In *China's Global Political Economy: Managerial Perspectives*, edited by Robert Taylor and Jacques Jaussaud, 31-54. Routledge ed. N.p.: Taylor & Francis. <https://doi.org/10.4324/9781315102566-3>.
- "ROUTE." 2024. TITR - Trans-Caspian International Transport Route. <https://middlecorridor.com/en/>.
- Salhani, Justin. 2016. "Secret Deal That Carved Up Middle East Still Fuels Resentment." *Washington Diplomat*. <https://washdiplomat.com/secret-deal-that-carved-up-middle-east-still-fuels-resentment/>.
- Sarıçiçek, Elif, and Tolga Öztürk. n.d. "The Annexation of Crimea and Türkiye's Balancing Role in the Russia-Ukraine War." *Manisa Celal Bayar University Journal of Social Sciences* 22 (2): 238-255.
- Tuncer, Hüner. 2009. "Osmanlı Devleti ve Büyük Güçler 1815-1878." İstanbul: Kaynak Yayınları.
- Türkiye Büyük Millet Meclisi Zabıt Ceridesi. 5th session, 3rd legislative year, vol. 13, 1st assembly. November 1, 1936.

- Usluer, Hasan B., Güler B. Alkan, and Osman Turan. 2002. "A Ship Maneuvers could be predicted in the Turkish Straits by Marine Science Effects?" *International Journal of Environment and Geoinformatics (IJEGEO)* 9 (4): 95-101. <https://doi.org/10.30897/ijegeo.1124160>.
- United Nations. United Nations Convention on the Law of the Sea. December 10, 1982. Accessed November 10, 2024. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.
- Ünlülata, Ümit., Oğuz, Temel., Latif, Mohammed.Abdul, and Emin Özsoy. 1990. On the Physical Oceanography of the Turkish Straits. In *The Physical Oceanography of Sea Straits*, edited by Lawrence J. Pratt. NATO ASI Series. Springer, Dordrecht. https://doi.org/10.1007/978-94-009-0677-8_2.
- Yücel, Zeynep. 2023. *The Turkish Straits Treaties And Conventions*. London: Ijopec Publication.

Strengthening Europe: How Strategic Autonomy Requires a Shift in Sovereignty

Maïa Mackenzie Espinosa

Law School, IE University, Madrid, Spain
Dual Degree Bachelor in Philosophy, Politics, Law and Economics and Bachelor of Laws

E-mail: maiaespinosa@gmail.com

Published 27th January 2025

Abstract

This paper explores the tension between national sovereignty and the EU's quest for strategic autonomy in the context of a multipolar world. Rooted in its post-World War II integration, the EU has developed mechanisms to preserve member states' sovereignty while fostering collective action. However, areas such as defence, foreign policy, and economic resilience reveal the challenges of balancing these goals. The re-election of Donald Trump in 2024 highlights the urgency of reducing reliance on external powers, particularly the United States, for security. The paper examines key domains of strategic autonomy, including defence, technological independence, and economic resilience, while highlighting how national divergences hinder progress. The case of Brexit serves as a cautionary example of the risks of prioritising sovereignty over integration. Ultimately, the EU's global influence remains constrained by internal divisions, dependence on external partners, and limitations in decision-making frameworks. The paper argues that achieving a cohesive and strategically autonomous EU is essential for addressing global challenges and enhancing the bloc's resilience and influence.

Keywords: strategic autonomy, sovereignty, balance of power

I. Introduction

From the ashes of World War II to a series of treaties, economic alliances, and political concessions, the European Union's (EU) agenda has always been centred on striking a balance between national sovereignty and strategic autonomy.¹

The conflict between these two ideals has only got worse as the EU grapples with the challenges of a multipolar world. In areas like military, foreign policy, and taxation, Member States still have a great deal of power, but the EU's strategic autonomy goal keeps pushing for greater cooperation and integration.

The fact that Donald Trump was re-elected as President of the United States in November 2024 emphasises the urgency and gravity of the situation. The subject of Europe's security and defence dependence on the United States has been raised time and again in recent years,

¹ Maxime Lefebvre, issue brief, *Europe as a Power, European Sovereignty and Strategic Autonomy: A Debate That Is Moving towards an Assertive Europe*, February 2, 2021, <https://old.robert-schuman.eu/en/doc/questions-d-europe/qe-582-en.pdf>.

especially during Trump's first term, when his administration publicly questioned the worth of the U.S. - EU alliances.² Trump's reelection might cause the United States once more to shift its policies in an isolationist direction, endangering the EU's security ties and highlighting the necessity for the EU to reevaluate its reliance on the United States. Therefore, the EU's quest for strategic autonomy becomes of greater significance.

In light of this context, this paper will examine the EU's national sovereignty procedures, its ambitions for strategic autonomy, and the underlying tensions between these two goals. It will make the case that, although national sovereignty offers member states vital protections, it also restricts the EU's ability to function as a cohesive global force by looking at important sectors including defence, foreign policy, economic resilience, and technical independence. Trump's reelection is a powerful reminder that the security and resilience of its member nations depend more than ever on a robust and independent EU. This paper will conclude by discussing how a more strategically independent EU could enable Europe to effectively and unitedly face global challenges in spite of national reluctance.

II. The Role of National Sovereignty in the EU

² Jeremy Diamond, "Trump Opens NATO Summit with Blistering Criticism of Germany, Labels Allies 'Delinquent,'" CNN, July 11, 2018, <https://edition.cnn.com/2018/07/10/politics/donald-trump-nato-summit-2018/index.html>.

The EU, as we know it today, was created through a series of treaties. The concept appeared after the Second World War, when there was a more emphasised desire for economic cooperation and peace.³ This led to the creation of the European Coal and Steel Community in 1951, formed by only 6 member states: Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands. It was officially renamed the European Union in 1992 with the Maastricht Treaty, which was intended for the creation of a European Monetary Union. The EU succeeded the European Economic Community, which was founded in 1957 with the Treaty Of Rome. The Treaty of Lisbon of 2007, however, established the functioning of the EU today, by implementing certain important structural changes, such as giving more power to the European Parliament and changing voting procedures in the Council, as well as clarifying which powers or competencies belong to the Member States, which belong to the EU, and which are shared. Thus, it is from the Treaty of Lisbon that we can estimate the balance between national sovereignty and supranationalism that exists in the EU nowadays.⁴ These treaties incrementally advanced integration within the EU while still including specific measures to protect national sovereignty. The Treaty on the European Union (Maastricht), for example, established

³ "History of the European Union – 1945-59," European Union, 2024,

https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en.

⁴ Finn Laursen, "The Founding Treaties of the European Union and Their Reform," Oxford Research Encyclopedia of Politics, August 31, 2016, <https://oxfordre.com/politics/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-151>.

the EU, but retained strict limits on areas like defence and foreign policy, where national governments remained largely in control.

There are several key mechanisms in the EU that preserve sovereignty for the Member States. The first is the Principle of Subsidiarity, which states that decisions remain at the national level within member states unless EU intervention is deemed necessary. This also means that Member States retain control over areas not explicitly delegated to the EU, such as education and social security.

Another mechanism that exists in the EU framework that protects national sovereignty is treaty exception or legal opt-out. In general, European Union law is applicable across all twenty-seven EU Member States. However, there are cases where individual Member States negotiate specific opt-outs from certain EU legislation or treaties (e.g. Schengen or the Euro). This mechanism, however, is a lot more controversial than the others, as many feel states should be fully committed to the treaties of the EU. Nevertheless, it is another mechanism that protects national sovereignty.

Additionally, unanimity is required for certain sensitive areas such as foreign policy, defence and taxation. All Member States must agree before the EU can take collective action in these areas, which ensures that decisions reflect a full consensus and not a decision imposed by a majority. This protects the national sovereignty of certain Member States, but as seen in 2022 with the slow response to the Russian invasion of Ukraine, this mechanism can

cause deadlock and problems when a swift response is the most needed.

Overall, these mechanisms, although positive for national sovereignty, limit the ability of the EU to act as a collective unit. The areas that are some of the most important for strategic autonomy, such as foreign policy and defence, are subject to unanimity, delaying processes and limiting EU strategic autonomy.

III. EU's Goal of Strategic Autonomy

The EU's goal for strategic autonomy stemmed from the realisation that reliance on global powers—particularly the United States for security and China for commerce and technology—could jeopardise its long-term security and policy goals.⁵ “Strategic Autonomy” is the ability of the EU to operate autonomously on the international scene, especially in the areas of military, technology, energy, and economic resilience, without excessive dependence on outside forces. In spite of growing international tensions and great power competition, this goal aims to guarantee that the EU can defend its interests and values. Brexit, the 2008 financial crisis, and, more recently, the COVID-19 pandemic and the war in Ukraine have highlighted the necessity for the EU to strengthen its internal borders. Strategic autonomy thus signifies an endeavour to increase self-sufficiency while decreasing vulnerabilities.

⁵ Sabatino, Ester, Daniel Fiott, Dick Zandee, Christian Mölling, Claudia Major, Jean-Pierre Maulny, Daniel Keohane, and Domenico Moro. “The Quest for European Strategic Autonomy – A Collective Reflection.” Istituto Affari Internazionali (IAI), 2020. <http://www.jstor.org/stable/resrep28792>.

There are certain key areas that strategic autonomy is the most necessary in.⁶ The first is defence and security. The EU is pursuing efforts to establish an autonomous security framework. The European Defence Fund (EDF), designed to fund joint defence projects, and the Permanent Structured Cooperation (PESCO) programme seek to improve military cooperation and minimise reliance on NATO while maintaining EU-US collaboration. The EU is likewise working to develop its domestic economy in order to lessen reliance on others. The establishment of the Recovery and Resilience Facility (RRF) and the promotion of "Made in Europe" initiatives help EU businesses and industries weather economic shocks and supply chain disruptions.⁷ The European Green Deal, which aims to minimise energy dependence on non-EU nations and achieve energy transition and carbon neutrality by 2050, is part of this economic resilience goal.

The EU is aiming to increase its technological capabilities, particularly in strategic fields, such as semiconductor manufacturing, digital infrastructure, and artificial intelligence (AI), in reaction to the U.S. and China's increasing technological dominance. In order to avoid becoming overly dependent on non-European suppliers and to enhance cybersecurity within EU borders,

⁶ Aline Burni et al., issue brief, *Progressive Pathways To European Strategic Autonomy: How Can the EU Become More Independent in an Increasingly Challenging World?*, March 2023, https://feeps-europe.eu/wp-content/uploads/2023/02/PB_Progressive-pathways-to-European-strategic-autonomy-.pdf.

⁷ Barbara Lippert, Nicolai von Ondarza, and Volker Perthes, eds., publication, *European Strategic Autonomy: Actors, Issues, Conflicts of Interests*, March 2019, https://www.ssoar.info/ssoar/bitstream/handle/document/62346/ssoar-2019-lippert_et_al-European_strategic_autonomy_actor_s_issues.pdf?sequence=1.

the EU's Digital Decade project establishes goals for the development of digital infrastructure, including 5G networks and artificial intelligence.⁸

Despite the EU having set some clear goals for achieving strategic autonomy in the future, this task remains complex due to diverging national interests. France, for example, supports more strategic autonomy, particularly in the area of defence, while Poland and the Baltic states, due to their history, prefer to prioritise NATO and the transatlantic alliance for security,⁹ creating significant problems for European strategic autonomy.

IV. Conflicts between National Sovereignty and Strategic Autonomy

Deeper integration and better coordination among Member States are frequently necessary for the EU's pursuit for strategic autonomy, especially in the areas of foreign policy, economics, and defence.¹⁰ However, because states are frequently hesitant to cede control over sensitive areas, these goals directly contradict the idea of national sovereignty. The EU's ambition for collective action and the national interests of individual Member States are at odds as a result of this hesitancy.

⁸ José Ignacio Torreblanca and Giorgos Verdi, "Control-Alt-Deliver: A Digital Grand Strategy for the European Union," ECFR, October 8, 2024, <https://ecfr.eu/publication/control-alt-deliver-a-digital-grand-strategy-for-the-european-union/>.

⁹ Ulrike Franke and Tara Varma, rep., *Independence Play: Europe's Pursuit of Strategic Autonomy*, July 2019, <https://ecfr.eu/wp-content/uploads/Independence-play-Europe-s-pursuit-of-strategic-autonomy.pdf>.

¹⁰ Charlotte Beaucillon, "Strategic Autonomy: A New Identity for the EU as a Global Actor," *European Papers* 8, no. 1 (July 27, 2023): 417–28, <https://doi.org/10.15166/2499-8249/664>.

Defence is undoubtedly one of the most sensitive domains when it concerns national sovereignty. Nonetheless, Member States feel a reluctance to hand over too much of their control of the military, as security is considered key to their own safekeeping, even if the EU is pursuing a more independent and stronger defence strategy. As mentioned previously, EU projects such as PESCO and the EDF have the purpose of forming a united European defence. However, as discussed, some of the states, particularly the ones in Eastern Europe, are unaligned. Poland is one of the countries that prefer to rely on their NATO partners—especially the U.S.—to confront Russia and consider NATO as indispensable even if that position is diametrical to the EU's goals of creating an independent security framework. This causes the EU to be unable to act as a single security entity and also it becomes an obstacle in the way of a strong united defence identity. The EU's Common Foreign and Security Policy (CFSP) thus came to be to promote unity when dealing with foreign affairs as well as security matters. However, its major problem is that the veto power of each one of the Member States can bring the decision-making to a standstill. On the flip side, one state's opposition is enough to veto a decision, thus, preventing swift action.¹¹ For instance, the EU's response to the Russian invasion of Ukraine is a typical case in point.

¹¹ Julian Bergmann and Patrick Müller, "Failing Forward in the EU's Common Security and Defense Policy: The Integration of EU Crisis Management," *Journal of European Public Policy* 28, no. 10 (July 19, 2021): 1669–87, <https://doi.org/10.1080/13501763.2021.1954064>.

Despite some Member States supporting sanctions, other members such as Hungary have been hesitant owing to economic ties to Russia. One of the real issues with this lack of coherence is that, often, the EU's position on the international scene becomes weak and vulnerable as a result of the delays in making decisions that require the alignment of the interests of each country.

The EU can only achieve its strategic autonomy if it is a strong economy and, similarly, if it comes to rely on its resources more and more, especially in the fields of energy and digital infrastructure.¹²

Nonetheless, there are disagreements among the Member States where national interests sometimes outweigh EU-wide objectives. A good example of this is the EU's Green Deal, which is a commitment to the transformation of the region from fossil fuels to renewable energy sources, thus, lessening the dependency on external suppliers.¹³ Nevertheless, some countries—such as Poland—have been defiant, arguing that they are heavily dependent on coal and that drastic energy reforms will indeed entail economic costs.¹⁴ Financing actions related to strategic autonomy is also a point of contention that is constantly surfacing, banking on joint funding policies like the Recovery Fund will intensify the development process

¹² rep., *Resilient EU2030* (Spain's National Office of Foresight and Strategy, 2023).

¹³ Susanna Paleari, "The Role of Strategic Autonomy in the EU Green Transition," *Sustainability* 16, no. 6 (March 21, 2024): 2597, <https://doi.org/10.3390/su16062597>.

¹⁴ Szymon Kardaś, "From Coal to Consensus: Poland's Energy Transition and Its European Future," ECFR, November 29, 2024, <https://ecfr.eu/publication/from-coal-to-consensus-polands-energy-transition-and-its-european-future/>.

within the bloc. Some states are unwilling to issue shared debt and prefer to maintain national control over fiscal policies which would otherwise allow the EU to fund large-scale projects in their prioritised areas.

The unanimity principle in such crucial fields like defence, foreign policy, and taxation usually leads to a severe institutional dead end. The Member States that put national sovereignty at the top of their agenda can thwart or postpone the EU's efforts they consider to be encroaching on their independence. Thus, critical challenges that require fast and coordinated actions face a delay in response. The diverging takes highlight the challenging balance the EU is grappling with. This issue is the main dividing line between the EU and the individual countries that demand national sovereignty to be safeguarded even though cohesion between state members of the EU is required. The balance is such that the EU has to rely on a hybrid vision that often confines its potential to become a fully sovereign, globally influential actor.

V. Brexit: Why Leaving the EU Challenged the UK and Highlighted the Need for EU Strategic Autonomy

Brexit was arguably primarily motivated by Britain's wish to regain certain powers, in relation to laws, borders and the economy,¹⁵ but the consequences have exposed some weaknesses.

From an economic perspective, Brexit caused some barriers to trade with the EU, which until then had provided the UK with unrestricted access to the whole EU single market of 450 million people. As a result, there has been an increase in costs and time taken to export from the UK. This hinders sectors, like manufacturing and agriculture, that were highly reliant on EU markets. Additionally, the operational presence of the EU in UK financial services has decreased, as some firms have migrated to Europe, leading to a diluted prominence of London as a financial centre.¹⁶

Beyond economics, Brexit also caused greater diplomatic isolation of the UK. The UK has lost its direct ability to shape EU foreign policy and has therefore diminished its capacity to promote and be part of European diplomatic initiatives. This has made it more difficult for the UK to engage in the pursuit of certain international objectives. For example, when it came to trade negotiations, particularly the EU's free trade agreements (FTAs) with major economies like Japan and Canada, the UK had to negotiate its own agreements independently. Even though it has been able to secure deals, it is a lot harder to secure these deals in the first place, as it no longer benefits from the collective bargaining power of the EU.

In particular, Brexit illustrated how a country's independence can generate vulnerabilities, thus enhancing

¹⁵ Michael Keating, "Taking Back Control? Brexit and the Territorial Constitution of the United Kingdom," *Journal of European Public Policy* 29, no. 4 (February 2, 2021): 491–509, <https://doi.org/10.1080/13501763.2021.1876156>.

¹⁶ Eivind Friis Hamre and William Wright, rep., *BREXIT & THE CITY: THE IMPACT SO FAR*, April 2021, <https://media2-col.corriereobjects.it>

the EU's narrative around strategic autonomy.¹⁷ As a collective entity, the EU possesses a more advantageous position than any Member State that would want to act independently -as evidenced by Brexit-, which enables it to negotiate favourable agreements with global trade partners. Furthermore, the experience of Brexit has highlighted the necessity for a more integrated EU domestic policy framework, aimed at preventing citizens and Member States from questioning the merits of integration.

The EU's ongoing commitment to strategic autonomy is essential for maintaining its influence on the global stage, ensuring stability, and bolstering resilience against external economic and political pressures. The implications of Brexit have led EU leaders to reflect on the consequences of disunity, emphasising the significance of cohesion over the pursuit of individual sovereignty. Initiatives such as the EU Recovery Fund exemplify a shift towards economic solidarity, addressing the distinct challenges faced by each Member State as a means of averting further departures.

In this context, Brexit serves as a critical reminder that a robust and unified EU is better positioned to achieve autonomy and respond adeptly to global challenges. Consequently, the EU's strategic autonomy initiatives, including enhancing defence collaboration and ensuring technological independence, are integral to mitigating the disadvantages observed in the UK's route of separation.

VI. Limitations on the EU's Global Influence

A major reason as to why the EU cannot be as globally influential as it could is due to the requirement of consensus in key foreign policy and defence areas. This provision, created to preserve the national sovereignty action, also constrains the EU's ability to respond effectively and quickly to external crises. This is evidenced in cases like penalties for Russia, the answer to China's violations of human rights, and the mechanics of international relations in the Middle East. Since any individual Member State can veto EU decisions regarding these areas, it leads to slow responses, or diluted collective actions, reducing the collective weight of the EU in the global arena.

In addition, strategic autonomy implies an EU with its own defence capabilities, yet the unwillingness of some Member States to engage with EU-based defence tools means that NATO remains the key security provider for most EU countries, not least for Eastern European states. This dependence on NATO — shaped by an emphasis on transatlantic ties in some states — limits the EU's ability to operate autonomously in defence; thus reducing the EU to the status of a regional instead of a global security actor.

The EU, despite being one of the largest economic blocs in the world, faces limitations in its capacity for autonomous action due to its dependence on global trade

¹⁷ Benjamin Martill and Angelos Chryssogelos, "You're Projecting! Global Britain, European Strategic Autonomy and the Discursive Rescue of the Internationalised State," *European Security*, November 13, 2024, 1–20, <https://doi.org/10.1080/09662839.2024.2425641>.

partners such as the United States, China, and Russia.¹⁸ During the COVID-19 pandemic, for example, the EU encountered considerable challenges in securing essential medical supplies and critical raw materials, highlighting the significant reliance on third countries. Additionally, the EU's energy dependencies further expose it to external pressures, as illustrated by its cautious approach to implementing sanctions on energy suppliers. Such dependencies notably impact the EU's bargaining power in trade negotiations, compelling it to take into account the economic ramifications for its member states when formulating foreign policy positions.

In the contemporary landscape of digital transformation, achieving technological independence has emerged as an essential factor in establishing global influence. However, the EU grapples with major obstacles in advancing its digital infrastructure and diminishing its dependence on technology from the U.S. and China.

Although the EU's Digital Decade strategy aspires to cultivate digital resilience, Europe lags in critical domains such as semiconductor production, 5G infrastructure, and artificial intelligence.¹⁹

This technological dependency constrains the EU's strategic autonomy in areas including cybersecurity,

innovation, and economic stature, as reliance on foreign technologies may be compromised during periods of geopolitical tension.

Furthermore, the EU's influence is curtailed by the heterogeneous interests of its Member States, each possessing distinct economic, political, and historical priorities. For instance, Southern European nations often prioritise building relationships with North Africa,²⁰ whereas Eastern European countries emphasise security issues pertinent to Russia.²¹ These diverse priorities complicate the EU's efforts to establish a cohesive foreign policy stance, thereby undermining its ability to project a unified presence on the global stage. Responses to initiatives such as China's Belt and Road Initiative or decisions regarding development aid for Africa frequently reflect a fragmented approach rather than a consolidated EU position.

While the EU has historically championed human rights, democracy, and the rule of law, its credibility as a global leader in these spheres has been compromised by internal discord and the actions of Member States that diverge from EU principles. This decline in soft power adversely impacts the EU's global influence, eroding the moral authority that has traditionally underpinned its foreign policy initiatives.

¹⁸ Pawel Zerka and Jana Puglierin, "Keeping America Close, Russia down, and China Far Away: How Europeans Navigate a Competitive World," ECFR, February 8, 2024, <https://ecfr.eu/publication/keeping-america-close-russia-down-and-china-far-away-how-europeans-navigate-a-competitive-world/>.

¹⁹ David Elliot, "EU Falling Short on Digital Transformation, Report Says," World Economic Forum, July 19, 2024, <https://www.weforum.org/stories/2024/07/eu-digital-transformation-lagging/>.

²⁰ Silvia Colombo, "A Tale of Several Stories: Eu-North Africa Relations Revisited," ECDPM, November 6, 2018, <https://ecdpm.org/work/north-africa-hope-in-troubled-times-volume-7-issue-4-autumn-2018/a-tale-of-several-stories-eu-north-africa-relations-revisited>.

²¹ Marie Dumoulin, "One Step beyond: Why the EU Needs a Russia Strategy," ECFR, August 22, 2023, <https://ecfr.eu/article/one-step-beyond-why-the-eu-needs-a-russia-strategy/>.

VII. Conclusion

This paper has examined the EU's pursuit of strategic autonomy in light of growing external pressures, particularly in the context of economic interdependence and foreign policy challenges. Central to the discussion is the tension between national sovereignty and the collective decision-making required for deeper integration. Through the analysis of key areas such as the EU's economic unity, its capacity for a unified foreign and defence policy, and the role of member states in shaping integration, this paper argues that a more integrated EU is essential for ensuring its global competitiveness and security in an increasingly multipolar world.

This paper has argued that strategic autonomy provides a compelling framework for addressing this challenge. By reducing reliance on external powers in critical sectors such as energy, defence, and technology, the EU can strengthen its capacity to act independently in global affairs. However, achieving this vision requires deeper European integration. While the principle of sovereignty remains deeply rooted in the identity of member states, the complexities of today's challenges— from transnational security threats to economic vulnerabilities—demand supranational collective solutions, transcending national boundaries. The case for deeper integration lies in its potential to amplify the EU's strategic capabilities, ensure more effective decision-making, and leverage the Union's unparalleled potential as a unified political and economic bloc.

The road to strategic autonomy is fraught with challenges. Diverging national interests and varying levels of commitment to integration pose significant hurdles. However, the complexity of transnational threats, such as security issues and economic vulnerabilities, requires a collective approach. Deeper integration is essential to overcoming these challenges and ensuring that the EU can act effectively on the global stage.

Ultimately, the case for strategic autonomy highlights the necessity of European integration as both a means and an end. It would equip the EU with the capacity to navigate a turbulent international landscape and assert its sovereignty on the global arena, all while reaffirming the EU's foundational ideals of unity, cooperation, and collective strength. The path forward will require leadership, political courage, and an unwavering commitment to the European project. Should the EU rise to this challenge, it will not only secure its place as a resilient, capable, and independent global actor, but also demonstrate how unity and integration can transform challenges into opportunities for growth, stability, and influence.

Bibliography

- Beaucillon, Charlotte. "Strategic Autonomy: A New Identity for the EU as a Global Actor." *European Papers* 8, no. 1 (July 27, 2023): 417–28. <https://doi.org/10.15166/2499-8249/664>.
- Bergmann, Julian, and Patrick Müller. "Failing Forward in the EU's Common Security and Defense Policy: The Integration of EU Crisis Management." *Journal of European Public Policy* 28, no. 10 (July 19, 2021): 1669–87. <https://doi.org/10.1080/13501763.2021.1954064>.
- Burni, Aline, Edward Knudsen, Justin Nogarede, Nicoletta Pirozzi, and David Rinaldi. Issue brief. *Progressive Pathways To European Strategic Autonomy: How Can the EU Become More Independent in an Increasingly Challenging World?*, March 2023. https://feps-europe.eu/wp-content/uploads/2023/02/PB_Progressive-pathways-to-European-strategic-autonomy-.pdf.
- Colombo, Silvia. "A Tale of Several Stories: Eu-North Africa Relations Revisited." ECDPM, November 6, 2018. <https://ecdpm.org/work/north-africa-hope-in-troubled-times-volume-7-issue-4-autumn-2018/a-tale-of-several-stories-eu-north-africa-relations-revisited>.
- Damen, Mario. "EU Strategic Autonomy 2013-2023: From Concept to Capacity: Think Tank: European Parliament." Think Tank | European Parliament, July 8, 2022. [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2022\)733589](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2022)733589).
- Diamond, Jeremy. "Trump Opens NATO Summit with Blistering Criticism of Germany, Labels Allies 'Delinquent.'" CNN, July 11, 2018. <https://edition.cnn.com/2018/07/10/politics/donald-trump-nato-summit-2018/index.html>.
- Dumoulin, Marie. "One Step beyond: Why the EU Needs a Russia Strategy." ECFR, August 22, 2023. <https://ecfr.eu/article/one-step-beyond-why-the-eu-needs-a-russia-strategy/>.
- Elliot, David. "EU Falling Short on Digital Transformation, Report Says." World Economic Forum, July 19, 2024. <https://www.weforum.org/stories/2024/07/eu-digital-transformation-lagging/>.
- Franke, Ulrike, and Tara Varma. Rep. *Independence Play: Europe's Pursuit of Strategic Autonomy*, July 2019. <https://ecfr.eu/wp-content/uploads/Independence-play-Europes-pursuit-of-strategic-autonomy.pdf>.
- Hamre, Eivind Friis, and William Wright. Rep. *BREXIT & THE CITY: THE IMPACT SO FAR*, April 2021. <https://media2-col.corriereobjects.it/pdf/2024/data-room/DOC%2005%20-%20NewFinancial%202021.pdf>.
- "History of the European Union – 1945-59." European Union, 2024. https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en.
- Kardaś, Szymon. "From Coal to Consensus: Poland's Energy Transition and Its European Future." ECFR, November 29, 2024. <https://ecfr.eu/publication/from-coal-to-consensus-polands-energy-transition-and-its-european-future/>.
- Keating, Michael. "Taking Back Control? Brexit and the Territorial Constitution of the United Kingdom." *Journal of European Public Policy* 29, no. 4 (February 2, 2021): 491–509. <https://doi.org/10.1080/13501763.2021.1876156>.
- Laursen, Finn. "The Founding Treaties of the European Union and Their Reform." Oxford Research Encyclopedia of Politics, August 31, 2016. <https://oxfordre.com/politics/politics/view/10.1093>

[/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-151](https://acrefore/9780190228637.001.0001/acrefore-9780190228637-e-151).

[ussia-down-and-china-far-away-how-europeans-navigate-a-competitive-world/](https://ecfr.eu/publication/keeping-america-close-russia-down-and-china-far-away-how-europeans-navigate-a-competitive-world/).

Lefebvre, Maxime. Issue brief. *Europe as a Power, European Sovereignty and Strategic Autonomy: A Debate That Is Moving towards an Assertive Europe*, February 2, 2021.

<https://old.robert-schuman.eu/en/doc/questions-d-europe/qe-582-en.pdf>.

Lippett, Barbara, Nicolai von Ondarza, and Volker Perthes, eds. Publication. *European Strategic Autonomy: Actors, Issues, Conflicts of Interests*, March 2019.

https://www.ssoar.info/ssoar/bitstream/handle/document/62346/ssoar-2019-lippert_et_al-European_strategic_autonomy_actors_issues.pdf?sequence=1.

Martill, Benjamin, and Angelos Chrysogelos. “You’re Projecting! Global Britain, European Strategic Autonomy and the Discursive Rescue of the Internationalised State.” *European Security*, November 13, 2024, 1–20.

<https://doi.org/10.1080/09662839.2024.2425641>.

Paleari, Susanna. “The Role of Strategic Autonomy in the EU Green Transition.” *Sustainability* 16, no. 6 (March 21, 2024): 2597.

<https://doi.org/10.3390/su16062597>.

Rep. *RESILIENT EU2030*. Spain’s National Office of Foresight and Strategy, 2023.

Torreblanca, José Ignacio, and Giorgos Verdi. “Control-Alt-Deliver: A Digital Grand Strategy for the European Union.” ECFR, October 8, 2024.

<https://ecfr.eu/publication/control-alt-deliver-a-digital-grand-strategy-for-the-european-union/>.

Zerka, Pawel, and Jana Puglierin. “Keeping America Close, Russia down, and China Far Away: How Europeans Navigate a Competitive World.” ECFR, February 8, 2024.

<https://ecfr.eu/publication/keeping-america-close-r>

How can digital literacy in India bridge the gap between rural and urban populations?

Sofia Damásio

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: sdamasio.ieu2022@student.ie.edu

Published 27th January 2025

Abstract

Digital literacy is key in our modern world. It is crucial for everyone to be familiar with innovative technologies and their possible implications, especially in a rapidly developing country like India. However, 70% of India's population lives in rural areas, most of them facing a digital divide. To address this ongoing problem, this paper discusses potential solutions that consist of leveraging other already existing solutions and adapting them to a local level.

This paper also looks at how this digital divide not only affects development at a national level, but may also affect India's foreign policy and prosperity. Seeking regional dominance, India simply cannot afford having most of its population excluded from society and contributing to economic growth. Hence, bridging the digital divide is key to India's future.

Keywords: digital literacy, urban and rural divide, India,

I. Introduction

Digital literacy has gained a big role in our modern world. It is one of the key pillars of current ideologies that shape our modern world, such as globalisation. India is a rapidly emerging country located in Southeast Asia. It is currently involved in several political alliances, mainly the BRICS. This showcases India's rapid development and its search for global influence.

This paper will look at how digital literacy may bridge the gap between urban and rural populations in India. Through the use of government and institutional sources such as the WHO, this paper will provide an unbiased analysis of the issue at hand.

The digital gap is currently one of India's main domestic issues, as around 70% of its total population lives in rural areas. However, India is a labour-intensive country and, thus, their rural population contributes significantly to India's GDP. Nevertheless, this digital divide has posed an immense challenge to bringing together Indian society. Having more than half of the population marginalized, is negative for the country, from an economic, social, and governmental perspective. However, this can be solved through public and private partnerships, international treaties, and global cooperation.

Firstly, this article will provide an analysis of what is currently happening due to the gap between rural and

urban populations. Moreover, the possible long-term effects of these current impacts, and what this means for India, both, from a national and international point of view, will be examined. And the final sections will analyse possible international policies and evaluate to what extent India can implement them.

Before jumping into the analyses, it is important to understand the origin of this inequality. This inequality stems from cultural differences. In rural areas, people are less likely to feel the need to get digital education.¹ They depend on agriculture, thus, their priority is not technology. As a result, people prefer to invest their time in activities that relate to their daily lives and surroundings.

This main cultural principle led to the inequality we have nowadays that grew in scale. Digital disparity today is based on educational differences and a lack of infrastructure. While, culture itself plays a minor role since nowadays you cannot afford to not be digitally literate.

II. Consequences of the divide between urban and rural populations

The gap between urban and rural populations in India has been increasing especially from an economic perspective. For example, the rural inflation rate is 75% higher than the urban.² This is mainly because of

disruptions in distribution channels, underscoring the current division between rural and urban people. For example, disruption in the food system. Urban areas have access to quality food. However, by the time this food reaches rural areas, it has spoiled.

This ongoing division has several consequences. First of all, the urban population has limited access to government-provided essential services such as the PM Kisan and the Jan dhan Yojana. The PM Kisan is a government-led platform that provides financial assistance to small and medium-scale farmers.³ This platform provides them a total of 6000 rupees annually, transferred in three installments, as income support. 80% of farmers in India are considered small scale farmers.⁴ Out of those, 47% live in rural areas.⁵ Due to the bureaucratic complexities and technical or intricate requirements needed to have a bank account with conventional financial services providers, this platform is a big opportunity for unbanked and low-income individuals to open a savings account. Another advantage is that there is no minimum amount required to open an account. However, with the recent rapid shift towards online banking and online services, rural citizens with limited literacy skills and knowledge on innovative technologies are struggling to adapt. Therefore, the Jan Dhan Yojana is an online platform that offers bank

¹ Mahmudul Hasan Laskar. 2023. "Examining the emergence of digital society and the digital divide in India: A comparative evaluation between urban and rural areas." *frontiers*.
<https://www.frontiersin.org/journals/sociology/articles/10.3389/fsoc.2023.1145221/full>.

² Ishaan Gera. 2023. "Why is rural inflation trending higher than urban inflation?"
https://economictimes.indiatimes.com/news/economy/indicators/explainer-why-is-rural-inflation-trending-higher-than-urban-inflation/articleshow/105985571.cms?utm_source=contentofint.

³ Administration of Union Territory of Ladakh. 2023. "Pradhan Mantri Kisan Samman Nidhi (PM-KISAN) | The Administration of Union Territory of Ladakh | India." Ladakh.
<https://ladakh.gov.in/scheme/pradhan-mantri-kisan-samman-nidhi-pm-kisan/>.

⁴ Shweta Saini. 2023. "arcus research." India's small and marginal farmer.
<https://arcusresearch.in/indias-small-and-marginal-farmer/>.

⁵ PIB Delhi. 2023. "Press Release:Press Information Bureau." Press Release:Press Information Bureau. <https://pib.gov.in/PressReleasePage.aspx?PRID=1894900>.

accounts, insurance and pensions, available to all Indian citizens from the age of 10, with adult supervision.

Furthermore, rural populations are disadvantaged when it comes to digital markets, online purchases and employment. As a result, rural entrepreneurs find it challenging to expand the reach of their products, as their market is very limited.⁶ The process of expanding from a local level, to a regional level, to a national level, and finally to an international level takes much longer and is sometimes impossible in their circumstances. This makes competition with urban-based developing businesses very difficult. Additionally, for employment opportunities, it is crucial to have some type of digital literacy. Today, within the poorest 20% of rural households, only 8.9% have internet access.⁷ This prevents social and personal development, reinforcing the poverty cycle.

Thirdly, education disparities between urban and rural populations in India have hindered educational development in rural areas. For example, during the Covid-19 pandemic, a report released by the Azim Premji University in 2021 found that only 25% of students in rural areas had access to online learning.⁸ 5% of students had somewhat access to education during that time, and 60% had zero access to online education, while 60% of students in urban areas had full access to online classes. It is

also important to consider that teachers in rural areas are uneducated about technology, making it difficult for them to adapt to the online learning system.

Moreover, health disparities caused by a lack of infrastructure and medical staff in rural India is a severe problem. This scarcity in rural areas means that people have to travel a long distance to get the care they need. Furthermore, it has been proven that in case of an emergency, rural citizens do not trust they will have access to the appropriate care. Despite the fact that 70% of the Indian population is located in rural areas, almost 70% of the medical professionals work in the urban areas.⁹

Although physical healthcare facilities are scarce in rural areas, telemedicine could offer a solution for this issue. However, this highlights the bigger issue faced by most rural citizens: they are unable to access online healthcare services. Even though telemedicine has gained popularity overall, its adoption has been limited mainly to urban India.¹⁰ Issues such as poor internet connectivity and lack of digital literacy means that people are prevented from using telemedicine.

This lack of digital literacy in healthcare also contributed to the spread of misinformation, not only about Covid-19, but also about other health issues.¹¹ Due to the Indian rural population's limited exposure to

⁶ Dr. V. Shireesha. 2021. "Challenges of Rural Entrepreneurship in India." <http://www.ijmdrr.com/admin/downloads/280220249.pdf>.

⁷ Scrollstaff. 2022. "Digital divide: Mobile ownership 30% higher among men than women in India, shows Oxfam report." scroll.in. <https://scroll.in/latest/1039064/digital-divide-mobile-ownership-30-higher-among-men-than-women-in-india-shows-oxfam-report>.

⁸ Azim Premji University. 2021. Loss of Learning during the Pandemic. http://publications.azimpremjifoundation.org/2490/1/Loss_of_Learning_during_the_Pandemic.pdf.

⁹ Kusum Pareek. 2023. "ROLE OF MICROFINANCE ON WOMEN ENTREPRENEURSHIP." *Inspira Journals*.

¹⁰ Department of Psychology, Central University of Karnataka, Kalaburagi, Karnataka India. 2023. "PubMed Central." Applications, benefits and challenges of telehealth in India during COVID-19 pandemic and beyond: a systematic review. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9810518/>.

¹¹ Salman Bin Naeem, and Maged N Kamel Boulos. 2021. "COVID-19 Misinformation Online and Health Literacy: A Brief Overview." PubMedCenter. <https://pmc.ncbi.nlm.nih.gov/articles/PMC8345771/>.

government websites or institutional websites such as the World Health Organization, which provide accurate information about diseases. Consequently, this leads to the self interpretation of several health issues. Some people may over emphasise them or underestimate them. Not only that, the rural population is also vulnerable to rumours or fake news.¹²

Finally, due to a lack of education and access to digital services, they are limitedly involved in civic life. They have no access to online civic processes such as online voting or signing online petitions. This divide reinforces the power dynamics in favour of the urban population. Rural communities are underrepresented in policy-making, for example. They do not participate in discussion panels to improve certain areas of society, politically, socially, economically, or environmentally.

III. Long-term consequences of the digital gap

Starting off with the economic consequences, it must be noted that the digital gap will have negative effects on economic growth and prosperity. This digital divide restricts access to financial tools that could be used to drive productivity and efficiency. Therefore, more than half of the Indian population is prevented from achieving their full potential by hindering rural productivity.¹³

These barriers can also be observed when it comes to innovation, as the digital divide prevents the creation of new businesses. This barrier hinders job creation and the development of new sectors, which, given India's rapidly growing population, is important to address, in order to develop new sources of employment. Moreover, new businesses generate solutions for common problems.¹⁴ We can see this through the example of Ather Energy . Ather Energy is a local start-up that successfully tackles the problem of urban pollution. They produce low-emission scooters that are adapted to local daily needs. This is crucial in rural areas since locals have a better understanding of the problems faced by their community, and the solutions needed to tackle them.

All these factors combined result in a reduced tax revenue. Limiting part of the possible economic activity in the country results in less production and thus, less taxable activities. For this reason, the total revenue available to the government is much more limited when it comes to investing in public sectors, infrastructure, healthcare and so on. Furthermore, reducing tax income may contribute to India's deficit. India has a current deficit of \$663.8 Billion. Reducing tax revenue makes India more dependent on outside borrowing, increasing the deficit.¹⁵

Regarding long term social consequences, the main one is unemployment, which increases dependence on social welfare programs provided by the government. Having this

¹² Farhana Shahid. 2022. "Examining Source Effects on Perceptions of Fake News in Rural India." researchgate.net. https://www.researchgate.net/publication/359808898_Examining_Source_Effects_on_Perceptions_of_Fake_News_in_Rural_India.

¹³ "Changing Structure of Rural Economy of India Implications for Employment and Growth." 2017. NITI Aayog. https://www.niti.gov.in/sites/default/files/2021-08/11_Rural_Economy_Discussion_Paper_0.pdf.

¹⁴ Ather Energy. 2024. "All thrills. All electric." AtherEnergy. <https://www.atherenergy.com>.

¹⁵ Barkha Mathur. 2024. "India's external debt rises to \$663.8 bn; debt to GDP ratio falls: RBI." business-standard.com. https://www.business-standard.com/economy/news/india-s-external-debt-rises-to-663-8-bn-debt-to-gdp-ratio-falls-rbi-124062501024_1.html.

dependency culture in a country is detrimental, as it causes a dependency cycle, which leads to workforce discouragement. Being unemployed and dependent on social warfare, decreases your motivation of finding a job and pursuing a career. Furthermore, unemployment leads to higher income inequality, which, in turn, may increase crime and social unrest. All of these, seriously put the country's development at risk, especially India which is labour intensive. Being a labour intensive country, means you have a high population, thus, social unrest is detrimental for your country. We can see this through the case of Sudan, which has high levels of social unrest, hence, fails to develop and reach its full potential.¹⁶

In addition to unemployment, another possible long-term consequence is underemployment. India has potential for development, but not if individuals work below their skill set. Rural citizens have the capability and skills to progress in the workforce, however, they are underemployed because they lack digital literacy.¹⁷

Furthermore, low levels of digital literacy reinforce the tendency of the poverty trap. Cycles of poverty that may go on for generations. Despite India's potential, mainly because of its size and influence, having a big part of the population stuck in a poverty trap prevents it from achieving its full capacity. This is especially concerning for India, as it is competing for regional dominance. This

regional dominance cannot be sustained in the long term if the country continues to develop at different rates. This inequality prevents India from having a stable and growing economy. Therefore, how can India expect to have influence over other countries, if it does not have domestic stability?

Finally, we have the governmental long-term consequences. The digital divide causes an increase in public spending, as India allocates larger resources to tackle the issue in the country, however, this allocation should be improved, to more efficient programs. So far, the government has invested in online programs to help unify both types of population, nevertheless, it systematically ignores the rural population.¹⁸

Moreover, having a big internal problem like a population gap, prevents the Indian government from looking outwards, and focusing on its foreign policy, especially considering its regional rivalry with China.¹⁹

Additionally, a key factor for a country to develop is to ensure that it develops in a sustainable manner. This principle involves leaving no one behind. This principle created by the UN Sustainable Development Goals, is aimed at developing in a way that considers social, economic and environmental factors. In the long term,

¹⁶ International Rescue Committee. 2023. International Rescue Committee. <https://www.rescue.org/article/crisis-sudan-what-happening-and-how-help>.

¹⁷ Deshpande, Prashant P. 2024. "India's potential to become the largest provider of skilled workforce to the world." Times of India. <https://timesofindia.indiatimes.com/blogs/truth-lies-and-politics/indias-potential-to-become-the-largest-provider-of-skilled-workforce-to-the-world/>.

¹⁸ BTI transformation index. 2024. "BTI 2024 India Country Report: BTI 2024." BTI Transformation Index. <https://bti-project.org/en/reports/country-report/IND>.

¹⁹ Arvind Mohan. 2024. "India-China Rivalry and its Long Shadow Over the BRICS." E-International Relations. <https://www.e-ir.info/2024/11/02/india-china-rivalry-and-its-long-shadow-over-the-brics/>.

this domestic dilemma can act as a major setback for India's foreign policy objectives.

Lastly, ensuring transparency is essential for a government's survival in the long-term. Hence, Prime Minister Modi should not ignore more than half of its population because they do not have access or they cannot use online tools that focus on citizen competence. It is extremely dangerous for a government to have over half of its population vulnerable to misinformation. Therefore, tackling this digital divide is key for Modi's survival as a politician.

IV. Long-term consequences of the digital gap

The good news for India is that several other countries went through the same challenge, therefore, there are numerous policies India could implement that have succeeded in other countries.

For instance, India could consider implementing and adapting the Connect America Fund. This project invested in infrastructure that would ensure high quality internet access to rural and isolated communities. It managed to drive economic growth and create business opportunities in the United States. The CAF managed to connect around 400,000 Americans living in rural areas with already existing businesses within three years, through providing internet access. This helped with rural based businesses, and incentivizing entrepreneurship. As mentioned above, India struggles with rural

entrepreneurship and business development, which would be tackled with this government-funded policy.²⁰

Secondly, India could implement a National Digital Literacy Initiative, and leverage the existing one in Australia.²¹ As a first step, the government could fund community workshops that would take place in public space, free of cost. These community workshops would consist of basic skills needed to use government provided online platforms. Citizens would complete these workshops and understand the importance of these tools, how to use them, when to use them, and guidance about what to do after using them. In doing so, they could partner with NGOs that are already tackling digital illiteracy such as Pratham and DEF (Digital Empowerment Fund), and, therefore, have experience in conducting these workshops for isolated areas. Moreover, it would also be important for the government to tackle specific sectors of society such as the educational sector, and its teachers. As seen before, access to online education was close to zero in rural areas, in part because teachers did not have the knowledge to use online tools. This indicates that teachers lack the skills and the knowledge to provide their students digital literacy. Not only teachers, but also senior citizens need to have access to healthcare services, such as telemedicine. Providing an easy to understand workshop can help bridge this gap. However, it is important to have some sort of feedback portal to ensure this policy's success

²⁰ "Federal Communications Commission." 2012. FC news. <https://docs.fcc.gov/public/attachments/DOC-315413A1.pdf>

²¹ Australian Government. 2024. "Digital Inclusion Standard." Digital Inclusion Standard. <https://www.digital.gov.au/policy/digital-experience/digital-inclusion-standard#:~:text=The%20Digital%20Inclusion%20Standard%20is,with%20government%20information%20and%20services.>

and efficiency. This feedback system is important for the government to understand what is going right and what could be improved. With the information of what could be improved, this initiative could be adapted to local needs, and increase efficiency.

Additionally, India should expand on device accessibility policies, such as the implementation of subsidy programs or short-term loans that can provide financial assistance for low-income families that cannot afford a digital device. These loans are especially useful for students who only need a digital device for school. Thus, the programs could then be done through partnerships with schools to ensure every student has equal access to technology.

Furthermore, collaborations with private companies may also arise, encouraging the donation of second-hand devices, in exchange for tax incentives, in the form of tax breaks, equivalent to the amount of second hand devices they donate.

Also, the government could adapt and apply the Canadian Internet Access Initiative policy. This policy aims at funding local initiatives that tackle the digital divide. Several small-scale local initiatives in India aim at bridging the digital divide, such as the Akshaya Centers. The Akshaya Centers consist of several hubs spread around the city of Kerala, where citizens are able to pay their bills, do online application and other services.²² Local initiatives have the advantage that they understand the complexities of the problem and understand the needs of the people.

They better comprehend the local culture and know how to tackle the problem. And lastly, they know the extent to which this is a low-education problem, a lack-of-access problem or an affordability problem. Hence, investing in a solution that is already adapted to local needs, has a higher probability of success than one created externally.

Nevertheless, for any of these policies to work, the government needs to have an accurate image of the current digital divide. This involves robust data collection methods and analyses. Regional governments must conduct surveys to understand the internet speed and access in each region in order to implement the right policy. This can be done either, independently by the government, or in collaboration with research institutions. Nonetheless, considering Modi's popularity decline, citizens would most likely trust this project if it had external influence. The Indian population is sceptical and does not trust its government or its institutions, thus, they will not participate willingly in an initiative done only by the government.²³

Furthermore, in order to implement effective policies, it is important to understand the development of digital illiteracy over time. Understanding the complexities of the system, as well as identifying key points that are currently lacking, will help the government shape and adapt already existing policies, to better fit the Indian context.

V. Conclusion

²² Akshaya Kerala. 2023. "Akshaya- 'Reforming Kerala through Digitization.'" <http://www.akshaya.kerala.gov.in/about>.

²³ Kumar, Hari. 2024. "Narendra Modi Fell to Earth After Making It All About Himself." *The New York Times*. <https://www.nytimes.com/2024/06/05/world/asia/india-election-modi.html>.

In conclusion, this paper aimed to answer the question, how does digital literacy in India bridge the gap between rural and urban populations? Firstly the negative effects of this gap are addressed, especially those regarding the development of the rural population. Moreover, we can see health and education disparities between both groups of citizens, as well as a difference in involvement in civic life. Moreover, we can see that the digital gap will have long-term, economic, social, and governmental consequences. On the other hand, there are several policies that can and should be implemented to close the gap. India should leverage already existing policies and adapt them into their context. Furthermore, the implementation of feedback mechanisms are crucial to measure the success and effectiveness of these policies. Feedback mechanisms are also important to understand what is going well and what could be improved from a citizen point of view. Finally, we can conclude that digital literacy would play a key role in bridging this gap. Digital literacy would enable education in rural communities, allowing them to leverage existing technologies. Hence, leveraging these technologies would give them the opportunity to attend online courses. As a result, this would give them economic empowerment. This economic empowerment would be key in creating online jobs, thus, decreasing income inequality.

VI. Bibliography

- “Think IAS Think Drishti.” 2024. Drishti IAS Coaching in Delhi, Best UPSC Website For IAS Test Series & Study Material. <https://www.drishtias.com>.
- “Digital governance in India - statistics and facts.” 2023. Statista. <https://www.statista.com/topics/10293/digital-governance-in-india/#topic>.
- Overview. India Development Review. 2024. “The digital divide in India: From bad to worse?” IDR. <https://idronline.org/article/inequality/indias-digital-divide-from-bad-to-worse/>.
- Kantar. 2023. “Kantar.” Internet in India. https://www.iamai.in/sites/default/files/research/Internet%20in%20India%202022_Print%20version.pdf.
- “Digital India.” 2021. A programme to transform India into a digitally empowered society and knowledge economy. https://www.meity.gov.in/sites/upload_files/dit/files/Digital%20India.pdf.
- “The Role of Digital Infrastructure in Socio-economic Development.” 2021. NITI Aayog. <https://www.niti.gov.in/role-digital-infrastructure-socio-economic-development>.
- IEEE. 2024. “IEEE.” Impact of the Digital Divide: Economic, Social, and Educational Consequences. <https://ctu.ieee.org/impact-of-the-digital-divide-economic-social-and-educational-consequences/>.
- Sharma, Dr Kanika. 2023. “ROLE OF E-COMMERCE IN RURAL ECONOMIC DEVELOPMENT.” <https://www.inspirajournals.com/uploads/Issues/169354462.pdf>.
- OXFAM. 2022. “India’s Digital divide.” Rural India Online. <https://ruralindiaonline.org/en/library/resource/digital-divide-india-inequality-report-2022/>.
- NASSCOM. n.d. “India’s Digital Public Infrastructure.” Accessed February, 2024. https://community.nasscom.in/sites/default/files/publicreport/Digital%20Public%20Infrastructure%2022-2-2024_compressed.pdf.
- Kumar, Hari. 2024. “Narendra Modi Fell to Earth After Making It All About Himself.” The New York Times. <https://www.nytimes.com/2024/06/05/world/asia/india-election-modi.html>.
- Akshaya Kerala. 2023. “Akshaya- ‘Reforming Kerala through Digitization.’” <http://www.akshaya.kerala.gov.in/about>.
- “Federal Communications Commission.” 2012. FC news. <https://docs.fcc.gov/public/attachments/DOC-315413A1.pdf>
- Australian Government. 2024. “Digital Inclusion Standard.” Digital Inclusion Standard. <https://www.digital.gov.au/policy/digital-experience/digital-inclusion-standard#:~:text=The%20Digital%20Inclusion%20Standard%20is,with%20government%20information%20and%20services>.
- Arvind Mohan. 2024. “India-China Rivalry and its Long Shadow Over the BRICS.” E-International Relations. <https://www.e-ir.info/2024/11/02/india-china-rivalry-and-its-long-shadow-over-the-brics/>.
- BTI transformation index. 2024. “BTI 2024 India Country Report: BTI 2024.” BTI Transformation Index. <https://bti-project.org/en/reports/country-report/IND>.
- Deshpande, Prashant P. 2024. “India’s potential to become the largest provider of skilled workforce to the world.” Times of India. <https://timesofindia.indiatimes.com/blogs/truth-lies-and-politics/indias-potential-to-become-the-largest-provider-of-skilled-workforce-to-the-world/>.
- International Rescue Committee. 2023. International Rescue Committee. <https://www.rescue.org/article/crisis-sudan-what-happening-and-how-help>.

- Barkha Mathur. 2024. "India's external debt rises to \$663.8 bn; debt to GDP ratio falls: RBI." business-standard.com. https://www.business-standard.com/economy/news/india-s-external-debt-rises-to-663-8-bn-debt-to-gdp-ratio-falls-rbi-124062501024_1.html.
- Ather Energy. 2024. "All thrills. All electric." AtherEnergy. <https://www.atherenergy.com>.
- "Changing Structure of Rural Economy of India Implications for Employment and Growth." 2017. NITI Aayog. https://www.niti.gov.in/sites/default/files/2021-08/11_Rural_Economy_Discussion_Paper_0.pdf.
- Farhana Shahid. 2022. "Examining Source Effects on Perceptions of Fake News in Rural India." researchgate.net. https://www.researchgate.net/publication/359808898_Examining_Source_Effects_on_Perceptions_of_Fake_News_in_Rural_India.
- Salman Bin Naeem, and Maged N Kamel Boulos. 2021. "COVID-19 Misinformation Online and Health Literacy: A Brief Overview." PubMedCenter. <https://pmc.ncbi.nlm.nih.gov/articles/PMC8345771/>.
- Department of Psychology, Central University of Karnataka, Kalaburagi, Karnataka India. 2023. "PubMed Central." Applications, benefits and challenges of telehealth in India during COVID-19 pandemic and beyond: a systematic review. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9810518/>.
- Kusum Pareek. 2023. "ROLE OF MICROFINANCE ON WOMEN ENTREPRENEURSHIP." Inspira Journals.
- Azim Premji University. 2021. Loss of Learning during the Pandemic. http://publications.azimpremjifoundation.org/2490/1/Loss_of_Learning_during_the_Pandemic.pdf.
- Scrollstaff. 2022. "Digital divide: Mobile ownership 30% higher among men than women in India, shows Oxfam report." scroll.in. <https://scroll.in/latest/1039064/digital-divide-mobile-ownership-30-higher-among-men-than-women-in-india-shows-oxfam-report>.
- Dr. V. Shireesha. 2021. "Challenges of Rural Entrepreneurship in India." <http://www.ijmdrr.com/admin/downloads/280220249.pdf>.
- PIB Delhi. 2023. "Press Release:Press Information Bureau." Press Release:Press Information Bureau. <https://pib.gov.in/PressReleasePage.aspx?PRID=1894900>.
- Shweta Saini. 2023. "arcus research." India's small and marginal farmer. <https://arcusresearch.in/indias-small-and-marginal-farmer/>.
- Administration of Union Territory of Ladakh. 2023. "Pradhan Mantri Kisan Samman Nidhi (PM-KISAN) | The Administration of Union Territory of Ladakh | India." Ladakh. <https://ladakh.gov.in/scheme/pradhan-mantri-kisan-samman-nidhi-pm-kisan/>.
- Ishaan Gera. 2023. "Why is rural inflation trending higher than urban inflation?" https://economictimes.indiatimes.com/news/economy/indicators/explainer-why-is-rural-inflation-trending-higher-than-urban-inflation/articleshow/105985571.cms?utm_source=contentofint.
- Mahmudul Hasan Laskar. 2023. "Examining the emergence of digital society and the digital divide in India: A comparative evaluation between urban and rural areas." frontiers. <https://www.frontiersin.org/journals/sociology/articles/10.3389/fsoc.2023.1145221/full>.

Shifting Sands: How Iran's Nuclear Ambitions Transform Middle Eastern Alliances

Miranda Freund Tavárez

School of Politics, Economics, and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: mfreund.ieu2023@student.ie.edu

Published 27th January 2025

Abstract

This article explores the significant impact that Iran's nuclear ambitions have had on the transformation of Middle Eastern regional alliances. It explores how Iran's quest for nuclear weapons has shifted the balance of power and led to developments among major powers including Saudi Arabia, Israel, and the United Arab Emirates, using a realist paradigm. The study illustrates how regional and global players' interests meet and diverge by examining historical context, the Joint Comprehensive Plan of Action's (JCPOA) disintegration, and the evolving geopolitical landscape. Research suggests that in addition to provoking security concerns, Iran's nuclear program has sparked previously unprecedented cooperation, such as the Abraham Accords, along with potential arms races by other nations. These events underline the challenges of diplomacy, the likelihood of a nuclear escalation, and the broader ramifications for international governance and Middle Eastern stability. This study provides insight into the strategic decisions made by nations when confronting a region, at the crossroads of conflict and change.

Keywords: Iran Nuclear Program, Middle Eastern Alliances, JCPOA, Realism in International Relations, Regional Security, Abraham Accords, Middle East Politics, Israel, Balance of Power, Nuclear Proliferation

I. Introduction

The Middle East has long been a region defined by complex geopolitical dynamics, where power struggles and alliances shift constantly, with the tide of regional ambitions and international pressures. The geopolitical environment prior to the 2000s was marked by fierce competition between major actors, such as Saudi Arabia, Israel, Iraq, and Iran, who were all fighting for domination following crucial events like the Cold War, the Iranian Revolution in 1979, and the Gulf War in 1990-1991.

The interests of global superpowers, especially the United States and the Soviet Union, which viewed the Middle East as a vital battleground for exerting global influence, had a significant impact on regional politics during this period of time. Early on, Iran was a lesser player in the Middle East's power structure, due to its strategic position at the intersection of the East and the West.

¹Although its impact was acknowledged, the region did not see a significant shift of alliances until Iran's nuclear ambitions emerged in the early 1980s (post Israel's invasion of Lebanon with the creation of Hezbollah), a shift primarily due to concerns over a nuclear-capable Iran.

Iran's nuclear ambitions became a focal point of concern amongst both regional and international actors, such as Saudi Arabia and the United States, as the country's intentions were questioned. Were Iran's nuclear developments a question of increased security? Global recognition? Or could they be analyzed as a threat, a strong play to achieve regional hegemony, eliminating their adversaries inside the region in the process?

The Iranian government maintains that having nuclear technology strengthens its position as a major state actor in the region and abroad, in addition to improving national security. Yet this nuclear trajectory makes countries in the international stage, especially those with tense and rival relations with Iran, uneasy about their possibilities. In response to Iran's nuclear program, Israel, the United Arab Emirates (UAE), and Saudi Arabia have all adjusted their diplomatic objectives and established new alliances to combat Iran's perceived threat.

The question this paper aims to answer is 'How have Iran's nuclear ambitions influenced the transformation of regional alliances in the Middle East?'

¹ Ansari, Ali M. *Confronting Iran: The Failure of American Foreign Policy and the Roots of Mistrust*. Columbia University Press, 2006.

In addressing this question, this essay will explore alliances that have significantly shifted, broken down, or emerged in response to Iran's nuclear program, notably the (i) UAE- Israel Comprehensive Economic Partnership Agreement (CEPA) of 2022 and ii) the evolving stance of Saudi Arabia. We will also explore the reason behind Iran's nuclear developments and security concerns. These diplomatic and strategic relations play a vital role in the Middle East's geopolitics and in shaping future discourses. As regional players focus on establishing security-focused partnerships over longstanding ideological divisions due to perceived threats, international relations evolve and work to fill the gap on why historical dynamics shape contemporary politics.

II. Historical Context: Iran's Security Concerns and Regional Dynamics

2.1 Pre-2000s Iranian Political Landscape

Iran's domestic and regional stance was drastically altered by the historic Iranian Revolution of 1979. Iran rejected Western influence and embraced an Islamic-based administration model² when it overthrew Shah Mohammad Reza Pahlavi's pro-Western monarchy and established the Islamic Republic. Iran's foreign policy was transformed by this ideological shift, which placed a stronger emphasis on combating Western influence—

² Moshiri, Fariborz. "The Islamic Revolution and Regional Conflict." *Middle East Journal*, 43(3), 1989: 389-404.

especially American influence— and on spreading its revolutionary values to its neighboring countries.³

The revolution also set the stage for Iran's realist policies, as the newly Islamic Republic faced opposition, both within the country and internationally. Ethnic minorities and Shah loyalist groups presented difficulties within the country, while Iran's revolutionary fervor was seen as disruptive by its neighbors, especially Iraq under the dictatorship of Saddam Hussein. A long history of border disputes, sunni politics that dominated Iraq and unrest that the Iranian Revolution would inspire insurgency among Iraq's Shia majority, (which had long been suppressed), as well as the struggle of power amongst both countries to become the leading Persian Gulf State, culminated in the Iran-Iraq War (1980-1988).⁴

When in war, Iran capitalized on their vulnerabilities and its government prioritized self-reliance when it came to their defense capabilities. The eight-year conflict left Iran in economic debt, militarily drained, and incredibly aware of its vulnerabilities. Post war, Iran prioritized their goal of prevention against future conflicts, invasions, and wanted to secure themselves from foreign troops and interference. This was the basis that drove Iran's nuclear aspirations.

By the 2000s, Iran's pursuit of a nuclear program—which it described as essential for both deterrence and upholding its revolutionary values in a hostile region—was driven by their record of insecurity and ideological determination.

2.2 Post-2000s: The emergence of Nuclear Ambitions

Iran started pursuing a nuclear program in the early 2000s, claiming it was a harmless initiative aimed at producing energy and stimulating technological advancement and growth in the country. Nevertheless, suspicions quickly emerged among the international community and surrounding nations, who saw Iran's nuclear advancements as a clandestine effort to acquire nuclear weapons capacity. Tensions increased, and concerns about potential non-compliance with the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)⁵ were triggered in 2002, when undisclosed nuclear facilities in Iran were discovered.⁶ In response to Iran's nuclear ambitions, the United States, European Union, and United Nations swiftly implemented a series of diplomatic and economic sanctions.

The UN Security Council issued sanctions aimed at Iran's access to nuclear resources, technology and materials, hoping to halt Iran's nuclear development. These sanctions included a series of resolutions, including

³ International Center on Nonviolent Conflict. "Iranian Revolution (1977-1979)." n.d. Accessed October 28, 2024. <https://www.nonviolent-conflict.org/iranian-revolution-1977-1979/>.

⁴ Renfrew, Nita M. "Who Started the War?" *Foreign Policy*, no. 66 (1987): 98–108. <https://doi.org/10.2307/1148666>.

⁵ Sagan, Scott D. "Why Do States Build Nuclear Weapons? Three Models in Search of a Bomb." *International Security*, 21(3), 1996/97: 54-86.

⁶ Albright, David, and Andrea Stricker. *Iran's Perilous Pursuit of Nuclear Weapons*. Institute for Science and International Security, 2021.

UN Security Council Resolution 1737 (2006), which “imposes sanctions on Iran for failing to stop its uranium enrichment programme following resolution 1696 (2006); imposes a ban the supply of nuclear-related technology and materials and imposes assets freeze on key individuals and companies related to the enrichment programme.”⁷ This was followed by Resolution 1747 (2007), which imposed sanctions on arms supply amongst individuals connected to Iran’s nuclear efforts.

The United States and the European Union enforced stricter regulations. The US imposed the Iran Sanctions Act⁸, targeting Iran’s central bank, restricting oil exports, and dissuading foreign companies from investing in Iran’s oil and gas sectors. The European Union carried out an oil embargo back in 2012, restricted Iranian banks dealings as well, and removed Iranian financial institutions from SWIFT (Society for Worldwide Interbank Financial Telecommunications) an international payment system that effectively isolated Iran from worldwide financial networks, severely impacting its economic development.⁹

As stated, we can observe that through these sanctions the international community aimed to pressure Iran into compliance, by severely hindering their economic growth

⁷ Security Council. “Security Council Resolution 1737.” United. <https://main.un.org/securitycouncil/en/s/res/1737-%282006%22>.

⁸ “IRAN SANCTIONS ACT OF 1996 [As Amended Through P.L. 114–277, Enacted December 15, 2016] Be it enacted by the Senate and House.” 2016. Office of Foreign Assets Control. <https://ofac.treasury.gov/media/5751/download?inline>.

⁹ Nephew, Richard. *The Art of Sanctions: A View from the Field*. Columbia University Press, 2017.

and financial gains, looking to absolutely halt Iran’s nuclear ambitions by crippling its ability to finance them. This multilateral effort reflected the international community’s concern, and what a threat a nuclear capable Iran meant to them. Yet these measures only succeeded in feeding into Iran’s sense of encirclement, and adding into the hostility they felt towards the West.

Among these international pressures, Iran also faced covert operations aimed at sabotaging their nuclear infrastructure. An incredibly significant attack was the Stuxnet cyberattack in 2010, believed to have been developed as a joint operation between U.S. and Israeli intelligence services, a malware operation designed to cause centrifuges to fail¹⁰ while providing readings to their operators that they were running normally. This attack demonstrated the length that international actors were willing to go to in order to stop Iran from becoming a nuclear power. Even though the aftermath included setbacks, it only increased Iran’s drive to continue its nuclear development, stating it as necessary for the country’s defense.

Iran’s nuclear pursuits are additionally mostly driven by security concerns in the region. Iran is encircled by US military presence in Afghanistan and Iraq, has to face the monopoly that Israel has over the region, and bears the consequences of the Iran-Iraq War. As a result, Iran has become more cautious about forming alliances in the

¹⁰ Lindsay, Jon R. “Stuxnet and the Limits of Cyber Warfare.” *Security Studies*, 22(3), 2013: 365–404.

region and considers nuclear weapons crucial for deterrence. By developing nuclear capabilities, Iran aims to position itself as a major regional power, deter possible threats, and enhance its negotiating power, particularly with Western nations. Consequently, Iran sees nuclear advancement as a way to secure its safety and achieve political stability in a challenging and hostile environment. Despite facing international opposition, economic sanctions, and covert actions, Iran has persisted in its nuclear development efforts.

2.2 Geopolitical Tensions and the Role of Other Nuclear Powers in the Region

Israel and Saudi Arabia, Iran's primary adversaries in the region, have played key roles over the years in shaping Iran's nuclear ambitions by challenging its security concerns and fueling regional competition.¹¹ In what has been described as the new Arab cold war, Saudi Arabia, which has for long fought Iran for control of the Muslim world, sees a nuclear-armed Iran as a serious threat to its hegemony in the Gulf. And although the Iran-Iraq War remains as the most recent instance of a direct armed conflict between an Arab country and Iran, both states still engage in open hostility, although they continue on in peaceful coexistence. Saudi Arabia has strengthened its relations with the United States and other Western countries and pursued its own nuclear energy projects over concern of Iran's regional status.

The state of Israel, on the other hand, has long been an adversary to Iran since the 1979 Iranian Revolution, where Iran's new government formed an anti-zionist stance, stating Israel's existence was incompatible with Islamic principles of the republic. Its government has long since framed Israel as a symbol of Western imperialism in the Middle East. Additionally, Iran has positioned themselves with extremist groups that counter Israeli interests, such as Hezbollah. Since then, Israel and Iran relations and conflict have only escalated significantly, contributing to the state of war both countries participate in now.

In response to such standpoints, Israel has responded with a multifaceted strategy to counter Iran's nuclear program such as military strikes (The October 2024 airstrikes to deter nuclear infrastructure)¹², cover operations, diplomatic pressure (lobbying with international bodies and nations to isolate Iran from the international community), as well as collaborating with Western powers and intelligence agencies to provide information on Iran's activities in the region. Together with Saudi Arabia, Israel and their combined pressures have made Iran's sense of vulnerability heighten, which may have strengthened its determination to develop a nuclear arsenal as a deterrent and to secure its place in the region.

III. The Iran Nuclear Deal: Milestone or Misstep?

¹¹ Inbar, Efraim. 2020. "Iran and Israel: The Inevitable War?" SIRIUS – Zeitschrift Für Strategische Analysen 4 (4): 524–30. <https://doi.org/10.1515/sirius-2020-4007>.

¹² Cohen, Avner. *The Worst-Kept Secret: Israel's Bargain with the Bomb*. Columbia University Press, 2010.

3.1 *The Joint Comprehensive Plan of Action (JCPOA)*

The Joint Comprehensive Plan of Action (JCPOA), widely also known as the Iran Nuclear Deal, was signed in Vienna 2015 between Iran and the P5+1 group— United States, France, United Kingdom, Russia, China, and Germany. The agreement aimed to deter Iran’s nuclear development and capabilities, in exchange from lifting economic sanctions that had impacted Iran’s economy.¹³

With such an agreement, Iran agreed to limit its uranium production to 3.67%, which is increasingly below the 90% level needed for weaponization, and to reduce its stockpile of uranium by 98%. Additionally, Iran committed to dismantling two-thirds of its centrifuges, committed to modifying its Arak heavy-water reactor to prevent the production of weaponry plutonium and to provide unprecedented access to its nuclear facilities and supply chain, monitored by the International Atomic Energy Agency (IAEA).¹⁴

Although widely supported by the international community at first, the deal, in time, began to receive mixed reactions. Many viewed it as a milestone in the diplomatic area, as it halted Iran’s nuclear efforts and promoted regional stability. China and Russia, which are

key players in the JCPOA, strongly supported the agreement, as they argued it was the key framework and one of the few diplomatic ways that they could prevent escalation in the Middle East, and strengthen their non-proliferation (Treaty on the Non-Proliferation of Nuclear Weapons (NPT)) norms. Both countries stressed the importance of diplomacy over confrontation, as it was in both states’ interest to maintain economic ties with Iran, protecting their regional interests.

However, critics countered that the agreement was a mistake, especially the US and Israel. They asserted that although Iran received financial relief from the JCPOA, its nuclear infrastructure remained intact, allowing for the potential for further nuclear developments. They argued that, “The deal fails to guarantee the peaceful nature of Iran’s nuclear program—rather, it gives Iran a clear pathway to nuclear weapons.”¹⁵ Furthermore, some worried that Iran would someday resume enrichment activities again were stoked by the deal's "sunset clauses," which remove certain restrictions after ten to fifteen years.

So while the JCPOA marked a key diplomatic achievement, the international community is still divided as to if it tested out its purpose of deterring nuclear ambitions, or if it simply postponed the inevitable confrontation that was to come.

3.2 *US Withdrawal and Iran’s Partial Withdrawal*

¹⁵ United Against Nuclear Iran. “The Iran Nuclear Deal: What’s Wrong With It And What Can We Do Now?” *UANI*. <https://www.unitedagainstnucleariran.com/iran-nuclear-deal>.

¹³ Mohamad Amine El Khalfi. 2020. “Agreement on the Joint Comprehensive Plan of Action (Jcpoa) between Iran and the United States.” *Jurnal Pembaharuan Hukum* 7 (2): 183–89. <https://doi.org/10.26532/jph.v7i2.11296>.

¹⁴ “The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon | The White House.” n.d. Obama White House. Accessed October 16, 2024. <https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal>.

“We cannot prevent an Iranian bomb under the decaying and rotten structure of the current agreement,” stated President Donald Trump when withdrawing from the Iran Nuclear Deal in 2018, a move that significantly escalated tensions in the Middle East.¹⁶

President Trump’s pullout made this agreement in name only, even if the other P5+1 countries were still involved, there was no way to actually know what the Iranians would do. Would they adhere to the deal, or slowly chip away at the deal’s restrictions, developing a nuclear arsenal over time? President Trump criticized the deal as inefficient and flawed, arguing that it failed to address Iran’s ballistic missile developments and the sunset clauses that would eventually lift key restrictions, as well as compromising regional influence, as well as its support for violent militias around the Middle East.

After withdrawing from the deal, the United States reimposed even stricter sanctions on Iran by the The Office of Foreign Assets Control (OFAC) which greatly compromised Iran. The US imposed stringent economic sanctions that targeted their banking sector, oil exports, and other vital sectors that were meant to place the maximum pressure on Iran to get back to the negotiating table, but instead achieved the opposite results and managed to have destabilizing effects in the Middle East.

Aside from straining US relations with European allies, the withdrawal succeeded in aggravating tensions with regional adversaries as Israel and Saudi Arabia, who feared that Iran would resume its nuclear activities and resurface as a nuclear threat. The sharp sanctions reimposed by the US led to a decline in oil revenue, economic activity, and increased inflation within Iranian territory and its citizens, further reinforcing the idea of western evil believed by Iran and creating anti-US sentiment, which feeds into the conflict happening today.¹⁷

In response to the US withdrawal and its sanctions, Iran minimized its compliance with the agreements stated in the JCPOA. From 2019, Iran grew its stockpile of enriched uranium and progressively raised its uranium enrichment levels above the JCPOA’s 3.67% limit. They also signaled a return to nuclear development by restarting enrichment at previously prohibited locations and installing sophisticated centrifuges.

¹⁶ Beauchamp, Zack. 2018. “Iran nuclear deal: Trump’s withdrawal, explained.” Vox. <https://www.vox.com/world/2018/5/8/17328520/iran-nuclear-deal-trump-withdraw>.

¹⁷ “The Impact of Sanctions Two Years After U.S. Withdrawal From the Nuclear Deal.” 2020. FDD. <https://www.fdd.org/analysis/2020/05/06/sanctions-impact-two-years-after-jcpoa-withdrawal/>.

Iran's Nuclear Facilities



Fig. 1: Iran's Nuclear Facilities
Source: Council on Foreign Relations, 2023.

Iranian officials presented these measures as a response to US incitements, but they also put pressure on European countries to lessen the sanctions or come up with other ways to provide Iran with economic relief.

Following the wavering of the Iran Nuclear Deal both by the United States and Iran, international actors have worried about a nuclear arms race in the Middle East, raising concerns over major regional powers and potential confrontations in the region and their impact.

3.3 Impact on Regional Alliances

The breakdown of the JCPOA had a remarkable impact on regional alliances, strengthening partnerships

and accelerating new diplomatic relations. As the threat of a nuclear capable Iran emerged, Israel, Saudi Arabia and the United Arab Emirates ran to strengthen their security collaborations and alliances. These countries that have been historically wary of each other, found common ground on countering Iranian hegemony, and leading to a historic transformation on regional alliances. One major outcome of these newly formed partnerships were the Abraham Accords in 2020, establishing greater relations between Israel, the UAE, and Bahrain, followed by similar agreements with Morocco and Sudan. The Abraham Accords were a game changer for the Middle East, both in economic collaboration and intelligence advancements, yet also influenced in setting the stage in alliances when it came to potential conflict, particularly with Iran. The accords set a vital framework to counterbalancing Iran's regional influence and increasing nuclear threat.¹⁸

The collapse of the JCPOA has brought Saudi Arabia closer to Western and Israeli security interests, even if it has not yet formally normalized relations with Israel. There have been signs of covert intelligence sharing with Israel to monitor Iran's nuclear programs, and Saudi Arabia has strengthened its security ties with the United States and other Western partners. Iran's threat has also prompted Saudi Arabia to seek its own nuclear energy ambitions, an indication that if Iran's nuclear program grows stronger, the regional power dynamics might shift further.

¹⁸ Bard, Mitchell. *The Arab Lobby: The Invisible Alliance That Undermines America's Interests in the Middle East*. Harper, 2010.

In summary, the breakdown of the JCPOA reshaped the Middle East's geopolitical landscape, alongside sparking new alliances aimed at concealing the risks Iran's nuclear power posed.

IV. Transformation of Alliances on the Middle East

4.1 Israel's Position and Alliance Formation with UAE

The 2020 Abraham Accords marked a turning point in Middle East diplomacy, ratifying relations between Israel and the UAE, followed by Bahrain and other Arab states. This newfound relations set a historic precedent in diplomatic relations, as both Israel and the UAE set aside historical divisions to focus on their shared concern over Iran's growing influence. For Israel specifically, the treaty has been particularly impactful, as the agreement prompts cooperation on multiple fronts, as Israel's primary regional adversary is Iran.

By working together, both countries aim to counterbalance Iran's power and establish greater security measures. Israel has historically been isolated from the Middle East, for a number of reasons, particularly the lack of regional recognition and the religious and ideological differences, as a Jewish-majority state in a predominantly Muslim region, as well as their historical alignment with the West. Now, they can benefit from intelligence sharing, expanded military cooperation, and overall a strong ally.

Although as of October 2024, the UAE has not provided direct military assistance to Israel, but has

constantly advocated for a ceasefire¹⁹ for the Israel-Palestine conflict, and has conditioned its support for a two state solution.²⁰

This alliance has strengthened Israel's defense by giving Israel access to Gulf waterways and intelligence networks nearby Iran. For its part, the UAE has improved its defensive capabilities against Iranian threats by leveraging Israeli military expertise and technological advances. Iran has responded by denouncing these partnerships as hostile behavior, viewing them as an element of a broader U.S.-backed anti-Iranian coalition. Iran has deepened its cooperation with states like China and Russia, and strengthened its connections with non-aligned regional entities as a counterbalance and precaution.

¹⁹ UAE Ministry of Foreign Affairs. "UAE Calls for Ceasefire and Protection of Civilians Amid Ongoing Conflict." Last modified June 12, 2024.

<https://www.mofa.gov.ae/en/mediahub/news/2024/6/12/12-6-2024-uae-gaza>.

²⁰ Times of Israel. "UAE: Viable Two-State Solution Plan Needed Before We Commit to Rebuilding Gaza." Accessed November 6, 2024.

https://www.timesofisrael.com/liveblog_entry/uae-viable-two-st-ate-solution-plan-needed-before-we-commit-to-rebuilding-gaza/.



Fig. 2: *Israel's Diplomatic Ties.*
 Source: *The Economist*, 2022.

4.2 Saudi Arabia's Evolving Position

The goal of limiting and eventually reversing Iranian regional influence has united Saudi Arabia, the UAE, and Israel. All of these regional players consider that force is the only way of dealing with Iran. Since Tehran would never voluntarily stand down and since doing so would legitimize unwanted Iranian achievements in the region, they view any diplomatic engagement with the country as risky and futile.

It has been a battle between the region's two dominant powers: the kingdom of Saudi Arabia and the Islamic Republic of Iran.²¹ What was once primarily an ethnic dispute between the Sunni Arab Saudis and the Shiite Persian Iranians has now become a hostile conflict where the two states have participated in opposing sides of the deadliest conflicts in the Middle East. And in most international arenas, Iran's hard power has prevailed.

²¹ Gause, F. Gregory III. "Beyond Sectarianism: The New Middle East Cold War." *Brookings Institution*, 2014.

As a result of Iran's participation in the nuclear playground, Saudi Arabia has sought to bolster ties with the Gulf Cooperation Council (GCC) members and with western allies such as the United States. Yet both countries have friends in high places, and the consequences of even higher tensions and direct conflict between the two would be catastrophic for the Middle East. With so many regional powers in play, the best outcome to Saudi-Iranian relations would be two sustainable, forward-looking visions in both countries. While it may be hard to achieve, another ending would be nothing short of fatal.

4.3 Allies and Shifting Stances towards Iran

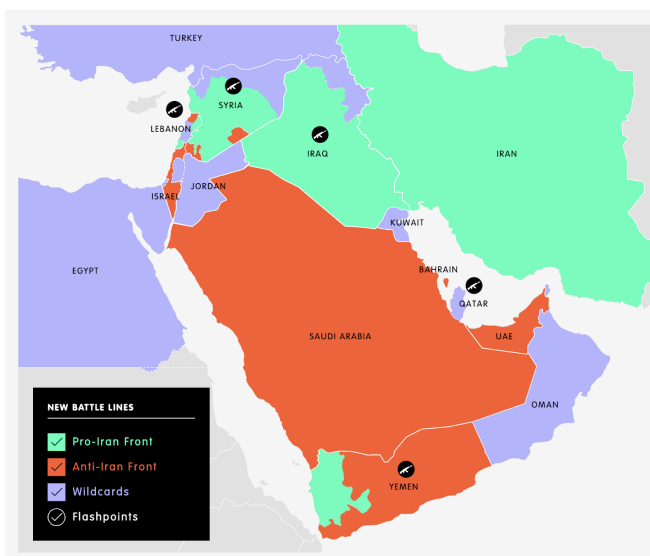


Fig. 3: *Middle East Battle Lines*
 Source: *European Council on Foreign Relations*, 2018.

In the evolving geopolitical landscape of the Middle East, several countries have shifted their stance towards Iran, forming coalitions that threaten to drive the region apart. We have already discussed the region's central battle line with Iran– Israel, Saudi Arabia, and UAE– but what

about the other states? Which states have aligned themselves with Iran in this never ending battle for dominance?

Iraq and Syria have established themselves as two key allies in the fight for middle eastern hegemony between Iran and other countries. Syria, a steadfast ally of Iran since the 1979 Iranian Revolution, shares their opposition to the state of Israel and US influence in the region. During the Syrian Civil War, Iran provided military and financial support, and it is safe to say that in the event of escalation (Israel-Iran relations) and an all out war, Syria would provide the same support for their ally. Losing the support of their most strategic ally would change the course of the Middle East conflict.

Since the fall of Saddam Hussein, Iran has gained evident influence on Iraq, particularly among Shia political parties and militia groups. The relationship between both countries is particularly strong, since both states are dominated by Shia Muslims.²² Iraq needs Iran's support in building its economy and in its war against terrorism. And Iran needs Iraq's contribution and support economically, and even as a political mediator when facing the West .

Iran also holds close relationships and alliances with Hezbollah, the political, militant group (many call them a terrorist organization) who are located in Lebanon. Iran

provides weapons and funding to Hezbollah, and Hezbollah acts as an enemy of the state of Israel and a key actor in Middle Eastern politics and Iran's regional stance. Hezbollah holds seats in the Lebanese parliament and is part of political alliances and the government, although it does not have sole control over the Lebanese state. The Palestinian militant group Hamas have also aligned themselves with Iran, primarily through arms supply and economic and financial assistance. Even though Hamas identifies as a Sunni group, it serves as an Iranian ally due to their shared interest in the destruction of Israel.

While Russia does not identify as an ally of Iran in the traditional sense, they have a strategic partnership, specifically in Syria where both countries support the Assad regime. They share interests in countering Western and US influence and maintaining key geopolitical stances in the region due to their own goals, which makes them partners in potential conflict.

The Houthi movement in Yemen, which has been engaged in a civil war against the Saudi-backed Yemeni government, is also an ally of Iran. The alliance challenges Saudi dominance and increases Iran's influence along Saudi Arabia's southern border.

Qatar, even though historically it has maintained balanced diplomatic relations in foreign policy, has recently shifted closer to Iran, partly due to the 2017 Gulf Cooperation Council (GCC) crisis, during which Saudi Arabia, the UAE, Bahrain, and Egypt imposed a blockade

²² "From Rivals to Allies: Iran's Evolving Role in Iraq's Geopolitics." 2024. Middle East Council on Global Affairs. https://mecouncil.org/publication_chapters/from-rivals-to-allies-irans-evolving-role-in-iraqs-geopolitics/.

on Qatar. In response to this measure, Qatar deepened its relationship with Iran, coming to include diplomatic engagement and shared cooperation on gas fields.

Sudan and Morocco are two countries which have started to distance themselves from the Iranian landscape. Sudan, which was once a close ally to Iran, shifted its alliance in 2016, aligning with Saudi Arabia and other states, due to economic incentives, and the wish to enter and have a place in the international community. Morocco, on the other hand, cut diplomatic relations with Iran back in 2018, due to reported support on the Polisario Front a separatist movement seeking independence for Western Sahara from Morocco. In 2018 Morocco cut all ties with Iran, stating that Iran had provided military support, through Hezbollah, to Polisario fighters. And although the Polisario support has allowed Iran to build influence in North Africa, they lost Morocco as a potential ally to the battleground.

Turkey is an important player in Middle Eastern relations when discussing Iran due to its strategic location and economic influence, as well as ambitions. They both compete for influence in Syria, Iraq, and Transcaucasus. As Turkey sits at the crossroad of Europe, Asia, and the Middle East, giving it a very calculated importance. Both Turkey and Iran aspire to be influential powers in the Middle East, and despite political differences when it comes to supporting certain groups in the area, they have established strong economic ties, especially in trade and energy. Iran supplies natural gas to Turkey, which is crucial

for what Turkey needs in the energy sector. This economic relationship creates a complex agreement between the two countries, where they both balance competition with economic interests. Additionally, Turkey is a member of NATO and maintains close ties with Europe and the US. This allows Turkey to act as a sort of mediator between Iran and the West, creating diplomatic balance.

In summary, these states' actions and alliances are vital for shaping Middle East politics, and these shifts reflect the complex and fluid nature of Middle Eastern dynamics.

V. Theoretical Framework: Realism in International Relations

5.1 Introduction to Realism

Realism is a school of thought in international relations that emphasizes national interest and the pursuit of power. Realism provides a framework to understand the international system, as it states that it is anarchic where states are the primary actors, guiding their actions by self interest and their struggle for power.²³ This theory emphasizes survival as the objective of states, leading to competitive behaviour amongst them. Realism provides tools like balance of power, the principle of self-help, and security dilemma to interpret and analyze state actions.

5.2 Application of Realism to the Transformation of Alliances

²³ Stanford Encyclopedia of Philosophy. "Realism in International Relations." Last modified May 24, 2010. <https://plato.stanford.edu/entries/realism-intl-relations/>.

Israel, through a realist lens, has since its establishment, has sought out to secure its position in a region full of adversaries (also dominated by them) who'd like no more than to erase the state of Israel off of the Middle Eastern map. Iran's nuclear ambitions have served as an existential threat to Israel, and have pushed Israel's diplomatic process to establish relations with other Arab states. Through a realist perspective, Israel has sought to balance their security needs by fostering alliances with Arab states, notably the UAE. Realism explains this as a strategic response to shared threats, reaching out to states by military and intelligence cooperation. We can see this theory pointed out through the Abraham Accords, which are thus a realist strategy that works to counterbalance Iranian influence.

The UAE's alignment with Israel serves as a strategy of pragmatic self-help, reflecting its realist status. As they are faced with nuclear threats from Iran and instability across the region, the UAE uses partnerships and military alliances with advanced states such as Israel, as vital and even critical for enhancing (and keeping) their own security and hegemony. The UAE can also recognize the geopolitical benefits of being an ally of the United States, ensuring continued economic and even military support. The Realist theory explains this scenario as prioritizing self interest and state survival in an unstable region.

Saudi has a play of shifting strategies in a multipolar region, which reflects a realist approach. Saudi Arabia has recently worked within a gradual shift towards normalizing

relations with Israel. Saudi Arabia has long been a proponent of pan-Arab solidarity, but they are increasingly driven by self-interest, especially when it comes to countering Iran's influence. However, these advancements towards a solid partnership with Israel have been crumbling under the Gaza situation, as they have accused Israel of genocide. Israel is still eager and willing to establish formal relations with the Saudi powerhouse, seen as an historic milestone, yet relations are tense due to the ongoing conflict and Riyadh's position towards Palestine. Nonetheless, Saudi Arabia's realist strategy involves a practical partnership with Israel to maintain a regional balance of power.

5.3 Nuclear Ambitions and Realist Goals

Iran's nuclear program clearly works as a Realist power strategy, as Iran's ambitions are a pursuit of power and security under an unstable environment. Their nuclear program is not only about military and nuclear capability, but also about regional dominance and bargaining power. Iran achieving nuclear status disrupts the balance of power within the Middle East, challenging their adversaries to scramble for the same developments and strengthen their alliances.

The regional counteractions in response to Iran aligns with a realist lens and the security dilemma factor. Israel builds up its military, collaborates with Arab states, and lobbies for US support, as a tactic to counterbalance the perceived threat, all a realist tactic. When we analyze all previously stated, Realism effectively explains the

transformation of alliances in the Middle East, as it provides a framework to understanding state actions, as it becomes clear that the revision of alliances is not ideological but strategic, rooted in the will of survival and stability.²⁴

VI. Future Scenarios: Nuclear Escalation or Diplomacy?

With potential outcomes varying from escalation to renewed diplomatic efforts, the Iranian nuclear issue has emerged as one of the fundamental challenges in Middle Eastern and international security. Policymakers, analysts, and regional actors are growing more concerned about the possible course of Iran's nuclear program as it continues to grow. The potential outcomes of Iran acquiring nuclear weapons will be examined in this section, along with the effects on regional ties and the future of multilateral initiatives, including the possible revival of the JCPOA. Is it possible to coexist with a nuclear Iran?

6.1 Potential Outcomes if Iran Achieves Nuclear Capability

If Iran were to achieve nuclear weapon capabilities, the repercussions would likely echo throughout the Middle East and beyond. As of 2024, Iran has not yet declared possession of nuclear weapons, but they have significantly advanced their nuclear program, and has enriched uranium to levels of weapons grade and they do possess the technical knowledge to possibly develop a nuclear weapon.

Such an outcome would mean that the power balance in the region would significantly shift. Neighboring countries, such as Saudi Arabia, would consider taking on their own nuclear projects, as they have previously hinted that they would take on their own nuclear capabilities if Iran acquires some of their own, which raises concern about an arms race in the region.²⁵ Israel, who maintains a policy of nuclear ambiguity, would also take part in the arms race that would potentially take place in the Middle East in case of such a situation. And in terms of nuclear power, Israel has the edge. Israel, who is not a signatory of the Treaty on the Non-Proliferation on Nuclear Weapons (NPT), is allowed to develop nuclear arsenal outside of international oversight. A regional nuclear threat from Iran would mean Israel racing to increasing their nuclear capabilities.

Additionally, a nuclear armed Iran would mean that they could embolden their policies in the region, as well as strengthen their alliances. Support for proxy groups such as Hezbollah in Lebanon and militias in Iraq and Syria would increase, signifying peril for their enemies and citizens. The consequence of this would be heightened instability in the region as well as immoral politics. As a result, global powers like the US, Russia, and China would possibly have to intervene or cohead security agreements to improve conditions in the Middle East. This would either allow to contain the threat, or contribute to wider conflicts if mismanaged.

²⁴ Mearsheimer, John J. *The Tragedy of Great Power Politics*. W.W. Norton & Company, 2001.

²⁵ Waltz, Kenneth. "Why Iran Should Get the Bomb." *Foreign Affairs*, July/August 2012.

6.2 Future of Alliances in the Region

The threat or possibility of a nuclear capable Iran drives existing alliances into strength or breaking down, all depending on the level of perceived threat. Alliances such as the Israel-UAE, formed in the 2020 Abraham Accords, would potentially strengthen and deepen under the Iranian threat. As concerns have been shared in the past over Iran's intentions amongst the Gulf states and Israel, this partnership would empower other states to join the fight against Iranian influence and combine efforts, strategies, intelligence, and military power.

However, we cannot dismiss the potential strain these alliances could face. If Iran were to approach and take a more moderate, diplomatic stance in its policies and in their relationship with the West (highly unlikely), and if Western powers reached a new agreement with Iran, some regional states would seek to balance their ties with Iran, which would compromise their reliance on Israeli security and alliances based on cooperation. Additionally, in this instance, countries with diplomatic ties or economic partnerships with Israel and Iran may have to appease regional voices, and reach for a balanced approach with Iran, which would not favor Israel.

Relationships with significant external powers might shift as well as a result of Iran's nuclear development.

China and Russia,²⁶ given their political and economic connections with Iran, may act as mediators, establishing themselves as regional stabilizing powers.²⁷ Depending on how much China and Russia are perceived to be backing Iran's nuclear development, this influence could drive some Gulf nations towards the United States and Israel.

5.3 Exploring the Future of the JCPOA or New Diplomacy Initiatives

One of the most significant concerns in international diplomacy is still the future of the Joint Comprehensive Plan of Action (JCPOA), also referred to as the Iran Nuclear Deal. The agreement, which was once intended to restrict Iran's nuclear capabilities in return for the lifting of sanctions, suffered substantial setbacks after Iran's continual violations and the U.S. exit in 2018 under President Donald Trump. The possibility of renewing the JCPOA or exploring other diplomatic frameworks in light of ongoing tensions poses major challenges regarding international collaboration, nuclear nonproliferation, and regional stability.

The next Trump administration would completely forsake the JCPOA framework in favor of a "maximum pressure" approach. This strategy would probably entail strengthening economic sanctions and taking a more

²⁶ Sun, Degang, and Yahia H. Zoubir. "China's Participation in Conflict Resolution in the Middle East and North Africa: A Case of Quasi-Mediation Diplomacy?" *Journal of Contemporary China*, 27(110), 2018: 224-243.

²⁷ Leverett, Flynt, and Hillary Mann Leverett. *Going to Tehran: Why the United States Must Come to Terms with the Islamic Republic of Iran*. Picador, 2013.

aggressive stand against Iran's nuclear aspirations. Even though it might impact short-term Iran's economy and reduce its regional influence, Iran could accelerate its nuclear program in the absence of a diplomatic framework, escalating regional tensions and posing a security threat to its neighbors. Furthermore, future multilateral attempts would be considerably tougher by the continuing deterioration of the United States' credibility in international agreements.

New diplomatic efforts might be launched as alternatives to deal with Iran's nuclear ambitions and its increasing involvement in the Middle East if the JCPOA is not renewed. The creation of a regional security agreement encompassing important nations like Saudi Arabia, Israel, and the United Arab Emirates is one possible strategy. Thorough arms control measures, monetary incentives to promote collaboration, and tactics to lessen proxy wars throughout the area might all be included in such a deal. As an alternative, gradual agreements could focus on specific issues, such as restricting Iran's ballistic missile program or limiting uranium enrichment, offering small but practical steps toward de-escalation.²⁸ Relief from sanctions with a humanitarian focus may also be used as a tactic to set the stage for further negotiations.

Multipolar mediation may see yet another major shift, with superpowers like China and Russia taking on major roles in mediating talks. This strategy might lessen the

strain on the United States while adding new dynamics to the diplomatic process by broadening the sources of pressure on Iran. But doing so would require reevaluating current partnerships to compromise on key issues.

The JCPOA or any new diplomatic initiative survival ultimately rests on striking a balance between idealism and realism when tackling nonproliferation of nuclear weapons and regional stability. Iran's nuclear aspirations must be curbed, but a renewed agreement or alternative framework must also address the larger geopolitical issues raised by its regional influence and proxy operations. A shared commitment to long-term stability and collaboration in the Middle East, persistent multilateral involvement, and reasonable adjustments will all be crucial to success.

VII. Conclusion

Iran's nuclear ambitions have undeniably reshaped the Middle East, driving regional alliances in new and often unprecedented directions. Key findings have indicated that Iran's nuclear ambitions have led historically and traditionally divided states to join forces against a common goal, such as Israel and the UAE. Similarly, Saudi Arabia has shown signs of aligning itself with Western powers and Israel, attempting to counterbalance Iran's influence over the region. The potential for Saudi-Israel relations remains a realistic prospect in diplomatic relations, as it would be considered a historic alliance, spurred by shared interests.

The transformations in alliances also carry significant implications for stability in the Middle East. As more

²⁸ Fitzpatrick, Mark. *Overcoming Pakistan's Nuclear Dangers*. Routledge, 2014

regional actors align against Iran, the Middle East heads towards polarization. This polarization complicates diplomatic efforts and escalates tensions significantly.²⁹ For multilateral institutions like the United Nations or the ICJ (International Court of Justice), it will be increasingly tough to try and balance the interests of these powerful nations with the need for conflict prevention. The United Nations Security Council, particularly, has already challenged to manage issues where their permanent members (such as the US or Russia) may differ on their interests and struggle to take unified action, resulting in taking no action at all, which weakens the influence of the United Nations and global governance institutions.

To conclude, the situation in the Middle East remains a sensitive area, with both opportunities and challenges ahead for regional actors and the international community. While the potential for further nuclear escalation looms ahead, we must search for promising avenues for addressing the Iran nuclear situation.

²⁹ Lustick, Ian. *Trapped in the War on Terror*. University of Pennsylvania Press, 2006.

VIII. List of Figures

Figure 1: Iran's Nuclear Facilities	8
Figure 2: Israel's Diplomatic Ties	10
Figure 3: Middle East Battle Lines	10

IX. Bibliography

- Arms Control Association. "Timeline of Nuclear Diplomacy With Iran, 1967-2023." Last reviewed January 2023. <https://www.armscontrol.org/factsheets/timeline-nuclear-diplomacy-iran-1967-2023>.
- Barnes, Julien, Ellie Geranmayeh, and Hugh Lovatt. 2018. "Middle East Battle Lines." European Council on Foreign Relations. https://ecfr.eu/special/battle_lines/.
- Beauchamp, Zack. 2018. "Iran Nuclear Deal: Trump's Withdrawal, Explained." Vox. <https://www.vox.com/world/2018/5/8/17328520/iran-nuclear-deal-trump-withdraw>.
- Council on Foreign Relations. "Confrontation Between the United States and Iran." Global Conflict Tracker, n.d. Accessed October 28, 2024. <https://www.cfr.org/global-conflict-tracker/conflict/confrontation-between-united-states-and-iran>.
- Davenport, Kelsey. n.d. "Iran Nuclear Deal Negotiations Reach Final Stage." *Arms Control Today* 52 (7): 29–30.
- Dr Muhammad Naveed Ul Hasan Shah, Rab Nawaz, and Dr Muhammad Irfan Mahsud. 2019. "Iran Nuclear Deal: Its Political and Economic Implications for the Region as a Whole and for Pakistan." *Вестник Волгоградского Государственного Университета. Серия 4. История, Регионоведение, Международные Отношения* 24 (5): 259–67. <https://doi.org/10.15688/jvolsu4.2019.5.19>.
- Ehteshami, Anoushiravan, and Raymond Hinnebusch. *Syria and Iran: Middle Powers in a Penetrated Regional System.* New York: Routledge, 2002.
- El Khalfi, Mohamad Amine. 2020. "Agreement on the Joint Comprehensive Plan of Action (JCPOA) between Iran and the United States." *Jurnal Pembaharuan Hukum* 7 (2): 183–89. <https://doi.org/10.26532/jph.v7i2.11296>.
- Erlanger, Steven. n.d. "Iran Nuclear Talks Head for Collapse." *New York Times,* A.
- Fitch, Asa. "Iran's Spending on Foreign Conflicts Raises Protesters' Ire." *Wall Street Journal,* January 2, 2018. <https://www.wsj.com/articles/irans-spending-on-foreign-conflicts-raises-protesters-ire-1514920398>.
- "Factsheets: Country List | IAEA." n.d. *International Atomic Energy Agency*. Accessed November 5, 2024. <https://www.iaea.org/resources/legal/country-factsheets>.
- Geranmayeh, Ellie, and Kadri Liik. "The New Power Couple: Russia and Iran in the Middle East." European Council on Foreign Relations, September 13, 2016. https://www.ecfr.eu/publications/summary/iran_and_russia_middle_east_power_couple_7113.
- Inbar, Efraim. 2020. "Iran and Israel: The Inevitable War?" *SIRIUS – Zeitschrift Für Strategische Analysen* 4 (4): 524–30. <https://doi.org/10.1515/sirius-2020-4007>.
- International Center on Nonviolent Conflict. "Iranian Revolution (1977-1979)." n.d. Accessed October

- 28, <https://www.nonviolent-conflict.org/iranian-revolution-1977-1979/>. 2024.
- Pollack, Kenneth M. *Unthinkable: Iran, the Bomb, and American Strategy.* New York: Simon & Schuster, 2013.
- “IRAN SANCTIONS ACT OF 1996 [As Amended Through P.L. 114–277, Enacted December 15, 2016].” 2016. *Office of Foreign Assets Control*. <https://ofac.treasury.gov/media/5751/download?inline>.
- Renfrew, Nita M. “Who Started the War?” *Foreign Policy*, no. 66 (1987): 98–108. <https://doi.org/10.2307/1148666>.
- Riedel, Bruce. “Lessons from America’s First War with Iran.” *Brookings*, May 22, 2013. <https://www.brookings.edu/articles/lessons-from-americas-first-war-with-iran/>.
- Kerr, Paul K., and Kenneth Katzman. n.d. “Iran Nuclear Agreement and U.S. Exit.” *Current Politics and Economics of the Middle East* 9 (1): 83–138.
- Ronen, Yaël. 2010. *The Iran Nuclear Issue*. Oxford: Hart. <http://site.ebrary.com/id/10430924>.
- Maizland, Lindsay, Kali Robinson, Ray Takeyh, and Gabrielle Sierra. n.d. “What Is the Iran Nuclear Deal?” *Council on Foreign Relations*. Accessed October 5, 2024. <https://www.cfr.org/backgrounder/what-iran-nuclear-deal>.
- “Saudi Arabia’s Use of Soft Power in Iraq Is Making Iran Nervous.” *The Economist*, March 8, 2018. <https://www.economist.com/news/middle-east-and-africa/21738405-kingdom-eyeing-southern-iraq-which-iran-considers-its-backyard-saudi>.
- Malus, Katherine. “Atoms for Peace to the JCPOA: A History of Iranian Nuclear Development.” K1 Project, Columbia University, September 9, 2018. <https://k1project.columbia.edu/content/atoms-peace-jcpoa-history-iranian-nuclear-development>.
- Smiley, Xan. 2022. “The Middle East’s Complex Web of Alliances Is Evolving.” *The Economist*. <https://www.economist.com/the-world-ahead/2022/11/18/the-middle-east-complex-web-of-alliances-is-evolving>.
- Masterson, Julia. n.d. “Iran Nuclear Deal Hangs in the Balance.” *Arms Control Today* 52 (2): 30–31.
- Solomon, Jay. *The Iran Wars: Spy Games, Bank Battles, and the Secret Deals That Reshaped the Middle East*. New York: Random House, 2016.
- Masters, Jonathan, and Will Merrow. “What Are Iran’s Nuclear and Missile Capabilities?” *Council on Foreign Relations*, n.d. Accessed October 28, 2024. <https://www.cfr.org/article/what-are-irans-nuclear-and-missile-capabilities>.
- “The Impact of Sanctions Two Years After U.S. Withdrawal from the Nuclear Deal.” 2020. *FDD*. <https://www.fdd.org/analysis/2020/05/06/sanction-s-impact-two-years-after-jcpoa-withdrawal/>.
- “The Historic Deal that Will Prevent Iran from Acquiring a Nuclear Weapon.” *Obama White House,* n.d.

Accessed October 16, 2024.

<https://obamawhitehouse.archives.gov/issues/foreign-policy/iran-deal>.

“The Iran Nuclear Deal: What’s Wrong With It And What Can We Do Now?” *UANI*, n.d. Accessed November 6, 2024.

<https://www.unitedagainstnucleariran.com/iran-nuclear-deal>.

“Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – UNODA.” n.d. *UNODA*. Accessed November 5, 2024.

<https://disarmament.unoda.org/wmd/nuclear/npt/text/>.

World Nuclear Association. “Nuclear Power in Iran.” n.d. Accessed October 28, 2024.

<https://world-nuclear.org/information-library/country-profiles/countries-g-n/iran>.

From Fossils to Minerals: The Hidden Challenges of the Energy Transition

Mariana Gámez Pineda

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Dual Degree in Business Administration and International Relations

E-mail: mgamez.ieu2022@student.ie.edu

Published 27th January 2025

Abstract

This paper explores the growing challenges posed by the renewable energy transition, an energy transition driven by the worsening climate crisis and mounting social pressure for sustainable development. A fundamental element of transforming and replacing greenhouse gas-emitting sources with renewable alternatives is the extraction of critical minerals and metals. These minerals are essential for technologies such as wind, solar, and lithium-ion batteries. The urgency to attain these resources, along with the necessity to diversify the mineral supply chain, has led to heightened opposition to mining practices, which are often associated with social and environmental harm. This opposition has presented significant barriers to the rapid adoption and expansion of green technologies, a notion which poses a threat to the climate-resilient ambitions of policy-makers worldwide. Central to this discussion are Europe and South America, two regions that are at the forefront of the transition but with deep contrasts in attitudes and historical contexts regarding these issues. This paper will discuss this systemic transformation, examining its associated costs, and the conflicting priorities that global leaders must navigate.

Keywords: Renewable Energy, Social Opposition, Extractivist Policies, South America, Europe

I. Introduction

The transition to renewable energy has become a central focus of many politicians worldwide. This emphasis is underpinned by alarming research that highlights the concerning pace of global warming that is threatening societies, ecosystems, and the stability of our planet. A report by the United Nations Intergovernmental Panel on Climate Change (IPCC) (2023), outlines the grim future ahead as a consequence of the rising greenhouse gas

emissions.¹ This scientific assessment on climate change underscores the need to rapidly shift away from the burning of fossil fuels, as well as implement system-wide transformations in order to ensure a climate-resilient future.²

¹ Intergovernmental Panel on Climate Change, "Climate Change 2023 Synthesis Report", 2023.

² Sophie Boehm and Clea Schumer. "10 Big Findings of the 2023 IPCC Report on Climate Change." *World Resources Institute* (2023).

In this context, countries all around the world have begun to substantially increase their capacity to generate renewable energy. The International Energy Agency (2024) highlights that the world's renewable energy capacity grew by 50% in 2023 and that states' sustainable energy potential is expanding at a faster rate than at any point in the past three decades.³ This trend is heightened by increased social pressure for a green transition.

While this is encouraging progress for sustainable development, the transition to renewable energy entails a distinct set of challenges and costs. Fundamentally, the renewable energy transition defined as "the global energy sector's shift from fossil-based systems of energy production and consumption - including oil, natural gas, and coal - to renewable energy sources like wind and solar, as well as lithium-ion batteries,"⁴ increases the demand for critical minerals and metals.⁵ Despite the necessity of a revived mining industry to ensure the continuous supply of these minerals, tensions exist between the environmental and social impacts of the industry and the goals of the green transition. One may observe a trend for intensive exploitation of resources that is framed as compatible with, and essential for climate action.

This paper will discuss and explore the critical dilemma between renewable energy and extractive policies, which is

amplified by the anti-mining sentiment evident in the European Union (EU) and South America. Additionally, instruments employed by states to mitigate this friction will also be addressed.

II. Background

Although technological solutions for transitioning to green energy are less fuel-intensive, they are more material-intensive than non-renewable technologies.⁶ For instance, photovoltaic cells, lithium-ion batteries, and wind turbines depend on large quantities of critical raw materials such as copper, lithium, nickel, and cobalt. Thus, mined resources are fundamental components to power cleaner energy technologies.⁷ In this context, it becomes clear that through an increase in demand for renewable energy, a simultaneous rise in mining activity must follow.

The World Economic Forum recently stated that the market for key energy transition minerals has doubled over the past five years, and the total demand for critical minerals and metals is expected to increase twofold or fourfold by 2040.⁸ Furthermore, other global studies, such as those conducted by Drexhage et al. (2017), Hund et al. (2020), and the IEA (2021), predict that demand for minerals like lithium, graphite, and cobalt will increase by upwards of ten times current production levels. In light of

³ International Energy Agency. "Massive expansion of renewable power opens the door to achieving the global tripling goal set at COP28." January 11, 2024.

⁴ S&P Global. "What is the Energy Transition." 2020.

⁵ Benjamin Gibson et al. "The energy transition will need critical minerals and metals. Here's how to mine responsibly." *World Economic Forum*, 2024.

⁶ Terah U De Jong et al. "Mining and the Green Energy Transition." *USAID*, 2021.

⁷ Isaacs-Thomas, Bella. "Mining is necessary for the green transition: Here's why experts say we need to do better." *PBS News*, 2023.

⁸ Gibson et al. "The energy transition" 2024.

this, it is evident that in the coming years, the mining sector will play a pivotal role in the green transition.⁹

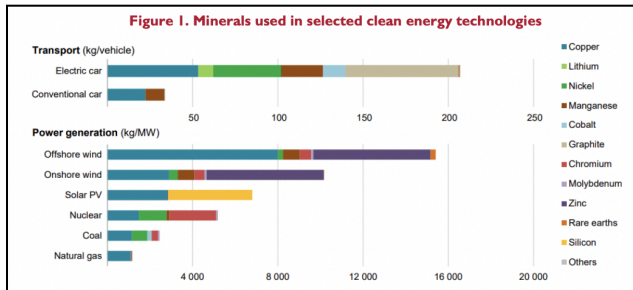


Fig.1: Minerals used in selected clean energy technologies.
Source: International Energy Agency, 2021.

Nevertheless, at this stage, the perils of mining begin to emerge. While extractive industries, particularly in developing countries, have immense potential to drive growth and support sustainable development, their actual contribution has been hindered by social, environmental, and governance concerns.¹⁰ Moreover, the mining industry has been historically tied to widespread contamination and human health hazards. Extraction projects cause serious water and soil pollution, lead to deforestation, and biodiversity loss.¹¹ These factors, among many others, contribute to the rise of an anti-mining sentiment, characterized by strong opposition, negative attitudes, and active resistance towards the mining industry and its activities.

⁹ Isaacs-Thomas. "Mining is necessary" *PBS News*, 2023.

¹⁰ United Nations. "Policy Brief: Transforming extractive industries for sustainable development." 2021.

¹¹ Adator Worlanyo et al. "Evaluating the environmental impact of mining for post-mined land restoration and land-use: A review." *Journal of Environmental Management* (2021).

One can argue that a complete phase-out of fossil fuels may overlook that a shift to renewable energy involves expanding mining infrastructure, which evidently has its environmental challenges.¹² While most experts recognize the necessity to determine a way to mine more responsibly to concurrently meet the demands of the clean energy transition and limit environmental and social harm, most politicians fail to address that their extractive policies are putting vulnerable communities at risk.¹³ For this reason, social opposition towards the extraction of critical minerals worldwide is centered around this inherent contradiction between environmental goals of reducing GHG emissions and the detrimental consequences of mining for sustainable energy initiatives.

What is clear is that anti-mining protests and social movements in an increasing number of countries are jeopardizing the sustained extraction of critical minerals, a happening that many fear will further disrupt an already unstable supply chain and limit the advancements of clean energy.¹⁴ Moreover, policymakers continue to stress the importance of domestic mineral production in order to minimize important dependence while environmentalists express concerns of this expansion.¹⁵

How to balance these priorities was one of the topics discussed by world leaders, policymakers, and researchers at

¹² Elena Gnant, "Opposing 'green' extractivism." *Lund University*, 2022.

¹³ Isaacs-Thomas. "Mining is necessary." 2023.

¹⁴ Greetje Frankena, "Critical minerals in LAC are key for energy transition," *Atradius*, March 5, 2024.

¹⁵ Vitor Correia et al. "Understanding the narratives in the public debate about mining in Europe." *Journal of the European Federation of Geologists* (2024).

the COP28 climate conference in Dubai in 2023. UN Secretary-General, António Guterres, emphasized the importance of augmenting renewables capacity, energy efficiency and clean energy production by 2030. However, he also stressed that this transition should be done in the most “just, fair, and equitable” manner possible in order to minimise the geopolitical risks and environmental and social challenges.¹⁶ Additionally, he argued that the world cannot repeat past mistakes by systematically exploiting developing countries for their raw materials.¹⁷

Given this setting, the following section will dive deeper into the tensions that have emerged in countries within the European Union and South America. What distinguishes these two regions of the world in terms of extractive policies is their mining legacy. European countries have historically been primary importers of critical minerals, relying on developing countries with rich resources for their supply - a notion that began to shift due to a desire to reduce dependency on external entities. On the other hand, South America is a region with vast mineral resource reserves, being a net exporter of the latter.¹⁸ As mentioned above, it is clear that with an increase in renewable energy initiatives, demand for their raw materials will increase, and will further threaten the livelihood of societies and biodiversity alike.

¹⁶ Laura Quiñones, “COP28: Extraction of minerals needed for green energy must be ‘sustainable and just’, says Guterres,” *UN News*, 2023. Quiñones, “COP28”.

¹⁷ Quiñones, “COP28”.

¹⁸ Circle Economy Foundation. “Latin America exports 40% of its extracted resources at the cost of environmental degradation, new study finds.” *Circle Economy*, 2024.

III. Case Studies

As renewable energy initiatives expand globally, the interest in critical minerals and other metals used in green technologies has resulted in a reassessment of extractive policies worldwide. This is driven primarily by the desire to diversify the global resource supply chain, and has led to the granting of concessions and permits to engage in mining activities. However, these policies have not been very popular among the populace.

Prior to discussing the potential consequences of increased mining behaviour, it is essential to outline the supply chain landscape in order to better understand the geopolitical motivations driving these actions. Currently, mineral security has become an essential factor in energy security and industrial policy. Hence, excessive market concentration poses a significant systemic risk for national security and decarbonization.¹⁹ In the present global market, China holds strategic dominance over the world’s critical minerals, metals, and commodities; with the Democratic Republic of Congo and other countries in South America also holding abundant supplies. The formers are the world’s largest refiners, producers, and consumers of metals. Critical materials for renewable technologies are processed almost entirely in China: 60 - 70% of lithium and cobalt, almost 60% of nickel, and 90% or rare earth elements.²⁰ This domination of mineral supply chains is best illustrated by the fact that China is

¹⁹ Rebecca Campbell et al. “Geopolitics and decarbonization in the mining & metals sector.” *White & Case*, 2023.

²⁰ Jamie Smyth and Harry Dempsey. “Western nations join forces to break China’s grip on critical minerals.” *Financial Times*, 2024.

“the largest source of U.S imports for 26 of the 50 minerals that are currently classified as critical by the United States Geological Survey.”²¹ In the context of clean energy technologies, such as wind turbines and solar panels, the three largest producer countries together control at least 70% of manufacturing capacity for each technology, China being dominant in all of them.

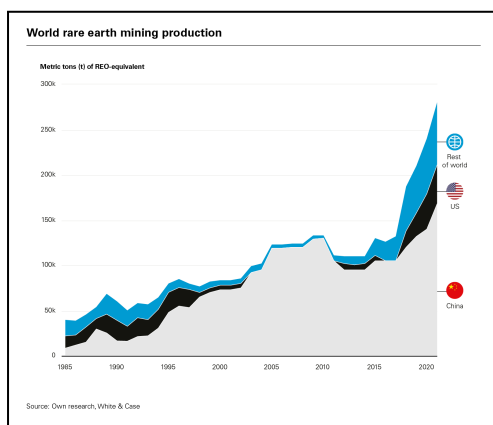


Fig. 2: World rare earth mining production.
Source: White & Case, 2023.

Therefore, it is evident that concentration at any stage in the supply chain exposes the entire chain to risks.²² As a result, mitigation measures and reducing reliance on foreign imports is a key strategy for diversification. In this context, and amid rising tension between the world powers, building resilient critical minerals supply chains is fundamental.²³ However, one might ask: at what cost?

²¹ Majkut et al. “Building larger and more diverse supply chains for energy minerals.” *Center for Strategic and International Studies*, 2023.

²² International Energy Agency. “Energy Technology perspectives 2023.” *IEA*, 2023.

²³ Jasper Wauters and Nikolas Hertel, “Critical Minerals Supply Chain: The Minerals security partnership and trade-related challenges.” *White & Case*, 2024.

3.1 Europe

For decades, the European costs of mining materials, both environmental and human, have not been internalized nor fully considered by EU states. Governments from the Global North have commonly outsourced mining activities, an industry notorious for its environmental harm, human rights violations, and its position as a lesser-valued component of the supply chain (increasing the possibility for protests), thus leaving its impact on the back-burner.²⁴ However, European states have increasingly begun shifting towards the promotion of domestic production, capitalizing upon their rich mineral resources to achieve a more stable and sustainable supply chain.²⁵

The rationale behind this is excessive dependency on foreign countries for raw resources, as eloquently highlighted by Thierry Breton, the EU Commissioner for Internal Market and Services: “When we have such dependencies, and Russia is at war, or China bans exports or there is an earthquake in Chile, we can have a problem.”²⁶ To emphasize the gravity of the situation, it is important to understand that China controls the EU supply of critical raw materials, hence, minimal tensions may jeopardize the EU’s goals of achieving sustainable

²⁴ Thea Riofrancos, “The Security-Sustainability Nexus: Lithium Onshoring in the Global North.” *Global Environmental Politics*, 2023.

²⁵ Sonja Kivinen et al. “Mining conflicts in the European Union: Environmental and political perspectives.” *Fennia: International Journal of Geography*, 2020.

²⁶ Attila Kalman and Amund Trellevik, “Green transition, dirty business: Europe’s struggle to tear loose from Chinese minerals,” *Investigative Europe*, 2023.

development. This is why the EU is exploring ways to diversify its supply away from China to be able to build green technology more efficiently.

The strategy of exploiting domestic reserves aligns with the European Green Deal²⁷ and is underpinned by the Critical Raw Materials Act (CRMA). In May of 2024, the CRMA entered into force following its adoption by the EU Council and the European Parliament.²⁸ The CMA will ensure EU access to a secure and sustainable supply of critical raw materials, when met with a surging global demand for these materials, in order to meet its 2030 climate and digital objectives. More precisely, the CRMA hopes to guarantee a stable supply of nickel, lithium, magnesium, and other materials, as well as provide opportunities for public and private financing for strategic projects (some of which are environmentally harmful but are of overriding public interests, such as...) and streamline permitting procedures.²⁹

This Act is particularly relevant for Europe and its strategic industries such as electrical cars, renewable energy, military equipment, and aerospace systems as it seeks to address the fact that while Europe consumes between

25-30% of the world's metals, spending on mineral exploration stands at a mere figure of 3%.³⁰

In light of this, in 2021, the European Commission's Vice President Maroš Šefčovič outlined: "We need to work together to overcome the important challenge of social acceptance by demonstrating that we will not repeat the mistakes of the past. This means engaging with local communities openly and transparently, and addressing their concerns about potential environmental damage, while highlighting the benefits of raw materials activities for combating climate change and preserving biodiversity."³¹

Therefore, the prevailing narrative in Europe is now one of a trade-off between the security of supply and environmental harm. While policymakers are stressing the importance of increasing domestic mineral production, environmentalists and local communities affected by mining activities express concerns over its ecological harms.³² The country that will be discussed in relation to extractive policies and surging anti-mining sentiments is Portugal. This case exemplifies the tension between the need for sustainable energy and the increasing potential for the disruption of the supply chain needed for the development of the former. Moreover, they also inform on the recent growing phenomenon of 'sacrifice zones', places

²⁷Christin Stuehlen and Felix Anderl. "Transnational companies in environmental conflicts: Rio Tinto, anti-mining resistance in Serbia, and the contradictions of Europeanization." *Z Friedens und Konfliktforschung*, May 2024.

²⁸Baker McKenzie. "Europe: the EU's Critical Raw Materials Act enters into force." 2024.

²⁹ The European Commission. "Critical Raw Materials Act." *European Commission*.

³⁰Manuel Rico, "Mining minerals is not a European business." *Investigative Europe*, 2023.

³¹Dominique Van Meer and Christos Zografos. "Take Your Responsibility: The politics of green sacrifice for just low-carbon transitions in rural Portugal." *Sustainability Science*, 2024.

³²Correia et al. "Understanding the narratives."

whose ecology has been gravely deteriorated for the greater good or a higher social purpose.³³

3.1.1 Portugal & Lithium Extraction

Lithium mining projects in rural Northern Portugal have seen an increase in occurrence. At the epicenter of lithium exploitation, an activity highly endorsed by the national government since the mid-2010s, is the Barroso region - a region particularly rich in deposits and minerals, but also known for its agricultural practices and heritage. In the past five years, 39% of Barroso's land has been slated for mining prospecting or licensing. One of the most significant projects in the area is the proposed 'Mina do Barroso'.³⁴ In 2017, Savannah Resources, a British multi-commodity mineral resource development company was granted a mining lease for lithium mining exploration in Covas do Barroso.³⁵ Since then, the company has been developing plans for an open-pit lithium mine in the area, with the potential for it to become the largest in Western Europe.

From its onset, the mining plan has been highly controversial. While Savannah has promised to invest in technology to achieve the best quality standards and environmental performance, mining, in reality, is not 'green'. Open-pit mining is ecologically destructive and has severe socio-environmental consequences. Particularly in Barroso, $\frac{3}{4}$ of the mine depends on deposits found on

common land owned by the village ('Baldios'), which are currently being used for forestry and pasture.³⁶ The majority of residents in Covas do Barroso, joined to create Unidos em Defesa de Covas do Barroso to oppose the exploration, citing pollution risks and threats to their rights to the landscape. Similarly, climate activists and environmental organizations have also severely criticized the project, through demonstrations, assemblies, and legal action against its implementation. They have continuously rejected financial offers and leases, emphasising the concessions are not enough - they do not want a lithium mine in their town.

The controversy surrounding this mine was exacerbated by its link to the corruption scandal that led to the resignation of Prime Minister António Costa in November 2023 due to the mishandling of exploration concessions.³⁷ Support for anti-mining demonstrations surged due to these accusations, exposing public discontent and urging the government to halt and reassess lithium projects.³⁸

In this context, pro-mining stakeholders have taken diverse approaches to manage this crisis. Savannah Resources has continuously emphasized the economic advantages of the mine, particularly through the creation

³³ Van Meer and Zagafos. "Take Your Responsibility."

³⁴ Alexander Dunlap and Mariana Riquito, "Social warfare for lithium extraction? Open-pit lithium mining, counterinsurgency tactics and enforcing green extractivism in northern Portugal." *Energy Research & Social Science*, 2023.

³⁵ Van Meer and Zagafos. "Take Your Responsibility."

³⁶ Caroline Bayley. "Portugal's Barroso lithium mine project faces villagers' ire." *BBC*, 2023.

³⁷ Dario Antonelli and Giacomo Sini. "Covas do Barroso: Local Resistance to Europe's Lithium Race." *Green European Journal*, 2024.

³⁸ Fernando Mares. "Global opposition to mining impacts green minerals extraction." *Mexico Business News*, 2023.

of jobs and the contribution to the nation's GDP.³⁹ The Portuguese government also highlighted the advantages towards the green transition.⁴⁰ Moreover, according to Dunlap and Riquito (2023), Savannah used social warfare tactics to “infiltrate social bonds, exploit psycho-social vulnerabilities, and attempt to disable anti-mining organizing and unity within the region.”⁴¹

However, one can argue that these entities framed their efforts wrong in order to encourage the populace to re-examine their priorities. The project from its onset has been characterized by the lack of clear processes, transparency, and stakeholder consultation. This only exacerbated the prevalent anti-mining sentiments of the residents and exposed a schism between economic performance and the interest of the people. Residents were not thoroughly informed on the preliminary prospecting and surveying efforts on lithium resources, leading to the underestimation of the scale of the project. Interests were also highly camouflaged.⁴² Moreover, entities suggested a rhetoric that emphasized the feasibility of mining and circularity without stakeholder engagement.

The anti-mining sentiment in Covas do Barroso has delayed the mining production until 2027 due to legal and administrative processes. It is evident that a bottom-down approach to critical mineral exploitation is impeding

progress from taking place, and is acting as a political hurdle to the implementation of renewable energy.

3.2 South America

Due to South America's vast resource pool and mining legacy, the study of mining projects and related resistance movements is centered on this region, with a large focus on extractivism. Latin America is a major producer of critical metals and minerals that are essential for the clean energy transition. It is also one of the most biodiverse regions globally, as outlined by the United Nations Environment Programme, roughly 60% of the world's terrestrial life, and diverse freshwater and marine species are found in the region.⁴³ Hence, with an increased demand for renewable energy, the region has significant potential to expand its role, and gain a predominant position in the market, but also faces significant trade-offs if they were to do so.

Latin America holds some of the world's largest mineral reserves: it accounts for 40% of global production of copper, with Chile at the forefront; supplies 35% of the world's lithium; and has significant amounts of graphite, nickel and manganese, largely focused in Brazil.⁴⁴ Despite their resource endowments, the region has not attracted sufficient investment to increase its exploration capacity in line with its potential.⁴⁵

³⁹ Francisco Carballo-Cruz and Joao Cerejeira. “The Mina do Barroso Project Economic and Development Impacts.” *Universidade do Minho*, 2020.

⁴⁰ Luis Silva and Siddharth Sareen. “The calm before the storm? The making of a lithium frontier in transitioning Portugal.” *The Extractive Industries and Society*, 2023.

⁴¹ Dunlap and Riquito. “Social warfare for lithium extraction?”

⁴² Dunlap and Riquito. “Social warfare for lithium extraction?”

⁴³ Luis A Ramirez Garcia. “How biodiversity conservation can unlock opportunities for Latin America and the Caribbean.” *World Economic Forum*, 2023.

⁴⁴ Alejandra Bernal et al. “Latin America's opportunity in critical minerals for the clean energy transition.” *International Energy Agency*, 2023.

⁴⁵ Bernal et al. “Latin America's opportunity in critical minerals.”

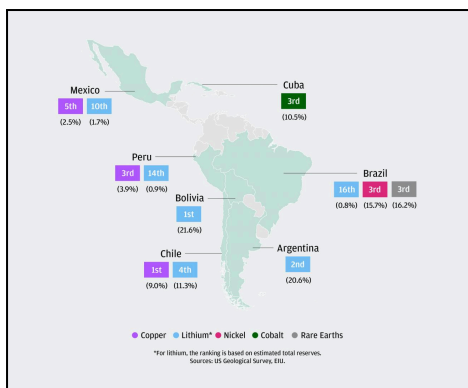


Fig. 3: Latin America's global critical mineral reserves ranking.

Source: *The Economist Impact*, 2022.

Many entities believe that Latin America's well-established mining sector should diversify into new materials, leveraging its position to help the global economy avoid potential supply disruptions that could hinder the effective progress towards the clean energy transition.⁴⁶ However, the mining landscape and the associated sentiments towards it are relatively unfavorable.

Mining projects in this region of the world are prone to significant opposition from local communities. The last decade has seen severe environmental disasters that have fueled anti-mining sentiments in the continent. These include the 2014 spill of 40,000 cubic meters of sulfuric acid in the Sonora River in Mexico,⁴⁷ as well as the tailings dam disaster in Brumadinho, Brazil in 2019 which led to the deaths of hundreds of individuals. Furthermore, 45% of mining conflicts are reported in Latin America due to the

mining industry being centered on sensitive ecosystems exploiting large amounts of land and water.⁴⁸

Additionally, due largely to Latin America's foreign exploitative past, one can see an increasing trend in resource nationalism.⁴⁹ This is a movement where governments begin exerting greater control over their natural resources, influenced by a desire to keep possession of a larger share of economic benefits and ensure direct population benefit. This is best illustrated through increased state role in the mining industry, or even its nationalization.⁵⁰ This policy change takes its roots in policy choices elsewhere. Governments regionally are responding to an increased demand for green transition minerals by leading economies.⁵¹ As suggested by researchers at the Center for Strategic and International Studies (CSIS) (2023), "outsiders should avoid giving the impression that the rules governing the exploitation of transition minerals are, in the first instance, theirs to set. Latin American leaders have legitimate objectives of their own for tomorrow's green economy."⁵² For instance, Mexico's former president López Obrador has been prominently hostile to the mining industry, refusing to grant new mining concessions and introducing administrative obstacles and delays.

⁴⁶ Bernal et al. "Latin America's opportunity in critical minerals."

⁴⁹ BMI. "Resource Nationalism in Latin America: Three Themes to Watch." 2023.

⁵⁰ Shawn Doyle and Josh Friedman. "2023 Political Risk in Latin America: A Primer for Canadian Miners." *McCarthy Tetrault*, 2023.

⁵¹ Lauri Tähtinen and Henry Ziemer. "A Specter Haunting Latin American Mining? Not So Fast." *Center for Strategic and International Studies*, 2023.

⁵² Tähtinen and Ziemer, "A Specter".

⁴⁶ Bernal et al. "Latin America's opportunity in critical minerals".

⁴⁷ Daniel Shailer, "9 years after mine spill in northern Mexico, new report gives locals hope for long-awaited cleanup." *AP News*, 2023.

There are a few factors that stand out in the case of South America. As opposed to Europe, weak regulatory frameworks exist which make potential disasters more likely and more severe. Moreover, what is unique for South America is the government's and citizen's legibility in terms of understanding the region's exploitative past. This, in turn, leads to more effective resistance movements, with a more active and strict civil society towards the conservation of biodiversity and socio-economic consequences.

In Latin America, there exists widespread community frustration with mining companies, associated with worker safety, human rights abuses, and poor environmental performance.⁵³ This is in addition to the lack of trust in the government to successfully enforce environmental and social legal frameworks.⁵⁴ Hence, their previous negative experiences with extractive industries have prompted local disillusionment and caution about its benefits. This is best illustrated by the fact that there are currently 231 communities in conflict with 176 proposed mining projects, according to the Observatory of Mining Conflicts in Latin America.⁵⁵ Moreover, in the 2020s, US\$25 billion of investment in the mining sector was hindered or halted due to conflicts and disputes with civil society.⁵⁶

3.2.1 Peru & Copper Mining

⁵³ Alejandra Martín, "Mining in Latin America: National Policies, Local Opinion." *BSR*, 2023.

⁵⁴ Martín, "Mining in Latin America".

⁵⁵ Martín, "Mining in Latin America".

⁵⁶ Anabel Marin, "Bringing Democracy to Governance of mining for a Just Energy Transition." *Institute of Development Studies*, 2023.

An example of the vehement opposition to mining by local communities is the Tía María mine in the Arequipa Region in the south of Peru. Since 2009, Southern Copper, the world's largest publicly traded mining company, has faced ardent resistance and opposition to their copper mine.⁵⁷ The deposit contains total reserves of close to 711 million tonnes of ore, and the project is expected to eventually produce upwards of 120,000 tons of copper annually.⁵⁸

The Southern Copper mining project, however, has been held up for over a decade due to opposition over the mine's environmental impact. The \$1.4 billion project was deemed unviable due to conflict environmental concerns primarily centered on water contamination.⁵⁹ Furthermore, there were also grave concerns of the insufficient consultation with "affected districts in line with the Indigenous and Tribal Convention 169 (ILO 169) - and especially their right to free, prior, and informed consent."⁶⁰

The population of Valle del Tambo emphasise that they do not need another source of economic activity in their region, highlighting that their agricultural capacity is more

⁵⁷ Alexander Dunlap, "Agro sí, mina no! The Tia Maria copper mine, state terrorism and social war by every means in the Tambo Valley, Peru." *Political Geography*, 2019.

⁵⁸ Southern Cooper. "Proyecto Tía María - SCC." *Southern Copper Corporation*, 2024.

⁵⁹ Hector Morales Muñoz et al. "Climate security and critical minerals mining in Latin America: How can business help?" *Climate Diplomacy*, 2023.

⁶⁰ Hector Morales Muñoz et al. "Climate security and critical minerals mining in Latin America. "

than sufficient.⁶¹ The land in the area is used to produce rice, garlic, potatoes, onions, and sweet potatoes, among others. They fear that copper mining will pollute the Tambo River and other diverse water bodies and make agriculture impossible. Jaime Borda, executive secretary of Red Muqui, a network of activist groups supporting communities affected by mining, also emphasizes that the agricultural industry has no risk of contamination, as opposed to the former.⁶² Moreover, apart from losing the traditional economic activity, the mine could negatively affect water reserves and endanger people's health. Copper mines pose a risk of leaching chemicals like sulfuric acid into the groundwater.⁶³

Therefore, we can observe the grave situation that the local community faces if the mine were to continue. There are several key milestones that are important to mention in relation to this conflict. Firstly, in September 2009, over 96% of the residents in the district of Dean Valdivia, Cochacra, and Punta de Bombon voted against the mine.⁶⁴ In 2011, the whole project was suspended after an independent review was conducted by a U.N agency which deemed that Southern Copper had to address 138 environmental and social concerns.⁶⁵ In 2015, officials reinstated the project, leading to an indefinite resident

strike that led to several deaths and hundreds of individuals injured after clashes with law enforcement. In 2019, after several new protests emerged, the government suspended Southern Copper's construction license for 4 months and informed the company that it could only move forward with the project when social conditions improved.⁶⁶ Furthermore, as vice president, Boluarte promised a definite closure of the mine - however, this has not happened.

Overall, the political reactions from Southern Copper and the Peruvian government have been diverse. The local community organized popular consultations, demonstrations, and strikes, many of which were met with violent repression.⁶⁷ The social resistance to this mine has been very intense and while the government began tolerating and reacting positively at first, priorities in recent years have shifted.

Despite these efforts, and much to the dismay of local communities, Southern Cooper has recently stated that they will initiate construction of Tia Maria in 2025. They have outlined that they have no pending licenses, have all the authorizations needed, and have continuously worked with the community to improve the social conditions.⁶⁸ Moreover, in their statement, they emphasized the creation of jobs as an advantage to the mine's presence, the installation of fog collectors, and the implementation of

⁶¹ Business & Human Rights Resource Center. "Peru: Tia Maria copper mine could begin operations before the end of the year despite concerns from local communities." 2024.

⁶² Maxwell Radwin, "Tia Maria copper mine set to open in Peru despite community backlash." *Mongabay*, 2024.

⁶³ Radwin. "Tia Maria copper mine."

⁶⁴ Radwin. "Tia Maria copper mine."

⁶⁵ Julian Turner, "Tia Maria: Peru's commodity versus community dilemma." *Mining Technology*, 2019.

⁶⁶ Radwin. "Tia Maria copper mine."

⁶⁷ Dunlap, "Agro sí, mina no!"

⁶⁸ AX Legal. "Peru Project Pipeline - Tia Maria Copper Project." 2024.

earth moving works this year.⁶⁹ Furthermore, large mining projects have an important role in improving the Peruvian economy, and hence since assuming presidency in 2022, Boluarte has looked to increase mining investment and infrastructure as a way forward, particularly in light of the severe economic and political crisis Peru is facing. Hence, what is clear in this case is that economic priorities largely overshadow environmental concerns despite initial ailment.

In order for mining projects to be more positively viewed and reconcile with inclusive growth, Anabel Marin, Research Fellow at the Institute of Development Studies (2023), emphasized the need for the entire governance frameworks of natural resources to be re-designed, “bringing a proactive and democratic approach to a vital economic area.”⁷⁰ She outlines the importance of involving local communities at early stages to co-produce policies for mining projects. This is in contrast to the current reality, where public consultations prior to project development are only a minor practice in Latin America.⁷¹

IV. The Path Forward & Key Takeaways

As perceived through the case studies presented - perspectives on the Global South and the Global North - states worldwide are facing a dual pressure: there is an increased need for extraction but there are socio-economic

and environmental consequences that accompany it. Reconciling these two pressures is a complicated yet decisive task. In Peru specifically, much of the grievances towards the mining industry stem from lower-income populations and indigenous communities, as they were gravely affected by past industry and government practices. As suggested by Bebbington (2009), resource extraction in South America has had many adverse effects: “at an aggregate level, it has been associated with a relative concentration of benefits (*“no hay chorreo,”* or “there is no trickle down,” as is said in Peru) and with a failure to develop institutions to ensure transparent governance of the natural resource economy and the rents it generates.”⁷² Moreover, historically in Europe, there has been very little emphasis on mining, and hence this renewed need for extractive policies has somewhat caught the population by surprise, particularly a population with a green attitude towards the exploitation of the earth.

Firstly, it is important to mention the disconnection between top-down directives and bottom-up concerns. Policies developed are prioritizing sustainable economic growth and the associated resource acquisition, and are often overlooking and inadequately addressing the local impacts of the extraction activities.⁷³ In this regard, stakeholder engagement is essential. Many critical think tanks emphasize the exclusion of participation in planning and ownership. Opponents to lithium mining are often

⁶⁹ Forbes Staff. “Southern Copper estima que iniciará la construcción de Tia Maria en 2025.” *Forbes*, 2024.

⁷⁰ Sophie Robinson, “Scale of conflict between mineral mines and indigenous peoples revealed.” *Institute of Development Studies*, 2023.

⁷¹ Tulsa Oré Monago, “Critical Minerals in Latin America.” *Baker Institute of Public Policy*, 2024.

⁷² Anthony Bebbington, “Contesting Environmental Transformation.” *Latin America Research Review*, 2009.

⁷³ Hajo Eicken et al. “Connecting Top-Down and Bottom-Up Approaches in Environmental Observing.” *BioScience*, 2021.

disregarded and restricted in participation in decision-making processes.⁷⁴

In Europe for example, the discourse on the responsibility of public institutions is centred around convincing instead of considering the opposition. European institutions are focused on employing effective strategies to convince communities on the benefits of mining. As suggested by Van Meer and Zografos (2024), institutions emphasize the need to reform public opinion in order for mines to be accepted without paying attention to health and environmental consequences in the process towards it.⁷⁵ This discourse of responsibility adopted by both the government and corporate action, assigns “public institutions the role of convincing communities to accept ‘green’ mining; to corporations the role of exercising corporate social responsibility; and to affected populations the role of subjects whose political action should conform to their consumption habits and help deliver a distinctive ‘European way’ of being responsible in a warming world.”⁷⁶

⁷⁶ For instance, Savannah Resources developed two community plans to highlight their commitment to becoming a valued member of the local community and endorse CSR.

Beyond Europe, the main discursive strategies to legitimize mining is the association of green technologies with employment and socio-economic progress, and

climate-friendly extraction.⁷⁷ For instance, in 2016, the Government of Chile highlighted their confidence “that Chile’s lithium will not be a case of frustrated development but an example of a well-built future.”⁷⁸

Another factor that is quintessential to this dilemma is the need for transparency with these projects. Informing local communities, allowing them to object and suggest, and involving them in the decision-making processes is essential to avoid repeating the mistakes of the past. Transparency over water waste and pollution and emissions is essential. Prior to initiating new mining projects, baselines for key environmental indicators should be established and monitored constantly. Risk and tailings management - the waste materials left after the target mineral is extracted from ore - and response preparedness should also be a priority, along with the transmission of reliable public information.⁷⁹ This is very applicable in the context of environmental regulation. Numerous mining projects cite their compliance with the Environmental Impact Assessment (EIA) as a judge of the feasibility and sustainability of the former. However, grave concerns exist with this procedure. In the EU particularly, there were many petitions with inadequate, incomplete, or a lack of

⁷⁴ European Environmental Bureau. “Top 10 Problems for Renewable Energy in Europe. *EEB*, 2022.

⁷⁵ Van Meer and Zografos. “Take Your Responsibility.”

⁷⁶ Van Meer and Zografos. “Take Your Responsibility.”

⁷⁷ Daniel M. Voskoboynik and Diego Andreucci. “Greening extractivism: Environmental discourses and resource governance in the ‘Lithium Triangle.’” *Environment and Planning E: Nature and Space*, 2021.

⁷⁸ Michelle Bachalet, “‘El litio chileno no será un caso de desarrollo frustrado, sino un ejemplo de futuro bien.’” *Gobierno de Chile*, 2016.

⁷⁹ Sofia Economopoulos. “Global race for critical minerals... a unique opportunity for Latin America.” *Economist Impact*, 2024.

EIAs.⁸⁰ With proper EIAs, mining operations proceed with little regard to the potential detrimental effects to the environment. This may lead to degradation of ecosystems and the contamination of water sources, among others. This is fully contradictory to the set vision the EU wants to achieve with its green transition. If damage were to happen, biodiversity offsetting (compensation of biodiversity loss) should be mandatory in legislation, outlines a report by the EU's PETI Committee.⁸¹

Central to this argument is the question of how states should approach the green transition. The energy transition model, now focused on extractivism, prioritizes mineral extraction, but the mining industry is extremely harmful to local communities and biodiversity. It is hence important to critically evaluate how much extractive projects tackle the root causes of climate change. Potentially, it is not as simple as replacing one industry with another, but changing whole consumption mindsets and economies.

Moreover, resistance to the mining industry is not only about the location of the mines, as suggested by Van Meer.⁸² The challenge is also framed around the positive outlook given by governments on the logic of a circular economy that is compatible with extensive mining projects. However, without social acceptance, this rhetoric will never have the support needed.

⁸⁰ European Parliament: Department for Citizen's Rights and Constitutional Affairs. "Social and environmental impacts of mining activities in the EU." *European Parliament*, 2022.

⁸¹ European Parliament, "Social and environmental impacts of mining activities."

⁸² Van Meer and Zografos, "Take Your Responsibility."

Lastly, it is important to recognize that while this extraction strategy aligns with decarbonization goals, it contributes very meaningful to the emergence of new environmental conflicts. In this context, although the pressure to increase production is extremely high, policymakers should not be blinded by this pressure in order to ignore all correct practices. For instance, direct financing and speedy environmental permitting without the proper frameworks may exacerbate local communities' discontent with the situation and aggravate the supply chain insecurity further.

V. Conclusion

The need for the adoption of renewable energy initiatives is clearer now than ever before, particularly in light of surmounting global temperatures and increasing GHG emissions worldwide. However, the implementation of these technologies requires a rise in the extraction of critical raw materials, obtained through mining. Entities globally are increasing the pressure from states to implement extractive policies to address the soaring demand for these essential resources. However, a fundamental factor that is impeding the fast development of technologies is an anti-mining sentiment driven by detrimental socio-environmental impacts that extractive policies have on the populace and on biodiversity. Hence, what we are observing in regions like Europe and South America is the hindering of the effective development of mining projects, an increase in regulatory costs, as well as limited access to critical minerals. These shortages are affecting the feasibility and pace at which renewable

technologies may be deployed as balancing mineral sourcing with environmental concerns remains a deep concern for policymakers and citizens.

We cannot identify a single solution to this increased tension between extractive policies and an anti-mining sentiment. Yet, as a senior reporter for Coda, Isobel Cockerell powerfully suggests (2023), confronting the deeper issue at stake - climate mitigation - is not as straightforward as “trading out one extractive industry for another.”⁸³ For durable and effective change to take place, we must challenge the systems that got us here in the first place.

While attitudes towards environmental policies are positive, the cost of these policies is primordial. No matter what the energy transition entails, these costs are a definitive fact. In this context, governments, institutions, and corporations must ensure the protection of the socio-economic environment: legally through more restrictive and coordinated policies, increase in stakeholder engagement, and understanding the core grievances of communities. And so, assuming these costs are going to take place regardless might be the first step, and disregarding the opposition will only increase future backlash towards extraction.

⁸³ Isobel Cockerell, “In the Swedish Arctic, a battle for the climate rages.” *Coda Story*, 2023.

V. List of Figures

Figure 1: Minerals used in selected clean energy technologies. 3

Figure 2: World rare earth mining production..... 5

Figure 3: Latin America’s global critical mineral reserves ranking 9

VI. References

- Antonelli, Dario, and Giacomo Sini. “Covas do Barroso: Local Resistance to Europe’s Lithium Race.” *Green European Journal*, February 27, 2024. <https://www.greeneuropeanjournal.eu/covas-do-barroso-local-resistance-to-europes-lithium-race/>.
- AX Legal. “Peru Project Pipeline - Tia Maria Copper Project - AX | LEGAL.” *AX Legal*, May 24, 2024. <https://ax.legal/2024/05/28/peru-project-pipeline-tia-maria-copper-project/>.
- Bachelet, Michelle. “Presidenta Bachelet: “El litio chileno no será un caso de desarrollo frustrado, sino un ejemplo de futuro bien construido.”” *Gobierno de Chile*, 2016. www.gob.cl/noticias/presidenta-bachelet-el-litio-chileno-no-sera-un-caso-de-desarrollo-frustrado-sino-un-ejemplo-de-futuro-bien-construido/.
- Baker Mckenzie. “Europe: The EU’s Critical Raw Materials Act enters into force.” *Baker Mckenzie*, May 27, 2024. <https://insightplus.bakermckenzie.com/bm/projects/europe-the-eus-critical-raw-materials-act-enters-into-force>.
- Bayley, Caroline. “Portugal’s Barroso lithium mine project faces villagers’ ire.” *BBC*, October 19, 2023. <https://www.bbc.com/news/world-europe-67135047>.
- Bebbington, Anthony. “Contesting Environmental Transformation.” *Latin America Research Review* 44, no. 3 (2009): 177-186. <https://dx.doi.org/10.1353/lar.0.0119>.
- Bernal, Alejandra, Joerg Husar, and Johan Bracht. “Latin America’s opportunity in critical minerals for the clean energy transition.” *International Energy Agency*, April 7, 2023. <https://www.iea.org/commentaries/latin-america-s-opportunity-in-critical-minerals-for-the-clean-energy-transition>.
- BMI. “Resource Nationalism In Latin America: Three Themes To Watch.” *BMI*, August 10, 2023. <https://www.fitchsolutions.com/bmi/mining/resource-nationalism-latin-america-three-themes-watch-10-08-2023>.
- Boehm, Sophie, and Clea Schumer. *10 Big Findings from the 2023 IPCC Report on Climate Change*. World Resources Institute. 2023. <https://www.wri.org/insights/2023-ipcc-ar6-synthesis-report-climate-change-findings>.

- Business & Human Rights Resource Center. “Peru: Tía María copper mine could begin operations before the end of the year despite concerns from local communities.” *Business & Human Rights Resource Center*, August 3, 2024.
<https://www.business-humanrights.org/en/latest/news-and-events/press-releases/detail/12122024/peru-tia-maria-copper-mine-could-begin-operations-before-the-end-of-the-year-despite-concerns-from-local-communities/>.
- Campbell, Rebecca, John Tivey, Kamran Ahmad, and David E. Bond. “Geopolitics and decarbonization in the mining & metals sector.” *White & Case*, September 18, 2023.
<https://www.whitecase.com/insight-our-thinking/geopolitics-and-decarbonization-mining-metals-sector>.
- Carballo-Cruz, Francisco and Joao Cerejeira. “The Mina do Barroso Project Economic and Development Impacts.” *Universidade do Minho*, July 2022.
https://www.savannahresources.com/media/uuri54jx/the-mina-do-barroso-project-economic-development-impacts_universityofminho_english_final.pdf
- Circle Economy Foundation. “Latin America exports 40% of its extracted resources at the cost of environmental degradation, new study finds.” *Circle Economy*, February 9, 2024.
www.circle-economy.com/news/latin-america-exports-40-of-its-extracted-resources-at-the-cost-of-environmental-degradation-new-study-finds.
- Cockerell, Isobel. “In the Swedish Arctic, a battle for the climate rages.” *Coda Story*, December 7, 2023.
<https://www.codastory.com/climate-crisis/sweden-climate-change-colonialism/>.
- Correia, Vitor, Luis Rosendo, and Eberhard Falck. “Understanding the narratives in the public debate about mining in Europe.” *Journal of the European Federation of Geologists* 57 (2024). ISSN: 1038-267X.
- De Jong, Terah U., Titus Sauerwein, and Ludivine Wouters. “Mining and the Green Energy Transition.” *LandLinks | USAID*, November 2021.
https://www.land-links.org/wp-content/uploads/2021/11/Green-Energy-Minerals-Report_FINAL.pdf.
- Doyle, Shawn, and Josh Friedman. 2023. “2023 Political Risk in Latin America: A Primer for Canadian Miners.” *Mccarthy Tetraault*, March 6, 2023.
<https://www.mccarthy.ca/en/insights/blogs/mining-praspects/2023-political-risk-latin-america-primer-canadian-miners>.
- Dunlap, Alexander. “‘Agro sí, mina NO!’ The Tía María copper mine, state terrorism and social war by every means in the Tambo Valley, Peru.” *Political Geography* 71 (2019): 10-25.
<https://doi.org/10.1016/j.polgeo.2019.02.001>.
- Dunlap, Alexander, and Mariana Riquito. “Social warfare for lithium extraction? Open-pit lithium mining, counterinsurgency tactics and enforcing green extractivism in northern Portugal.” *Energy Research &*

- Social Science* 95 (2023).
<https://doi.org/10.1016/j.erss.2022.102912>.
- Economopoulos, Sofia. “Global race for critical minerals... a unique opportunity for Latin America?” *The Economist Impact*, June 24, 2024.
https://impact.economist.com/perspectives/sustainability/global-race-critical-minerals-unique-opportunity-latin-america#_ftn2.
- Eicken, Hajo, Finn Danielsen, Josephine-Mary Sam, Maryann Fidel, Noor Johnson, Michael K. Poulsen, Olivia A. Lee, Katie V. Spellman, Lisbeth Iversen, Peter Pulsifer, and Martin Enghoff. “Connecting Top-Down and Bottom-Up Approaches in Environmental Observing.” *BioScience* 71, no. 5 (2021): 467- 483.
<https://doi.org/10.1093/biosci/biab018>
- The European Commission. “Critical Raw Materials Act.” European Commission.
https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en.
- European Environmental Bureau. “Top 10 Problems for Renewable Energy in Europe.” *EEB*, 2022.
<https://eeb.org/wp-content/uploads/2022/05/Top-10-problems-for-renewable-energy-in-Europe.pdf>.
- European Parliament: Policy Department for Citizens’ Rights and Constitutional Affairs. “Social and environmental impacts of mining activities in the EU.” *European Parliament*, May 2022.
- [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729156/IPOL_STU\(2022\)729156_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/729156/IPOL_STU(2022)729156_EN.pdf).
- Forbes Staff. “Southern Copper estima que iniciará la construcción de Tía María en 2025.” *Forbes*, July 19, 2024.
<https://forbes.pe/negocios/2024-07-19/southern-copper-estima-que-iniciara-la-construccion-de-tia-maria-en-2025>.
- Frankena, Greetje, and Dana Bodnar. “Critical minerals in LAC are key for energy transition.” *Atradius*, March 5, 2024.
<https://group.atradius.com/knowledge-and-research/reports/critical-minerals-in-lac-are-key-for-energy-transition>.
- Gibson, Benjamin, Joel Frijhoff, and Kadie Fedosenko. “The energy transition will need critical minerals and metals. Here’s how to mine responsibly.” *World Economic Forum*, June 20, 2024.
<https://www.weforum.org/stories/2024/06/energy-transition-critical-minerals-mining>.
- Gnant, Elena. “Opposing ‘green’ extractivism: Voices of resistance in the case of the Gállok iron mine, Sápmi.” *Lund University*, 2022.
<https://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=9097252&fileOId=9097253>
- Intergovernmental Panel on Climate Change. *Climate Change 2023 Synthesis Report*. Geneva, Switzerland: IPCC, 2023. 10.59327/IPCC/AR6-9789291691647.

- International Energy Agency. "Energy Technology Perspectives 2023." *IEA*, 2023.
<https://iea.blob.core.windows.net/assets/a86b480e-2b03-4e25-bae1-da1395e0b620/EnergyTechnologyPerspectives2023.pdf>.
- International Energy Agency (IEA). "Massive expansion of renewable power opens door to achieving global tripling goal set at COP28 - News - IEA." *International Energy Agency*, January 11, 2024.
<http://www.iea.org/news/massive-expansion-of-renewable-power-opens-door-to-achieving-global-tripling-goal-set-at-cop28>.
- Isaacs-Thomas, Bella. "Mining is necessary for the green transition. Here's why experts say we need to do it better." *PBS News*, December 8, 2023.
www.pbs.org/newshour/science/mining-is-necessary-for-the-green-transition-heres-why-experts-say-we-need-to-do-it-better.
- Kalman, Attila, and Amund Trellevik. "Green transition, dirty business: Europe's struggle to tear loose from Chinese minerals." *Investigate Europe*, October 26, 2023.
<https://www.investigate-europe.eu/posts/green-transition-mines-metals-minerals-china-europe>.
- Kivinen, Sonja, Juha Kotilainen, and Timo Kumpula. "Mining conflicts in the European Union: environmental and political perspectives." *Fennia - International Journal of Geography* 198, no. 1-2 (2020). 10.11143/fennia.87223.
- Majkut, Joseph, Jane Nakano, Maria J. Krol-Sinclair, Thomas Hale, and Sophie Coste. "Building Larger and More Diverse Supply Chains for Energy Minerals." *Center for Strategic & International Studies*, July 19, 2023.
<https://www.csis.org/analysis/building-larger-and-more-diverse-supply-chains-energy-minerals>.
- Mares, Fernando. "Global Opposition to Mining Impacts Green Minerals Extraction." *Mexico Business News*, November 16, 2023.
<https://mexicobusiness.news/mining/news/global-opposition-mining-impacts-green-minerals-extraction>.
- Marin, Anabel. "Bringing Democracy to Governance of Mining for a Just Energy Transition." *Institute of Development Studies*, August 2023.
https://opendocs.ids.ac.uk/articles/report/Bringing_Democracy_to_Governance_of_Mining_for_a_Just_Energy_Transition/26429260?file=48182347.
- Martin, Alejandra. "Mining in Latin America: National Policies, Local Opinion." *BSR*, March 11, 2013.
<https://www.bsr.org/en/blog/mining-in-latin-america-national-policies-local-opinion>.
- Morales Muñoz, Hector C., Johanna Dieffenbacher, Raquel Munayer, and Beatrice Mosello. "Climate security and critical minerals mining in Latin America: How can business help?" *Climate Diplomacy*, March 17, 2023.
<https://climate-diplomacy.org/magazine/environment>

- [/climate-security-and-critical-minerals-mining-latin-america-how-can-business.](#)
- Oré Mónago, Tilsa. “Critical Minerals in Latin America.” *Baker Institute of Public Policy*, August 22, 2024. <https://www.bakerinstitute.org/research/critical-minerals-latin-america>.
- Quiñones, Laura. “COP28: Extraction of minerals needed for green energy must be ‘sustainable and just’, says Guterres.” *UN News*, December 2, 2023. <https://news.un.org/en/story/2023/12/1144267>.
- Radwin, Maxwell. “Tía María copper mine set to open in Peru despite community backlash.” *Mongabay*, July 31, 2024. <https://news.mongabay.com/2024/07/tia-maria-copper-mine-set-to-open-in-peru-despite-community-backlash/>.
- Ramirez Garcia, Luis A. “How biodiversity conservation can unlock opportunities for Latin America and the Caribbean.” *World Economic Forum*, June 30, 2023. <https://www.weforum.org/stories/2023/06/biodiversity-conservation-latin-america-caribbean/>.
- Rico, Manuel. “Mining for minerals is not a European business.” *Investigative Europe*, October 26, 2023. <https://www.investigate-europe.eu/posts/mining-minerals-not-european-business>.
- Riofrancos, Thea. “The Security–Sustainability Nexus: Lithium Onshoring in the Global North.” *Global Environmental Politics* 23, no. 1 (2023): 20–41. https://doi.org/10.1162/glep_a_00668.
- Robinson, Sophie. “Scale of conflict between mineral mines and indigenous peoples revealed.” *Institute of Development Studies*, August 9, 2023. <https://www.ids.ac.uk/news/scale-of-conflict-between-mineral-mines-and-indigenous-peoples-revealed/>.
- Shailer, Daniel. “9 years after mine spill in northern Mexico, new report gives locals hope for long-awaited cleanup.” *AP News*, September 29, 2023. <https://apnews.com/article/copper-mine-sonora-mexico-spill-pollution-eff24daec766d4944ed2e990355ea43a>
- Silva, Luis and Siddharth Sareen. “The calm before the storm? The making of a lithium frontier in transitioning Portugal.” *The Extractive Industries and Society* 15, (2023). <https://doi.org/10.1016/j.exis.2023.101308>
- Smyth, Jamie, and Harry Dempsey. “Western nations join forces to break China’s grip on critical minerals.” *Financial Times*, September 23, 2024. <https://www.ft.com/content/2984ae03-df15-420b-89cc-9ad8337014a9>.
- S&P Global. “What is the Energy Transition?” *S&P Global | Market Insights*. February 24, 2020. <https://www.spglobal.com/en/research-insights/market-insights/what-is-energy-transition>.
- Southern Cooper. “Proyecto Tía María - SCC.” *Southern Copper Corporation*, 2024.

- <https://southerncoppercorp.com/proyecto-tia-maria/>
- Stuehlen, Christin, and Felix Anderl. “Transnational companies in environmental conflicts: Rio Tinto, anti-mining resistance in Serbia, and the contradictions of Europeanization.” *Z Friedens und Konfliktforschung* 13, (2024): 243 - 268.
<https://doi.org/10.1007/s42597-024-00114-5>.
- Tähtinen, Lauri, and Henry Ziemer. “A Specter Haunting Latin American Mining? Not So Fast.” *Center for Strategic and International Studies*, August 9, 2023.
<https://www.csis.org/analysis/specter-haunting-latin-american-mining-not-so-fast>.
- Turner, Julian. “Tia Maria: Peru’s commodity versus community dilemma.” *Mining Technology*, November 28, 2019.
<https://www.mining-technology.com/features/tia-maria-inside-the-commodity-versus-community-dilemma-in-peru/>.
- United Nations. *Policy Brief: Transforming Extractive Industries for Sustainable Development*. UN, 2021.
https://www.un.org/sites/un2.un.org/files/sg_policy_brief_extractives.pdf.
- Van Meer, Dominique, and Christos Zografos. ““Take Your Responsibility”: The politics of green sacrifice for just low-carbon transitions in rural Portugal.” *Sustainability Science* 19 (2024): 1313–1326.
<https://doi.org/10.1007/s11625-024-01519-0>.
- Voskoboynik, Daniel M., and Diego Andreucci. “Greening extractivism: Environmental discourses and resource governance in the ‘Lithium Triangle.’” *Environment and Planning E: Nature and Space* 5, no. 2 (2021).
<https://doi.org/10.1177/25148486211006345>.
- Wauters, Jasper, and Nikolas Hertel. “Critical Minerals Supply Chains: The Minerals Security Partnership and Trade-Related Challenges.” *White & Case LLP*, October 7, 2024.
<https://www.whitecase.com/insight-our-thinking/critical-minerals-supply-chains-minerals-security-partnership-and-trade>.
- Worlanyo, Adator S., and Li Jiangfeng. “Evaluating the environmental and economic impact of mining for post-mined land restoration and land-use: A review.” *Journal of Environmental Management* 279 (2021).
<https://doi.org/10.1016/j.jenvman.2020.111623>.

Exploring Base Erosion and Profit Shifting in the Context of Conflicting National Interests.

Iker Graña

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain

Bachelor in Business Administration and International Relations

E-mail: jgrana.ieu2023@student.ie.edu

Published 27th January 2025

Abstract

The article seeks to explore the issue of Base Erosion and Profit Shifting in Europe. The recent victory of the European Commission on Apple, which forces it to pay 14 Billion dollars back to Ireland, has shown progress while raising fears of destabilizing international investment. The article argues that harmonizing tax codes and closing loopholes will both balance national sovereignty and curb tax avoidance.

Keywords: tax governance, Apple, OECD, tax heaven, tax avoidance

I. Introduction

Are tomatoes a vegetable or a fruit? This simple question was the topic of debate in *Nix v. Hedden*, a case taken by the United States Supreme Court in 1893. The Tariff Act of 1883 had placed duties on vegetables, but not fruit. Armed with the botanical knowledge that a tomato, is indeed, classified as a fruit, the John Nix & Co. company sued the Port of New York to recoup paid tariffs on their tomato imports. The court unanimously sided with the port, declaring that for tax and tariff purposes, a tomato is

legally considered a vegetable, much to the horror of pomologists everywhere.¹

This story showcases the lengths companies are willing to go to avoid paying taxes. Since the 19th century, tax avoidance has only grown in scope and impact. In 2014, the International Consortium of Investigative Journalists (ICIJ) leaked 28,000 pages of documents corresponding to more than 340 American based companies who worked with Price Waterhouse Coopers. They detailed how some of these companies managed to pay less than 1% in taxes by

¹ *Nix v. Hedden* (United States Supreme Court May 10, 1893).

shifting profits to Luxembourg, in a move completely in accordance with the nation's laws.² The ordeal became known as the luxleaks. The leak came soon after Jean-Claude Juncker became the new head of the European Commission (EC), the body responsible for investigating such affairs. He had served as Prime Minister of Luxembourg during the time the deals took place. Thus the leaks called into question the impartiality of politicians on such matters. Soon enough, however, an even bigger leak would break.

On April third of 2016, over 2.6 Terabytes of data were leaked from the Panama-based law firm Mossac Fonseca, detailing how the firm's clients abused the legal tax system to pay as little in taxes as possible.³ The leak, also published by the ICIJ, did not uncover anything strictly illegal. Nevertheless, it was decried by many around the world as an example of the double standard taxation that exists between the wealthy and the impoverished. Calls to do something about it such actions became abundant.

Partly in response to the outrage on the matter, the Organisation for Economic Co-operation and Development (OECD), a club of mostly rich countries, launched the Base Erosion and Profit Shifting (BEPS) program to fight international tax avoidance. At its inaugural meeting in 2016 82 countries joined and pledged to incorporate measures to fight BEPS, including Ireland

and Luxembourg.⁴ Yet, this initiative hasn't been able to stop today's biggest companies from continuing to find creative ways to run from the taxman.

Apple, one of the most valuable companies in the world, famously abused global tax laws by exploiting the double Irish loophole, which in combination with favourable deals with the Irish tax authority, allowed it to effectively pay close to no taxes. The loophole abuses tax regulation recommendations by the OECD and Irish and American tax law inconsistencies to, for tax purposes, have no country to report to.⁵ This situation creates an unfair advantage for Apple in the European Union, as it allows it to invest more capital in its operations and gain an unfair advantage over its competitors. In 2016 the EC, in an initiative championed by the Competition Commissioner Margrethe Vestag, ordered Apple to repay 13 Billion US dollars back to Ireland in uncollected taxes, accusing Ireland of having granted Apple illegal state aid.⁶

The mood in Dublin seemed somehow worse than the one in Cupertino. Ireland's finance minister at the time, Michael Noonan, proclaimed "We will fight it at home and abroad and in the courts."⁷ They alleged that the EC had compromised their tax sovereignty and feared that the move could constrain foreign investment, particularly from

² Vanessa Houlder, "Leak Reveals Scale of Corporate Tax Deals with Luxembourg," *www.ft.com*, November 6, 2014, [Link](#).

³ The Economist, "A Torrential Leak," *The Economist*, April 9, 2016, [Link](#)

⁴ "Base Erosion and Profit Shifting (BEPS)," OECD, 2024, [Link](#).

⁵ Rita Barrera and Jessica Bustamante, "The Rotten Apple: Tax Avoidance in Ireland," *The International Trade Journal* 32, no. 1 (August 2, 2017): 150–61, [Link](#).

⁶ Javier Espinoza, Jude Webber, and Emma Agyemang, "Financial Times," *FinancialTimes*, September 10, 2018, [Link](#).

⁷ The Economist, "Upsetting the Apple Cart," *The Economist*, September 8, 2016, [Link](#)

the United States. America for its part also took issue with the decision, with the US Treasury department siding with Apple. If anything, they claimed, it was America's right to claim those taxes.⁸

The issue of BEPS is causing disarray in cabinet-meetings as much as it is in board-ones. The different interests of countries are causing strife and creating disunity in the face of a challenge countries can only overcome by working together.

This paper seeks to critically examine the present situation. It finds that harmonising tax codes and simplifying international tax regimes is the best way to curb BEPS. Such an objective would require extraordinary cooperation from different jurisdictions, but recent events might force them to accept.

II. Balancing state sovereignty and international cooperation

After the end of the Cold War, the world became increasingly interconnected. The rise of globalisation and the modern multinational changed the taxation paradigm. These newly emerging international firms became, in some cases, even more powerful than nations themselves. With the aim of maximising profits, these firms began to engage in profit shifting, recording and paying taxes on earnings from a certain territory in a different territory, with a far more favourable tax regime. These nations benefited from the additional income and were able to reinvest it to grow

⁸ Ciara Graham and Brendan K. O'Rourke, "Cooking a Corporation Tax Controversy: Apple, Ireland and the EU," *Critical Discourse Studies* 16, no. 3 (January 24, 2019): 298–311, [Link](#).

more powerful. However, despite the superficial legality of these actions, they remain anything but popular in the firms' home countries, as these arrangements cost billions in lost tax revenues and flaunt norms of fairness and redistribution. The Tax Justice Network estimates that every year the US is losing 140 billion US dollars to "global tax abuse committed by multinational corporations."⁹ After many leaks, such as the aforementioned Luxleaks and the Panama Papers, people became infuriated by the apparent greediness of these firms. Thus, in 2013 the G20 tasked the OECD to find a solution to the problem. This effort resulted in 2015 in the Base Erosion and Profit Shifting (BEPS) initiative, which had its first meeting in 2016.¹⁰ The initiative includes 15 points, one of which particularly discusses the importance of global cooperation. Some authors have critiqued its overreliance on mutual cooperation, as it fails to account for the economic interests of nations.¹¹

Under normal circumstances, most countries would celebrate being able to collect an additional \$ 13.8 billion in taxes. But, in the case of Ireland, both politicians and the broader population objected to the decision by the EC.¹² Ireland and the citizens at large believe that their

⁹ "United States - Tax Justice Network," Tax Justice Network, 2021, [Link](#).

¹⁰ Dhammika Dharmapala, "What Do We Know about Base Erosion and Profit Shifting? A Review of the Empirical Literature," *Fiscal Studies* 35, no. 4 (December 2014): 421–48, [Link](#).

¹¹ John Paul, "Global Tax Governance or National Tax Discrimination: The Case of the EU vs. Apple," *Social Science Research Network* 39, no. 15 (April 13, 2019).

¹² Graham and O'Rourke, "Cooking a Corporation Tax Controversy: Apple, Ireland and the EU," 298–311.

business-friendly model provides an important part of the country's output. For instance, using the same data from the Tax Justice Network, "by enabling global corporate tax abuse," Ireland makes other countries lose \$ 11 billion a year.¹³

The pursuit of Apple by the European Commission threatens to dissuade large companies from investing in Ireland for profit shifting. The interests of Ireland stand in direct opposition to those of the European Union on this tax matter. However, the United States is not celebrating the recent ruling by the European Court. The US sees the Europeans as taking money for themselves that they should instead be collecting.¹⁴ The EC has made two enemies: Ireland and the United States. This threatens European integrity, foreign trade relations, and national sovereignty.

Not enough research has been done on potential policy measures that can be taken to address the conflict of interests. The BEPS initiative provides a potential framework and harmonising force. Proposition number 15 advocates for treaties to standardise global tax law and eliminate profit shifting, but thus far little has been accomplished. If countries fail to cooperate, institutions like the EC would be forced to intervene. But such an intrusion on a state's sovereign right to tax, regardless of the pretext of illegal state aid, risks further alienating tax havens and hampering collaboration. Additionally, it

presents a risk to foreign investment, a variable of key economic importance. Therefore, this paper will study how the BEPS initiative can best resolve the conflict of national interests and international obligations.

This paper employs a case study approach to analyse potential solutions. Specifically, it looks at the case study of Apple avoiding taxes through Ireland. The paper uses descriptive and explanatory analysis to analyse why the situation came about, while normative analysis is used to understand how the situation could have been solved without compromising Ireland's sovereignty and to prevent similar loopholes from being exploited by companies and countries going forward.

III. Applying Game Theory

The stated conflict can be modelled by a prisoner's dilemma game. If countries decide to cooperate, they can both obtain a sensible and fair amount of tax revenues. But, if one country decides to become a "tax haven" and implement overly business-friendly policies, it will bring in extra tax revenues from countries installing operations and increased foreign investment. If in response, the other country follows suit and also implements a low tax regime, both countries would enter into a tax race. This could potentially force both countries to lower their taxes, leading to a downward spiral that would leave both worse off than to start with.

This final situation is known as a Nash equilibrium, where both countries cannot improve their situation by changing their strategy. This is the situation that the EC

¹³ "Ireland," Tax Justice Network, n.d., [Link](#).

¹⁴ Boyu Wang. "After the European Commission Ordered Apple to Pay Back Taxes to Ireland: Ireland's Future in the New Global Tax Environment." *Indiana Journal of Global Legal Studies* 25, no. 1 (2018): 539–64.

wants to avoid. By interfering and ensuring that competition is fair, the commission seeks to prevent non-cooperative parties. A 2020 report by the Tax Justice Network found that the EU lost over 27 billion a year to countries like the United Kingdom, Switzerland, Luxembourg, and the Netherlands.¹⁵ Instead of joining in the competition, the EU wants to prevent such a Nash equilibrium from occurring.

However, it does not seem like this Nash equilibrium happens naturally, at least in the EU. In a special report published in 2007 by *The Economist*, they point out that “as a proportion of GDP, total tax revenues have increased steadily over the past 30 years even as statutory tax rates have fallen.”¹⁶ Therefore, it seems that no Nash equilibrium exists, as the extra tax revenues brought about by attracting foreign investment make up for the decrease in tax rates. The European Union might be fighting a non-existent battle.

Yet there seem to exist benefits to these tax havens for a company’s home country. When a firm utilises a tax haven to save on costs, it simultaneously invests more in its domestic operations. In other words, tax havens do not divert economic activity, and if anything, they increase domestic demand and investment.¹⁷ In fact, foreign direct investment looks to not be a zero sum game. Instead, it can

lead to economic benefits in other countries in the form of research and development and capital investment by national firms.¹⁸ This does not negate the other negative effects of profit shifting by corporations, such as starving public welfare funds and violating generally agreed-upon moral norms, but it might help explain why this move came from the EC instead of a member state.

The issue that allowed loopholes like the one abused by Apple and Ireland is the complicated nature of the global tax code. According to Feargal O’Rourke, who, much to his displeasure, is known as the father of the Double Irish exploit, was quoted in 2015 in an interview by *The Irish Times* saying that the BEPS initiative is “very good” for Ireland.¹⁹ Beyond contributing to a media paradigm that advocates for Ireland’s tax strategy, he makes a salient point. He claims that companies, in addition to tax avoidance, simply look for simplicity and stability in what has become an overly complicated global tax regime. To that end, the OECD’s plan to standardise the international tax system might benefit companies. In turn, the EC’s actions do exactly the opposite, and risks hurting foreign investment in the European Area.

IV. Analysing the situation

Returning to the example of the prisoner’s dilemma, despite the apparent lack of a Nash equilibrium, there are

¹⁵ “EU Loses over \$27 Billion in Corporate Tax a Year to UK, Switzerland, Luxembourg and Netherlands,” Tax Justice Network, April 17, 2020, [Link](#).

¹⁶ *The Economist*, “Places in the Sun,” *The Economist*, February 24, 2007, [Link](#).

¹⁷ Mihir A Desai, C Fritz Foley, and James R Hines, “Do Tax Havens Divert Economic Activity?,” *Economics Letters* 90 (2006): 219–24, [Link](#).

¹⁸ Mihir A Desai, C Fritz Foley, and James R Hines, “Foreign Direct Investment and Domestic Economic Activity,” National Bureau of Economic Research, January 1, 2005.

¹⁹ Fiona Reddan, “Scion of a Prominent Political Dynasty Who Gave His Vote to Accountancy,” *The Irish Times*, May 8, 2015, [Link](#).

other forms of tax competition. Special deals and court decisions, which the EC has decried as state aid, are used throughout the whole continent to secure foreign investment. The difference between Ireland cutting Apple a sweat-heart tax deal and Germany investing billions in frozen Intel factories, in terms of the label state aid, are hard to see. This, in turn, complicates the tax code, as countries compete to attract investment.

In today's globalised age it is impossible, and highly undesirable, to do away with multinationals and foreign investment. Ergo, in order to simplify the tax code, national tax systems need to be displaced by an international platform. The evident issue is convincing countries to give up their Westfalian right to tax within their borders.

But the EC's actions might have created the needed impetus for change to happen. For many years Ireland remained comfortable in its status quo. This victory signals that Ireland's and other tax haven's business as usual won't be tolerated. The electoral win of Donald J. Trump and his alleged tariff measures will add to the feeling of uncertainty with regards to foreign investment and trade. This might just force these countries to the negotiating table. In spite of the downfalls and shortcomings of the EC's approach, it might be the much needed catalyst for progress.

The opportunity should be used to draft an international agreement. However, as a concession to state sovereignty, there should be some room to manoeuvre with regards to the percentage taxed. Rather, the focus of negotiations should be on closing loopholes like the

Double Irish Taxation. The issue stemmed from inconsistencies with OECD rules. Closing them and agreeing upon a universal set of taxation rules on who should tax based on where income is generated is a better solution.

V. Conclusion

The OECD's BEPS initiative represents a step in the right direction; however, its reliance on multinational cooperation has compromised its ability to create substantial progress. Countries hold strong incentives to pursue foreign investment-attracting policies, sometimes to the detriment of other neighbouring states. Yet, there are also economic benefits from residing in proximity to these tax havens.

Many citizens in these countries see these tax regimes as a cornerstone of their economy, and without them countries like Ireland would be economically compromised. This makes these countries effectively become opposition to BEPS curving-initiatives, while they reside on the governing board of these countries, representing a major conflict of interest.

The major issue at hand is that of tax complexity. Harmonising tax codes is a necessity in the fight against BEPS, beyond simply requiring certain tax minimum percentages, it is imperative that countries agree on a standard for taxing a company's income. Current inconsistencies allow for the Double Irish loophole and other tricks. Getting the different parties to agree will be an arduous challenge.

But current events are preparing the container for such a situation. The victory of the EC over Apple and Ireland signals that they can repeat this trick in other countries. President-elect Trump's threats add additional urgency to opening negotiation channels. Drafting an accord that crushes international tricks while preserving the sovereignty of states can help alleviate the situation.

Another cause for glee is the internal push by some countries to reform their economy. The aforementioned threats make the tax haven model unsustainable. Luxembourg for instance, is seeking to lose that label and stand on its own two feet economically.²⁰ If it succeeds, it will show similar countries around the world that there is another way. More importantly, it will show that troublemakers can change for the better, and that companies will have to find new places to escape taxes from.

²⁰ Alex Irwin-Hunt, "Luxembourg Tries to Shed 'Tax Haven' Label," www.ft.com, November 15, 2020, [Link](#).

VI. Bibliography

- Barrera, Rita, and Jessica Bustamante. "The Rotten Apple: Tax Avoidance in Ireland." *The International Trade Journal* 32, no. 1 (August 2, 2017): 150–61.
<https://doi.org/10.1080/08853908.2017.135625>.
- Desai, Mihir A, C Fritz Foley, and James R Hines. "Do Tax Havens Divert Economic Activity?" *Economics Letters* 90 (2006): 219–24.
<https://doi.org/10.1016/j.econlet.2005.08.007>.
- Desai, Mihir A, C Fritz Foley, and James R Hines. "Foreign Direct Investment and Domestic Economic Activity." National Bureau of Economic Research, January 1, 2005.
- Dharmapala, Dhammika. "What Do We Know about Base Erosion and Profit Shifting? A Review of the Empirical Literature." *Fiscal Studies* 35, no. 4 (December 2014): 421–48.
<https://doi.org/10.1111/j.1475-5890.2014.12037.x>.
- Espinoza, Javier, Jude Webber, and Emma Agyemang. "Financial Times." *FinancialTimes*, September 10, 2018.
<https://www.ft.com/content/d6b7d0fd-a41b-45a9-a830-9cacb10c5151>.
- Graham, Ciara, and Brendan K. O'Rourke. "Cooking a Corporation Tax Controversy: Apple, Ireland and the EU." *Critical Discourse Studies* 16, no. 3 (January 24, 2019): 298–311.
<https://doi.org/10.1080/17405904.2019.1570291>.
- Houlder, Vanessa. "Leak Reveals Scale of Corporate Tax Deals with Luxembourg." *www.ft.com*, November 6, 2014.
<https://www.ft.com/content/93e75c1a-6545-11e4-91b1-00144feabdc0>.
- Irwin-Hunt, Alex. "Luxembourg Tries to Shed 'Tax Haven' Label." *www.ft.com*, November 15, 2020.
<https://www.ft.com/content/ebfea57b-ce1c-4e1d-8b08-640d1a87ff99>.
- Nix v. Hedden (United States Supreme Court May 10, 1893).
- OECD. "Base Erosion and Profit Shifting (BEPS)," 2024.
<https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html#beps-actions>.
- Paul, John. "Global Tax Governance or National Tax Discrimination: The Case of the EU vs. Apple." *Social Science Research Network* 39, no. 15 (April 13, 2019).
- Reddan, Fiona. "Scion of a Prominent Political Dynasty Who Gave His Vote to Accountancy." *The Irish Times*, May 8, 2015.
<https://www.irishtimes.com/business/financial-services/scion-of-a-prominent-political-dynasty-who-gave-his-vote-to-accountancy-1.2203820>.
- Tax Justice Network. "EU Loses over \$27 Billion in Corporate Tax a Year to UK, Switzerland, Luxembourg and Netherlands," April 17, 2020.
<https://taxjustice.net/press/eu-loses-over-27-billion->

[in-corporate-tax-a-year-to-uk-switzerland-luxembou
rg-and-netherlands/](https://taxjustice.net/country-profiles/ireland/).

Tax Justice Network. "Ireland," n.d.

<https://taxjustice.net/country-profiles/ireland/>.

Tax Justice Network. "United States - Tax Justice
Network," 2021.

[https://taxjustice.net/country-profiles/united-states
/](https://taxjustice.net/country-profiles/united-states/).

Wang, Boyu. "After the European Commission Ordered
Apple to Pay Back Taxes to Ireland: Ireland's Future
in the New Global Tax Environment." *Indiana
Journal of Global Legal Studies* 25, no. 1 (2018):
539–64.

<https://doi.org/10.2979/indjglolegstu.25.1.0539>.

"A Torrential Leak." *The Economist*, April 9, 2016.

[https://www.economist.com/international/2016/0
4/09/a-torrential-leak](https://www.economist.com/international/2016/04/09/a-torrential-leak).

"Places in the Sun." *The Economist*, February 24, 2007.

[https://www.economist.com/special-report/2007/0
2/24/unintended-consequences](https://www.economist.com/special-report/2007/02/24/unintended-consequences).

"Upsetting the Apple Cart." *The Economist*, September 8,
2016.

[https://www.economist.com/europe/2016/09/08/
upsetting-the-apple-cart](https://www.economist.com/europe/2016/09/08/upsetting-the-apple-cart).

Afghanistan: How did it go so wrong?

Maximilian Hankins

IE School of Politics, Economics, and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: mhankins.ieu2022@student.ie.edu

Published 27th January 2025

Abstract

This article aims to explore the various factors that contributed to the defeat of the US-led Coalition in Afghanistan and the failure of their nation-building program. The analysis builds off of government documents, historical records, and a variety of other sources to explain just how this multi-billion-dollar fiasco went sideways. Furthermore, this piece expands on the reasons for failure and delves into lessons the US and its allies should take from their rout and how they can change their strategies going forward.

Keywords: Afghanistan, Taliban, Nation Building, Democratisation

I. Introduction

The US' failures in Afghanistan remain one of the most embarrassing chapters in its recent history. After trillions¹ of dollars spent, thousands of lives, and over 20 years, the United States withdrew from Afghanistan with very little to show for its work. How the world's best-funded and equipped military could not defeat the comparatively far worse Taliban confounded many in the West. After the US and its allies' success in Iraq and early success in removing the Taliban from power, many Western experts had thought Afghanistan was on the path towards becoming a stable democracy and were shocked at how it diverged. Military and political failures, the Taliban, and complex mechanisms of the US-led coalition all played a role in their lack of success. As such, this paper will seek to examine the

relevance of these factors to the overall defeat of Western forces in Afghanistan and determine what lessons can be gleaned from said defeat.

II. Historical Comparisons

Naturally, the US is not the only great power to have failed in Afghanistan. Its nickname as the "graveyard of empires" is wholly deserved; aside from the US, the USSR, Alexander the Great, and countless more have suffered defeat within its borders. Yet describing Afghanistan as such fails to account for the toll these relentless attacks have taken on its people, land, and resources.² Ultimately, despite the huge price the US paid for its failures in Afghanistan, it is Afghanistan itself that has suffered the most.

¹ Remarks by President Biden on the End of the War in Afghanistan (The White House, 2021)

² Baker, Kevin. *The Old Cliché About Afghanistan That Won't Die*. (Politico, 2021).

In terms of comparisons with the US' failures in Afghanistan, the botched invasion of Afghanistan by the USSR in 1979 is perhaps the best example available. Fearing that the Americans would gain a potential stronghold directly bordering the USSR, the Soviets invaded Afghanistan under the guise of supporting a socialist revolution. Just as the US partook in the Vietnam War due to fears of the Domino Effect and Communist imperialism spreading around the world, the USSR saw Afghanistan as the next hotspot in the superpower confrontation of capitalism versus communism.³ When a Soviet-backed government fell due to a combination of infighting, religious extremism, and the eventual assassination of its leader, the Soviets intervened, launching their invasion on Christmas Eve in 1979.

When Soviet ground forces ran into trouble defeating the largely guerilla-style insurgency, a decision was made to deploy even more ground troops to help defend major cities, freeing up the local allied Afghan forces to do the bulk of the fighting. Along with this increased deployment came the removal of the Soviets' main allied figurehead leader in Afghanistan and the creation of a new government, one designed to follow every whim, beckon, and call of its Soviet masters.

Despite the Soviet's ease in removing the existing Afghan government and neutralising most unloyal elements of the Afghan army, a sustained guerilla campaign

cost them dearly. Nearly a million Soviet troops⁴ served in Afghanistan over the course of the invasion, with nearly 50,000 casualties, over 15 billion Rubles spent, and billions more lost through damage and destruction of equipment.⁵

Part of this can be attributed to Afghanistan's rough terrain. Its combination of high-altitude mountains and plateaus made air support difficult, and its sandy deserts proved difficult for tanks and other armoured vehicles to handle, leading to large repair costs and countless vehicles lost altogether. Given this was the Soviet Union's first armed conflict since the end of the Second World War that faced large-scale opposition, its troops lacked desert fighting experience, and in general, the Soviet Union's war machine was untested. Furthermore, tactics employed by the USSR resembled those used during its invasion of Czechoslovakia in 1968, a conflict that did not see much opposition from guerilla warfare elements.

Mounting Soviet losses in terms of men, land, and equipment put pressure on Soviet Military leadership to achieve successes, so that, at the very least, the high costs of the invasion could be justified. However, a larger issue arose as the general thinking of Soviet officers and leadership was that military victories could only be achieved through escalation, through the increased deployment of troops and other military assets. As such, a cycle arose where increased deployment of resources would

³ Gompert, D. C., Binnendijk, H., & Lin, B. *The Soviet Invasion of Afghanistan, 1979*. (RAND Corporation, 1979).

⁴ Gandomi, Jonathan. *Lessons from the Soviet Occupation in Afghanistan for the United States and NATO*. (Journal of Public and International Affairs, 2008).

⁵ *The Costs of Soviet Involvement in Afghanistan*. (Central Intelligence Bureau, 1987).

lead to increased losses, which would then lead to increased demand for success, and then more deployment of resources. The Soviet Union became trapped in a quagmire, where escalation was the dominating paradigm, and where no one wanted to propose cutting their losses out of fear for having to take responsibility for an embarrassing military failure.⁶

Not to be underestimated are the fighting capabilities of the Afghani resistance. The Mujahideen, famously funded and equipped by the CIA and other Western nations put up a fierce fight against the much larger and better-equipped Soviet Army. While the Mujahideen failed to replace the Soviet-backed government, they were able to handily defeat them militarily.⁷ Additionally, the significant aid in the form of weapons, financial support, training, and intelligence from other nations bolstered the abilities of the Mujahideen, allowing them to fight a more technologically sophisticated and competent resistance.

Outdated tactics that didn't fit the conditions of Afghanistan, a doctrine of escalation, and an effective resistance all played important roles in the Soviet Union's failure in Afghanistan. Further issues such as a general dislike of Communism among Afghans, failure of Soviet propaganda, and a perceived illegitimate government all compounded the Soviet's problems. Eventually, the Soviets

withdrew after 10 long years of fighting, having suffered major losses physically, financially, and reputationally.

III. How the Invasion of Afghanistan Came to Be

After the Soviets' defeat in Afghanistan, the country entered a period of political chaos. The USSR-backed regime of Mohammad Najibullah managed to stay in power after the Soviet withdrawal up until its eventual collapse in 1992. The power vacuum left by the collapse of the Najibullah government led to a power struggle and subsequent civil war, as internal factions supported by different foreign powers seized territory and divided the country up. Neighbouring countries in the Middle East saw the conflict as an opportunity to push their ideologies and develop their influence in the region. Pakistan, Saudi Arabia, Iran, among others all played parts in furthering the conflict.⁸

It was in the midst of this conflict that the Taliban emerged from the former Mujahideen which had fought against the USSR. Due to feelings that their political desires for the return of Islamic law were not being properly heard by the rest of the Mujahideen, the Taliban split off and formed their own group. The group quickly achieved military successes, taking over much of Southern Afghanistan with little resistance, after which they implemented Sharia law under a strict law and order approach to governing.⁹ Having either convinced local

⁶ Reuvany, Rafael & Aseem Prakesh. *The Afghanistan War and the Breakdown of the Soviet Union*. (Review of International Studies, 1999).

⁷ Paul, Christopher, Colin P. Clarke, and Beth Grill. *Detailed Overviews of 30 Counterinsurgency Cases*. (RAND Corporation, 2010).

⁸ Ahmed, Samina. *Civil War in Afghanistan*. (Institute for Global Dialogue, 2001).

⁹ Ghufuran, Nasreen. *The Taliban and the Civil War Entanglement in Afghanistan*. (Asian Survey, 2001).

warlords to fight with them or removed them from relevance, the Taliban quickly grew in size and strength, eventually seizing control of Afghanistan's capital, Kabul, in 1996. At this point, the other parties in the civil war, realising their infighting had allowed the Taliban to gain great amounts of power and land, decided to unite as the Northern Alliance, and come together against their common enemy.

Confined to the northern parts of the country, the aptly named Northern Alliance struggled to combat the Taliban, facing material and manpower shortages, and despite some support from foreign powers, could not dislodge the Taliban. UN-mediated efforts to end the conflict and bring peace failed, leaving the fighting ongoing.¹⁰ The conflict stayed relatively stable, with neither side making much headway, up until the 2001 9/11 Attacks, committed by the Taliban-sheltered Al-Qaeda terrorist group. The US invoked NATO's Article 5 and called all member states into the fight against Al-Qaeda and the Taliban.

While the combined might of NATO and the Northern Alliance managed to take back most of the country and greatly limit Taliban advances, they were unable and unwilling to maintain the continuous presence required to prevent the Taliban from eventually taking the country back.

IV. Military Failures in Afghanistan

With hundreds of billions of dollars a year in funding, the US is often considered the world's premier military

power, with a well-trained and equipped fighting force. Additionally, having learned lessons from the failures of the Soviet Union and the success of the Mujahideen, any lack of military might was not a primary cause of the US' failures in Afghanistan. However, the behaviour and conduct of US and NATO forces inside the country likely played a role in allowing for the Taliban's return.

In the face of military losses, some in the Pentagon's chain of command fell into the same trap the Soviets found themselves in during their invasion; escalation. Calling for more military action and more freedom for forces in Afghanistan to fight back led the US to become further ingrained in the conflict. More importantly, these looser rules of engagement led to more civilian casualties, arguably the biggest of the US' military mistakes in Afghanistan.¹¹

As seen in the below figure, the US presence in Afghanistan continuously ramped up for the first 10 years of the invasion, as with the USSR's Military Command, escalation was the doctrine of choice for the US-led NATO Coalition. It was only after a long decade of fighting without an end in sight when the American public, political system, and military considered that perhaps relentless escalation was not the proper answer.

¹⁰ Magnus, Ralph H. *Afghanistan in 1996: Year of the Taliban*. (Asian Survey, 1997).

¹¹ Gossman, Patricia. *How US-Funded Abuses Led to Failure in Afghanistan*. (Human Rights Watch, 2021).

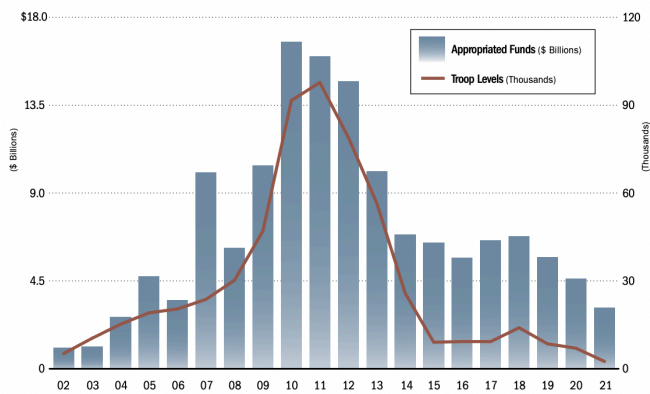


Fig. 1: U.S. Appropriations and U.S. Troop Levels in Afghanistan by Fiscal Year, 2002–2021.
Source: SIGAR, 2021.

Airstrikes, often based on false or misunderstood intelligence, led to the deaths of thousands of civilians in Afghanistan. While civilian casualties are always an unfortunate side effect of war, the scope of the civilian casualties was often due to overly-relaxed rules of engagement.¹² At one point, deaths from the US-led coalition airstrikes actually overtook deaths caused by the Taliban. Women and children suffered especially; children alone made up 40% of airstrike casualties between 2016 and 2020.¹³ Beyond the horrors of civilian casualties, the use of airstrikes as a replacement for troops on the ground also had harmful effects. While they were a much easier pill for Western governments to swallow, their widespread use led to the Afghan army becoming dependent on air power,

creating an unsustainable reliance on a large-scale continued Western military presence in Afghanistan.¹⁴

While the US and other coalition members were able to temporarily conceal their war crimes from the public,¹⁵ they could not hide them from the Afghani people. Summary executions, deaths resulting from torture, and other war crimes were undoubtedly noticed and had clear impacts on the trust of many Afghans in the Coalition forces. As such, it is likely that in many cases, the benefit of military victories was often outweighed by the cost in civil deaths. Furthermore, Coalition war crimes only drove more people into the open arms of the Taliban, augmenting their ranks and helping them spread guerilla warfare throughout Coalition-controlled lands.

However, the US and its foreign allies were not the only ones committing war crimes. Their local allies, the Northern Alliance, played a major role in alienating many Afghans from supporting the US-backed government. Often pillaging and marauding through areas after having retaken them from the Taliban, the North Alliances and other allied warlords' murder and rape of civilians allowed for the Taliban to retake previously captured land and slow the Coalition's advances.¹⁶ Regardless of whether or not the US had control over its allies' behaviour, in the eyes of many Afghans, it was linked nonetheless.

¹² Crawford, Neta. *Afghanistan's Rising Death Toll due to Airstrikes*. (Watson Institute of International and Public Affairs, 2020).

¹³ 40% of all civilian casualties from airstrikes in Afghanistan – almost 1,600 – in the last five years were children. (Reliefweb, 2021).

¹⁴ Cordesman, Anthony H. *'Peace' as the Vietnamization of a U.S. Withdrawal?* (Center for Strategic and International Studies (CSIS)).

¹⁵ Philipps, Dave. *Pentagon Begins Inquiry into Special Ops and War Crimes*. (The New York Times, 2021).

¹⁶ Gossman, *How US-Funded Abuses Led to Failure in Afghanistan*.

Using warlords to help rule and enforce law and order on captured territory was a key tenet of the US military doctrine for fighting against the Taliban. The US believed that they needed to have some kind of local presence on the ground, as foreign troops would never be fully trusted. Instead, this plan backfired in many instances. Warlords often acted with impunity, committing war crimes, raping, stealing, and forcing countless other untold horrors onto the populations of land they controlled.¹⁷ These warlords, who had been entrusted with the responsibility of security and safeguarding, did the very opposite, in the process indoctrinating many against the democratically elected government. Despite the huge amount of security forces in their country, Afghans consistently stated by huge majorities that they still felt unsafe.¹⁸

Aside from local militias and warlords, the official Afghan army also faced similar problems, leading to a lack of legitimacy and support from many. Hugely corrupt and inefficient, the army often failed to enforce law and order, and its predatory behaviour led many to join the Taliban more out of opposition to it than support for the Taliban.¹⁹ The army's failures were just one component in the broader issue of the democratic government's lack of legitimacy, but its failures had ramifications beyond just that. With security often a top issue for Afghans, and the army being some of their most direct contact with the

government, the poor shape of the Afghan military enabled the Taliban to continue recruiting in the face of heavy losses.²⁰

In many cases, prisoners who weren't summarily executed upon capture were taken prisoner, an experience many did not survive. Even those whose links to the Taliban were only suspected were in some cases subject to torture and mistreatment. Prison conditions were horrid, crowded, and unsanitary, leading many who survived the order to rejoin the Taliban shortly after their release. Rehabilitation was not a policy pursued by the prison system, which served essentially to keep Taliban fighters off the battlefield as long as possible, an unsustainable strategy that eventually ended up backfiring for the US; some of the leaders of the Taliban's final offensive that led it to retake control of the country had at one point been imprisoned by the Coalition.²¹

Despite the US military's massive size and funding, it still outsources countless parts of its military operation from logistics to security to even some military operations. Hence emerged a world of private military companies, (PMCs) a form of modern-day mercenaries. Perhaps the most famous (or infamous) of the PMCs is Blackwater, a firm started by a former Navy SEAL. Blackwater was hired in multiple capacities in Afghanistan; counternarcotics, security, supply, and transport, among others. The

¹⁷ "Today we shall all die" | *Afghanistan's Strongmen and the Legacy of Impunity*. (Human Rights Watch, 2015).

¹⁸ Cordesman, 'Peace' as the Vietnamization of a U.S. Withdrawal?

¹⁹ Pandya, Amit. *Afghanistan and Pakistan: More Realism Needed to Prevent US Failure*. (Stimson Center, 2009).

²⁰ Rahimullah Yusufzai. *16 Years of US Presence in Afghanistan: Objectives, Strategies and Emerging Scenario*. (Policy Perspectives, 2018).

²¹ Gossman, *How US-Funded Abuses Led to Failure in Afghanistan*.

countless war crimes likely perpetrated by these groups, who often operate in a legal grey zone as non-state actors, undoubtedly hurt the reputation of Coalition and Afghan forces.²² Instead of carrying out these important operations by the rules and with US or Coalition forces, the Pentagon took the easier route and outsourced it to PMCs for more effective and easy results, at the cost of public opinion. These wholly unnecessary actions could have been avoided had the Pentagon taken the high road.²³

Beyond the military, Afghan police forces were severely undertrained, underfunded, and underequipped, inhibiting a key aspect of governance and security. The Afghan National Police was rife with corruption, and despite some attempts to train and arm officers, was not a force able to defend itself, let alone the rule of law.²⁴ While the military was often deployed to the frontlines and conflict zones, the police were left to defend wide swathes of land, a task they failed miserably at, allowing the Taliban to foment insurrections and other guerilla-style activities.

V. Democratic Failures in Afghanistan

Naturally, however, the war in Afghanistan was not lost solely due to military failures. The failure of the Coalition to create a democratic government that was legitimate in the eyes of Afghans enhanced support for the Taliban. Naturally, most Afghans were unwilling to fight for a

government that they did not believe in, consider legitimate, or feel connected to. Hence, the Taliban was able to seize on this dissatisfaction and use it to their advantage, aiding it in recruitment, and propaganda, and ultimately led to most Afghans resigning themselves to their eventual takeover.

However, it was not always this way; following the takedown of the Taliban, hope for democracy in the country was strong. Voter turnout for the first democratic elections in Afghanistan in 2004 was 68%, a figure higher than what many Western Democracies typically have. Despite this excellent start, things only went downhill, with failure after failure causing support for democracy to hemorrhage, leading to turnout for the 2019 elections being less than 10%, an astounding dropoff.²⁵

Many issues with Afghanistan's failed democracy stem from the way in which it was designed. Following the defeat of the Taliban, Western nations created a strong unitary system of government in Afghanistan. However, as a highly diverse and tribal-dominated environment, the fragmented nature of Afghan society was not reflected in the design of its government.²⁶ As such, power struggles and infighting emerged as different societal groups competed for power that was not easily shared between them. For many Afghans, the centralization of power also harkened back to the era of Soviet influence in

²² ICRC Resource Center. *A Humanitarian Perspective on the Privatization of Warfare*. (Global Policy Forum, 2012).

²³ Wood, Ruairidh. *Promoting Democracy or Pursuing Hegemony? An Analysis of U.S. Involvement in the Middle East*. (Journal of Global Faultlines, 2019).

²⁴ Jones, Seth G. *Counterinsurgency in Afghanistan*. (RAND Corporation, 2008).

²⁵ Sopko, John F., and David H. Young. *The Factors Leading to the Collapse of the Afghan Government and Its Security Forces*. (Special Inspector General for Afghanistan Reconstruction, 2023).

²⁶ Murtazashvili, Jennifer. *The Collapse of Afghanistan*. (Journal of Democracy, January, 2022)

Afghanistan, when power was likewise consolidated into the hands of a few handpicked communist cronies. This comparison made many Afghans uncomfortable with this idea of a unitary government from the beginning.²⁷

Furthermore, pressure to change the design of the government in order to make it more appealing to the wider public was easily rebutted. Western nations were drawn to the allure of the more direct and uncomplicated democracy the unitary system provided, and Afghan leaders were drawn to the power it gave them, as each felt it would let them keep all the power and withhold it from their rivals.²⁸

Additionally, in an attempt to prevent the Mujahideen and Taliban from exerting influence on the newborn democratic process, candidates for the parliament were banned from aligning with a political party. However, with a parliament full of technically independent MPs, political party identity, a key factor in the sustainability of any democratic system, was non-existent.²⁹ While eventually, this restriction was loosened, the parliament remained a weak body, with the vast majority of political, constitutional, and financial powers. The failure of the forming of strong political parties meant that Afghan politics remained largely tribal and prevented national unity from forming.

Also key to the downfall of Afghan democracy were its leaders. As previously mentioned, the unitary system amassed power with the executive branch, giving the Afghan president direct control over large portions of the government, economy, judiciary, and many other aspects related to the governance of Afghanistan. However, many leaders ended up abusing that power, to the detriment of Afghanistan's perception of democracy. Leaders such as Aschraf Ghani surrounded themselves with people from their tribes, filling positions of power almost exclusively with his close allies, allowing them to enrich themselves through widespread corruption and embezzlement.³⁰

As Ghani's power grew, so too did his list of enemies. His micromanagement of judges, generals, and advisors led to inconsistency and uncertainty both within the government and outside it, and the high rate of staff turnover was certainly not helpful for the running of the Afghan state and military.³¹ While not an underlying cause of the failure of democracy, Ghani's behaviour during his presidency, a period of time during a key juncture in the period of Western involvement in Afghanistan, absolutely destabilised the government and only gave the Taliban more propaganda material to use against the democratic government. His semi-authoritative style of governance disappointed many in the Western World, who had thought, given his experience working at the World Bank,

²⁷ Owens, Rachel. *The Failure of State Building in Afghanistan*. (Stanford Freeman Spogli Institute for International Studies, 2024).

²⁸ Murtazashvili, *The Collapse of Afghanistan*.

²⁹ Murtazashvili, *The Collapse of Afghanistan*.

³⁰ Murtazashvili, *The Collapse of Afghanistan*.

³¹ Sopko, *The Factors Leading to the Collapse of the Afghan Government and Its Security Forces*.

that he would be a technocratic leader who would help streamline the workings of the Afghan government.³²

Despite Ghani's issues as a leader, he was not at all unique. Corruption had long been identified as a serious and endemic issue within the Afghan government even from the very beginning under its first President Karzai.³³ Political power became linked with the ability to commit corrupt acts and embezzle Western funds, meaning the battle for political office became increasingly important for each tribe, as they all wanted to be the richest and prevent their rivals from gaining access to those resources. This led to many elected officials trying to embezzle as much money as possible before their term ended, as they wanted both to gain as much money as possible but also to use as much funds up as they could before that source of income could be turned over to someone from a rival group. As such, elections became hotly contested issues, as major tribes and their leaders would allege fraud and interference if the results were not to their liking. With important figures in their communities constantly flip-flopping between calling elections rigged or defending against those very same claims, it is no surprise that many Afghans became fed up and dissatisfied with democracy.

Naturally, Western donor nations and organisations were well aware of this issue and had taken steps to minimise its effects, often creating parallel institutions to do the work for them, for example, the US-led Provincial Reconstruction Teams, which served as alternate governing

³² *Why the Afghan Government Collapsed*. (Special Inspector General for Afghanistan Reconstruction, 2022).

³³ *Why the Afghan Government Collapsed*.

organisations.³⁴ While these types of organisations were able to get around some of the corruption, they also delegitimized the Afghan government. For better or for worse, the Afghan government was recognized by most Afghans as having at least some power, so having a foreign power come in and replace them hardly bolstered their image. Not only did this undermine the government and its officials, but it also led to more disputes. Despite local organisations already doing most of the work a government traditionally does, many Western donors insisted on creating their own institutions, a policy that generally backfired.³⁵

Yet, the failure of democracy in Afghanistan to replace the Taliban may not have been related to the specific structure or design of the Afghan democracy, nor any fault of the US. A 2013 study³⁶ found that in countless cases, countries struggled with the transition to democracy after the forced removal of an authoritarian regime, especially when said removal was backed or led by foreign powers, an archetype that Afghanistan fits perfectly. As such, it may very well be that the conditions in place were simply not receptive to the emergence of a democratic government, condemning any attempt at democratic governance in Afghanistan to failure. Nonetheless, it is clear that the illegitimacy and lack of confidence in democracy and the democratic government in Afghanistan were key elements in the reemergence of the Taliban.

³⁴ Murtazashvili, *The Collapse of Afghanistan*.

³⁵ Murtazashvili, *The Collapse of Afghanistan*.

³⁶ Downes, Alexander B, and Jonathan Monten. *Forced to Be Free? Why Foreign Imposed Regime Change Rarely Leads to Democratization*. (International Security, 2013).

VI. The Role of the Taliban

As the leader of the resistance that would eventually kick out the Western-backed democratic government, the Taliban's role is clearly crucial to understanding the overall failure of the US in Afghanistan. The Taliban's military offensive, but also their propaganda and politics played a major role in their ability to successfully remove the democratic government from power.

The haste with which the US withdrew from Afghanistan following the conclusion of its peace deal with the Taliban surprised many, the Afghan central government included. Having thought that the US was going to withdraw over a more protracted schedule, the Afghan army was unprepared to fully take over all military duties necessary to keep the Taliban at bay. However, the Taliban were not. The Taliban war machine had been honed during the 20 years of insurgency since they had been forced underground by Coalition forces.

Furthermore, the Taliban's financial means were substantially more refined than the central government's. Without the widespread corruption and embezzlement that riddled the democratically elected government, the Taliban was able to more efficiently fund its insurgency. With relatively few funds gained through taxation, extortion, and other locally-driven methods, the Taliban was able to defeat the trillions of dollars pumped into the central government. The harsh command structure with severe punishments for financial crimes, ideologically

driven commanders, and an autocratic structure allowed the Taliban to streamline its financial operations.³⁷

Likewise, another advantage the Taliban had over the central government dealt with the provision of basic services. In Taliban-controlled territory, schools ran as normal (and included girls up to 12 years old), disputes were generally fairly adjudicated by courts, and the Taliban ran a competent parallel government.³⁸ After beginning with a harsh-anti government services dogma, the Taliban learned the necessity to provide government-esque services, particularly as their territory grew in size and population. In this sense, they gained a huge advantage over the central government as they were able to provide these services better and more efficiently.

Even militarily, while it may seem that the Taliban, as a partial terrorist organisation, would be hugely unpopular amongst civilians, was actually not. In a hugely advantageous move, the Taliban established a commission to look into civilian casualties. Injured civilians or their relatives could make a complaint to the commission, which would then look into the details of the case and make a judgement. This commission later expanded to include a wide range of aspects of Taliban governance. In contrast, the central government was generally seen as distant and not very involved in the daily lives of most Afghans. The direct contact of Taliban-provided services linked civilians

³⁷ Cordesman, Anthony H. *The Reasons for the Collapse of Afghan Forces*. (Center for Strategic and International Studies (CSIS)).

³⁸ Smith, Scott S. *Service Delivery in Taliban Influenced Areas of Afghanistan*. (US Institute of Peace, 2020).

to the Taliban, and the resulting connection that developed made it harder for the Coalition to retake Taliban territory.³⁹

The Taliban also benefited from a severe underestimation by foreign powers and the Afghan central government. Whether this is due to the skill of the Taliban at hiding their forces and infrastructure or the mistakes of Coalition intelligence in properly analysing their intelligence is still under debate, but nonetheless the Taliban benefitted massively. They launched numerous military offensives that caught Western and Afghan forces entirely off guard, allowing them to seize land and the people and economic resources that came with that land before Coalition forces were able to come together and half the Taliban's advance. The element of surprise and the underestimation of their strength were invaluable to the Taliban's streak of military victories.⁴⁰

Additionally, the Taliban's propaganda machine enabled them to paint themselves as a better alternative to the central government. Coalition military mistakes such as civilian casualties, government corruption, and the lack of consistency of life under democracy were all used to hark back to the period of time when the Taliban was in power. Moreover, the Taliban also used word-of-mouth campaigns and social media to spread this message across the country. As previously mentioned, the Taliban also governed captured territory generally well, giving them a secondary

source of propaganda as people living in those areas would then spread the word that the Taliban was not so bad.

The Taliban were able to present a staunch military opposition, showed a masterful use of social media, and quite simply governed better than the central government. Hence, the ease with which they retook the country should not be overly surprising. Coalition and government forces, due to ignorance or a lack of intelligence, failed to properly compete with the Taliban on these fields and others, all of which played a role in the disenfranchisement of the general populace with the democratically elected government.

VII. The Role of Allies

While the US contributed the bulk of the funds, troops, and equipment used in Afghanistan, its coalition partners also played an important role, one which must be examined. In addition to the US and NATO, countries from across the rest of Europe, Asia, Oceania, and even the Middle East all aided the Coalition in various ways.

Coalition partners, often shirking away from participating in direct combat, preferred to support the central government through logistics and training assistance. However, this led to disagreements between members of the coalition, all of whom had different training styles. Conflicts emerged over the speed and duration of training, which units should receive what kind of training, and many more. Hence emerged an

³⁹ Smith, *Service Delivery in Taliban Influenced Areas of Afghanistan*.

⁴⁰ Cordesman, *The Reasons for the Collapse of Afghan Forces*.

inconsistent training program for local forces, depriving the Coalition of a key aspect of the defence of democracy.⁴¹

Further conflict came in the area of reconstruction assistance. Given the corruption rampant in the central government, the choice of some allied nations to form their own aid and development projects led to a logistical mess.⁴² Certain areas of Afghanistan were flooded with projects while others were left with little to no attention.⁴³ The lack of coordination on aid projects between nations led to inconsistent development, inhibiting the reconstruction of Afghanistan and the formation of a national identity.

The unstable security situation in Afghanistan also played a role; many nations had experience deploying their military in coordination with aid efforts during humanitarian crises, but doing so in an active conflict zone led to issues. Additionally, the transition from an active war footing, as was the case in the beginning of the conflict, to a more long-term developmental mindset. This switch had difficult domestic legal ramifications in some allied states, whose constitutions or laws required different structures, authorizations, and procedures for each kind of deployment.⁴⁴ Conflicting legislation prevented cooperation between countries and generally inhibited the functioning of the coalition.

Moreover, despite this constantly unstable security situation, Coalition members consistently refused to meet their very own defined troop requirements. The persistent understaffing of coalition soldiers, trainers, logistical staff, and others constrained the Coalition's progress towards achieving its own goals.⁴⁵ The lack of a uniform long-term policy also hindered progress and confused allies and Afghans alike. Simply, the coalition was too large and disorganised, with a constantly changing mandate and varying commitments by each member state that led to an inefficient fighting force and an even more inefficient attempt at development.

VIII. The Botched Withdrawal

Consummating the Coalition's embarrassing ordeal in Afghanistan was its exit; its chaos and general disorganisation represented so much of what was wrong with nation-building in Afghanistan. First and foremost was just how poorly the Afghan Defense Forces operated, falling to pieces rapidly. Key to highlight are the issues of ghost soldiers, as troop counts in Afghanistan were consistently overestimated by huge amounts, the lack of a capable domestic air force and the resulting reliance on Western air support, and a lack of motivation leading to huge desertions and surrenders.⁴⁶

Furthermore, the corruption widespread in the democratic government was exposed on a massive scale, as equipment was found not to exist, infrastructure found

⁴¹ Jones, *Counterinsurgency in Afghanistan*.

⁴² *Lessons from the Coalition: International Experiences from the Afghanistan Reconstruction*. (Special Inspector General for Afghanistan Reconstruction, 2016).

⁴³ Murtazashvili, *The Collapse of Afghanistan*.

⁴⁴ *Lessons from the Coalition: International Experiences from the Afghanistan Reconstruction*.

⁴⁵ Yasa, Abdul Rahman. *The Case of Afghanistan*. (Journal of Strategic Security, 2020).

⁴⁶ Yasa, *The Case of Afghanistan*.

unconstructed, and a myriad of other ill effects. When, along with the withdrawal of troops, the Democratic government crumbled, deficiencies could be seen across a wide range of government activities, from aid to administration. Those who had the means to do so took what valuables they could and fled the country, hastening the Taliban's advance even more.⁴⁷

Yet, the Afghan central government was purportedly shocked by the US speeding up its withdrawal timeline, having thought they would continue to receive security and financial support for substantially more time. This feeling primarily derived from the idea that the US had sunk so many resources into Afghanistan that they effectively would never leave and was furthered by their exclusion from the Doha peace talks between the Taliban and the US, which left them out of the loop in some regards.⁴⁸ As such, they were unprepared to take over all defensive duties, a factor that is evident in how quickly the defences fell apart.

The Taliban also played an important role in the chaos that took place during the period before America's final withdrawal. Despite having agreed to pursue a peace deal with the central government, the Taliban never negotiated in good faith and ramped up violent attacks against government forces in another violation of the Doha Accords. Seizing on the advanced US withdrawal plan, the Taliban took advantage of unprepared Afghan forces and

rapidly swept the country, even faster than most Western countries had anticipated. As previously mentioned, the corrupt and ineffective Afghan army was no match for the Taliban war machine, well-trained through years of combat and well-funded through the Taliban's network of opium narcotics trafficking.⁴⁹

Moreover, the Taliban was already in control of much of the country, as part of the US military strategy in Afghanistan was to focus on maintaining control of cities and large population centres while sidelining the rural countryside. While this strategy was generally successful, it deprived the central government of infrastructure and resources while allowing the Taliban to profit from a large amount of territory that was essentially ceded to it without a fight.⁵⁰ The below figure represents just how widespread the Taliban's control was, allowing it to easily wipe away the central government from the few areas it still had control over.

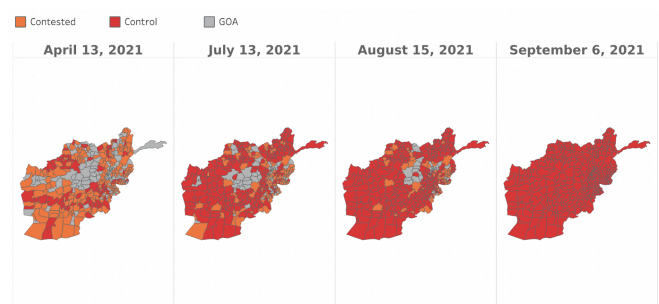


Fig.2: Taliban vs. Government Control of the Districts of Afghanistan After the American Withdrawal.
Source: FDD's Long War Journal, 2017.

⁴⁷ Cordesman, 'Peace' as the Vietnamization of a U.S. Withdrawal?

⁴⁸ Sopko, *The Factors Leading to the Collapse of the Afghan Government and Its Security Forces*.

⁴⁹ Cordesman, *The Reasons for the Collapse of Afghan Forces*.

⁵⁰ Cordesman, *The Reasons for the Collapse of Afghan Forces*.

While primarily, the disastrous withdrawal of Coalition forces from Afghanistan was due to military causes, the underlying factors reflect the wide range of issues faced in Afghanistan that were not overcome. Corruption, military weaknesses, misguided strategy, and time all played a role in the ensuing crisis that was the withdrawal.

IX. Lessons from Afghanistan

Despite an overall failure in the Western World's nation-building efforts in Afghanistan, there is much that can be learnt from their errors.

Was the US ever going to have built a functioning state in Afghanistan? Its perpetual focus on constant military action belies a goal that state-building in Afghanistan was primarily a military mission and not a political one. Were the US to have negotiated a stalemate in the early years of the war when the Taliban was truly in danger of getting wiped out, it is possible that could have opened the door for a period of peace necessary for true state-building to occur. After all, constant violence is hardly the prime condition under which to construct a democratic society from the ground up. Furthermore, the US and its allies had a great deal of leverage at that time, with domestic support for their activities in Afghanistan still strong, a mostly cohesive set of local allies, and success on the battlefield. As such, the US was in a prime position to negotiate a peaceful end to the conflict.⁵¹ Yet, the idea in the heads of many American military and political leaders was the complete destruction of the Taliban, leading to the decline

of any peace proposal at that time.⁵² In contrast, the final peace settlement negotiated by the Trump administration was done at a time when the US had close to no leverage at all, henceforth resulting in a peace deal with almost no concessions on the part of the Taliban, something that played a key role in the chaotic withdrawal. The only peace the US military could envision was a complete and total military victory, something unrealistic and also a contributing factor in the rather peaceless withdrawal.

Likewise, the constant shifting of goals in order to promote continuous military buildup led to confusion amongst allies and the lack of a worthy long-term strategy. The US' goal in Afghanistan varied greatly during the span of its involvement in the nation; beginning with the elimination of Al-Qaeda and revenge for the 9/11 attacks, then moving on to the destruction of the Taliban, followed by a new focus on corrupt warlords and other local leaders, before finally on to state building. This never-ending search for new enemies so that military involvement could be justified led to countless unnecessary civilian and soldier casualties and only served to complicate the state-building process.⁵³ Moreover, changing success metrics also led to the incorrect sentiment that the central government could survive without US support. An Afghan military built up in the style as the American one failed to adapt to the different conditions, with equipment and tactics not suited for Afghanistan. Yet, military leaders and policymakers

⁵¹ Bateman, Kate. *Learning from Failed Peace Efforts in Afghanistan*. (United States Institute of Peace, 2023).

⁵² Robinson, Linda. *Our Biggest Errors in Afghanistan and What We Should Learn from Them*. (Council on Foreign Relations, 2023).

⁵³ *What We Need to Learn: Lessons from Twenty Years of Afghanistan Reconstruction*.

refused to believe the truth and made only minimal changes.⁵⁴

It is telling that the most effective Afghan security force was the Auxiliary Police, a paramilitary group formed to fill the gaps left by the failures of the Army and National Police. Despite little training and equipment, the Auxiliary Police soon became the preferred local partner for US and Coalition forces. Notwithstanding the fact that these units had close to no loyalty to the central government, instead following the orders of local tribal leaders and warlords, their efficiency could not be denied. In contrast to the Army and Police, the Auxiliary Police were paid well and on a regular basis, meaning that desertion was almost nonexistent, and furthermore prevented the militiamen from secretly switching sides and turning on their Western counterparts. Moreover, the Auxiliary Police had a rigid command structure, which would punish ineffective leaders and promote promising cadets. The increased control given to local leaders created a much more cohesive fighting force and one the Coalition forces would actually trust by their side on the battlefield.⁵⁵

Furthermore, despite the Coalition's attempts to build a strong democratic government in Kabul, they also continued working with local leaders and warlords, delegitimizing the central government and putting power in the hands of these local leaders, not Kabul. While some of this was out of necessity, as the central government was often too corrupt to get much done, the failure of the

Coalition to fully choose one or the other led to confusion, both among Coalition members and Afghans. Some power was kept mainly in the hands of local leaders, and other responsibilities were given to the central government, inhibiting the central government from being the ultimate authority in the land but also preventing local leaders from effectively fully helping the coalition.⁵⁶ Perhaps nothing better represents the failure of the US to create a reliable and legitimate government in Kabul than Afghan President Ghani fleeing to Uzbekistan despite his promise to fight to the death.

Key to the Coalition's goals in Afghanistan, and in the end, key to its failures too, was aid and development. There was simply not enough coordination of aid between Coalition states and other donor organisations, leading to a lopsided distribution and general ineffectiveness of aid. While attempts were made to rectify this issue, such as the Joint Coordination and Monitoring Board, which did help increase the amount of information donors knew about other donors, there were simply too many individual parties for there to be proper negotiations.⁵⁷ Hence, it is possible that consolidating aid through a single channel could have been more effective in this regard. Yet, having done so would have also run the risk of alienating certain donor countries and may also have led to corruption. Moreover, the US and its allies created unrealistic schedules, choosing figures and timeframes that were politically

⁵⁴ Bateman, *Learning from Failed Peace Efforts in Afghanistan*.

⁵⁵ Jones, *Counterinsurgency in Afghanistan*.

⁵⁶ Cordesman, Anthony H, and Grace Hwang. *Learning the Right Lessons from the Afghan War*. (Center for Strategic and International Studies (CSIS), 2021)

⁵⁷ *Lessons from the Coalition: International Experiences from the Afghanistan Reconstruction*.

beneficial but incredibly unworkable. These schedules lead to corruption, as they prioritised huge amounts of short-term spending, while vastly underachieving their goals.⁵⁸

Despite all these funds being pumped into the country, monitoring programs and audits were rare. Rampant corruption went either ignored or undiscovered, and oftentimes, coalition leaders had little idea about the effectiveness of their programs. The lack of reporting and information led to ill-guided policies and decisions, as policymakers based their ideas off of incorrect knowledge. As such, billions of dollars were wasted on unnecessary projects that did not help American interests in Afghanistan, but instead either looked politically beneficial or descended from the deception of politicians.⁵⁹ The introduction of the Special Inspector General for Afghanistan Reconstruction helped, cutting billions of dollars in costs, finding corrupt programs and officials and prosecuting them, but it was unable to consistently cover all aspects of the coalition's involvement in Afghanistan.⁶⁰

While the US' failed nation-building experiment in Afghanistan will endure as one of its most embarrassing actions for some time, it will hopefully also serve as a wake-up call for a major restructuring of aspects of American foreign and military policy. It is clear that money and guns are not the way to build a sustainable democracy,

it needs people, selfless leaders, and most importantly, confidence. Yet, Afghanistan's failed democratic experiment had none of those things.

However, one must also remember the price of these lessons; the hundreds of thousands of Afghan civilians and troops that lost their lives during the course of the conflict. One of the greatest mistakes the Coalition made was dehumanising the conflict. So many military leaders and policymakers failed to understand the reality in Afghanistan, making decisions from their plushy offices in the Capitol or Pentagon. Therein lies what may well be the largest lesson; the US failed to understand Afghanistan, its people, society, and culture, and attempted to push an unwelcome change through brute force. It is a strategy that has now been tried and failed in several cases and ought to be entirely rethought.

In the end, despite all the factors that influenced the US' failure in Afghanistan, at the core it was people that drove its successes and its failures. People who joined the Taliban or Al-Qaeda, people who were not convinced by the corrupt democracy, people who fled to warlords for protection, and people who the US failed to win over.

⁵⁸ *What We Need to Learn: Lessons from Twenty Years of Afghanistan Reconstruction.*

⁵⁹ Robinson, *Our Biggest Errors in Afghanistan and What We Should Learn from Them.*

⁶⁰ *What We Need to Learn: Lessons from Twenty Years of Afghanistan Reconstruction.*

X. List of Figures

Figure 1: U.S. Appropriations and U.S. Troop Levels in Afghanistan by Fiscal Year, 2002–2021 5

Figure 2: Taliban vs. Government Control of the Districts of Afghanistan After the American Withdrawal 15

XII. Bibliography

- “‘Today We Shall All Die’ | Afghanistan’s Strongmen and the Legacy of Impunity.” 2015. Human Rights Watch. March 3, 2015.
<https://www.hrw.org/report/2015/03/03/today-we-shall-all-die/afghanistans-strongmen-and-legacy-impunity>.
- “40% of All Civilian Casualties from Airstrikes in Afghanistan – Almost 1,600 – in the Last Five Years Were Children - Afghanistan.” 2021. ReliefWeb. May 6, 2021.
<https://reliefweb.int/report/afghanistan/40-all-civilian-casualties-airstrikes-afghanistan-almost-1600-last-five-years>.
- Ahmed, Samina, le Pere, and Noelle Lawson. 2001. “Civil War in Afghanistan.” *State and Society in Afghanistan*: Institute for Global Dialogue. JSTOR.
<http://www.jstor.org/stable/resrep07774.15>.
- Baker, Kevin. 2021. “The Old Cliché about Afghanistan That Won’t Die.” POLITICO. August 28, 2021.
<https://www.politico.com/news/magazine/2021/08/28/afghanistan-graveyard-britain-us-russia-506990>.
- Bateman, Kate. 2023. “Learning from Failed Peace Efforts in Afghanistan.” United States Institute of Peace. October 4, 2023.
<https://www.usip.org/publications/2023/10/learning-failed-peace-efforts-afghanistan>.
- Cordesman, Anthony H. 2020. “‘Peace’ as the Vietnamization of a U.S. Withdrawal?” Center for Strategic and International Studies (CSIS). JSTOR. <http://www.jstor.org/stable/resrep29338>.
- . 2021. “The Reasons for the Collapse of Afghan Forces.” Center for Strategic and International Studies (CSIS). JSTOR.
<http://www.jstor.org/stable/resrep34044>.
- Cordesman, Anthony H, and Grace Hwang. 2021. “The Civil Threat from the Afghan Central Government.” *Learning the Right Lessons from the Afghan War*. Center for Strategic and International Studies (CSIS). JSTOR.
<http://www.jstor.org/stable/resrep35119.6>.
- Crawford, Neta. 2020. “Afghanistan’s Rising Civilian Death Toll due to Airstrikes.” Watson Institute of International and Public Affairs.
https://watson.brown.edu/costsofwar/files/cow/imce/papers/2020/Rising%20Civilian%20Death%20Toll%20in%20Afghanistan_Costs%20of%20War_Dec%207%202020.pdf.
- Downes, Alexander B, and Jonathan Monten. 2013. “Forced to Be Free? Why Foreign Imposed Regime Change Rarely Leads to Democratization.” *International Security* 37 (4): 90–131. <http://www.jstor.org/stable/24480621>.
- Gandomi, Jonathan. 2008. “Lessons from the Soviet Occupation in Afghanistan for the United States and NATO.” *Journal of Public and International*

- Affairs.
<https://jpia.princeton.edu/sites/g/files/toruqf1661/files/2008-3.pdf>.
- Ghufran, Nasreen. 2001. "The Taliban and the Civil War Entanglement in Afghanistan." *Asian Survey* 41 (3): 462–87.
<https://doi.org/10.1525/as.2001.41.3.462>.
- Gompert, David C, Hans Binnendijk, and Bonny Lin. 2014. "The Soviet Invasion of Afghanistan, 1979." In *Blinders, Blunders, and Wars*, 129–38. RAND Corporation.
<http://www.jstor.org/stable/10.7249/j.ctt1287m9t.18>.
- Gossman, Patricia. 2021. "How US-Funded Abuses Led to Failure in Afghanistan." Human Rights Watch. July 6, 2021.
<https://www.hrw.org/news/2021/07/06/how-us-funded-abuses-led-failure-afghanistan>.
- ICRC Resource Center. 2012. "A Humanitarian Perspective on the Privatization of Warfare." Global Policy Forum. September 14, 2012.
<https://archive.globalpolicy.org/pmscs/51906-a-humanitarian-perspective-on-the-privatization-of-warfare.html%3Fitemid=id.html#1458>.
- Jones, Seth G. 2008. "Afghan Government and Security Forces." In *Counterinsurgency in Afghanistan*, 67–86. RAND Corporation.
<http://www.jstor.org/stable/10.7249/mg595osd.13>.
- "Lessons from the Coalition: International Experiences from the Afghanistan Reconstruction." 2016. Special Inspector General for Afghanistan Reconstruction.
<https://www.sigar.mil/pdf/lessonslearned/SIGAR-16-59-LL.pdf>.
- Magnus, Ralph H. 1997. "Afghanistan in 1996: Year of the Taliban." *Asian Survey* 37 (2): 111–17.
<https://doi.org/10.2307/2645476>.
- Murtazashvili, Jennifer. 2022. "The Collapse of Afghanistan." *Journal of Democracy*. January 2022.
<https://www.journalofdemocracy.org/articles/the-collapse-of-afghanistan/>.
- Owens, Rachel. 2024. "The Failure of State Building in Afghanistan." Stanford Freeman Spogli Institute for International Studies. 2024.
<https://fsi.stanford.edu/news/failure-state-building-afghanistan>.
- Pandya, Amit, Ellen Laipson, Nancy Langer, and Alison Yost. 2009. "More Realism Needed to Prevent US Failure." *Innovative Ideas for Global Security*. Stimson Center. JSTOR.
<http://www.jstor.org/stable/resrep10933.7>.
- Paul, Christopher, Colin P Clarke, and Beth Grill. 2010. "Detailed Overviews of 30 Counterinsurgency Cases." In *Victory Has a Thousand Fathers*, 1–312. RAND Corporation.

- <http://www.jstor.org/stable/10.7249/mg9641osd.8>.
- Philipps, Dave. 2021. "Pentagon Begins Independent Inquiry into Special Ops and War Crimes." *Nytimes.com*. The New York Times. January 29, 2021. <https://www.nytimes.com/2021/01/28/us/military-special-ops-investigation.html>.
- Rahimullah Yusufzai. 2018. "16 Years of US Presence in Afghanistan: Objectives, Strategies and Emerging Scenario." *Policy Perspectives* 15 (1): 139–53. <http://www.jstor.org/stable/10.13169/polipers.15.1.0139>.
- Reuveny, Rafael, and Aseem Prakash. 1999. "The Afghanistan War and the Breakdown of the Soviet Union." *Review of International Studies*, 693–708. <https://faculty.washington.edu/aseem/afganwar.pdf>.
- Robinson, Linda. 2023. "Our Biggest Errors in Afghanistan and What We Should Learn from Them." Council on Foreign Relations. June 22, 2023. <https://www.cfr.org/article/our-biggest-errors-afghanistan-and-what-we-should-learn-them>.
- Roggio, Bill. 2017. "Mapping Taliban Control in Afghanistan." FDD's Long War Journal. August 29, 2017. <https://www.longwarjournal.org/mapping-taliban-control-in-afghanistan>.
- Smith, Scott S. 2020. "Service Delivery in Taliban Influenced Areas of Afghanistan." US Institute of Peace. JSTOR. <http://www.jstor.org/stable/resrep24903>.
- Sopko, John F., and David H. Young. 2023. "The Factors Leading to the Collapse of the Afghan Government and Its Security Forces." Special Inspector General for Afghanistan Reconstruction. https://www.sigar.mil/pdf/speeches/SIGAR_John_Sopko_David_Young_Berlin_Speech_2023-03-02.pdf.
- "The Costs of Soviet Involvement in Afghanistan." 1987. CIA Reading Room. Central Intelligence Bureau. February 1987. https://www.cia.gov/readingroom/docs/DOC_0000499320.pdf.
- The White House. 2021. "Remarks by President Biden on the End of the War in Afghanistan." The White House. August 31, 2021. <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan/>.
- "What We Need to Learn: Lessons from Twenty Years of Afghanistan Reconstruction." 2021. *Special Inspector General for Afghanistan Reconstruction (SIGAR)*.

<https://www.sigar.mil/pdf/lessonslearned/SIGAR-R-21-46-LL.pdf>.

“Why the Afghan Government Collapsed.” 2022. Special Inspector General for Afghanistan Reconstruction. November 2022.
<https://www.sigar.mil/pdf/evaluations/SIGAR-23-05-IP.pdf>.

Wood, Ruairidh. 2019. “Promoting Democracy or Pursuing Hegemony? An Analysis of U.S. Involvement in the Middle East.” *Journal of Global Faultlines* 6 (2): 166–85.
<https://doi.org/10.13169/jglobfaul.6.2.0166>.

Yasa, Abdul Rahman. 2020. “The Case of Afghanistan.” *Journal of Strategic Security* 13 (3): 99–119.
<https://www.jstor.org/stable/26936547>.

From Versailles to the United Nations Security Council: The Impact of World War I on Human Rights and International Law in the Middle East

Denis-Mihai Horte

Sciences Po Paris, Reims, France

Dual Bachelor's Degree Program between Sciences Po - Paris and Columbia University, "Political Science & Government" and "Human Rights"

E-mail: denis.horte@sciencespo.fr

Published 27th January 2025

Abstract

This paper examines the integration of international law into state formation and transformation in the Middle East, focusing on World War I agreements such as the Sykes-Picot Agreement and the Treaty of Versailles. Colonial interest led to the signing of these treaties, as evident in how they ignored existing ethnic, cultural, and religious diversity, which led to major regional conflicts. Though certainly most obvious in the Israeli-Palestinian conflict, problems of statehood, right of return, and reparations inalienably challenge international law. This article explores the origins of these conflicts and their implications for subsequent UN resolutions, therefore highlighting the manner in which international law has tried to address grave historical injustices.

Keywords: International law, State formation, Sykes-Picot Agreement, Treaty of Versailles, Colonial interests, Israeli-Palestinian conflict, UN resolutions.

I. Introduction

As the conflict in the Middle East intensifies, United Nations members have pontified and questioned the role of international human rights law. These actions have obscured the meaning of international law and dehumanized the victims from the 7th of October onwards, as described by UN Special Rapporteur for the occupied Palestinian territories, Francesca Albanese.¹ Human rights exist in a stark dichotomy: they are both

voiced, with protests worldwide, especially in the West, calling on states to uphold the rule of law, and voiceless, as political leaders suppress these rights in their pursuit of power.

The Middle East boasts a vast and complex history shaped by millennia of cultural, religious, and political transformations. Over time, it has been the home to the rise and fall of many different civilizations, including Jews,

¹ "A/79/384." Undocs.org. 2024. <https://undocs.org/A/79/384>.

Arabs, and Ottomans, as well as the Romans and Greeks.² This region has long had significant cultural, ethnic, and religious power, which served as the foundation for the formation of Christianity, Judaism, Islam, and kingdoms like the Kingdom of Israel and Judah. In more recent history, colonial powers such as the British and French have dominated the region, dividing it through agreements to favor their colonial interests, leaving long-lasting effects on the region.³ Initiatives like UN Resolution 2334 (2016) emphasize the need for a two-state solution based on principles created to solve colonial legacies and recognize the illegality of Israeli settlements. These divisions continue to impact international law.⁴

The Sykes-Picot Agreement in 1916 and the Treaty of Versailles in 1919, both signed after World War I, reshaped the Middle East. Made in secret, the Sykes-Picot agreement was made between the United Kingdom and France and divided the Middle East, cutting over civilizations, ethnic groupings, and religious communities, hence fostering long-term instability and the emergence of wars in the area. Subsequently, the Treaty of Versailles not only imposed heavy reparations and territorial losses on Germany but

also had significant implications in the Middle East^{5,6}. This resulted with the dismantling of the Ottoman Empire, mandate systems established by the League of Nations, as well as arbitrary borders and a legacy of nationalism, with anti-colonial movements among Arab Treaty communities, such as the *Islamic State of Iraq and Syria (ISIS)*, which led to systematic human rights conflicts.^{7,8} The United Nations has taken actions to solve the systematic problems that have aroused since early 20-th century history through the establishment of peacekeeping missions and advisory opinions of the International Court of Justice.⁹

These treaties have profoundly influenced how international law addresses the rights of people and nations, especially regarding the legitimacy of state claims

² William Foxwell Albright. 2014. "Ancient Middle East | Historical Region, Asia." In Encyclopedia Britannica. https://www.britannica.com/place/ancient-Middle-East."A/79/384."

³ The Editors of Encyclopaedia Britannica. 2024. "Middle East | History, Map, Countries, & Facts." Encyclopedia Britannica. November 15, 2024. <https://www.britannica.com/place/Middle-East.William>

⁴ United Nations Security Council. 2020. "U.N. Security Council Resolution 2334 (2016)." *The Palestine Yearbook of International Law Online* 19 (1): 385–87. https://doi.org/10.1163/22116141_019010017.

⁵ The Editors of Encyclopaedia Britannica. 2024. "Sykes-Picot Agreement | Map, History, & Facts." Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/event/Sykes-Picot-Agreement.Unit> edUnited

⁶ Treaty of Versailles | Definition, Summary, Terms, & Facts." Encyclopedia Britannica. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Versailles-1919.Th> e

⁷ Yapp, Malcolm Edward, and Stanford Jay Shaw. 2024. "Ottoman Empire | Facts, History, & Map." Encyclopedia Britannica. October 5, 2024. <https://www.britannica.com/place/Ottoman-Empire>.

⁸ The Editors of Encyclopedia Britannica. 2018. "Islamic State in Iraq and the Levant | History & Facts." In Encyclopedia Britannica. <https://www.britannica.com/topic/Islamic-State-in-Iraq-and-the-Levant>.

⁹ MENA, ICJ. 2024. "Palestine/Israel: International Court of Justice's Advisory Opinion on Israel's Unlawful Presence in Palestine Is an Important Step towards Justice and Self-Determination | ICJ." International Commission of Jurists. July 19, 2024. <https://www.icj.org/palestine-israel-international-court-of-justice-advisory-opinion-on-israels-unlawful-presence-in-palestine-is-an-important-step-towards-justice-and-self-determination/>.

and territorial boundaries. The arbitrary borders drawn by Sykes-Picot have influenced the ongoing Israeli-Palestinian conflict, resulting in a series of UN interventions aimed at addressing these colonial legacies. A shift in the legal framework of the Middle East happened with the establishment of the United Nations on the 24th of October 1945¹⁰. Resolutions 242 addressed the issues created by the aforementioned agreements, such as occupation, refugee rights, and the right to self-determination, reflecting historical grievances established by earlier treaties¹¹. Such accords have also affected geopolitical reality and international relations, guiding state interactions. Though their efficacy in the scope of current conflicts is still debatable, these resolutions show the change of international legal systems meant to secure and correct the inequities of colonial treaties.

Hence, this leads us to our research question: *How did post-WWI treaties, particularly the Sykes-Picot Agreement and Treaty of Versailles, shape the legal and geopolitical landscape of the Middle East, and how has the UN addressed the resulting conflicts through international law?*

First, we will delve into the historical background of the Middle East up to the 1940s, examining important treaties and accords. Secondly, we will look at continuous peacebuilding initiatives and evaluate how later UN

¹⁰ Ravndal, Ellen J. 2023. *In the Beginning*. Policy Press EBooks. Policy Press. <https://doi.org/10.1332/policypress/9781529210439.001.0001>.

¹¹Security, UN. 2024. "Resolution 242 (1967) / [Adopted by the Security Council at Its 1382nd Meeting], of 22 November 1967." United Nations Digital Library System. November 29, 2024. <https://digitallibrary.un.org/record/90717?ln=fr>.

resolutions and legal reforms have sought to resolve issues resulting from these historical choices.

II. Historical Foundations of the Middle East: From Antiquity to the Mandate Era

The Sykes-Picot agreement, named after its architects, English diplomat Sir Mark Sykes and French diplomat François Georges-Picot, was made secretly in London¹². The agreement, birthed from the desire for colonialism and power, drew the frontiers of the Middle East, dividing the Ottoman Empire's Arab Provinces and cutting over their history and culture, which led to long-term instability and conflicts in the region. Implementing this secret agreement violated the McMahon-Hussein Correspondence (1915-1916), which promised Arab independence in exchange for supporting the British against the Ottomans.¹³ Ultimately, it raised conflicts between the Arabs and the British at the time of World War I because the British promised to aid Arab independence in exchange for the support of the Arabs against the Ottoman Empire.¹⁴ Additionally, the arbitrary borders drawn by the

¹² The Editors of Encyclopaedia Britannica. 2024. "Sykes-Picot Agreement | Map, History, & Facts." Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/event/Sykes-Picot-Agreement>.

¹³ The Editors of Encyclopaedia Britannica. 2024. "Hussein-McMahon correspondence | Palestine, History, Significance, & Map." Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/topic/Husayn-McMahon-correspondence>.

¹⁴ The Editors of Encyclopaedia Britannica. 2024. "Sykes-Picot Agreement | Map, History, & Facts." Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/event/Sykes-Picot-Agreement>.

Sykes-Picot agreement set the stage for future sectarian and nationalistic conflicts across the Middle East.

The Balfour Declaration, issued by British Foreign Secretary Arthur Balfour in 1917, had been a very meaningful document in the history of Zionism and the establishment of Israel¹⁵. It declared the British government's intention to make "the establishment in Palestine of a national home for the Jewish people" possible. At a period when Britain had some sway in the Middle East, especially with Palestine's strategic location close to the Suez Canal, this proclamation was issued. However, the Balfour Declaration was burdened by its vague and contradictory aspects. It expressed an idea of a Jewish homeland; however, it also claimed Greco-Jewish that "nothing shall be done that may violate the civil and religious rights of the current non-Jewish communities in Palestine." This statement was quite elusive because it aroused various interpretations and was subjected to different readings by the Jews and Arabs. Besides, for the Jews, it meant that the matter of persecution they had endured in Europe might be near an end. The Zionist movement, which was headed by men like Theodor Herzl, saw it as a signal that they could intensify the Jewish immigration to Palestine¹⁶. Similar colonial policies affected other regions under the mandate system, which led to

various levels of autonomy and resistance movements beyond Palestine.¹⁷

Conversely, the Arab people in Palestine perceived the Balfour Declaration as a risk to their dream of autonomy. Thus, the Balfour Declaration was more of a danger to the aspirations of national self-determination for the Arabs in Palestine.¹⁸ This led to civil wars such as the one we saw in Syria, which erupted in 2011, where these divisions, deeply rooted in colonial history, intensified, leading to various sectarian groups fighting for influence. In effect, the arbitrary decisions institutionalized through the Sykes-Picot agreement gave substance to the marginalization and alienation felt by certain The radical elements, drivers that helped to fuel the rise of extremist groups like ISIS, which have sought to expunge these "colonial borders" in an attempt to mobilize support for the re-establishment of a unified Islamic state. These groups leveraged the resentment towards this unfair demarcation and the outsider's influence to further their popularity, especially in societies with weak or contested administration.¹⁹ This Sykes-Picot agreement is thus felt in modern times in the Middle East via some of the

¹⁵ The Editors of Encyclopaedia Britannica. 2018. "Balfour Declaration | History & Impact." In Encyclopedia Britannica. <https://www.britannica.com/event/Balfour-Declaration>.

¹⁶ Britannica. 2019. "Zionism | Definition, History, Examples, & Facts." In Encyclopedia Britannica. <https://www.britannica.com/topic/Zionism>.

¹⁷ United Nations. 2021. "Origins and Evolution of the Palestine Problem: 1917-1947 (Part I)." Question of Palestine. 2021. <https://www.un.org/unispal/history2/origins-and-evolution-of-the-palestine-problem/part-i-1917-1947/>.

¹⁸ The Editors of Encyclopaedia Britannica. 2018. "Balfour Declaration | History & Impact." In Encyclopedia Britannica. <https://www.britannica.com/event/Balfour-Declaration>.

¹⁹ Stansfield, Gareth. Review of Explaining the Aims, Rise, and Impact of the Islamic State in Iraq and al-Sham, by Jean-Pierre Filiu, Michael Weiss, Hassan Hassan, Patrick Cockburn, Abdel Bari Atwan, Jessica Stern, J.M. Berger, Charles Lister, and William McCants. Middle East Journal 70, no. 1 (2016): 146–51. <http://www.jstor.org/stable/43698623>.

continuous geopolitical tensions. One instance of this is the fight for Kurdistan's self-determination that stretches over Turkey, Iraq, Syria, and Iran. The Kurds' inability to build a shared national identity from their ongoing differences has hampered their capacity for stability and peace, hence fueling ongoing warfare.²⁰

The Treaty of Versailles, enacted following the end of World War I, is famous for its retributive policies against Germany for its part in extending the conflict. The treaty then contained the 231 "war guilt clause," which assigned Germany and its allies whole responsibility for the start of the war. However, the treaty also reshaped the geopolitics of the Middle East. Alongside the Treaty of Sèvres in 1920, it was intended to formally divide the Ottoman lands but was strongly resisted by the Turkish nationalists and was replaced by the Treaty of Lausanne in 1923, which led to a fundamental geopolitical reorganization and established the League of Nations' mandate system.²¹

One of the very significant outcomes of the Treaty of Versailles and the other peace treaties was the mandate system.²² The League of Nations devised the mandate system, allegedly to govern territories that were not yet able

to stand by themselves until they could eventually govern themselves. In practice, however, it became a tool of colonial administration, allowing European powers to exert control over these regions. Under this system, Britain and France assumed administrative control over vast portions of the former Ottoman Empire. One such affected region is Palestine; this placed it under an international regime as "Mandatory Palestine" because of its religious importance.²³ This showed up in the Israeli-Palestinian conflict, when both parties asserted religious and historical links to the territory. Britain received mandates for Palestine and Iraq; Syria and Lebanon came under the authority of France.²⁴ Even though the mandates were different, the general situation was that the British and French imposed political systems that were reflective of their global economic and strategic interests on the societies. As an example, it can be said that, on the one hand, the British authorities possessed power and were able to offer the Zionist movement the political support that the Balfour Declaration expressed. On the other hand, the Zionist potential to the local Arabs was the situation that would develop as the Israeli-Palestinian conflict. In Iraq, the British established a monarchy; however, they had challenges of rebellion, which were especially a result of

²⁰ Gordyaen Benyamin Jermayi on, and 2024. 2024. "Why Some Kurds Side with Turkey and Iran." Kurdish Peace Institute. April 8, 2024. <https://www.kurdishpeace.org/research/government/why-some-kurds-side-with-turkey-and-iran/>.

²¹ The Editors of Encyclopaedia Britannica. 2019. "Treaty of Lausanne | Allies-Turkey [1923] | Britannica." In Encyclopedia Britannica. <https://www.britannica.com/event/Treaty-of-Lausanne-1923>.

²² "Treaty of Versailles | Definition, Summary, Terms, & Facts." Encyclopedia Britannica. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Versailles-1919>.

²³ Shaw, Malcolm. 2016. "The League of Nations Mandate System and the Palestine Mandate: What Did and Does It Say about International Law and What Did and Does It Say about Palestine?" *Israel Law Review* 49 (3): 287–308. <https://doi.org/10.1017/s0021223716000170>.

²⁴ The American Journal of International Law. 2010. "French Mandate for Syria and the Lebanon." 1923. Journal-article. *The American Journal of International Law*. Vol. 17. American Society of International Law. <https://www.ndu.edu.lb/lerc/resources/french%20mandate%20for%20syria%20and%20the%20lebanon.pdf>.

tribal groups that refused to be ruled by foreigners.²⁵ France's control over Syria and Lebanon was also based on the precarious balance between competing religious and ethnic communities, resulting in an enormously fragmented and very unstable political environment. Under a surface of international legitimacy, the mandate system therefore established European dominance in the area. The mandates sometimes planted seeds of bitter resentment instead of offering means of independence when local populations came to recognize that their so-called guardians were more concerned with resource exploitation and geopolitical control than in promoting self-governance.²⁶

In addition, although the Treaty of Versailles is considered to be a European event and its post-war influence was primarily on European countries and events, it was no less of a damage to the Middle East in the long run²⁷. The dissolution of the Ottoman Empire, along with the imposition of the mandate system and the drawing of arbitrary borders, set off a series of events leading to a

century of conflict and instability in this part of the world. The architects of the Versailles settlement are blamed for leaving a legacy of social tensions among the Middle Eastern populations by making sure that colonial interests were attended to first and foremost. Indeed, those arbitrarily created borders and political structures have been so resilient that they prolonged cycles of conflict and complicated peace efforts and attempts at self-determination. The consequences of the Treaty of Versailles, then, constitute one of the most basic chapters in understanding the challenges and complexities of the modern Middle East.²⁸

Hence, we find delving into the ancient history of the Middle East pivotal in understanding the modern-day Middle East. For this reason, we are going to draw a parallel between the history of Palestine and Israel. In its early history, the Middle East region, more specifically Palestine and the West Coast, was originally inhabited by the Canaanites, who established city-states and engaged in trade with surrounding civilizations., including Egypt.²⁹ The southern coast was given the name of Palestine because it was occupied by the Philistines (derived from the Greek word "Philistine"). Amidst the Classical period, the region was occupied by the Assyrian and Babylonian

²⁵ Rey, Matthieu, 'The British, the Hashemites and monarchies in the Middle East', in Robert Aldrich and Cindy McCreery (eds), *Crowns and Colonies: European Monarchies and Overseas Empires*, Studies in Imperialism MUP (Manchester, 2016; online edn, Manchester Scholarship Online, 19 Jan. 2017), <https://doi.org/10.7228/manchester/9781784993153.003.0012>, accessed 10 Nov. 2024.

²⁶ "French Mandate for Syria and the Lebanon." 1923. Journal-article. *The American Journal of International Law*. Vol. 17. American Society of International Law. <https://www.ndu.edu.lb/lerc/resources/french%20mandate%20for%20syria%20and%20the%20lebanon.pdf>.

²⁷ The Editors of Encyclopedia Britannica. 2019. "Treaty of Versailles | Definition, Summary, Terms, & Facts." *Encyclopedia Britannica*. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Versailles-1919>.

²⁸ McDougall, James, 'The British and French Empires in the Arab World: Some Problems of Colonial State-formation and its Legacy', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012),

²⁹ The Editors of Encyclopedia Britannica. "Canaan | Definition, Map, History, & Facts." *Encyclopedia Britannica*. October 28, 2024. <https://www.britannica.com/place/Canaan-historical-region-Middle-East>.

Empires in the 8th century, respectively, the 6th century BCE. Afterwards, the western region of the Middle East was controlled by the Persian Empire when they conquered the Babylonian Empire in 539 BCE³⁰. Followed by the Hellenistic period, with Alexander the Great conquering the region in the 330s BC.³¹ Three centuries later, it was conquered by the Romans, who annexed that region in 63 BCE and the Byzantine Empire, leading to several Jewish revolts against Roman rule, including the destruction of the Second Temple in 70 CE. Six centuries later, it would be conquered under Islamic rule, spanning over a millennia, including the Crusaders establishing the Kingdom of Jerusalem in 1099, later reconquered by the Ayyubid Sultanate in 1187. The Ottoman Empire ruled the region from 1516 until the end of World War I in 1918³². Making sense of the Middle East in its modern manifestation, requires an understanding of the ancient past. The region has long been a crossroads of civilizations, including those of the Canaanites and Philistines, the Assyrian, Babylonian, Persian, Hellenistic, Roman,

Byzantine, Islamic, and Ottoman empires, especially in Palestine and the West Coast. With each conquest and each administrative change came new complexities woven into the region's social and political fabric, creating the patterns of conflict we see here today.³³

Abraham, regarded as the father of Judaism, Christianity, and Islam, has helped to shape Israel from its beginnings. The Israelites, his descendants, landed in Canaan, what is now Israel and Palestine. King David founded Jerusalem as the capital and united the Israelites about 1000 BCE. His son, King Solomon, built the First Temple in Jerusalem.³⁴ After Solomon's death, the kingdom split into the northern kingdom of Israel and the southern kingdom of Judah around 931 BCE. The origins of Israel are deep in the ancient history of the region, with the likes of Abraham, King David, and King Solomon at the center. The historic legacy thus inherited imbues the modern-day Israeli-Palestinian conflict with a heavy layer of religious and cultural significance, along with an intersection of ancient aspirations and those more recent, dealing with colonial-era treaties that shaped the realities across the land.³⁵

³⁰ Valbjørn, Morten, 'Culture in the Middle East: The "Western Question" and the Sovereignty of Post-imperial States in the Middle East', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748643042.003.0016>

³¹ Valbjørn, Morten, 'Culture in the Middle East: The "Western Question" and the Sovereignty of Post-imperial States in the Middle East', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748643042.003.0016>,

³² Gitler, Inbal Ben-Asher, 'Appropriating Multi-histories: The Palestine Archaeological Museum', *Architectural Culture in British-Mandate Jerusalem, 1917-1948* (Edinburgh, 2020; online edn, Edinburgh Scholarship Online, 19 May 2022), <https://doi.org/10.3366/edinburgh/9781474457491.003.0003>

³³ The Editors of Encyclopedia Britannica. 2017. "Canaan | Historical Region, Middle East." In *Encyclopedia Britannica*. <https://www.britannica.com/place/Canaan-historical-region-Middle-East>.

³⁴ The Editors of Encyclopedia Britannica. 2017. "Canaan | Historical Region, Middle East." In *Encyclopedia Britannica*. <https://www.britannica.com/place/Canaan-historical-region-Middle-East>.

³⁵ Gitler, Inbal Ben-Asher, 'Appropriating Multi-histories: The Palestine Archaeological Museum', *Architectural Culture in British-Mandate Jerusalem, 1917-1948* (Edinburgh, 2020; online edn, Edinburgh Scholarship Online, 19 May 2022),

As a “mandated power” under the League of Nations, Britain controlled Palestine, all the while managing a wave of Jewish immigration and popular resistance in the form of Arab uprisings (1936–1939) and a Jewish insurgency (1944–1948). In 1947, the UN Partition Plan suggested dividing Palestine into separate states for Jewish and Arab people and an international zone for Jerusalem.³⁶ Zionist leaders accepted the plan as a step toward independence, whereas Arab leaders rejected it, viewing it as part of colonialism, and rejected the establishment of a Jewish state in a predominantly Arab region. That rejection triggered the 1948 Arab-Israeli War, whereby Israel became independent and about 700,000 Palestinians were displaced – the Nakba. In “Der Judenstaat”³⁷ (1896). Theodor Herzl imagined the ideological foundation of a Jewish home, provoking increased Jewish migration to the region and growing friction with the native Arabic population.³⁸

The Sykes-Picot Agreement was replaced following World War I by the San Remo Conference and later mandated laws, therefore formalizing British and French

rule over Lebanon, Iraq, Transjordan, and Palestine.³⁹ Turkey seized Syria’s Iskenderun province in 1939 with the French’s help, but in 1943, both Syria and Lebanon managed to gain independence⁴⁰. Driven by international pressure after World War II and increasing hostilities between Jews and Arabs, Britain terminated the Palestine mandate⁴¹. The year that Israeli independence was declared in 1948 and the Arab-Israeli War broke out following the UN Partition Plan of 1947 to divide Palestine into Jewish and Arab states. It led to the displacement of about 700,000 Palestinians (Nakba) and the creation of unresolved issues of land, borders, and sovereignty, with Jerusalem and Israeli settlements playing a key role.⁴² The Six-Day War of 1967 reinforced tensions by adding the West Bank, Gaza Strip, and Golan Heights under Israeli authority, entrenching military governance and further

³⁶ Khalidi, Walid. “Revisiting the UNGA Partition Resolution.” *Journal of Palestine Studies* 27, no. 1 (1997): 5–21. <https://doi.org/10.2307/2537806>.

³⁷ Wijnberg, Nachoem M., and David Colmer. “Der Judenstaat.” In *Of Great Importance*, 90–91. Punctum Books, 2018. <https://doi.org/10.2307/jj.2353958.45>.

³⁸ Sears, John F. “COMMITTING TO THE ESTABLISHMENT OF A JEWISH STATE.” In *Refuge Must Be Given: Eleanor Roosevelt, the Jewish Plight, and the Founding of Israel*, 176–93. Purdue University Press, 2021. <https://doi.org/10.2307/j.ctv17kw9gh.18>.

³⁹ The Editors of Encyclopaedia Britannica. 1998a. “Conference of San Remo | League of Nations, Treaty of Sevres, Mandates System.” *Encyclopedia Britannica*. July 20, 1998. <https://www.britannica.com/event/Conference-of-San-Remo#:~:text=During%20the%20Conference%20of%20San,also%20mandated%20to%20Great%20Britain>.

⁴⁰ Lawson, Fred H., ‘Ottoman Legacies and Economic Sovereignty in Post-imperial Anatolia, Syria and Iraq’, *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748643042.003.0003>

⁴¹ Nalbantian, Tsolin, ‘Repositioning Armenians in Newly Post-Colonial Nation-states: Lebanon and Syria, 1945–1946’, *Armenians Beyond Diaspora: Making Lebanon their Own, Alternative Histories* (Edinburgh, 2020; online edn, Edinburgh Scholarship Online, 17 Sept. 2020), <https://doi.org/10.3366/edinburgh/9781474458566.003.0002>

⁴² Richmond, Oliver P., and Jason Franks, ‘Building/Rejecting the Liberal Peace: State Consolidation and Liberal Failure in the Middle East’, *Liberal Peace Transitions: Between Statebuilding and Peacebuilding* (Edinburgh, 2009; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748638765.003.0005>

inflaming the issue.⁴³ Other similar unanswered questions – the same ones in Iraq and Syria and the Kurdish populations – show the bigger picture of what these colonial decisions lead to across the region.

Despite the Oslo Accords of the 1990s that were initially supposed to result in a two-state solution and the Palestinians' actual governance, there still exist issues such as the status of Jerusalem, refugee rights, and borders that remain unresolved.⁴⁴ The conflict persists in that Israelis are largely, on the one hand, emphasizing security and their recognition as a Jewish state, while Palestinians, on the other hand, are more into self-determination and sovereignty. Peace initiatives by the international community still face stiff opposition, which is rooted in both regional and global dynamics. The establishment of Israel and the subsequent conflicts have contributed to the emergence of the present Middle East; thus, it has become a perpetual cycle of tension and violence.⁴⁵

The establishment of Israel and the following conflicts have influenced the modern Middle East, thereby creating a cycle of tension and violence. The historical legacies of

such important events as the Balfour Declaration, the UN Partition Plan, and the wars of 1948 and 1967 are still breeding the relations between Israelis and Palestinians; hence, the significant challenges to peace and stability in the region are being highlighted.

III. UN Resolutions and Changes in International Law

In order to ensure a permanent peace in the region, the United Nations Security Council issued the UN 242 resolution in 1967, following the Six-Day War, which was fought mainly between Israel and Egypt, Jordan, and Syria.⁴⁶ Because the resolution urged the Arab governments to recognize Israel's right "to live in peace within secure and organized boundaries free from threats or acts of force," the Israelis supported it. Furthermore, because the resolution called for Israel to leave "territories occupied in the recent conflict," Egypt and Jordan agreed to it. In the case of the Palestinians, the Palestinian Liberation Organization rejected the resolution until 1988 because it lacked explicit references to Palestinians. Although it was never implemented, it was diplomatic grounds to end the Arab-Israeli conflicts until the Camp David Accords.⁴⁷ Its "lands for peace" perspective remained pivotal in the

⁴³ Rezk, Dina, 'Six-Day War', *The Arab World and Western Intelligence: Analysing the Middle East, 1956-1981* (Edinburgh, 2017; online edn, Edinburgh Scholarship Online, 18 Jan. 2018), <https://doi.org/10.3366/edinburgh/9780748698912.003.0007>

⁴⁴ Hurst, Steven, 'The 1990s: Clinton and the Failure of Containment and Engagement', *The United States and the Iranian Nuclear Programme: A Critical History* (Edinburgh, 2018; online edn, Edinburgh Scholarship Online, 23 May 2019), <https://doi.org/10.3366/edinburgh/9780748682638.003.0004>

⁴⁵ Hurst, Steven, 'The 1990s: Clinton and the Failure of Containment and Engagement', *The United States and the Iranian Nuclear Programme: A Critical History* (Edinburgh, 2018; online edn, Edinburgh Scholarship Online, 23 May 2019), <https://doi.org/10.3366/edinburgh/9780748682638.003.0004>

⁴⁶ Security, UN. 2024. "Resolution 242 (1967) / [Adopted by the Security Council at Its 1382nd Meeting], of 22 November 1967." United Nations Digital Library System. November 29, 2024. <https://digitallibrary.un.org/record/90717?ln=fr>.

⁴⁷ "CAMP DAVID ACCORDS." *Strategic Studies* 15, no. 3/4 (1993): 103–10. <http://www.jstor.org/stable/45182129>.

negotiation of the resolution to the Arab-Israeli conflict.⁴⁸ If the resolution was evaluated in terms of its effectiveness by metrics, you cannot argue that the resolution was successful because there was no 100 percent adherence by both Israel and the Arab states to the terms of the resolution, and there were even territorial disputes that persisted. Despite this legal framework for negotiations, resolution had little practical impact, mainly because it did not resolve essential issues of a settlement such as withdrawal from occupied lands, sovereignty of state, and location of refugees. Its life has been longer than that, but the principles contained in Resolution 242 are still used as a basis for proposals for peace and for diplomacy in the region.

An earlier resolution, in 1948, adopted by the United Nations General Assembly near the end of the Palestinian War (1947-1949), asserted principles of reaching a final agreement and returning Palestine refugees to their homes⁴⁹. This statement can be found in Article 11 of the resolution:

“refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of

*international law or equity, should be made good by the Governments or authorities responsible.”*⁵⁰

Additionally, the resolution also mentioned the establishment of the United Nations Conciliation Commission with the scope to facilitate peace between Israel and Arab countries.⁵¹ The six Arab League countries represented at the UN voted against the resolution, followed by the Communist bloc member countries,⁵² which had already recognized Israel as a state. It is worth noting that Israel was not a member of the United Nations at that time and objected to many resolution articles. On the other hand, Palestinian representatives also rejected Resolution 194.⁵³

Despite rejection at that time, Article 11 of the resolution was cited in United Nations General Assembly Resolution 302, establishing the UNRWA and other UN resolutions. Consequently, it has been argued that the resolution enshrines a right of return for the Palestinian refugees, a claim that Israel disputes.⁵⁴

⁴⁸ Britannica, T. Editors of Encyclopaedia. "United Nations Resolution 242." Encyclopedia Britannica, October 15, 2024. <https://www.britannica.com/topic/United-Nations-Resolution-242>.

⁴⁹ Gabiam, Nell. 2006. "Negotiating Rights: Palestinian Refugees and the Protection Gap." *Anthropological Quarterly* 79 (4): 717–30. <https://doi.org/10.1353/anq.2006.0049>.

⁵⁰ Gabiam, Nell. 2006. "Negotiating Rights: Palestinian Refugees and the Protection Gap." *Anthropological Quarterly* 79 (4): 717–30. <https://doi.org/10.1353/anq.2006.0049>.

⁵¹ United Nations General Assembly Resolution 169 (1980), Article 66.

⁵² United Nations Information System on the Question of Palestine. December 11, 1948.

⁵³ "1948 Refugees: Proceedings of an International Workshop, Hebrew University of Jerusalem Faculty of Law, 14–15 December 2016." *Israel Law Review* 51, no. 1 (2018): 47–110. <https://doi.org/10.1017/S0021223717000280>.

⁵⁴ Masalha, Nur (October 20, 2003). *The Politics of Denial: Israel and the Palestinian Refugee Problem*. Pluto Press. ISBN 978-0-7453-2120-2.

The binding nature of these resolutions led to the development of legal norms that were influenced by the UN resolutions, especially concerning refugees' rights and the right to self-determination of all people. The international legal scene was significantly impacted by UN Resolution 242's emphasis on territorial withdrawal and peaceful cohabitation as well as by the earlier 1948 resolution's emphasis on refugee rights. By stressing the need for international law in handling difficult humanitarian problems, these resolutions have had a long-lasting effect on the diplomatic and legal methods used to settle Middle Eastern problems.⁵⁵

After the second Intifada, also known as the Al-Aqsa Intifada, where the Palestinians led a major uprising against Israel and its corruption,⁵⁶ the United Nations Security Council was convened, leading to Resolution 1397. It was the first Security Council resolution to call for a two-state solution to the conflict.⁵⁷

The Secretary General of the United Nations at that time, Kofi Annan, urged the Palestinians to end the "morally repugnant" violence and suicide bombings, as well as Israelis to end their occupation of Palestine and

excessive forces.⁵⁸ The Security Council expressed its concerns about the events that took place after September 2000 and the need for all civilians to coexist with two of the existing states side-by-side and respect international humanitarian law. Finally, the resolution demanded the immediate ceasefire and called upon both the Israelis and the Palestinians to cooperate in the implementation of the Tenet Plan and Mitchell Report, led by former US Senator George Mitchell. The paper discusses the various reasons for the Al-Aqsa Intifada and makes proposals to cease the violence, restore confidence, and resume discussions.⁵⁹

These resolutions clearly show the strengthening of human rights values in frameworks of conflict resolution and negotiations. These resolutions have created vital legal and diplomatic rules by giving refugees' rights, the right to self-determination, and peaceful coexistence first priority. This focus on human rights highlights the ongoing impact of international law in the Middle East since it shapes the policies applied in handling and resolving problems.

International law was strengthened in 2016 at the Security Council with the adoption of Resolution 2334 concerning Israeli settlements in "Palestinian territories occupied since 1967, including East Jerusalem." According to the resolution, Israel's settlement activity is a "flagrant violation" of international law and has "no legal validity." It

⁵⁵ Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.

⁵⁶ Araj, Bader, and Robert J. Brym. "Opportunity, Culture, and Agency: Influences on Fatah and Hamas Strategic Action during the Second Intifada." *International Sociology* 25, no. 6 (2010): 842–868. <https://doi.org/10.1177/0268580909351327>.

⁵⁷ Podeh, Elie. 2014. "Israel and the Arab Peace Initiative, 2002–2014: A Plausible Missed Opportunity." *The Middle East Journal* 68 (4): 584–603. <https://doi.org/10.3751/68.4.15>.

⁵⁸ Left, Sarah. 2002. "UN security council backs Palestinian state." *The Guardian*, March 13, 2002. <https://www.theguardian.com/world/2002/mar/13/israelandthepalestinians.unitednations>.

⁵⁹ Shapira, Amos. 1971. "The Six-Day War and the Right of Self-Defence." *Israel Law Review* 6 (1): 65–80. <https://doi.org/10.1017/s0021223700002843>.

requests that Israel cease such activities and fulfil its obligations as an occupying power under the Fourth Geneva Convention.⁶⁰

It was the first UNSC resolution to expressly address the issue of Israeli settlements since Resolution 465 in 1980 and the first on Israel and the Palestinian territories since Resolution 1860 in 2009.⁶¹ The resolution, which was adopted under the non-binding Chapter VI of the UN Charter and contained no sanctions or coercive measures, "may have serious ramifications for Israel in general and specifically for the settlement enterprise" in the medium-to-long term, according to Israeli newspaper *Haaretz*⁶². In addition to the challenges that Resolution 2334 faced from a compliance perspective, Israel openly rejected its terms and continued settlement activities. In the short term, its impact has proven limited, as its adoption has not led to substantial change. But the resolution has real staying power in the international debate, framing the settlements as a violation of international law and a major obstacle to peace.⁶³

Much of the world community reacted positively to the text in the days that followed. According to Murray

McCully, former Minister of Foreign Affairs for New Zealand, Resolution 2334 reinforces the international community's commitment to a negotiated outcome, while former Canadian ambassador Paul Heinbecker observed that, despite Israeli and Palestinian narratives, Resolution 2334 "reflects what the world thinks."⁶⁴ It is hardly a minority stance or even a strongly split one. If this resolution of the 15-member UN Security Council were submitted to a vote in the 193-member General Assembly, the outcome would be unlikely to alter." In response, Israel's government replied with a series of diplomatic moves against select Security Council members, accusing President Barack Obama's administration of secretly orchestrating the resolution's adoption. Palestinian representatives argued that there was an opportunity to end the occupation and establish a Palestinian state alongside Israel on the 1967 border.⁶⁵

Palestinian President Mahmoud Abbas stated, "The voting in favour of the resolution has not resolved the Palestinian cause but defined it." He further stated: "The world said its word that settlement in the Palestinian territories occupied in 1967, including East Jerusalem, is illegal." He invited the two countries "to sit together on the negotiation table to discuss all the outstanding issues

⁶⁰ McGarry, Brian. 2017. "United Nations Security Council Resolution 2334." *International Legal Materials* 56 (3): 645–49. <https://doi.org/10.1017/ilm.2017.17>.

⁶¹ Ravid, Barak; Khoury, Jack (10 December 2016). "Palestinians Try to Sway Obama Not to Veto UN Resolution on Israeli Settlements". *Haaretz*.

⁶² Ravid, Barak. "Analysis Understanding the UN Resolution on Israeli Settlements: What Are the Immediate Ramifications?", *Haaretz*

⁶³ Ravid, Barak. "Analysis Understanding the UN Resolution on Israeli Settlements: What Are the Immediate Ramifications?", *Haaretz*

⁶⁴ Hoffman, Joshua. 2024. "The Ultimate Enemy of Israelis and Palestinians." *Futureofjewish.com*. Future of Jewish. January 9, 2024.

<https://www.futureofjewish.com/p/the-ultimate-enemy-of-israel-is-and?selection=22bef3d3-8061-4c18-88da-8849cfc4ced7>.

⁶⁵ Wikipedia Contributors. 2019. "United Nations Security Council Resolution 2334." *Wikipedia*. Wikimedia Foundation. October 27, 2019. https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_2334.

between us and resolve them with good intentions," claiming, "We are neighbours on this holy land, and we want peace."⁶⁶

These resolutions clearly show the strengthening of human rights values in frameworks of conflict resolution and negotiations. These resolutions have created important legal and diplomatic rules that still impact policies in handling and resolving the continuous Israeli-Palestinian conflict by giving refugees' rights, the right to self-determination, and peaceful coexistence first priority. Furthermore, by underlining the illegality of the settlements and supporting the ideas of international humanitarian law, the acceptance of Resolution 2334 has greatly affected international legal procedures. It has also sharpened the worldwide conversation on the issue by stressing the necessity of a fair and peaceful settlement honoring the rights of all the engaged parties.

The application of UN resolutions to impose penalties on states neglecting to follow international law, including Israel's settlement activity, emphasizes the enforcement tools accessible via international coalitions and agreements. Resolution 2334 strengthened the illegality of the colonies and urged member states to act to guarantee compliance even if it did not contain particular penalties. This approach underscores the importance of international cooperation and legal frameworks in holding states

accountable and promoting adherence to international humanitarian law.⁶⁷

IV. Mediation and Peacekeeping Efforts

Mediation and peacekeeping efforts were continued by the United Nations through a series of resolutions in the region. The United Nations Security Council Resolution 1860, adopted on January 8, 2009, after recalling resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003), and 1850 (2008) on the Israeli-Palestinian conflict, called for an immediate ceasefire in the Gaza War after 13 days of fighting between Israel and Hamas.⁶⁸ Ultimately, the resolution failed because Israel and Hamas ignored it, and the war continued despite members calling for "an immediate ceasefire in Gaza leading to a full Israeli withdrawal, unimpeded provision through Gaza of food, fuel, and medical treatment, and intensified international arrangements to prevent arms and ammunition smuggling."⁶⁹ Resolution 1860 thus serves as a sad example of how poorly it has performed and what an abysmal record of compliance it has to its name, with neither Israel

⁶⁶ Wikipedia Contributors. 2019. "United Nations Security Council Resolution 2334." Wikipedia. Wikimedia Foundation. October 27, 2019. https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_2334.

⁶⁷ Dan Joyner, "Legal Bindingness of Security Council Resolutions Generally, and Resolution 2334 on the Israeli Settlements in Particular." 2017. EJIL: Talk! January 8, 2017. <https://www.ejiltalk.org/legal-bindingness-of-security-council-resolutions-generally-and-resolution-2334-on-the-israeli-settlements-in-particular/>.

⁶⁸ United Nations Security Council. 2009. Resolution 1860 (2009) / adopted by the Security Council at its 6063rd meeting, on 8 January 2009. <https://digitallibrary.un.org/record/645525?ln=fr&v=pdf>

⁶⁹ United Nations Press. 2009. "SECURITY COUNCIL CALLS for IMMEDIATE, DURABLE, FULLY RESPECTED CEASEFIRE in GAZA LEADING to FULL WITHDRAWAL of ISRAELI FORCES | UN Press." Press.un.org. January 8, 2009. <https://press.un.org/en/2009/sc9567.doc.htm>.

nor Hamas abiding by its provisions. The effects were minimal, as the humanitarian crisis and violent death appeared to only increase rather than decrease. Its longevity, similarly, has also been short, as it has not been a basis for other agreements or ceasefires, underscoring the difficulty of enforcing such resolutions in live theatres of conflict.⁷⁰

Israel's status as a UN member state forces it to "agree, accept, and carry out the decisions of the Security Council" under Article 25 of the UN Charter.⁷¹ It is generally acknowledged that Security Council resolutions taken in the exercise of its primary responsibility for the maintenance of international peace in conformity with the UN Charter are binding on member states.

In a statement issued immediately following the Israeli cabinet session on January 9, the government stated that it would not accept the UN resolution, declaring that "the IDF will continue to act in order to achieve the operation's goals, which include changing the security environment in the southern part of the nation, in line with the plans that were approved prior to embarking on the operation."⁷² In addition, Israeli Prime Minister Ehud Olmert deemed the

resolution "unworkable" owing to Hamas' continuous missile fire.⁷³ "Even though we are the main actors on the ground in Gaza, we were not consulted about this resolution, and they have not taken into account our vision and the interests of our people," stated Ayman Taha, a Hamas spokesman in Gaza, on the same day.⁷⁴

The deployment of peacekeeping personnel to negotiate ceasefires and safeguard civilians has been a significant component of the United Nations' conflict zone stabilization policy. Peacekeeping operations have sought to create a buffer between warring sides, track ceasefire agreements, and guarantee citizen safety in many wars, including the Israeli-Palestinian one. Though not always successful in instantaneous conflict resolution, these initiatives highlight the international community's will to preserve peace and defend human rights by means of coordinated military and diplomatic activities.

Particularly in terms of refugee rights and self-determination, the acceptance of UN resolutions, including Resolution 193 and Resolution 2334, has had a significant influence on the national policy of member states.⁷⁵ Recognising their right to live in peace and security, these resolutions have driven nations to create and carry out programs encouraging the repatriation and

⁷⁰ United Nations Press. 2009. "GENERAL ASSEMBLY DEMANDS FULL RESPECT for SECURITY COUNCIL RESOLUTION 1860 CALLING for IMMEDIATE GAZA CEASEFIRE, as EMERGENCY SESSION CONCLUDES | UN Press." Press.un.org. <https://press.un.org/en/2009/ga10809.doc.htm>.

⁷¹ United Nations Charter, Chapter V: The Security Council

⁷² Shamir, Shlomo, and Barak Ravid. 2009. "Israel rejects UN truce resolution, says Gaza operation to continue - Haaretz Com." Haaretz.Com, January 9, 2009. <https://www.haaretz.com/2009-01-09/ty-article/israel-rejects-un-truce-resolution-says-gaza-operation-to-continue/0000017f-f41c-d47e-a37f-fd3cbf5f0000>.

⁷³ BBC News Editors. 2009. "BBC NEWS | Middle East | UN Ceasefire Call Goes Unheeded." Bbc.co.uk. BBC. 2009. http://news.bbc.co.uk/2/hi/middle_east/7820027.stm.

⁷⁴ BBC News Editors. 2009. "BBC NEWS | Middle East | UN Ceasefire Call Goes Unheeded." Bbc.co.uk. BBC. 2009. http://news.bbc.co.uk/2/hi/middle_east/7820027.stm.

⁷⁵ McGarry, Brian. 2017. "United Nations Security Council Resolution 2334." *International Legal Materials* 56 (3): 645–49. <https://doi.org/10.1017/ilm.2017.17>.

compensation of refugees. For example, several nations have included measures in their domestic laws to help refugees integrate and be protected, assuring people access to essential rights and services.⁷⁶ To cite an example, the German government has made it easier for refugees to find asylum in Germany through the implementation of the Integrationsgesetz (Integration Law) in 2016.⁷⁷ This law was passed because a lot of refugees were coming to Germany when the conflict started in Syria.⁷⁸ This law says refugees should go to German classes, get job training, and learn how to be part of Germany. Additionally, the law ensures that refugees have access to healthcare, education, and social services. These measures have reinforced Germany's commitment to addressing humanitarian issues and upholding the dignity and rights of displaced persons, setting a strong example for other nations to follow.⁷⁹

The binding nature of United Nations Security Council resolutions has led to the widespread adoption of international norms and principles within domestic legal frameworks.⁸⁰ Encouragement of member states to match

their national laws with the ideas expressed in these resolutions helps to foster respect for international humanitarian law and human rights norms. This has led to a harmonization of laws among many countries, therefore promoting a more consistent and coordinated strategy to handle world problems. In areas like conflict resolution, the protection of people, and the advancement of peace and security, UN resolutions clearly impact home policies. For example, South Africa has aligned its domestic legislation with the principles outlined in various UN resolutions, following and promoting international law and human rights standards.⁸¹ As a result of the apartheid, South Africa created numerous laws with the scope of protecting human rights and accountability, adhering to the UN standards. The Truth and Reconciliation Commission (TRC),⁸² created under the Promotion of National Unity and Reconciliation Act, for example, was crucial in correcting past transgressions of human rights and promoting national healing. In keeping with international humanitarian norms, South Africa passed the South Africa Refugee Act to provide protection and rights for asylum seekers and refugees.⁸³ The influence and the binding nature of the resolutions led to a harmonized

⁷⁶ Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.

⁷⁷ Gesley, Jenny. 2016. "Germany: Act to Integrate Refugees Enters into Force." Library of Congress, Washington, D.C. 20540 USA. August 15, 2016. <https://www.loc.gov/item/global-legal-monitor/2016-08-15/germany-act-to-integrate-refugees-enters-into-force/>.

⁷⁸ Laub, Zachary. 2023. "Syria's Civil War." Council on Foreign Relations, February 14, 2023. <https://www.cfr.org/article/syrias-civil-war>.

⁷⁹ Gesley, Jenny. 2016. "Germany: Act to Integrate Refugees Enters into Force." Library of Congress, Washington, D.C. 20540 USA. August 15, 2016. <https://www.loc.gov/item/global-legal-monitor/2016-08-15/germany-act-to-integrate-refugees-enters-into-force/>.

⁸⁰ Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.

⁸¹ South Africa. n.d. "Chapter 2: Bill of Rights." In BILL OF RIGHTS.

<https://www.justice.gov.za/constitution/SACConstitution-web-eng-02.pdf>.

⁸² Truth and Reconciliation Commission. 2014. "Truth and Reconciliation Commission." Justice.gov.za. 2014. <https://www.justice.gov.za/trc/>.

⁸³ REPUBLIC OF SOUTH AFRICA and GOVERNMENT GAZETTE. 1998. "REFUGEES ACT, 1998." Act. GOVERNMENT GAZETTE 402 (19544): 1-6. https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf.

approach to addressing global conflicts and promoting the values of the United Nations.

As we have observed through the decades, the United Nations resolutions have played an important role in enforcing human rights norms in conflict resolution and negotiation contexts. When seen through the prism of compliance, impact, and lifetime, their success has varied greatly, though. While resolutions like 242 and 2334 have shown ongoing relevance and guided negotiations, others like 1860 battled to reach quick compliance or influence. Emphasizing the requirement of strong procedures to translate legal principles into pragmatic results, these measures expose the difficulty of enforcing international law in politically charged and firmly rooted conflicts. These resolutions, which prioritize refugee rights, the right to self-determination, and peaceful coexistence, established legal and diplomatic norms that continue to impact conflict resolution techniques. Emphasizing the need for inclusive and fair solutions that regard the rights and aspirations of all parties involved, the focus on human rights has also affected the language surrounding the Israeli-Palestinian conflict and other world crises. This approach has helped to establish more successful and durable peace processes, emphasizing the role of international law in ensuring global stability and security.

V. Conclusion

The Sykes-Picot Agreement and the Treaty of Versailles cemented much of modern international law on territoriality, self-determination, and sovereignty to uphold

colonial interests by partitioning the Middle East into zones of colonial control that ignored aspects of its ethnic, religious, and cultural diversity in fictitious political units by erecting new states through treaties whose artificial borders transcended historical and community boundaries, propounded claims to territory ownership, and established procedures to resolve disputes over sovereignty over territory along with the right to exercise a claim – at least according to contemporary international law. These treaties officially placed the area under colonial rule in accordance with the League of Nations' mandate system, setting forth governance and sovereignty standards that would mold the wider geopolitical architecture of the Middle East. The British, for example, created a political structure in Palestine with the direct government through the High Commissioner and the applications of policies encouraging Jewish immigration, which, among other series of events, sparked the Israeli-Palestinian conflict. Similarly, in Syria, French rules not only set governmental systems but also imposed language and cultural policies affecting the varied population of the country, hence generating long-standing political difficulties.

The impact of these treaties is nowhere more starkly demonstrated, as noted below, than in the recurring international law debate over the Israeli-Palestinian conflict. This eternal tussle memorializes the chaos wrought by Sykes-Picot and Versailles, as sovereignty and land tenure, as well as displaced people, are never clear-cut. The set of principles summarized under refugee rights is one of the most important rallying cries in international

law, and here, too, the tenor of those claims resonates particularly strongly in a historic conflict such as this, where longstanding claims by Palestinian refugees to an international legal right to recognition and return are grounded on early UN Resolutions concerning the mandate of refugee rights. Moreover, the concepts of accountability and state responsibility that are becoming more common in international law present dilemmas in this context, as demands for accountability for acts by both Israeli and Palestinian actors remain part of the search for a legally mediated solution.

These ancient accords underline the need for creating fresh legal systems able to solve long-standing problems and simultaneously fit for present humanitarian conditions. Conventional strategies have often been unable to solve problems firmly rooted in the colonial-era regimes Sykes-Picot and Versailles established. Future legal systems should prioritize the efficient execution of binding resolutions, foster multilateral collaboration among affected parties, and ensure accountability for violations of international law and comprehensive peace treaties to address this issue. Only by embracing adaptive, forward-thinking legal processes can the international community hope to manage the complicated legacy of these founding treaties while fostering regional stability, human rights, and long-term peace in conflict-prone areas.

This study shows how colonial legacies still influence international law in the Middle East by analyzing the course from the Sykes-Picot Agreement to modern UN decisions. It emphasizes the pressing necessity of legal

reforms that can solve long-standing issues and promote a more permanent peace, stressing human rights, regional collaboration, and long-term stability of the area.

VI. Bibliography

- A/79/384.” 2024. Undocs.org. 2024. <https://undocs.org/A/79/384>.
- Security, UN. 2024. “Resolution 242 (1967) / [Adopted by the Security Council at Its 1382nd Meeting], of 22 November 1967.” United Nations Digital Library System. November 29, 2024. <https://digitallibrary.un.org/record/90717?ln=fr>.
- The Editors of Encyclopaedia Britannica. 2024. “Middle East | History, Map, Countries, & Facts.” Encyclopedia Britannica. November 15, 2024. <https://www.britannica.com/place/Middle-East>.
- The Editors of Encyclopedia Britannica. 2019. “Treaty of Versailles | Definition, Summary, Terms, & Facts.” Encyclopedia Britannica. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Versailles-1919>.
- 1948 Refugees: Proceedings of an International Workshop, Hebrew University of Jerusalem Faculty of Law, 14–15 December 2016.” *Israel Law Review* 51, no. 1 (2018): 47–110. <https://doi.org/10.1017/S0021223717000280>.
- Araj, Bader, and Robert J. Brym. “Opportunity, Culture, and Agency: Influences on Fatah and Hamas Strategic Action during the Second Intifada.” *International Sociology* 25, no. 6 (2010): 842–868. <https://doi.org/10.1177/0268580909351327>.
- BBC News Editors. 2009. “BBC NEWS | Middle East | UN Ceasefire Call Goes Unheeded.” Bbc.co.uk. BBC. 2009. http://news.bbc.co.uk/2/hi/middle_east/7820027.stm.
- BBC News Editors. 2009. “BBC NEWS | Middle East | UN Ceasefire Call Goes Unheeded.” Bbc.co.uk. BBC. 2009. http://news.bbc.co.uk/2/hi/middle_east/7820027.stm.
- Britannica, T. Editors of Encyclopaedia. “United Nations Resolution 242.” Encyclopedia Britannica, October 15, 2024. <https://www.britannica.com/topic/United-Nations-Resolution-242>.
- Britannica. 2019. “Zionism | Definition, History, Examples, & Facts.” In Encyclopedia Britannica. <https://www.britannica.com/topic/Zionism>.
- Camp David Accords. *Strategic Studies* 15, no. 3/4 (1993): 103–10. <http://www.jstor.org/stable/45182129>.
- Dan Joyner, Legal Bindingness of Security Council Resolutions Generally, and Resolution 2334 on the Israeli Settlements in Particular.” 2017. *EJIL: Talk!* January 8, 2017. <https://www.ejiltalk.org/legal-bindingness-of-security-council-resolutions-generally-and-resolution-2334-on-the-israeli-settlements-in-particular/>.

- Editors of Encyclopedia Britannica. 2017. "Canaan | Historical Region, Middle East." In Encyclopædia Britannica.
<https://www.britannica.com/place/Canaan-historical-region-Middle-East>.
- Editors of Encyclopedia Britannica. 2017. "Canaan | Historical Region, Middle East." In Encyclopædia Britannica.
<https://www.britannica.com/place/Canaan-historical-region-Middle-East>.
- French Mandate for Syria and the Lebanon." 1923. Journal-article. The American Journal of International Law. Vol. 17. American Society of International Law.
<https://www.ndu.edu.lb/lerc/resources/french%20mandate%20for%20syria%20and%20the%20lebanon.pdf>.
- Gabiam, Nell. 2006. "Negotiating Rights: Palestinian Refugees and the Protection Gap." *Anthropological Quarterly* 79 (4): 717–30.
<https://doi.org/10.1353/anq.2006.0049>.
- Gabiam, Nell. 2006. "Negotiating Rights: Palestinian Refugees and the Protection Gap." *Anthropological Quarterly* 79 (4): 717–30.
<https://doi.org/10.1353/anq.2006.0049>.
- Gesley, Jenny. 2016. "Germany: Act to Integrate Refugees Enters into Force." Library of Congress, Washington, D.C. 20540 USA. August 15, 2016.
<https://www.loc.gov/item/global-legal-monitor/2016-08-15/germany-act-to-integrate-refugees-enters-into-force/>.
- Gitler, Inbal Ben-Asher, 'Appropriating Multi-histories: The Palestine Archaeological Museum', *Architectural Culture in British-Mandate Jerusalem, 1917-1948* (Edinburgh, 2020; online edn, Edinburgh Scholarship Online, 19 May 2022).
- Gitler, Inbal Ben-Asher, 'Appropriating Multi-histories: The Palestine Archaeological Museum', *Architectural Culture in British-Mandate Jerusalem, 1917-1948* (Edinburgh, 2020; online edn, Edinburgh Scholarship Online, 19 May 2022),
<https://doi.org/10.3366/edinburgh/9781474457491.003.0003>
- Gordyaen Benyamin Jermayi on, and 2024. 2024. "Why Some Kurds Side with Turkey and Iran." *Kurdish Peace Institute*. April 8, 2024.
<https://www.kurdishpeace.org/research/government/why-some-kurds-side-with-turkey-and-iran/>.
- Hoffman, Joshua. 2024. "The Ultimate Enemy of Israelis and Palestinians." *Futureofjewish.com*. Future of Jewish. January 9, 2024.
<https://www.futureofjewish.com/p/the-ultimate-enemy-of-israelis-and?selection=22bef3d3-8061-4c18-88da-8849cfc4ced7>.
- Hurst, Steven, 'The 1990s: Clinton and the Failure of Containment and Engagement', *The United States and the Iranian Nuclear Programme: A Critical History* (Edinburgh, 2018; online edn, Edinburgh

- Scholarship Online, 23 May 2019), <https://doi.org/10.3366/edinburgh/9780748682638.003.0004>
- Hurst, Steven, 'The 1990s: Clinton and the Failure of Containment and Engagement', *The United States and the Iranian Nuclear Programme: A Critical History* (Edinburgh, 2018; online edn, Edinburgh Scholarship Online, 23 May 2019), <https://doi.org/10.3366/edinburgh/9780748682638.003.0004>
- Khalidi, Walid. "Revisiting the UNGA Partition Resolution." *Journal of Palestine Studies* 27, no. 1 (1997): 5–21. <https://doi.org/10.2307/2537806>.
- Laub, Zachary. 2023. "Syria's Civil War." *Council on Foreign Relations*, February 14, 2023. <https://www.cfr.org/article/syrias-civil-war>.
- Lawson, Fred H., 'Ottoman Legacies and Economic Sovereignty in Post-imperial Anatolia, Syria and Iraq', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748643042.003.0003>
- Left, Sarah. 2002. "UN security council backs Palestinian state." *The Guardian*, March 13, 2002. <https://www.theguardian.com/world/2002/mar/13/israelandthepalestinians.unitednations>.
- Masalha, Nur (October 20, 2003). *The Politics of Denial: Israel and the Palestinian Refugee Problem*. Pluto Press. ISBN 978-0-7453-2120-2.
- McDougall, James, 'The British and French Empires in the Arab World: Some Problems of Colonial State-formation and its Legacy', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012).
- McGarry, Brian. 2017. "United Nations Security Council Resolution 2334." *International Legal Materials* 56 (3): 645–49. <https://doi.org/10.1017/ilm.2017.17>.
- McGarry, Brian. 2017. "United Nations Security Council Resolution 2334." *International Legal Materials* 56 (3): 645–49. <https://doi.org/10.1017/ilm.2017.17>.
- MENA, ICJ. 2024. "Palestine/Israel: International Court of Justice's Advisory Opinion on Israel's Unlawful Presence in Palestine Is an Important Step towards Justice and Self-Determination | ICJ." *International Commission of Jurists*. July 19, 2024. <https://www.icj.org/palestine-israel-international-court-of-justices-advisory-opinion-on-israels-unlawful-presence-in-palestine-is-an-important-step-towards-justice-and-self-determination/>.
- Nalbantian, Tsolin, 'Repositioning Armenians in Newly Post-Colonial Nation-states: Lebanon and Syria, 1945–1946', *Armenians Beyond Diaspora: Making Lebanon their Own, Alternative Histories* (Edinburgh, 2020; online edn, Edinburgh

- Scholarship Online, 17 Sept. 2020), <https://doi.org/10.3366/edinburgh/978147>
- Podeh, Elie. 2014. "Israel and the Arab Peace Initiative, 2002–2014: A Plausible Missed Opportunity." *The Middle East Journal* 68 (4): 584–603. <https://doi.org/10.3751/68.4.15>.
- Ravid, Barak. "Analysis Understanding the UN Resolution on Israeli Settlements: What Are the Immediate Ramifications?", Haaretz
- Ravid, Barak. "Analysis Understanding the UN Resolution on Israeli Settlements: What Are the Immediate Ramifications?", Haaretz
- Ravid, Barak; Khoury, Jack (10 December 2016). "Palestinians Try to Sway Obama Not to Veto UN Resolution on Israeli Settlements". Haaretz. Retrieved 24 December 2016.
- Ravndal, Ellen J. 2023. *In the Beginning*. Policy Press eBooks. Policy Press. <https://doi.org/10.1332/policypress/9781529210439.001.0001>.
- Republic of South Africa and Government Gazette. 1998. "Refugees Act, 1998." *Act. Government Gazette* 402 (19544): 1–6. https://www.gov.za/sites/default/files/gcis_document/201409/a130-980.pdf.
- Rey, Matthieu, 'The British, the Hashemites and monarchies in the Middle East', in Robert Aldrich, and Cindy McCreery (eds), *Crowns and Colonies: European Monarchies and Overseas Empires, Studies in Imperialism MUP* (Manchester, 2016; online edn, Manchester Scholarship Online, 19 Jan. 2017), <https://doi.org/10.7228/manchester/9781784993153.003.0012>, accessed 10 Nov. 2024.
- Rezk, Dina, 'Six-Day War', *The Arab World and Western Intelligence: Analysing the Middle East, 1956-1981* (Edinburgh, 2017; online edn, Edinburgh Scholarship Online, 18 Jan. 2018), <https://doi.org/10.3366/edinburgh/9780748698912.003.0007>
- Richmond, Oliver P., and Jason Franks, 'Building/Rejecting the Liberal Peace: State Consolidation and Liberal Failure in the Middle East', *Liberal Peace Transitions: Between Statebuilding and Peacebuilding* (Edinburgh, 2009; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748638765.003.0005>
- Sears, John F. "Committing to the Establishment of a Jewish State." In *Refuge Must Be Given: Eleanor Roosevelt, the Jewish Plight, and the Founding of Israel, 176–93*. Purdue University Press, 2021. <https://doi.org/10.2307/j.ctv17kw9gh.18>.
- Security, UN. 2024. "Resolution 242 (1967) / [Adopted by the Security Council at Its 1382nd Meeting], of 22 November 1967." United Nations Digital

- Library System. November 29, 2024. <https://digitallibrary.un.org/record/90717?ln=fr>. <https://www.justice.gov.za/constitution/SACConstitution-web-eng-02.pdf>.
- Shamir, Shlomo, and Barak Ravid. 2009. "Israel rejects UN truce resolution, says Gaza operation to continue - Haaretz Com." Haaretz.Com, January 9, 2009. <https://www.haaretz.com/2009-01-09/ty-article/israel-rejects-un-truce-resolution-says-gaza-operation-to-continue/0000017f-f41c-d47e-a37f-fd3cbf5f0000>
- Shapira, Amos. 1971. "The Six-Day War and the Right of Self-Defence." *Israel Law Review* 6 (1): 65–80. <https://doi.org/10.1017/s0021223700002843>.
- Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.
- Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.
- Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008. Shaw, Malcolm N. *International Law*. 6th ed. Cambridge: Cambridge University Press, 2008.
- Shaw, Malcolm. 2016. "The League of Nations Mandate System and the Palestine Mandate: What Did and Does It Say about International Law and What Did and Does It Say about Palestine?" *Israel Law Review* 49 (3): 287–308. <https://doi.org/10.1017/s0021223716000170>.
- South Africa. n.d. "Chapter 2: Bill of Rights." In *BILL OF RIGHTS*.
- Stansfield, Gareth. Review of *Explaining the Aims, Rise, and Impact of the Islamic State in Iraq and al-Sham*, by Jean-Pierre Filiu, Michael Weiss, Hassan Hassan, Patrick Cockburn, Abdel Bari Atwan, Jessica Stern, J.M. Berger, Charles Lister, and William McCants. *Middle East Journal* 70, no. 1 (2016): 146–51. <http://www.jstor.org/stable/43698623>.
- The Editors of Encyclopaedia Britannica. 2024. "Sykes-Picot Agreement | Map, History, & Facts." *Encyclopedia Britannica*. October 15, 2024. <https://www.britannica.com/event/Sykes-Picot-Agreement>.
- The Editors of Encyclopedia Britannica. 1998a. "Conference of San Remo | League of Nations, Treaty of Sevres, Mandates System." *Encyclopedia Britannica*. July 20, 1998. <https://www.britannica.com/event/Conference-of-San-Remo#:~:text=During%20the%20Conference%20of%20San,also%20mandated%20to%20Great%20Britain>.
- The Editors of Encyclopedia Britannica. 2018. "Balfour Declaration | History & Impact." In *Encyclopedia Britannica*. <https://www.britannica.com/event/Balfour-Declaration>.
- The Editors of Encyclopedia Britannica. 2018. "Islamic State in Iraq and the Levant | History & Facts." In

- Encyclopædia Britannica. The Editors of Encyclopedia Britannica. Canaan | Definition, Map, History, & Facts.” Encyclopedia Britannica. October 28, 2024. <https://www.britannica.com/topic/Islamic-State-in-Iraq-and-the-Levant>
- The Editors of Encyclopedia Britannica. 2019. “Treaty of Lausanne | Allies-Turkey [1923] | Britannica.” In Encyclopedia Britannica. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Lausanne-1923>
- The Editors of Encyclopedia Britannica. 2019. “Treaty of Versailles | Definition, Summary, Terms, & Facts.” Encyclopedia Britannica. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Versailles-1919>
- The Editors of Encyclopedia Britannica. 2024. “Hussein-McMahon correspondence | Palestine, History, Significance, & Map.” Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/topic/Husayn-McMahon-correspondence>
- The Editors of Encyclopedia Britannica. 2024. “Sykes-Picot Agreement | Map, History, & Facts.” Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/event/Sykes-Picot-Agreement>
- The Editors of Encyclopedia Britannica. 2024. “Sykes-Picot Agreement | Map, History, & Facts.” Encyclopedia Britannica. October 15, 2024. <https://www.britannica.com/event/Sykes-Picot-Agreement>
- Treaty of Versailles | Definition, Summary, Terms, & Facts.” Encyclopedia Britannica. October 21, 2024. <https://www.britannica.com/event/Treaty-of-Versailles-1919>
- Truth and Reconciliation Commission. 2014. “Truth and Reconciliation Commission.” Justice.gov.za. 2014. <https://www.justice.gov.za/trc/>
- United Nations Charter, Chapter V: The Security Council.
- United Nations General Assembly Resolution 169 (1980), Article 66.
- United Nations Information System on the Question of Palestine. December 11, 1948.
- United Nations Press. 2009. “General Assembly Demands Full Respect for Security Council Resolution 1860 Calling for Immediate Gaza Ceasefire, as Emergency Session Concludes | UN Press.” Press.un.org. <https://press.un.org/en/2009/ga10809.doc.htm>
- United Nations Press. 2009. “Security Council Calls for Immediate, Durable, Fully Respected Ceasefire in Gaza Leading to Full Withdrawal of Israeli Forces | UN Press.” Press.un.org. January 8, 2009. <https://press.un.org/en/2009/sc9567.doc.htm>

- United Nations Security Council. 2009. Resolution 1860 (2009) / adopted by the Security Council at its 6063rd meeting, on 8 January 2009. <https://digitallibrary.un.org/record/645525?ln=fr&v=pdf>
- United Nations Security Council. 2020. "U.N. Security Council Resolution 2334 (2016)." *The Palestine Yearbook of International Law Online* 19 (1): 385–87.
- United Nations. 2021. "Origins and Evolution of the Palestine Problem: 1917-1947 (Part I)." *Question of Palestine*. 2021.
- United Nations. 2021. "Origins and Evolution of the Palestine Problem: 1917-1947 (Part I)." *Question of Palestine*. 2021.
- Valbjørn, Morten, 'Culture in the Middle East: The "Western Question" and the Sovereignty of Post-imperial States in the Middle East', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748643042.003.0016>
- Valbjørn, Morten, 'Culture in the Middle East: The "Western Question" and the Sovereignty of Post-imperial States in the Middle East', *Sovereignty After Empire: Comparing the Middle East and Central Asia* (Edinburgh, 2011; online edn, Edinburgh Scholarship Online, 22 Mar. 2012), <https://doi.org/10.3366/edinburgh/9780748643042.003.0016>
- Wijnberg, Nachoem M., and David Colmer. "Der Judenstaat." In *Of Great Importance*, 90–91. Punctum Books, 2018. <https://doi.org/10.2307/jj.2353958.45>.
- Wikipedia Contributors. 2019. "United Nations Security Council Resolution 2334." Wikipedia. Wikimedia Foundation. October 27, 2019. https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_2334.
- Wikipedia Contributors. 2019. "United Nations Security Council Resolution 2334." Wikipedia. Wikimedia Foundation. October 27, 2019. https://en.wikipedia.org/wiki/United_Nations_Security_Council_Resolution_2334.
- William Foxwell Albright. 2014. "Ancient Middle East | Historical Region, Asia." In *Encyclopædia Britannica*. <https://www.britannica.com/place/ancient-Middle-East>.
- Yapp, Malcolm Edward, and Stanford Jay Shaw. 2024. "Ottoman Empire | Facts, History, & Map." *Encyclopedia Britannica*. October 5, 2024. <https://www.britannica.com/place/Ottoman-Empire>.

“Britannica. 2019. “Zionism | Definition, History, Examples, & Facts.” In Encyclopedia Britannica. <https://www.britannica.com/topic/Zionism>.

“French Mandate for Syria and the Lebanon.” 1923. Journal-article. The American Journal of International Law. Vol. 17. American Society of International Law. <https://www.ndu.edu.lb/lerc/resources/french%20mandate%20for%20syria%20and%20the%20lebanon.pdf>.

The European Union and the Normalization Process between Kosovo and Serbia

Muhsin Emir Karabag

Sciences Po Paris, France

E-mail: muhsinemir.karabag@sciencespo.fr

Published on 27th January 2025

Abstract

Since Kosovo's 2008 Declaration of Independence, its relationship with Serbia has been marked by disputes, especially regarding Serbia's refusal to recognize Kosovo as a sovereign state. In this context, the European Union (EU) has played a central role in efforts to normalize relations between the two countries. The EU's approach to this process can be divided into two key strategies: its role in facilitating normalization dialogues and its influence on shaping the policies of Serbia and Kosovo towards one another. Notable events, such as the 2013 Brussels Agreement, highlight the EU's contributions throughout this process. However, the effectiveness of the EU has been limited by internal divisions among member states, the partial implementation of agreed frameworks, and external geopolitical pressures. The EU's conditionality strategy has influenced policies in both countries. Still, a waning commitment to enlargement and competition from global actors like Russia and China exposes the limitations of this approach. This case is a significant example of how global governance organizations, such as the EU, can contribute to addressing and relieving tensions between states with conflicting claims.

Keywords: Kosovo, Serbia, European Union (EU), Normalization process, Brussels Agreement, Independence, EU membership, EULEX (European Union Rule of Law Mission in Kosovo)

I. Introduction

The borders of Kosovo have been a complex issue since the Yugoslav Wars of the 1990s. Following NATO's intervention in 1999, Kosovo unilaterally declared independence in 2008, sparking an ongoing dispute with Serbia. Kosovo is currently recognized by 101 of 193 United Nations member states. The normalization process between Kosovo and Serbia, facilitated by the European Union (EU), represents one of the EU's most significant diplomatic engagements in the Western Balkans. The

EU-led Brussels Dialogue, which began in 2011, aimed to normalize relations between Kosovo and Serbia, a relationship complicated by Serbia's view of Kosovo as a part of its sovereign territory.¹ This dialogue aimed to reduce tensions and advance both parties' prospects for European integration, with EU membership as a primary cooperative incentive. Over the years, the EU's facilitation

¹ Emini, Donika, and Isidora Stakic. "Belgrade and Pristina: Lost in Normalization?" *European Union Institute for Security Studies (EUISS)*, 2018, pp. 102-125. JSTOR, <http://www.jstor.com/stable/resrep21126>. Accessed 7 Oct. 2024.

has involved numerous high-stakes negotiations, resulting in agreements intended to stabilize relations and address practical issues, such as freedom of movement and local governance structures.

Despite some notable achievements, the EU's role in the dialogue process to reconcile Kosovo and Serbia has faced challenges. Problems within the agreements, nationalist tensions, and varying interpretations of the dialogues by both Kosovo and Serbia have often hindered progress. Moreover, internal EU divisions, such as the refusal of five member states to recognize Kosovo's independence, have questioned the EU's role as a mediator². This article will examine the EU's role in the Kosovo-Serbia normalization process, divided into two main sections analyzing the role of the EU in the dialogues between the two countries and exploring its influence on the policies of both nations.

2. The EU's Role and Involvement in the Dialogue between Kosovo and Serbia

Since 2011, the EU's role in the Kosovo-Serbia dialogues has evolved, beginning with adopting a dual-phase structure comprising technical and high-level political meetings. The dialogue was initially brokered through technical talks, compared to the political dialogue that followed, which included issues such as governance and judicial systems in Serb-majority regions in Kosovo.

² Belgrade Centre for Security Policy. "BELGRADE & PRISHTINA: DIALOGUE ABOUT DIALOGUE." Belgrade Centre for Security Policy, 2020. <http://www.jstor.org/stable/resrep27051>. Accessed 7 Oct. 2024.

The EU positioned itself as a mediator, leveraging the promise of European integration for both countries.

The EU membership prospect motivated Kosovo and Serbia to participate in the dialogue. For Serbia, EU accession negotiations and the requirements for candidate status were necessary to establish and continue dialogue. Similarly, for Kosovo, the EU's Stabilization and Association Agreement (SAA) showed a path towards potential European integration, contingent on adherence to the policies agreed upon in the dialogue. The EU required both Serbia and Kosovo to proceed with the dialogue if they were to pursue EU integration. In sum, the EU utilized "conditionality" as an incentivizing tool to tie progress in normalization with European integration milestones for Kosovo and Serbia.³ This tool has been instrumental in maintaining the parties' commitment to negotiations, although its effectiveness has been mixed due to internal divisions within the EU over Kosovo's status.

One of the EU's most significant achievements in the Kosovo-Serbia dialogue is the 2013 Brussels Agreement, the first framework for cooperation on security and judicial authority in Serbian-majority municipalities. The Brussels Agreement addressed long-standing disputes caused by Kosovo's 2008 unilateral declaration of independence. It includes provisions across 15 points, covering security, rule

³ Vladimir Medović, "The Potential and Limits of the European Union as a Mediator" *LAI Istituto Affari Internazionali*, March 8, 2022, <https://www.iai.it/en/pubblicazioni/potential-and-limits-europe-an-union-mediator-dialogue-between-serbia-and-kosovo>.

of law, local governance in Serb-majority areas within Kosovo, and the judiciary. The agreement's key aspects include forming an Association/Community of Serb-majority municipalities and the dismantling of Serbian parallel structures in northern Kosovo. However, the agreement's ambiguity around the legal status and authority of the Serb-majority municipalities has led to varying interpretations, delaying implementation. For instance, Serbia viewed the Association as an entity with its proper executive powers, while Kosovo perceived it as a non-governmental organization, ultimately bound by its legislation. This ambiguity and dual interpretation caused Kosovo's Constitutional Court to rule in 2015 that parts of the agreement were unconstitutional, making the implementation more difficult. Despite these challenges, the Brussels Agreement remains a critical step toward normalization, bringing progress in northern Kosovo's judicial integration.⁴

Additionally, the EU successfully negotiated technical agreements on issues like freedom of movement, civil registry records, integrated border management, and mutual recognition of educational diplomas. These agreements were intended to normalize day-to-day interactions between Kosovars and Serbs and facilitate cooperation in areas directly impacting citizens' lives. The successful brokering of these agreements demonstrates the

EU's ability to mediate practical issues, even when the core political dispute remains unresolved.⁵

The dialogue process also allows the EU to assert itself as an influential actor capable of making positive change. According to a 2017 article by Gashi and Musliu titled "Mediation Through Recontextualization: The European Union and The Dialogue Between Kosovo and Serbia," the EU employs "recontextualization", a strategic change in the meanings and framing to the international community to maintain a neutral stance and reinforce the EU's influence. For instance, the EU's choice to refer to the dialogue as between "Belgrade and Pristina" rather than "Kosovo and Serbia" showcases the EU's efforts to appease the Serbian side of the dialogue by not directly implying Kosovo statehood. Furthermore, the EU often downplays the substantial challenges in implementing agreements from the dialogue, shifting focus to the need for further negotiations rather than addressing the lack of progress. This approach places responsibility on the parties themselves, allowing the EU to evade criticisms regarding accountability for stalled outcomes. Finally, the EU presents itself as a significant facilitator of positive change by consistently labeling the dialogue with adjectives such as

⁴ Emini, Donika, and Isidora Stakic. "Belgrade and Pristina: Lost in Normalization?" *European Union Institute for Security Studies (EUISS)*, 2018, pp. 102-125. JSTOR, <http://www.jstor.com/stable/resrep21126>. Accessed 7 Oct. 2024.

⁵ Vladimir Medović, "The Potential and Limits of the European Union as a Mediator in The," IAI Istituto Affari Internazionali, March 8, 2022, <https://www.iai.it/en/pubblicazioni/potential-and-limits-europe-an-union-mediator-dialogue-between-serbia-and-kosovo>.

“historic” and “ground-breaking”⁶ in the media, especially concerning the 2013 Brussels Agreement. The EU's neutrality regarding Kosovo's status has also complicated its role as a mediator. While the EU officially remains impartial regarding Kosovo's independence, five EU member states—Spain, Slovakia, Greece, Romania, and Cyprus—do not recognize Kosovo as a sovereign state. This lack of unanimity has hindered the EU's effectiveness, as Serbia has often exploited these internal divisions to resist any progress toward recognizing Kosovo. The ambiguity over Kosovo's status has also been a source of frustration for Kosovo's leaders, who view EU recognition as essential for their international legitimacy and integration.

Furthermore, the EU's approach to the dialogue has been criticized as a form of “simulated power,” wherein the EU exaggerates influence and effectiveness while downplaying its role in the process. This “simulated power” is perceived by some scholars as a strategy the EU uses to project legitimacy and authority without taking full responsibility for the outcomes. Critics argue that the EU's reliance on ambiguous agreements has created a “hyperreality” in which commitments are made but rarely

fulfilled, leading to stagnation in the normalization process and eroding public trust in the EU's mediating role.⁷

3. The EU's Indirect Influence on Shaping the Relationship between Kosovo and Serbia by Shaping the Policies of the Countries

The EU has significantly influenced Serbia and Kosovo's internal policies. This process took place mainly via the promise of membership to incentivize the two countries to relieve their tensions after the 2008 Kosovo Declaration of Independence. The efficiency of this strategy is influenced by different factors: the EU's commitment to enlargement, local governments, and the geopolitical conjuncture.

The EU utilizes a “carrot and stick”⁸ plan, that is to say, a strategy that makes progress towards EU membership for Kosovo and Serbia, contingent on the normalization of relations between the two countries. For Serbia, this means adopting a moderate stance on Kosovo. As to Kosovo, the EU emphasizes the importance of strengthening the rule of

⁶ Krenar Gashi, Vjosa Musliu, 'Mediation Through Recontextualization: The European Union and The Dialogue Between Kosovo and Serbia', (2017), 22, *European Foreign Affairs Review*, Issue 4, pp. 533-550, <https://kluwerlawonline.com/journalarticle/European+Foreign+Affairs+Review/22.4/EERR2017039>

⁷ Gashi, K. (2021) Simulated Power and the Power of Simulations: The European Union in the Dialogue between Kosovo and Serbia. *JCMS: Journal of Common Market Studies*, 59: 206–221. <https://doi.org/10.1111/jcms.13056>

⁸ Bohnet, Henri. “CAN SERBIA LET GO OF KOSOVO?: THE KEY QUESTION FOR BALKAN STABILITY.” *Konrad Adenauer Stiftung*, 2012. <http://www.jstor.org/stable/resrep09937>.

law and addressing the country's problems with its internal governance, such as those related to democracy and corruption, which is also often facilitated through missions like the European Union Rule of Law Mission in Kosovo (EULEX) that advises the government of Kosovo on governance questions.

Serbia's pursuit of EU membership has shaped the country's policy regarding Kosovo in a more moderate direction. While Serbia initially opposed the moves towards moderating its relationship with Kosovo, over time, the government has adopted a more pragmatic stance due to the incentives provided by the EU. Economic considerations also shape this incentive by the EU. The financial support associated with EU accession is a reason that Serbian policymakers rely on when making decisions about Kosovo. The following events, like the 2013 Brussels Agreement, resulted from this EU incentive. Since 2008, Serbia's policy has changed vastly. While Serbia maintained that Kosovo is an integral part of Serbian territory, its relationship with the EU, specifically in this area, has changed over time. During the presidency of Boris Tadic from 2004-2012, the Serbian government adopted rhetoric favouring the country's EU aspirations and claims on Kosovo. Nonetheless, some actors in Serbian politics, such as the junior partner of the government, the Democratic Party of Serbia, and the opposition party, the Serbian Radical Party, followed a rhetoric that is hostile towards the EU due to its stance on Kosovo.⁹

⁹ Economides, S, and Ker-Lindsay, J (2015), 'Pre-Accession Europeanization': The Case of Serbia and Kosovo. *Gender,*

Kosovo has also adopted its internal policies through the EU's influence. The emphasis on the rule of law and governance reforms through the EULEX mechanism has led to implementing measures regarding corruption, institutional accountability, and transparency. However, some expectations of the Kosovo side have been delayed, such as visa liberalization, even though Kosovo has met the necessary criteria.¹⁰

While the conditionality created by the EU's incentive strategy has advantages, it also has certain limitations. The decline in the commitment to enlargement, as has been the case in the 2019 French veto of accession talks with North Macedonia and Albania¹¹, has been an aspect that weakened trust in the EU among Western Balkan countries. This has decreased the efficiency of the EU's influence over the tensions between Kosovo and Serbia.

External actors like Russia and China also challenge the EU's regional policies and dominance. Russia's backing of

Work And Organization, 53, 1027–1044. doi: [10.1111/jcms.12238](https://doi.org/10.1111/jcms.12238)

¹⁰ Bashota, Bardhok, Dren Gërguri, and Leonora Bajrami. "The Ambivalence of Kosovo–EU Relations in the Last Decade: The Perspective of Kosovo's Political Elites." In *Reconfiguring EU Peripheries: Political Elites, Contestation, and Geopolitical Shifts*, edited by Miruna Butnaru Troncotă, Ali Onur Özçelik, and Radu-Alexandru Cucută, 3:259–86. Helsinki University Press, 2024. <http://www.jstor.org/stable/jj.16275973.14>.

¹¹ Huszka, Beáta. "THE POWER OF PERSPECTIVE: WHY EU MEMBERSHIP STILL MATTERS IN THE WESTERN BALKANS." European Council on Foreign Relations, 2020. <http://www.jstor.org/stable/resrep21645>.

Serbia's claim to Kosovo and its opposition to the EU's integration agenda pose challenges to the dynamics of normalization. Similarly, China's growing economic presence in Serbia provides an alternative, especially in terms of economic development, which had been traditionally associated with the EU, potentially reducing Serbia's reliance on the EU.

4. Conclusion

In conclusion, the European Union's role in the normalization process between Kosovo and Serbia represents a two-part strategy: The EU's role in the normalization dialogues and the EU's role in shaping the policies of both Serbia and Kosovo towards one another. While the EU has achieved notable successes, such as the 2013 Brussels Agreement, its effectiveness is limited by aspects like internal divisions between member states, frameworks that are completed to a limited extent, and external geopolitical conjuncture. The EU's conditionality strategy has been pivotal in shifting the policies of Kosovo and Serbia, yet the declining commitment to enlargement and challenges from global actors like Russia and China reveal the limitations of this approach. This case is vital on a larger scale as it shows how global governance organizations, of which the EU is one, can aid tensions between two states over varying and conflicting claims.

5. Bibliography

- Bebler, Anton. "The Serbia-Kosovo Conflict." *Frozen Conflicts in Europe*, edited by Anton Bebler, Verlag Barbara Budrich, 2024, pp. 152-154. JSTOR, <https://www.jstor.org/stable/j.ctvdf0bmg.18>.
- Bashota, Bardhok, Dren Gërguri, and Leonora Bajrami. "The Ambivalence of Kosovo–EU Relations in the Last Decade: The Perspective of Kosovo’s Political Elites." *Reconfiguring EU Peripheries: Political Elites, Contestation, and Geopolitical Shifts*, edited by Miruna Butnaru Troncotă et al., Helsinki University Press, 2024, pp. 259-285. JSTOR, <https://www.jstor.org/stable/jj.16275973.14>.
- Belgrade Centre for Security Policy. "BELGRADE & PRISHTINA: DIALOGUE ABOUT DIALOGUE." Belgrade Centre for Security Policy, 2020. <http://www.jstor.org/stable/resrep27051>.
- Emini, Donika, and Isidora Stakic. "Belgrade and Pristina: Lost in Normalization?" *European Union Institute for Security Studies (EUISS)*, 2018, pp. 102-125. JSTOR, <http://www.jstor.com/stable/resrep21126>. Accessed 7 Oct. 2024.
- Gashi, K. (2021) Simulated Power and the Power of Simulations: The European Union in the Dialogue between Kosovo and Serbia. *JCMS: Journal of Common Market Studies*, 59: 206–221. <https://doi.org/10.1111/jcms.13056>.
- Krenar Gashi, Vjosa Musliu, 'Mediation Through Recontextualization: The European Union and The Dialogue Between Kosovo and Serbia', (2017), 22, *European Foreign Affairs Review*, Issue 4, pp. 533-550, <https://kluwerlawonline.com/journalarticle/European+Foreign+Affairs+Review/22.4/EERR2017039>
- RADELJIĆ, Branislav. "Serbia’s EU Future: Concerns and Perspectives." *Disintegration and Integration in East-Central Europe: 1919 – Post-1989*, edited by Wilfried Loth and Nicolae Păun, 1st ed., Nomos Verlagsgesellschaft mbH, 2014, pp. 284–92. JSTOR, <http://www.jstor.org/stable/j.ctv941wbr.24>. Accessed 10 Oct. 2024.
- Visoka, Gëzim. "International Governance and Local Resistance in Kosovo: The Thin Line between Ethical, Emancipatory and Exclusionary Politics." *Irish Studies in International Affairs*, vol. 22, 2011, pp. 99–125. JSTOR, <http://www.jstor.org/stable/41413196>. Accessed 10 Oct. 2024.
- Vladimir Medović, "The Potential and Limits of the European Union as a Mediator in The," *IAI Istituto Affari Internazionali*, March 8, 2022, <https://www.iai.it/en/publicazioni/potential-and-limits-european-union-mediator-dialogue-between-serbia-and-kosovo>.
- Emerson, Michael, and Steven Blockmans. "Next Steps for EU Enlargement – Forwards or Backwards?" *SCEEUS and CEPS*, 2022, pp. 2-11, <https://www.ceps.eu/ceps-publications/next-steps-for-eu-enlargement/>.
- Bohnet, Henri. "CAN SERBIA LET GO OF KOSOVO?: THE KEY QUESTION FOR BALKAN STABILITY." Konrad Adenauer Stiftung, 2012. <http://www.jstor.org/stable/resrep09937>.
- Dabrowski, Marek, and Luca Léry Moffat. "The Changing Dynamics of the Western Balkans on the Road to European Union Membership: An Update." Bruegel, 2024. <http://www.jstor.org/stable/resrep61771>
- Andersson et al. "RETHINKING CSDP MISSIONS AND OPERATIONS: Where to Go and What to

Do?” Edited by Steven Everts and Bojana Zorić.
*TEN IDEAS FOR THE NEW TEAM: How the EU
Can Navigate a Power Political World*. European
Union Institute for Security Studies (EUISS), 2024.
<http://www.jstor.org/stable/resrep62977.10>.

Economides, S, and Ker-Lindsay, J (2015), ‘Pre-Accession
Europeanization’: The Case of Serbia and
Kosovo. *Gender, Work And
Organization*, 53, 1027–1044.
doi: [10.1111/jcms.12238](https://doi.org/10.1111/jcms.12238)

Viceré, Maria Giulia Amadio. “The Future Is Back: The
EU, Russia and the Kosovo—Serbia Dispute.”
Istituto Affari Internazionali (IAI), 2019.
<http://www.jstor.org/stable/resrep19674>.

Mexhuani, Burim. 2023. “The Role of the EU in Shaping
Kosovo’s Political Future: A Critical
Analysis.” *Cogent Social Sciences* 9 (1).
doi:10.1080/23311886.2023.2209983.

Huszka, Beáta. “THE POWER OF PERSPECTIVE:
WHY EU MEMBERSHIP STILL MATTERS IN
THE WESTERN BALKANS.” European Council
on Foreign Relations, 2020.
<http://www.jstor.org/stable/resrep21645>.

From a Development Bank to Climate Bank and back again: What to make of the European Investment Bank's decision to relax restrictions on defense?

Sciences Po, Paris, France

E-mail: nicolas.koivisto@sciencespo.fr

Published 27th January 2025

Abstract

As Europe is experiencing a shift towards increased defence spending, easing sustainability reporting and gearing up towards a renewed focus on increasing competitiveness, the European Investment Bank (EIB) is being called on to join to support these objectives. What may seemingly be an uncontroversial development is here argued to constitute a significant turning point in the institutional history of the EIB. Since 2007 the EIB has gone through a period of constant further restriction on what it can invest in, even declaring in 2019 that it intended to transform from an “EU bank investing in the climate” to a fully-fledged “Climate Bank.” Nevertheless, this paper aims to show that this process is coming to an end since the EIB is returning to its more traditional role as a “bank investing in the climate” as it reintroduces development and other policy objectives to the forefront of its strategy.

Keywords: European Investment Bank, Green Financing, European Defence, Environmental, Social and Governance (ESG)

I. Introduction

A wind of change is blowing in Europe. Over the last year we have witnessed elections, various unprecedented long-term policy recommendations by political heavyweights, and the continuation of the war in Ukraine shaping the European Union (EU). Therefore, it is no surprise that a major continuity shift in European climate finance has gone largely unnoticed. Namely, decades of institutional development of the European Investment Bank (EIB) were overturned after a struggle between

Member States, EU institutions and NGOs.¹ On the 12th of April 2024 its Board of Governors decided to relax the EIB's restrictions on defence investments.² This would seem like only a minor development for a Union already

¹ Letter to EU Institutions and Member States on Concerns about Defence Investments and Peace Promotion,” March 26, 2024.

<https://retepatedisarmo.org/wp-content/uploads/2024/03/Defence-Letter-26M.pdf>.

² European Investment Bank, “EIB Group and the European Defence Agency deepen partnership to strengthen European security and defence capabilities,” October 3, 2024.

<https://www.eib.org/en/press/all/2024-359-eib-group-and-the-european-defence-agency-deepen-partnership-to-strengthen-european-security-and-defence-capabilities>.

committed to further defence investment; yet the manner in which the EIB made this decision should be considered a historical turning point with wide-ranging consequences. Indeed, it is argued here that it is the end of the era in which the EIB tried to transition from an “EU bank that finances climate” to the “EU’s climate bank.”³ This thesis will be substantiated first by going over the EIB’s history to show how it started to transition towards being a climate bank from its origins of being a development bank. Secondly, a more thorough analysis of what is actually changing in the EIB is conducted. Thirdly, possible consequences of a more generalist EIB will be discussed shortly to open up ideas for further research to be conducted as the current changes in the EIB’s investment strategy start to materialise.

II. From a Development Bank to a Climate Bank (1957-2024)

To put it simply, the EIB is an independent bank owned by the member states of the EU and it uses a variety of financial instruments such as issuing debt or equity investments to support a variety of businesses and projects.⁴ Its governance is complicated, but it is essentially based on three levels of authority from highest to lowest.⁵ The highest level of authority is the Board of Governors, who are the finance ministers of the member states. They

set the overall direction of the EIB. The second highest level of authority is the Board of Directors who are appointed by the Board of Governors. Each member state as well as the European Commission have one seat in the Board of Directors. They monitor the activities of the EIB and ensure it aligns with the direction set by the Board of Governors. The lowest level of authority is the Management Committee, which is led by the President of the EIB. The members of the Committee are appointed by the Board of Directors and confirmed, by majority vote, by the Board of Governors to manage the daily activities of the EIB.

The EIB’s institutional history can be understood best by how its three goals, which it has kept since its foundation in 1957 alongside the European Economic Community (EEC), have been interpreted. These goals could be found in the original Article 130 of the Treaty of Rome,⁶ and are found only slightly reworded in Article 307 of the current Treaty of the Functioning of the European Union.⁷ The goals are to firstly support less-developed regions. Secondly, to modernise, convert or develop projects that strengthen the internal market. Thirdly, to support any projects that are of common interest to several member states. As we go through the EIB’s history from 1957 to 2007, it becomes clear that the EIB has always shifted its focus to the politically important

³ EIB, “Climate Bank Roadmap 2021-2025”, December 14, 2021.

https://www.eib.org/attachments/thematic/eib_group_climate_bank_roadmap_en.pdf

⁴ European Investment Bank, “Governance and Structure.” <https://www.eib.org/en/about/governance-and-structure/index.htm>.

⁵ Ibid

⁶ European Union, “Treaty Establishing the European Community, Rome Treaty”, 25 March, 1957.

<https://www.refworld.org/legal/agreements/eu/1957/en/40087>

⁷ European Union, “Treaty of the Functioning of the European Union”, 26 October, 2012.

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

issue of the time. This process was expansionary and included a general trend of allowing further flexibility for the EIB to reach new goals as well as support the old. This process of flexibilisation changed after 2007 when EIB started to more actively push for ambitious climate targets.⁸ Instead of flexibilisation and expanding the EIB's capabilities, the EIB began to restrict itself and exclude sectors it had previously been active in.⁹ Therefore, the post-2007 age has seen the EIB become increasingly focused on only climate finance. Therefore, the EIB's history should be viewed in two distinct periods. One expansionary from 1957-2007, and one restrictive from 2007-2024. Yet, to understand the overall development it is necessary to look at these ages more in depth.

In the 1950s and 1960s the EIB focused on financing energy and infrastructure projects within the EEC.¹⁰ However, as its members became more able to afford these projects themselves and the post-war era started to come to a close, the EIB began to expand outside the EEC and even cooperate with other international development banks in 1962 to support a variety of projects also outside of Europe.¹¹ Nevertheless, the EIB's capital was in need of new investment opportunities.

⁸Kavvadia, H. "The European Investment Bank's 'Quantum Leap' to Become the World's First International Climate Bank. *Politics and Governance*, 9(2)" 2021, 185–195. <https://doi.org/10.17645/pag.v9i2.3921>

⁹Just Economics. "Investing for Sustainable Development? A review of investment principles – trends and impacts" IIED, 2011. https://www.iied.org/sites/default/files/pdfs/migrate/16505IIE_D.pdf

¹⁰FundingUniverse. "History of European Investment Bank." <https://www.fundinguniverse.com/company-histories/european-investment-bank-history/>.

¹¹ Ibid

Such an opportunity appeared in 1973 during the oil crisis, when the EIB officially started moving beyond primarily infrastructure to adopting a policy-oriented stance and directly supporting the EEC in addressing common challenges to its member states, such as the question of energy independence.¹² Additionally, the EIB maintained its historical legacy in infrastructure and development by becoming a driving force in developing likely future EEC member states and supporting them in meeting the membership requirements.¹³

By the mid-1980s the EIB had expanded its operational capabilities and started to play a more prominent role on the international markets.¹⁴ It started to properly transform from a development bank to a proactive market maker by creating new financial instruments and enabling public-private partnerships. By the time of the founding of the European Union in 1992, its focus came in the form of supporting small-to-medium enterprises (SMEs), increasing competitiveness in the single market, and focusing on larger-scale integration and cohesion projects within the new Union. This eventually culminated into the EIB's declaration in 2000 that it would develop Europe into a high-technology and knowledge-based economy as its primary goal, which was in line with the EU's wider

¹² Coppolaro, Lucia. "A Dual Entity: The European Investment Bank and Its Lending Policy from Its Origins to the Late 1970s." *Contemporary European History*, August 30, 2023, 1–14. <https://doi.org/10.1017/S0960777323000462>.

¹³ Ibid

¹⁴ Clifton, Judith, Daniel Diaz Fuentes, and Julio Revuelta. "Financing Utilities: How the Role of the European Investment Bank Shifted from Regional Development to Making Markets." *MPRA Paper*, 2013. <https://mpra.ub.uni-muenchen.de/50557/>.

policy at the time.¹⁵ Yet, in 2007 the era of flexibly supporting the EU's policy-goals shifted towards a more constrained and focused era of climate financing.

2007 saw the issuance of the world's first Climate Awareness Bonds by the EIB.¹⁶ The subsequent years would see a continued effort to align the EIB's overall operations with fighting climate change. For example the first formal exclusion lists of industries in which the EIB could not invest in due to their climate effects were created.¹⁷ By 2015 a commitment to dedicate at least 25% of its lending to climate action was given.¹⁸ Simultaneously, more and more stringent environmental, social and governance (ESG) criteria were being incorporated into the EIB's project assessments.¹⁹

Likely emboldened by the signing of the Paris Agreement and Europe's ambitions in the green transition, the EIB's Board of Directors released a new climate strategy in 2019 that intended to transition the institution from an "EU bank that finances the climate" into the

"EU's climate bank."²⁰ The reasons for this are debated, however, at the time it aligned with the momentum of the newly appointed EU Commission President Ursula von der Leyen's ambitious climate targets through a European Green Deal that sought to make Europe climate neutral by 2050.²¹ By 2020 the EIB had already become one of the world's largest climate financiers, having issued over 33 billion euros worth of bonds since 2007, and in 2021 it released a specific Roadmap to becoming a climate bank by 2025.²²

This "Climate Bank Roadmap" emphasised four core areas: accelerating green finance, ensuring a just transition, aligning operations with the Paris Agreement and building accountability frameworks.²³ In concrete terms this meant to direct 50% of the EIB's annual funding to finance climate action and environmental sustainability by 2025. It also set the ambition to invest 1 trillion euros into green projects by 2030, to gradually phase-out from investing into fossil fuel projects, and to further add to its list of excluded activities. In 2022 this exclusionary practice reached its peak with a list of exclusions that included highly emission-sensitive activities in sectors such as energy,

¹⁵ European Investment Bank. "Annual Report 2000", 20 February, 2021.

<https://www.eib.org/attachments/general/reports/fr2000en.pdf>

¹⁶ Kavvadia, H. "The European Investment Bank's 'Quantum Leap' to Become the World's First International Climate Bank. Politics and Governance, 9(2)", 185–195. 2021.

<https://doi.org/10.17645/pag.v9i2.3921>

¹⁷ Just Economics, "Investing for Sustainable Development? A review of investment principles – trends and impacts" IIED, 2011.

https://www.iied.org/sites/default/files/pdfs/migrate/16505IIE_D.pdf

¹⁸ European Investment Bank "Climate Strategy", 2020.

https://www.eib.org/attachments/strategies/eib_climate_strategy_en.pdf

¹⁹ Ibid

²⁰ EIB, "Climate Bank Roadmap 2021-2025", December 14, 2021.

https://www.eib.org/attachments/thematic/eib_group_climate_bank_roadmap_en.pdf

²¹ Tamma, Paola; Schaart, Eline; Gurzu, Anca. "Europe's Green Deal plan unveiled" 11 December, 2019.

<https://www.politico.eu/article/the-commissions-green-deal-plan-unveiled/>

²² EIB, "Climate Bank Roadmap 2021-2025", December 14, 2021.

²³ Ibid

transport, industry and the bioeconomy.²⁴ The EIB shifted its policy goals into focusing on sustainable cities and regions, sustainable energy and natural resources, innovation and human capital, SMEs and mid-cap finance. Yet, even the last two goals listed above that do not include the word sustainable had to align with strictest environmental standards. All in all, these policies have made the EIB one of the world's highest ESG ranked banks as well as being one of the world's largest climate financiers in the world.²⁵

Yet, it is important to keep in mind that this move towards climate banking was a decision made and pursued independently by the EIB. This has left a debate as to why exactly the decision was made. For example, it has been argued that the EIB's proactive stance was born as a strategic response to preserve its important status within the EU financial architecture as discussions were being held at the time of creating a new European development bank.²⁶ Whatever the case, this climate stance has never been unanimous.²⁷ This struggle has continued in the background and the lack of flexibility of the EIB has

become more and more of an issue as Europe has been hit by a variety of crises, which it has been unable to properly react to. For example, the EIB was slow to respond to the COVID-19 pandemic due to its cumbersome assessment requirements, although it was eventually able to cooperate with other EU institutions to create the European Guarantee Fund to aid SMEs and other companies in managing the pandemic.²⁸ Nevertheless, the EIB continued to hold firm to its roadmap to becoming a climate bank.

Only on the 12th of April 2024 the EIB finally gave into pressure and formally increased its long-term flexibility by relaxing the defence investment restrictions in place. It was the culmination of years of pressure not only from the war in Ukraine, but also several policymakers, to shift EU institutions to focus more on European competitiveness, innovation and strategic autonomy. This pressure is perhaps most evidently showcased by the early-2024 letter signed by 14 member states to the EIB to relax defence spending restrictions.²⁹ It called for the clarification and redefinition of what EIB is and is not allowed to invest in; given the Ukraine crisis and the European defence industry's need for support. In other words, it implied that the EIB's restrictions were self-made and should be unmade.

²⁴ European Investment Bank, "EIB eligibility, excluded activities list and excluded sectors list", 2022.

https://www.eib.org/attachments/publications/eib_eligibility_excluded_activities_en.pdf

²⁵ Scope Group. "Analysis Report." 28 June, 2024.

<https://www.scopegroup.com/ScopeGroupApi/api/analysis?id=c3b7582b-2df2-44df-8f13-3310619c26a6>.

²⁶ Erforth, Benedikt. "The Future of European Development Banking: What Role and Place for the European Investment Bank?" IDOS Discussion Papers 11/2020. German Institute of Development and Sustainability (IDOS), 2020.

²⁷ Ekblom, Jonas. "European Investment Bank Postpones Decision on Fossil Fuel Lending." *Reuters*, October 15, 2019. <https://www.reuters.com/article/business/european-investment-bank-postpones-decision-on-fossil-fuel-lending-idUSKBN1WU1PH/>

²⁸ European Investment Bank. "Rapid Assessment of the EIB Group's Operational Response to the COVID-19 Crisis." December, 2021.

https://www.eib.org/attachments/publications/rapid_assessment_covid_reponse_en.pdf.

²⁹ Joint Letter to the European Investment Bank by 14 Member states 17 March, 2024.

<https://valitusus.ee/sites/default/files/documents/2024-03/EIB%20Letter%2017%20March%202024.pdf>

III. The end of the climate bank era?

Technically, the EIB has been giving out loans to the defence sector since 2017, but these demanded that the projects being funded had to derive more than 50% of their expected revenues from civilian applications.³⁰ In April 2024 it was this percentage that was removed, meaning that any project that could theoretically also be used in civilian markets are eligible for EIB funding.³¹ This includes sectors such as cybersecurity and critical infrastructure. It also means that the EIB is currently still excluding purely military projects, such as weapons, ammunition or combat-specific equipment.³² Other than these changes the EIB has also started a more thorough co-operation with various EU and NATO funds, which aim to support the European defence industry.

However, what is remarkable about the defence decision is that it came with the EIB reforming its entire long-term vision towards re-entering the business of supporting the EU's policy goals. The EIB's new strategic roadmap for 2024-2027 pushes the bank way from an exclusive focus on climate financing, which is argued here to signal a return of

the EIB to becoming an "EU bank financing climate", despite the fact that the EIB is still trying to claim the title of the EU's climate bank.

Indeed, being the EU's climate bank is simply one out of eight of the EIB's reformed policy goals in its new strategic roadmap.³³ The other seven are: digitalisation, defence, cohesion, agriculture and bioeconomy support, social infrastructure, high-impact investments outside the EU and pioneering the Capital Markets Union. What is really shocking is the bioeconomy mentioned directly as one of the EIB's main policy goals, seeing as in 2022 it was named as an industry that needed to be largely restricted due to highly emission-intensive activities.³⁴ These goals are also reinforced by the EIB starting to take a more direct role in bridging a so-called "European investment gap", which aims to convey the idea that Europe has fallen behind China and the USA in investing into key sectors.³⁵

Such a repositioning of the EIB did not come without a significant struggle. For example, before making the final decision in April, 29 NGOs signed an open letter in March to the EIB to not lift its restrictions, arguing that it would open the door to shifting the EIB's priorities away from

³⁰ European Defence Agency. "European Defence Agency and European Investment Bank Sign Cooperation Agreement." February 28, 2018.

<https://eda.europa.eu/news-and-events/press-office/latest-press-releases/2018/02/28/european-defence-agency-and-european-investment-bank-sign-cooperation-agreement>.

³¹ European Investment Bank. "EIB Board of Directors Steps up Support for Europe's Security and Defence Industry and Approves EUR 4.5 Billion in Other Financing.", 8 May, 2024.

<https://www.eib.org/en/press/all/2024-174-eib-board-of-directors-steps-up-support-for-europe-s-security-and-defence-industry-and-approves-eur-4-5-billion-in-other-financing>.

³² European Investment Bank. "Strategic Roadmap 2024-2027", 21 June, 2024.

https://www.eib.org/attachments/lucalli/20240198_eib_group_2024_2027_strategic_roadmap_en.pdf

³³ Ibid

³⁴ European Investment Bank, "EIB eligibility, excluded activities list and excluded sectors list", 2022.

https://www.eib.org/attachments/publications/eib_eligibility_excluded_activities_en.pdf

³⁵ European Investment Bank. "Strategic Roadmap 2024-2027", 21 June 2024.

https://www.eib.org/attachments/lucalli/20240198_eib_group_2024_2027_strategic_roadmap_en.pdf

sustainability and social cohesion.³⁶ As we have seen, social cohesion and sustainability makeup are now just arguably three of the Bank's 8 policy objectives, although the Bank's strict ESG requirements remain in the other policy ambitions as well. The EIB has also not renounced its goals of having 50% of its investments in the green transition and more than 45% in social cohesion.³⁷

These figures may not immediately insist on an end of the EIB as a climate bank, but what is truly important is to monitor how this new strategy will begin to be implemented in practice. Some ESG-rating agencies and credit agencies have already signalled that they may have to lower the EIB's high AAA-credit rating and top ESG-ratings if the Bank starts to invest in the defence sector.^{38 39} It all depends on what those investments will be and more specifically even, how those ESG-requirements for the new sectors will be assessed and balanced with the EIB's new interests of competitiveness, innovation and strategic autonomy.

³⁶ Letter to EU Institutions and Member States on Concerns about Defence Investments and Peace Promotion," March 26, 2024.

<https://retepacedisarmo.org/wp-content/uploads/2024/03/Defence-Letter-26M.pdf>.

³⁷ European Investment Bank. "Strategic Roadmap 2024-2027", 21 June, 2024.

https://www.eib.org/attachments/lucalli/20240198_eib_group_2024_2027_strategic_roadmap_en.pdf

³⁸ Anna Brunetti Moody's to Reassess EIB Credit Rating in Case of Larger Defence Investment." *Euractiv*, April, 2024.

<https://www.euractiv.com/section/economy-jobs/news/moodys-to-reassess-eib-credit-rating-in-case-of-larger-defence-investment/>

³⁹Mark Jones, "EIB's ESG Score to Be Re-evaluated if New Weapons Policy Agreed, Morningstar Sustainalytics Says." *Reuters*, March 25, 2024.

<https://www.reuters.com/sustainability/eibs-esg-score-be-re-evaluated-if-new-weapons-policy-agreed-morningstar-2024-03-25/>.

Overall, the main takeaway should be that for the first time in nearly two decades, the EIB has meaningfully increased its flexibility rather than constrained it, and left the door open to further flexibilisation. Whether or not this will mean a further move in transitioning the EIB back into a more general investment arm of the EU remains to be seen, but the political pressure to relax defence restrictions will continue to push for further flexibilisation. This leaves the EIB with a challenging future in which it has to navigate a balanced approach in order to meet political pressure as well as its own objective of truly becoming a climate bank.

IV. Possible Policy Consequences of a more generalist EIB

Despite the uncertainty of the EIB's future, simply looking at the current political climate shows signs that the EIB is unlikely to be able to continue its commitment to being a climate bank. At the end of the day the EIB is owned by its member states who are currently electing governments focused more on increasing a favourable environment for European companies, innovation and a myriad of other concerns other than the climate.⁴⁰ Not the least of which is the European Commission itself, which is signalling a halt and even deregulating climate-related burdensome reporting requirements on European companies.⁴¹ In terms of member states, France's

⁴⁰ Euronews. "Greenlash: Why It's Getting Harder to Pass Environmental Reforms in the EU." *Euronews*, August 13, 2023. <https://www.euronews.com/green/2023/08/13/greenlash-why-its-getting-harder-to-pass-environmental-reforms-in-the-eu>.

⁴¹ Oliver Hoedeman, "Von der Leyen's 'mission letters' let slip deregulation agenda of next commissioners", *EUobserver*, 31 October, 2024. <https://euobserver.com/eu-political/ar3d655039>

Emmanuel Macron was one of the biggest supporters for a proactive EIB in climate financing.⁴² Yet Macron's ruling coalition has evaporated. The only other member state who could theoretically push for climate financing in a similar way is Germany, yet it shows little signs of wanting to adopt such a role. It is difficult to imagine that the EIB would be able to continue being a world-leader in climate financing if the EU Commission and the highly-influential states of France and Germany do not support it.

Nevertheless, in its 2024-2027 Roadmap the EIB remains committed to being a huge player in climate finance and continuing to be a key investor in the European transition to climate neutrality despite it taking on new roles in defence and other policy areas.⁴³ This type of a more generalist EIB is likely to lead to some clear consequences. Four are shortly discussed here in hopes of opening future research and discussion as the EIB's new strategy starts to materialise.

Firstly, climate financing would lose one of its most proactive stakeholders. Throughout its history, the EIB has been one of, if not the most, innovative and ambitious Bank financing the green transition. It was the first to release green bonds in 2007 and the first major bank to

entirely stop fossil-fuel investments.⁴⁴ Were the EIB to start focusing on other objectives, it would likely lose its capability to truly revolutionise the climate market due to its other conflicting goals. The period of 2007-2024 saw a constant push for further restrictions on what could be invested in, which has been here argued to now have come to a halt.

Secondly, the so-called "investment gap" of Europe should see some improvements. Digitalisation, green reindustrialisation as well as generally European competitiveness, innovation and strategic autonomy will be more taken into account. By coordinating with the EU and member states, the EIB could achieve a very prominent role within the EU hierarchy. Especially in these current circumstances where the next Commission is promising to be an "investment Commission", as in aiming to maximise public investment and de-risking private capital.⁴⁵ This could see the EIB increasing and expanding its financing, which considering the Bank's strict ESG and sustainability conditions, could even see an overall net increase in investments into the green transition. This again, however, highly depends on how the Bank continues to develop and amend its policy objectives.

Thirdly, a decreased EIB's role in climate financing leaves room for more actors. Private funds, member state

⁴² Simon, Frédéric. "Macron Puts Climate Bank on EU Election Agenda." *Climate Change News*, March 6, 2019. <https://www.climatechangenews.com/2019/03/06/macron-puts-climate-bank-eu-election-agenda/>.

⁴³ European Investment Bank. "Strategic Roadmap 2024-2027", 21 June, 2024. https://www.eib.org/attachments/lucalli/20240198_eib_group_2024_2027_strategic_roadmap_en.pdf

⁴⁴Kavvadia, H. "The European Investment Bank's 'Quantum Leap' to Become the World's First International Climate Bank. *Politics and Governance*, 9(2)" 2021, 185–195. <https://doi.org/10.17645/pag.v9i2.3921>

⁴⁵ Ursula von der Leyen, "Political Guidelines 2024-2029" *European Commission*. 2024. https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf

subsidies and other EU funds are likely to fill some of the gap that the EIB would leave as it transitions a portion of its financing towards other goals. This comes with both risks and opportunities. The opportunities might be that some funds are more easily accessible than the EIB, and competition among these institutions might lead to a shift in power in favour of innovative green technology firms. Nevertheless, the huge risk would be the loss of harmonisation among climate impact assessments and a loss of coordination in funding. National subsidy competition among EU member states heavily distorts the functioning of the single market. A possible remedy might be an increasingly proactive role of the EU in developing important projects of common European interest (IPCEIs), which is a form of supporting projects that benefit the entire single market.⁴⁶ The EIB could play a key role in this sector in the future as well.

Fourthly, and perhaps most obviously, there is a significant risk that the EIB will decrease or even halt its role as a global actor. If it truly happens that the EIB will become the spearhead of European competitiveness and defence, it is difficult to imagine the EIB maintaining a significant role outside the common market and investing into projects that might threaten European interests. Currently, the bank maintains that 10% of its financing capabilities are spent outside the EU, and it's still mentioned as one of its eight policy ambitions for the

coming three years, but this might not always be the case.⁴⁷ The newly confirmed European trade commissioner, Maroš Šefčovič, has promised that the EU will respond to unfair competition and protect European markets if necessary.⁴⁸ Therefore, it is likely that with Donald Trump's reelection, having promised a flat 20% tariff on the EU, the EIB and Europe will start to prioritise European green development rather than green development at large. This is not only a loss to the fight against climate change at large, but also particularly for the highly endangered regions which will lose a key source of aid as they try to mitigate the effects of climate change and transition into greener economies.

V. Conclusion

The decision to relax the EIB's defence investment restrictions should not be understated as business as usual for a continent witnessing war. The EIB's two decade long push to form into a climate bank suffered a serious setback with this decision, and only history will tell whether or not this was the beginning of the EIB returning to its role as being a more general investment arm of the EU. However, what is clear is that there needs to be an investigation of how exactly the specific investments of the EIB will change in the coming three years and how climate financing will develop. Here some suggestions were given as to what

⁴⁶European Union, "Treaty of the Functioning of the European Union", 26 October, 2012, Article 107 (3)(b). <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDE>

⁴⁷ European Investment Bank. "Strategic Roadmap 2024-2027", 21 June, 2024. https://www.eib.org/attachments/lucalli/20240198_eib_group_2024_2027_strategic_roadmap_en.pdf

⁴⁸Maroš Šefčovič. "Written Questions and Answers Submitted by Maroš Šefčovič." *European Parliament*, 22 October, 2024. https://hearings.elections.europa.eu/documents/sefcovic/sefcovic_writtenquestionsandanswers_en.pdf.

might be investigated, however, even more general discussions need to be had about what the role of the EIB should be within the entire EU framework. The intention has not been to show that a climate EIB or a generalist EIB is better than the other, but that this change is occurring and it is a significant change in the fight against climate change. This change is not only significant for Europe, but the world at large as well simply because of how significant of a player the EIB has been since 2007.

VI. Bibliography

- Brunetti, Anna. "Moody's to Reassess EIB Credit Rating in Case of Larger Defence Investment." *Euractiv*, April 2024. Accessed November 8, 2024. <https://www.euractiv.com/section/economy-jobs/news/moodys-to-reassess-eib-credit-rating-in-case-of-larger-defence-investment>.
- Clifton, Judith, Daniel Diaz Fuentes, and Julio Revuelta. "Financing Utilities: How the Role of the European Investment Bank Shifted from Regional Development to Making Markets." *MPRA Paper*, 2013. Accessed November 8, 2024. <https://mpra.ub.uni-muenchen.de/50557/>.
- Eklblom, Jonas. "European Investment Bank Postpones Decision on Fossil Fuel Lending." *Reuters*, October 15, 2019. Accessed November 8, 2024. <https://www.reuters.com/article/business/european-investment-bank-postpones-decision-on-fossil-fuel-lending-idUSKBN1WU1PH/>
- Erforth, Benedikt. "The Future of European Development Banking: What Role and Place for the European Investment Bank?" IDOS Discussion Papers 11/2020. *German Institute of Development and Sustainability (IDOS)*, 2020.
- European Commission. "Political Guidelines 2024-2029." 2024. Accessed November 8, 2024. https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?file_name=Political%20Guidelines%202024-2029_EN.pdf.
- European Defence Agency. "European Defence Agency and European Investment Bank Sign Cooperation Agreement." February 28, 2018. Accessed November 8, 2024. <https://eda.europa.eu/news-and-events/press-office/latest-press-releases/2018/02/28/european-defence-agency-and-european-investment-bank-sign-cooperation-agreement>.
- European Investment Bank. "EIB Group 2024-2027 Strategic Roadmap." 2024. Accessed November 8, 2024. https://www.eib.org/attachments/lucalli/20240198_eib_group_2024_2027_strategic_roadmap_en.pdf.
- European Investment Bank. "Rapid Assessment of the EIB Group's Operational Response to the COVID-19 Crisis." 2020. Accessed November 8, 2024. https://www.eib.org/attachments/publications/rapid_assessment_covid_reponse_en.pdf.
- Euronews. "Greenlash: Why It's Getting Harder to Pass Environmental Reforms in the EU." *Euronews*, August 13, 2023. Accessed November 8, 2024. <https://www.euronews.com/green/2023/08/13/greenlash-why-its-getting-harder-to-pass-environmental-reforms-in-the-eu>.
- Hoedeman, Oliver. "Von der Leyen's 'Mission Letters' Let Slip Deregulation Agenda of Next Commissioners." *EUobserver*, October 31, 2024. Accessed November 8, 2024. <https://euobserver.com/eu-political/ar3d655039>.

Jones, Mark. "EIB's ESG Score to Be Re-evaluated if New Weapons Policy Agreed, Morningstar Sustainalytics Says." *Reuters*, March 25, 2024. Accessed November 8, 2024. <https://www.reuters.com/sustainability/eibs-esg-score-be-re-evaluated-if-new-weapons-policy-agreed-morningstar-2024-03-25/>.

https://hearings.elections.europa.eu/documents/sefcovic/sefcovic_writtenquestionsandanswers_en.pdf

Just Economics, "Investing for Sustainable Development? A review of investment principles – trends and impacts" *IIED*, 2011. Accessed November 8, 2024. <https://www.iied.org/sites/default/files/pdfs/migrate/16505IIED.pdf>

Kavvadia, H. "The European Investment Bank's 'Quantum Leap' to Become the World's First International Climate Bank. Politics and Governance, 9(2)", 185–195. 2021. <https://doi.org/10.17645/pag.v9i2.3921>

Scope Group. "Analysis Report." 28 June, 2024. Accessed November 8, 2024. <https://www.scopegroup.com/ScopeGroupApi/api/analysis?id=c3b7582b-2df2-44df-8f13-3310619c26a6>.

Simon, Frédéric. "Macron Puts Climate Bank on EU Election Agenda." *Climate Change News*, March 6, 2019. Accessed November 8, 2024. <https://www.climatechangenews.com/2019/03/06/macron-puts-climate-bank-eu-election-agenda/>.

Šeřčovič, Maroš. "Written Questions and Answers Submitted by Maroš Šeřčovič." *European Parliament*, October 22, 2024. Accessed November 8, 2024.

Walking the Tightrope: Government Policy and Resource Extraction in Colombia and Peru

Fiorella Martelo Estevez

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: fmartelo.ieu2021@student.ie.edu

Published 27th January 2025

Abstract

This paper examines the balance between economic growth and socio-environmental challenges posed by extractive industries using the cases of Colombia and Peru. Both countries, abundant in natural resources, have leveraged the latter to foster economic growth, and although successful, they have faced continuous issues of environmental degradation, social conflicts, and inequality. Through comparative analysis, the paper highlights the importance of regulatory frameworks, transparent revenue distribution mechanisms, and the enforcement of Free, Prior, and Informed Consent (FPIC) for handling these problems. Lessons from these case studies serve as examples for other resource-rich countries facing similar challenges. The paper analyzes the main regulations regarding mining activities in each country, such as Law 685 of 2001 in Colombia and Legislative Decree 1100 in Peru, and stresses the importance of balancing economic benefits with long-term equitable and sustainable development.

Keywords: Extractive industries, Mining, Environmental Impact, Social Impact, Colombia, Peru, Governance, Regulation, Sustainable development

I. Introduction

In many other countries, extractive industries serve as economic means, but for Colombia and Peru, they are crucial for national welfare. In Peru, mining has alleviated the economy in times of crisis and has pushed for growth in times of recession¹, accentuating its importance to the economy. The industry has also done wonders in Colombia, breaking records by contributing over USD 20

billion to the economy² proving its significance to public revenues and job creation. However, these enormous achievements have a downside, and that is the dangers and consequences faced by local communities due to this industry.

Many regions in both countries endure deep social and environmental disturbances with little to no help or

² Asociación Colombiana de Minería. Boletín Económico: La Minería Reporta Aportes Históricos en 2022 y 2023. Bogotá: ACM, 2023.

¹ World Bank. Peru Mining Sector Diagnostic. Washington, DC: World Bank, 2021, 27–30.

retribution from the companies and the government that permits and extracts from their land. This paper contends that, although current laws establish a regulatory foundation, comprehensive reforms are essential to enhance environmental protections, strengthen community engagement, and ensure that these industries contribute sustainably and equitably to national development.

II. Economic Contributions

Extractive industries are crucial to the economic welfare of Colombia and Peru. They produce jobs, attract FDI, and contribute billions of dollars to their GDPs.

In the case of Peru, mining accounted for 11% of their GDP this year alone,³ and with each direct job in mining created, 6.25 indirect jobs were created. The FDI concerning mining, especially copper projects, was projected around US \$21 billion in the early 2010s and kept growing in recent years.⁴ Mining has been vital to Peru's economy, especially in uneasy periods, since it is one of the few sectors that demonstrate positive assistance to GDP growth, helping mitigate recessions. Also, with copper production reaching 275 million tons in 2023,⁵ Peru has a lot of significance in the copper market globally.

Their mining exports position them globally as one of the lead exporters, earning them major foreign exchange.

Colombia is not far behind. In 2022, the mining sector contributed over US \$20 billion to the economy⁶, achieving record contributions and underscoring the sector's significance to Colombia's public revenue. That same year, the mining sector provided approximately 350,000 direct and indirect jobs⁷, especially in remote rural areas that have low employment rates. The sector plays a big part in local economies, infrastructure developments, and even healthcare and education, with mining activities attracting investments in education and infrastructure. Nevertheless, these benefits are not well distributed and some regions face a more significant impact than others.

Inequality in the distribution of benefits in mining regions, both in Peru and Colombia, is an issue. Although the industry provides significant income to the countries, this money is not often seen by the local communities near mining sites. In Colombia, these communities have long fought with the government over environmental impacts, land use, and sharing of revenues. In Peru, conflict with local communities emerges from similar issues.

Nevertheless, both countries have benefitted from the growing social investments in mining regions. Colombia has various community benefit programs concerning the

³ Global Business Reports. Peru Mining Global Business Report, 2024.

⁴ Comisión Multisectorial Permanente - EITI Perú. IX Informe Nacional de Transparencia de las Industrias Extractivas: Períodos 2021 y 2022. Lima: Comisión Multisectorial Permanente, mayo 2024. DOI: 10.21201/2023.621550.

⁵ Global Business Reports. Peru Mining 2024: Calm After the Storm. Pre-Release Edition. 2024. Accessed November 19, 2024. https://www.gbreports.com/files/pdf/_2024/Peru-2024-Prerelease-web.pdf.

⁶ Asociación Colombiana de Minería. *Boletín Económico: La Minería Reporta Aportes Históricos en 2022 y 2023*. Bogotá, Colombia: ACM, diciembre 2023. DOI: 10.21201/2023.621550.

⁷ EITI Colombia. Informe de Transparencia en las Industrias Extractivas: Vigencia 2021. Bogotá: EITI Colombia, 2022. DOI: 10.21201/2023.621550.

extractive sector, for example, its partnership with the Extractive Industries Transparency Initiative (EITI) has focused on empowering communities and civil societies who are directly affected by the sector.

Also, in Peru, the government has launched various initiatives to redistribute the earnings from mining. The most important initiative is “Canon Minero”, which is a fiscal policy that works by reserving a portion of the funds earned by taxes on mining operations and giving them to the local governments and communities affected by these.

It is clear that extractive industries are essential to the economic growth and welfare of these nations, they have proven it through the years with their massive earnings, but that does not mean that there is no room for reformation and flaws in regulations as we’ll keep exploring forward.

II. Environmental and Social Challenges

Even if the checks are filled with zeros, this does not help pay the real cost of this operation since it is not fixed with money. With health crises, deforestation, contamination of the water, and even displacements of communities, the repercussions of mining activities are highly dangerous if not done correctly and have become very controversial with the doubt of their true worth.

In Northern Colombia, at La Guajira, is the Cerrejón mine, owned by Glencore, a Swiss multinational commodity trading and mining company. Being one of the world's largest pit coal mining operations, it has had dreadful effects on the environment. To support its operations, the mine diverted the Ranchería River to

maximize its utilities and decrease its costs⁸. La Guajira is a semi-desert region that has been suffering from various droughts through the years due to physical conditions and the region's climate, but the problem has intensified thanks to extractive industries. When water is accessible in the region from the rivers, there have been traces of oils and coal residues that have polluted the rivers, disrupting everything from biodiversity to health, to agriculture. Aside from water pollution and further scarcity, the coal dust from the operations degraded air quality in communities surrounding the project. Studies show that there is a correlation between mining dust exposure and increasing respiratory illness among La Guajira's Indigenous Wayuu population, a group that by Colombia's constitution is protected.

There are regulatory policies for environmental protection in Colombia, for example, Law 99 of 1993⁹, which created the Ministry of Environment and stated that decisions about the exploitation of natural resources must be made in consultation with Indigenous communities if it concerns them. The ministry is in charge of issuing permits for oil and natural gas exploration, production, and construction of refineries and it has the power to revoke licenses for non-compliance and issue penalties.

The fault in the system is the state's unwillingness to enforce a strong hand, which allows for the mistreatment

⁸ Oxfam. *A Toxic Legacy: Glencore's Footprint in Colombia and Peru*. Oxford: Oxfam International, 2023.

⁹ International Energy Agency. "Law 99 of 1993: Creation of Ministry of Environment." Accessed November 19, 2024. <https://www.iea.org/policies/8917-law-99-of-1993-creation-of-ministry-of-environment>.

of the environment by prioritizing economic growth. This lack of enforcement and accountability has allowed companies to operate with minimal obligations, as seen in La Guajira, at the expense of local communities and ecosystems.

The Espinar Province in Peru, sadly, experiences a similar situation to La Guajira. The Antapaccay copper mine, also operated by Glencore, has caused severe environmental problems. The mine has been linked with the contamination of nearby rivers with mercury, cadmium, lead, and other toxic metals, this reached such levels that the water is no longer safe for consumption or agricultural use¹⁰. In that area, the Indigenous Quechua communities reside, this issue threatens their health as they rely on those sources of water to drink and farm. Reports from the Quechua community reveal how the contamination has led to respiratory problems, skin conditions, and other chronic diseases. In addition, blood samples taken from locals show alarming levels of heavy metals. Not only have these communities been affected, but also their animals. Due to the metals seeping into the soil and vegetation that surrounds the mine, some livestock showed poisoning and malnourishment due to the toxic fields. This area is in grave danger, with limited access to health services residents are often unable to get treatments for these illnesses related to mining activities.

Social tensions and conflicts with the community are very present in the Antapaccay mine. Indigenous communities have protested against Glencore and demanded that the corporation take responsibility for the health and environmental damages and work on the prevention of these; the protests have escalated and ended in confrontations against security forces and left some injured.

Although both Peru and Colombia have signed the International Labor Organization's Convention No. 169, which grants recognition of Indigenous and tribal peoples' control over their land and resources and specifies the need for Free, Prior, and Informed Consent (FPIC) from these communities before initiating any type of extractive activities in their lands, the states have been at fault by not respecting this. In the case of the Antapaccay mine, some reports have indicated that this process was bypassed, intensifying the gravity of the situation and strengthening opposition.¹¹

Peru's Law 27446, amended on May 3, 2024, mandates that for all mining activities, environmental impact assessments (EIAs) must be carried out., but the assessments have been criticized for failing long-term impacts and focusing instead on short-term mitigation measures. The Antapaccay mine has been sanctioned on various occasions by the country's environmental oversight agency, OEFA, but these sanctions have not resulted in significant changes in practices.

¹⁰ CooperAcción. *The Antapaccay Case*. Lima: CooperAcción, 2023.

¹¹ EITI Peru. *IX Informe Nacional de Transparencia de las Industrias Extractivas*. Lima: EITI, 2024.

These examples of how extractive industries harm the environment and threaten the lives of many stress the need for comprehensive reforms. Without improvements the ongoing social and environmental conflicts will continue and more people will continue to get sick, paying the true cost of these industries.

III. Current Governance Structures

In Colombia and Peru, extractive industries face substantial legal frameworks that work to ensure a balance between sustainable development, social equity, and economic growth. Still, there is a clear issue in reinforcing these laws and regulations restricting their envisioned outcomes.

All mining activities in Colombia are regulated by the Mining Code, Law 685 of 2001, which presents basic guidelines for the exploration, exploitation, and closure of mining projects. This law offers a thorough licensing system that highlights the importance of community engagement and environmental protection but has been demonstrated to be weak when the time of enforcement comes, particularly against illegal mining¹². Another issue the law has not been able to combat is the inadequate conditions for workers' health and safety.

A lamentable case that portrays the deficient action from the government, not only for the local community but also for the international companies that invest in the

country is Zijin Mining in Buriticá, a small town in the Antioquia department.

Back in 2019, Zijin Mining Group CO., a large multinational Chinese mining company, acquired Continental Gold, a gold mining company; When the transition happened, Zijin recognized the social responsibility work of Continental and promised to continue the social and environmental commitments while ensuring transparency in Buriticá, Colombia's largest gold mine¹³. However, the Chinese company carried out a minimal to almost nonexistent media and community engagement policy, with the project's website outdated and lacking effort in continuing relations with the local governments.

The deterioration of the relationship with the community kept aggravating, with over three documented work blockages, something that never happened under Continental's control of the mines. One of the issues that infuriated the municipality of Buriticará is the fact that Zijin paid USD 11 million to the Colombian government in 2021 for the operation of the mine, but the territory received approximately USD 100,000, less than 1% of the transaction.

In 2022 the conflict reached peaked escalation with the case of 2 dead workers, the community was infuriated by

¹² Asociación Colombiana de Minería. *Boletín Económico*. Bogotá: ACM, 2023.

¹³Continental Gold initiated its operations in 2016 in Colombia. Celebrated for their social development activities and inclusion of the communities in the area, Continental Gold was very close with the government, local authorities, and artisanal miners (in Colombia not all artisanal mining is illegal as the government recognizes the right of the land of some communities).

this tragedy and while the Antioquia Miners Association asked the government to pursue legal action, Zijin was pleading with the government to intervene in the blockades by the residents that interfered with their project.

In the Antioquia region, the Clan del Golfo invaded the territory and carried out illegal mining operations extorting formal companies and individual artisanal miners. The residents in the area have endured violence and insecurity for many years and Zijin is now another of their victims. The company received a mine in a conflict zone that lacks protection from the state and has significantly affected its productivity and production. Zijin pleaded with the government to address illegal mining activities, but the response has been insufficient to solve the issue.

The case of Zijin has raised concerns about Colombia's reputation as a mining investment, has put into question the government's legitimacy given the dual failure to protect the community and aid Zijin, and brings to public attention the systematic weakness within the state and lack of political will.

Like Colombia, Peru's laws have extensive environmental safeguards and a comprehensive framework to navigate and manage mining projects. The General Mining Law (Decree Law 109) serves as a guideline for mining activities and establishes the Ministry of Energy and Mines (MINEM) to oversee these processes. Thanks to Law 27446, Peru reassures the need for environmental assessments (EIAs) in all mining projects with potential

ecological impacts and requires public participation in the evaluation. Complementary to the latter, the Law on Mine Closure Plans serves as a legal framework for accountability of the companies for environmental restoration post-operations if necessary, and binds financial guarantees. Similar to Colombia, not all artisanal mining is illegal, and Peru targets the formalization of small-scale mining and artisanal mining through Legislative Decree 1100, which seeks to formalize artisanal and small-scale mining, lays out the sanctions for illegal mining activities, and aims to reduce environmental damage.

On paper, Peru's mining legal framework is idealistic, like Colombia's; it demands EIAs for project approval, counts with tax stability agreements that attract foreign investment, focuses on formalization, and encourages public participation, offering local populations a voice.

So why is Peru still facing various challenges in the sector? The answer is straightforward: weak enforcement and monitoring. The lack of resources and political commitment impede the enforcement of labor and environmental laws, especially in remote areas. Although Legislative Decree 1100 pursues formalization in the sector, only 10% of artisanal miners will be formalized by 2022 in regions like Madre de Dios, where gold mines thrive and the environment deteriorates every day. Another case of government failure will be the water contamination in the Yanacocha mines, one of the largest gold mines in the world, which has faced non-stop criticism for the contamination, the negative impact on local communities,

and the frail environmental monitoring and public engagement.¹⁴

In both Andean countries, there are clear and extensive legal requirements governing the mining sector that aim for monetary growth, environmental prosperity, and social equity. However, the countries' institutions falter in the application of these. The case of Zijin in Buriticá demonstrates the dual failure of governance, the inability of the government to take care of its communities, and neglect of its legal responsibility to the company. Likewise, Peru, as seen in the Yanacocha mine, struggles with the enforcement of labor and environmental protections demonstrating the systematic weakness in its institutions.

These cases showcase the vulnerabilities in the governance structures of Colombia and Peru, the gap between their socio-environmental goals and economic growth targets while disregarding the real-life impacts of their inadequate governance is a reminder of the formidable work yet to be done.

IV. Policy Recommendations

IV.1 Strengthen Regulatory Enforcement

Colombia and Peru have mining and environmental laws that national agencies enforce, OEFA in Peru, and ANLA, and ANM in Colombia, nevertheless, these

agencies undergo hardship in fulfilling their duties due to corruption, underfunding, and other issues.

The first recommendation to achieve this is to increase the funding of these existing agencies to carry out regular inspections and work on real-time monitoring. In Colombia, for example, The National Mining Agency (ANM) is responsible for the administration of natural resources owned by the state and the promotion of sustainable use of the latter following the law. Although ANM reported revenue of approximately COP 8,8 billion and accounted for 7% of the GDP, the Ministry of Finance and Public Credit assigned the ANM with a budget of only COP 131,476 million.¹⁵ If the country truly wants to see a change in the sustainable management of its resources and improve its impact on the environment and communities, the funds should go in harmony with the revenues to see progress.

Secondly, the countries could invest in new technologies, such as satellite monitoring, to identify illegal mining activities in remote areas. The use of space technology can implicate a reduction of cost when it comes to EIAs and facilitate monitoring and the gathering of information to improve transparency. Similar projects are being accomplished by The European Space Agency in partnership with the United Nations Crime Institute

¹⁴ EITI Peru. *IX Informe Nacional de Transparencia de las Industrias Extractivas*. Lima: EITI, 2024.

¹⁵ "Informe de Rendición de Cuentas 2023." Informe De Gestión, August 14, 2023.

(UNICRI)¹⁶ and Satellite Applications Catapult has created a community called MineSense that works discussing and brainstorming for solutions to challenges in the mining industry. This could serve as a possible partnership opportunity for Colombia and Peru, which lack access to these advanced technologies and may benefit MineSense with new grounds for the exploration and testing of their devices.

Lastly, it is recommended to explore the possibility of having independent auditing mechanisms to ensure transparency and accountability, limiting corruption and inefficiency. These could involve private regulatory companies that offer an unbiased report on the mining sites, minimizing the chance of corruption and personal gain. The financing of this mechanism could be shared by the government and companies due to their mutual benefit.

IV.2 Improve Revenue Distribution Mechanisms

Both countries already have existing legal frameworks addressing revenue distribution (General Royalties System, Law 2056 of 2020, in Colombia, and Canon Minero, Law 27506 in Peru), these mechanisms allocate revenue from mining operations to local governments, but communities often do not see this money and if they do it is unproportionate to what they should receive.

I recommend the creation of a “Priority Impact Fund” that is complementary to the existing frameworks and has

the purpose of ensuring that a fixed share of the royalties goes directly to the development of affected communities by mining activities. This fund would have to count on a transparent bi-yearly report that shows how the revenues are being spent and has the government’s support to issue penalties for the misuse of these.

IV.3 Enforce Free, Prior, and Informed Consent (FPIC)

Both countries have FPIC requirements under the ILO convention No. 169, but as seen in the cases, the implementation of this tends to be rushed and superficial.

The mandate of third-party mediators is recommended, such as NGOs and universities, to oversee the process and ensure the consideration of community voices.

Also, the development of legal consequences for companies that overlook FPIC could include fines and suspension of permits.

Another recommendation to improve the FPIC efficiency is to include terms for periodic renegotiations as new occurrences happen in the project.

IV.4 Enhance Environmental Monitoring

Although the countries have laws to protect and improve the environment, as is the case for regulations, revenue distribution, and FPIC, these are inefficient in implementation.

The implementation of performance bonds could resolve this issue by acting as a guarantee from mining companies to meet the pre-stated requirements of their

¹⁶ European Space Agency. *Mining Applications*. Paris: ESA, 2024.

operations¹⁷. This bond would be required before the projects begin and would be inaccessible to the companies. The companies would receive parts of the bond as the project develops and based on monitoring assessments that will evaluate the impact of the project. The bonds would aid in improving accountability, diminishing risks, and improving the overall transparency of their work.

IV. Conclusion

Extractive industries in Colombia and Peru undoubtedly play a prominent role in their economies, contributing to job creation, public revenues, and overall economic growth and development. However, these industries come with harmful social and environmental costs that mainly affect local communities. Peru's *Canon Minero* exists to redistribute mining revenues to regional governments but this does not reach local communities¹⁸. The Cerrejón coal mine in Colombia diverted rivers and polluted water supplies leading to droughts and causing health crises for the Wayuu Indigenous community. Both Peru's and Colombia's mining frameworks look good in theory but in practice, they lack enforcement and wound up neglecting sustainable practices.

The evidence showcases the pressing need for transformative reforms that still concentrate on maximizing economic growth but prioritize the environment and society. These reforms should focus on

improving the revenue distribution mechanisms, through a *Priority Impact Fund* that transfers royalties directly to affected communities, strengthening regulatory enforcement, by increasing funding, adopting independent audits, and leveraging technology to make monitoring easier in remote areas, enforcing FPIC through third-party mediators, and lastly, enhancing environmental monitoring by implementing performance bonds to ensure companies' accountability.

The cases of Colombia and Peru offer valuable insights for countries, communities, and companies on how to leverage multiple interest groups while battling together against social and environmental issues. Colombia, Peru, and other resource-rich countries around the world should prioritize inclusive regulatory frameworks and take action to comply with them to achieve social, economic, and environmental prosperity.

Understanding the balance between economic growth and sustainability and the true cost of this industry is important to reform and create new policies ensuring a sustainable future. It does not matter if a country has comprehensive legal frameworks, if the institutions are weak and there is minimal political will to enforce this, it leaves the door open for the intensification of social inequalities and the continuous degradation of the environment.

¹⁷ World Bank. *Mining Sector Diagnostic*. Washington, DC: World Bank, 2021.

¹⁸ EITI Peru. IX Informe Nacional de Transparencia de las Industrias Extractivas. Lima: EITI, 2024.

V. Citations

Asociación Colombiana de Minería. Boletín Económico: La Minería Reporta Aportes Históricos en 2022 y 2023. Bogotá, Colombia: ACM, diciembre 2023. DOI: 10.21201/2023.621550.

Business & Human Rights Resource Centre. "Colombia: Zijin's Buriticá Gold Mine Sparks Ongoing Tensions Over Security, Environmental Impacts, and Community Relations." Last modified June 2024. <https://www.business-humanrights.org/en/latest-news/colombia-zijins-buritic%C3%A1-gold-mine-sparks-ongoing-tensions-over-security-environmental-impacts-and-community-relations/>.

Comisión Multisectorial Permanente - EITI Perú. IX Informe Nacional de Transparencia de las Industrias Extractivas: Períodos 2021 y 2022. Lima: Comisión Multisectorial Permanente, mayo 2024. DOI: 10.21201/2023.621550.

CooperAcción and Oxfam. Glencore in Peru: The Antapaccay Case and an Analysis of Compliance with International Human Rights Due Diligence Standards. Lima, Peru: CooperAcción, 2023. DOI: 10.21201/2023.621550.

EITI Colombia. Informe de Transparencia en las Industrias Extractivas: Vigencia 2021. Bogotá: EITI Colombia, 2022. DOI: 10.21201/2023.621550.

Fair Finance International, Oxfam, Finanzas Justas Colombia, and Finanzas con Derechos Peru. A Toxic

Legacy: Glencore's Footprint in Colombia and Peru. Oxfam Briefing Paper, 2023. DOI: 10.21201/2023.621550.

Finance Colombia. "Editorial Opinion: The Sad Case of Zijin Mining in Colombia." Last modified June 2024.

<https://www.financecolombia.com/editorial-opinion-the-sad-case-of-zijin-mining-in-colombia/>.

Global Business Reports. Peru Mining 2024: Calm After the Storm. Pre-Release Edition. 2024. Accessed November 19, 2024.

<https://www.gbreports.com/files/pdf/2024/Peru-2024-Prerelease-web.pdf>.

Global Voices. "Tensions at Colombia's Largest Gold Mine Highlight Climate Justice Quagmire." Last modified June 26, 2024. <https://globalvoices.org/2024/06/26/tensions-at-colombias-largest-gold-mine-highlight-climate-justice-quagmire/>.

Informe de Rendición de Cuentas 2023. Informe De Gestión, August 14, 2023. https://anm.gov.co/sites/default/files/Informe_Rendici%C3%B3n_de_Cuentas_ANM_2023.pdf.

International Energy Agency. "Law 99 of 1993: Creation of Ministry of Environment." Accessed November 19, 2024. <https://www.iea.org/policies/8917-law-99-of-1993-creation-of-ministry-of-environment>.

Mining. Business Applications. Accessed December 1, 2024. <https://business.esa.int/mining>.

World Bank. Mining Sector Diagnostic: Peru. Washington, DC: World Bank, 2021. Accessed November 19, 2024. <https://www.worldbank.org>.

Zárate-Rueda, Ruth, Claudia Lisbeth Vélez-Hernández, and José Alonso Caballero-Márquez. "Socio-Environmental Conflicts Resulting from Extractive Activities in Latin America and Corporate Social Responsibility." *Estudios Gerenciales* 37, no. 161 (2021): 668–79. <https://doi.org/10.18046/j.estger.2021.161.4384>.

Comparing UN Interventions in Forced Displacement: The Rohingya Muslims (2016–) and South Sudanese (2013–).

Olivia Massoud

International Relations Department, IE University, Madrid, Spain

E-mail: omassoud.ieu2023@student.ie.edu

Published 27th January 2025

Abstract

This article delves into the nature of the conflicts in Myanmar, targeting the Rohingya Muslims, and in South Sudan, affecting civilians through civil war. By bringing together information and data provided by the UN and other sources showcasing how the United Nations, its Children's Fund (UNICEF), Refugee Agency (UNHCR) and its mission in South Sudan (UNMISS), the article explores the nature of the UN's interventions and compares the specificities of each case, and how aid was delivered either differently or similarly for the Rohingya and the South Sudanese. It finds that while the UN provided life-saving humanitarian aid in both countries, the nature of the required assistance differed; help in refugee camps with food, water and medicine was crucial for the Rohingya, whilst the South Sudanese required immediate physical protection from insurgent movements. The main findings point towards the necessity for more defined protection mechanisms and accountability measures, which may contribute to preventing similar future crises.

Keywords: United Nations, displacement, refugee, Rohingya, South Sudan, humanitarian, UNMISS, UNICEF, UNHCR

1. Introduction

1.1. Background information

The Rohingya are a Muslim ethnic minority group who have lived for centuries in the West of Myanmar, more specifically, the Rakhine state¹. This ethnic group has not yet obtained official recognition by the state of Myanmar as a community; many lack documentation and even citizenship. Since the 1980s, they have been recognised by Doctors Without Borders as the largest stateless

population worldwide². Due to their lack of protection, the Rohingya have been subjected to consistent persecution, abuse and violence for decades, causing around 1.1 million people to flee to surrounding countries, mainly Bangladesh and Malaysia. More than 931,000 have been displaced to the same refugee camp in the

¹ UNHCR (2023b). Rohingya Refugee Crisis Explained. [online] www.unrefugees.org. Available at: <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>.

² Doctors without Borders (2022). The Rohingya: The world's largest stateless population. [online] Médecins Sans Frontières Australia | Doctors Without Borders. Available at: <https://msf.org.au/rohingya-worlds-largest-stateless-population>.

Kutupalong region of Cox's Bazaar, Bangladesh, making it the largest refugee camp in the world³.

South Sudan is the newest country in the world, established in 2011 following a fatal civil war. Only two years later did a large-scale conflict⁴ erupt in this country as a consequence of ethnic tensions between President Salva Kiir's Dinka and former Vice President Riek Machar's Nuer communities⁵. The situation escalated to the point of large-scale fighting, causing the internal displacement of 2.22 million South Sudanese and 2.32 million immigrants in neighboring countries, mainly Sudan, Uganda, and Ethiopia⁶.

As a response to these conflicts, the United Nations and its humanitarian branches, including UNICEF, UNHCR, and the WHO, as well as specific missions such as UNMISS, have been deployed to assist in providing aid to these displaced populations. In Bangladesh and South Sudan, the UN supplies food, shelter, and medical aid to the respective Rohingya and South Sudanese refugees. The provision of UN aid for these refugees is unquestionably crucial, serving as a lifeline for thousands, albeit with limitations. However, UN personnel often encounter difficulties accessing conflict zones and assisting the most impoverished populations.

³ UNHCR (2023a). Inside the world's Five Largest Refugee Camps. [online] www.unrefugees.org. Available at:

<https://www.unrefugees.org/news/inside-the-worlds-five-largest-refugee-camps/>.

⁴ UNHCR (2023c). South Sudan Refugee Crisis Explained. [online] [Unrefugees.org](https://www.unrefugees.org). Available at: <https://www.unrefugees.org/news/south-sudan-refugee-crisis-explained/>.

⁵ Aufiero, P. and Tut Pur, N. (2021). South Sudan at a Crossroads. [online] Human Rights Watch. Available at: <https://www.hrw.org/news/2021/07/09/south-sudan-crossroads>.

⁶ UNHCR (2023d). South Sudan situation. [online] Global Focus. Available at: <https://reporting.unhcr.org/operational/situations/south-sudan-situation>.

1.2. Article synopsis

This article argues that the United Nations played a pivotal role in mitigating the forced displacement of the Rohingya Muslims (2016–) and the South Sudanese (2013–), saving thousands of lives. However, its interventions revealed significant shortcomings in scope, resource allocation, and long-term solutions. The paper examines these interventions, evaluates their outcomes, and compares them to highlight lessons for future crises.

This work will be supported by sources and reports from the UN or its affiliates, as well as papers that provide critical analyses of these crises.

This study will first examine the UN's intervention in the Rohingya crisis, followed by an analysis of the former's role in helping dilute the South Sudanese emergency. In the third and comparative part, the study will compare these interventions and assess them from a bilateral perspective while also reviewing their shortcomings.

2. The Rohingya Muslims and UN aid

2.1. Background

The late 1970s witnessed the emergence of a new wave of prosecutions targeting the Rohingya people in Rakhine State, then part of Burma, in a process initially named Operation Dragon King, "consisting of mass arrests, persecution, and horrific violence"⁷. This began the long process of forced displacement that relocated more than

⁷ Doctors Without Borders (2020). Timeline: A visual history of the Rohingya refugee crisis. [online] Doctors Without Borders - USA. Available at: <https://www.doctorswithoutborders.org/latest/timeline-visual-history-rohingya-refugee-crisis>.

1.1 million people to date⁸ to Bangladesh and other neighboring countries. In August 2017, armed attacks caused one of the most significant exodus of Rohingyas, many of them traveling for days and through jungles and bays (notably, the Bay of Bengal) to reach safety in Bangladesh⁹.

2.2. UNHCR involvement

In response, the United Nations High Commissioner for Refugees (UNHCR) established a large refugee camp in Cox's Bazar¹⁰ in the South of Bangladesh, providing immediate shelter for the thousands of incoming refugees following the attacks. Such was their role as the leading international organization working to uphold world peace and security, as stated in the UN Charter. Immediately upon the refugees' arrival, UNHCR personnel were sent to provide medical aid, food, and sanitation resources in a round of efforts to contain possible spreads of disease, especially dengue fever¹¹, as well as famine¹². Additionally, in the refugee camps, the climate significantly impacts the conditions in which the refugees live, as it is located in a tropical monsoon area, prone to landslides and heavy

rainfall¹³. This becomes especially detrimental during monsoon season, which lasts from June to October¹⁴, accounting for a substantial part of the year. Issues with water, sanitation, and hygiene (WASH) also posed severe challenges for the refugees, as water supplies often fell short of World Health Organisation (WHO) recommendations¹⁵, which is around 50-100 liters per person per day, the minimum being 20; some areas even received water for less than 2 hours per day. In response, the Central Emergency Response Fund, a humanitarian fund established by the United Nations General Assembly in 2005¹⁶, allocated \$11.5 million in 2017 and \$27.6 million in 2018¹⁷ to WASH services in Bangladeshi refugee camps hosting Rohingyas, which was used in the construction of additional sanitation facilities such as toilets and water pumps, in an attempt to reduce the risk and spread of waterborne diseases.

Moreover, small-scale economic activities such as running small businesses are encouraged by the UNHCR; only about 50,000 displaced who arrived in Bangladesh in 2017 were granted refugee status, leaving more than 880,000 without official status and, therefore, unable to access

⁸ Doctors without Borders (2022). The Rohingya: The world's largest stateless population. [online] Médecins Sans Frontières Australia | Doctors Without Borders. Available at: <https://msf.org.au/rohingya-worlds-largest-stateless-population>.

⁹ UNHCR (2023c). Rohingya Refugee Crisis Explained. [online] www.unrefugees.org. Available at: <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>.

¹⁰ Dwi, R. and Nur Aulia Safira (2024). The Role of the United Nations in Handling The Rohingya and Uighur Conflict in 2017–2022. *Advances in Social Science, Education and Humanities Research/Advances in social science, education and humanities research*, [online] pp.795–804. doi:https://doi.org/10.2991/978-2-38476-236-1_85.

¹¹ World Health Organisation (2022). Dengue in Rohingya refugee/Forcibly Displaced Myanmar Nationals (FDMN) camps in Cox's Bazar - Bangladesh. [online] www.who.int. Available at: <https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON401>.

¹² Dwi, R. and Nur Aulia Safira (2024). The Role of the United Nations in Handling The Rohingya and Uighur Conflict in 2017–2022. *Advances in Social Science, Education and Humanities Research/Advances in social science, education and humanities research*, [online] pp.795–804. doi:https://doi.org/10.2991/978-2-38476-236-1_85.

¹³ United Nations Development Programme (n.d.). Strengthening Disaster Risk Management and Community Resilience in Cox's Bazar. [online] UNDP. Available at: <https://www.undp.org/bangladesh/projects/strengthening-disaster-risk-management-and-community-resilience-coxs-bazar>.

¹⁴ UN News (2024). Millions impacted by 'catastrophic and massive floods' in Bangladesh. [online] UN News. Available at: <https://news.un.org/en/story/2024/09/1154036>.

¹⁵ United Nations (2010). The Human Right to Water and Sanitation Media Brief 1 UN-Water Decade Programme on Advocacy and Communication and Water Supply and Sanitation Collaborative Council. [online] Available at: https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf.

¹⁶ CERF (2016). Who We Are | CERF. [online] Un.org. Available at: <https://cerf.un.org/about-us/who-we-are>.

¹⁷ Damanik, A.F. (2016). THE ROLE OF THE UNITED NATIONS CHILDREN'S FUNDS (UNICEF) IN HANDLING ROHINGYA CHILDREN REFUGEES IN BANGLADESH 2016-2018. *Journal of International Islamic Law, Human Right and Public Policy*, [online] 2(1), pp.47–64. doi:<https://doi.org/10.59733/jishup.v2i1.47>.

goods and services outside the camps¹⁸. However, this does not imply that they cannot participate in economic activities within the camps; rather, this is encouraged. Many must have a source of income to provide for their families, causing them to enter into trade businesses, thus creating a subsistent internal economy supported by the UNHCR, as described in the UNHCR-Yale report published in June 2022, entitled “The Impact of Financial Assistance Through Volunteer Programmes In Cox’s Bazar Refugee Camps”¹⁹. According to this study, participation in such economic activities not only provides crucial income for family necessities but also contributes to reduced depression rates and fosters household resilience against financial shocks.

2.3. UNICEF involvement

Furthermore, the thousands of children who left Rakhine state with heavy trauma are also a source of great concern for the United Nations Children’s Fund (UNICEF). The latter helped create areas within the refugee camps designed to offer psychosocial support to children. They encourage structured “playtime” and other activities to restore a sense of normalcy and prevent these children from losing their childhoods. To ensure that they receive an education, 9,000 teachers²⁰, mainly consisting of

volunteers and Rohingyas, actively participate in weekly education programs for the refugees. These efforts are directed at preventing the emergence of a “Lost Generation” of more than 500,000 Rohingya children, as was outlined in the report published by UNICEF in August 2018, entitled “Futures in the Balance: Building Hope for a Generation of Rohingya Children”²¹. In this report, UNICEF describes how, in just under one year, more than 140,000 children became enrolled in formal education of some kind in the refugee camps in Bangladesh, with approximately 1,200 learning centres²² in operation, providing educational services primarily to children under the age of 14 (deemed a priority).

Additionally, the report describes UNICEF’s involvement with community outreach in the refugee camps, aimed at tackling dangerous misconceptions such as measles injections causing sterility in girls. More than 1,020 volunteers (many of them Rohingyas) hired by UNICEF and their partners, Pulse and BRAC²³, go from house to house to help inform the refugees on issues such as childbirth, nutrition and locations of WASH services, constituting an extensive community mobilisation program. Furthermore, UNICEF established an organised aid delivery system in coordination with the Bangladeshi government to reinforce camp security and ensure refugee protection in Cox’s Bazar, named the “Joint Response Plan

¹⁸ Joint Data Center on Forced Displacement (2020). Refugees who mean business: Economic activities in and around the Rohingya settlements in Bangladesh. [online] Joint Data Center. Available at:

https://www.jointdatacenter.org/literature_review/refugees-who-mean-business-economic-activities-in-and-around-the-rohingya-settlements-in-bangladesh/.

¹⁹ UNHCR and Yale Y-RISE (2022). THE IMPACT OF FINANCIAL ASSISTANCE THROUGH VOLUNTEER PROGRAMMES IN COX’S BAZAR REFUGEE CAMPS. [online] UNHCR Operational Data Portal (ODP). Available at: https://data.unhcr.org/en/documents/details/93863?_gl=1.

²⁰ UNICEF USA (2022). Inside Look: How UNICEF Supports Rohingya Refugees in Bangladesh. [online] UNICEF USA. Available at: <https://www.unicefusa.org/stories/inside-look-how-unicef-supports-rohingya-refugees-bangladesh>.

²¹ United Nations Children’s Fund (2018). FUTURES IN THE BALANCE: BUILDING HOPE FOR A GENERATION OF ROHINGYA CHILDREN. [online] Available at: <https://www.unicef.org/media/95336/file/UNICEF-Child-Alert-Rohingya-Aug-2018-EN.pdf>.

²² United Nations Children’s Fund (2018). FUTURES IN THE BALANCE: BUILDING HOPE FOR A GENERATION OF ROHINGYA CHILDREN. [online] Available at: <https://www.unicef.org/media/95336/file/UNICEF-Child-Alert-Rohingya-Aug-2018-EN.pdf>.

²³ BRAC (2021). South Sudan – BRAC International. [online] Bracinternational.org. Available at: <https://bracinternational.org/south-sudan/#our-programmes>.

for the Rohingya”, devised in 2018²⁴. With the help of the Bangladeshi government, the UN ensured the upkeep of the non-refoulement principle, which effectively prevented the forced return of the refugees to Myanmar and, therefore, guaranteed asylum for the displaced. The Joint Response Plan (JRP) also addressed pressing issues such as food security by providing more than 12,200 metric tons of food every month²⁵ to sustain the refugees and ensuring that malnutrition is avoided through medical screenings for children and nutrition support programs. Over 43 primary health centers and an additional 144 health posts were established to ensure that the refugees obtained medical care, and the JRP also provided obstetric care to 53,266 pregnant women, ensuring maternal health was prioritized in the camps.

2.4. UN diplomatic efforts

The UN’s diplomatic efforts in holding Myanmar’s government accountable for their role played in the genocide are also of note, as they coordinated with neighboring countries’ governments to find solutions for the displaced. Indeed, The UN specifically condemned Myanmar’s actions and the hindrance of humanitarian aid to affected regions in General Assembly Resolution 34/22, which was proposed in February-March 2017: “Calls upon the Government of Myanmar to continue efforts to eliminate statelessness [...] in particular relating to the

Rohingya minority”²⁶. In this resolution, the UN also initiated a fact-finding mission aimed at gathering evidence to shed light on the human rights violations occurring in Rakhine state by military and security forces, which included brutal killings, rape, and unlawful destruction of property²⁷. Persistent lobbying by the UN as a result of the findings of this mission caused many groups on the international stage, including NGOs and humanitarian organizations (e.g. Amnesty International, Save the Children), to raise awareness for and send aid to the Rohingya cause.

3. UNMISS in South Sudan

3.1. Background

The United Nations Mission in South Sudan (UNMISS) was established in July 2011 to support the development of the newly independent South Sudan, which became independent on July 9, 2011, and to ensure its stability²⁸. In December 2013, the South Sudanese civil war began when fighting broke out between two factions of the Sudan People’s Liberation Movement (SPLM). On one side were the governmental forces led by President Salva Kiir, and on the other were the opposition forces, known as the Sudan People’s Liberation Movement-in-Opposition (SPLM-IO), led by Kiir’s former deputy, Riek Machar²⁹.

²⁴ Strategic Executive Group (2019). Joint Response Plan For Rohingya Humanitarian Crisis: March-December 2018. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/JRP%20for%20Rohingya%20Humanitarian%20Crisis%20-%20FOR%20DISTRIBUTION.PDF>.

²⁵ Strategic Executive Group (2019). Joint Response Plan For Rohingya Humanitarian Crisis: March-December 2018. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/JRP%20for%20Rohingya%20Humanitarian%20Crisis%20-%20FOR%20DISTRIBUTION.PDF>.

²⁶ United Nations General Assembly (2017). Human Rights Council Thirty-fourth session Resolution adopted by the Human Rights Council on 24 March 2017 34/22. Situation of human rights in Myanmar. [online] Available at: <https://documents.un.org/doc/undoc/gen/g17/081/98/pdf/g1708198.pdf>.

²⁷ United Nations General Assembly (2017). Human Rights Council Thirty-fourth session Resolution adopted by the Human Rights Council on 24 March 2017 34/22. Situation of human rights in Myanmar. [online] Available at: <https://documents.un.org/doc/undoc/gen/g17/081/98/pdf/g1708198.pdf>.

²⁸ United Nations (n.d.). UNMISS. [online] UNMISS. Available at: <https://unmiss.unmissions.org>.

²⁹ Aufiero, P. and Tut Pur, N. (2021). South Sudan at a Crossroads. [online] Human Rights Watch. Available at: <https://www.hrw.org/news/2021/07/09/south-sudan-crossroads>.

Less than two days later, the fighting between these two groups spread to residential areas, resulting in large-scale killings and abuses. Given that the attacks were also ethnically motivated, many Nuer people were targeted and killed in specific neighborhoods, often 200 or 300 at a time. These attacks prompted thousands to seek refuge in UNMISS bases, more specifically in Bor, Juba, Akobó, Bentiu, Malakal, and Melut³⁰; this caused the South Sudanese government's relationship with UNMISS to worsen and even led to hostile remarks made by government officials as well as anti-UN demonstrations. By March of the following year, around 85,000 people had relocated to eight specific UNMISS bases. Security Council Resolution 2132 raised the mission's troop level to 12,500 personnel and the police component to 1,323^{31,32}. This represents one of the most vigorous UN Security Council mandates, taking exceptional measures to ensure civilian protection in South Sudan through active peacekeeping.

3.2. Protection of Civilian (PoC) sites in South Sudan

Many Protection of Civilian (PoC) sites were established by UNMISS, representing a "temporary last resort" and providing refuge for civilians under "imminent threat of physical violence"³³. However, with growing threats of

violence, these sites became semi-permanent, hosting more than 200,000 internally displaced people, a number which grew every day. In these sites, security is provided by the United Nations Police (UNPOL), who conduct 24-hour patrols around the camps, and in some sites, such as Bentiu and Malakal in Northern South Sudan, have even introduced "holding facilities" for perpetrators of violence³⁴. This has been proven to significantly lower rates of violence; in 2016, there were 275 incidents reported in the Malakal PoC site, which decreased to less than 170 in 2018. Search and seizure operations carried out by the UNPOL and the overall increased protection of the inhabitants in the camps caused them to emphasize the role of the police in their daily lives in interviews conducted by volunteers at UNMISS³⁵. Tens of thousands of lives were estimated to have been saved by the establishment and upkeep of these PoC sites, in which emergency relief in the form of food, water, and shelter was provided to the fleeing masses³⁶.

3.3. UNMISS Protection of Civilian Strategy (PCS)

Moreover, UNMISS established a Protection of Civilian Strategy (PCS), which outlines how they will engage in protection activities for people not in the PoC sites. There are three tiers to the UNMISS PCS: protection through the political process, providing protection from physical

³⁰ Stannes, E. (2015). The United Nations Mission in the Republic of South Sudan (UNMISS): Protecting Civilians in a Volatile Environment. [online] Available at: <https://www.files.ethz.ch/isn/193787/NUPI-Policy-Brief-24-15-Stannes-3.pdf>.

³¹ UN Security Council (2013). Resolution 2132 (2013) /: adopted by the Security Council at its 7091st meeting, on 24 December 2013. [online] United Nations Digital Library System. Available at: <https://digitallibrary.un.org/record/762863?ln=en&v=pdf>.

³² EPON (Effectiveness of Peace Operations Network) (2019). Assessing the Effectiveness of the United Nations Mission in South Sudan / UNMISS. [online] EPON. Available at: <https://collections.unu.edu/eserv/UNU:7595/EPON-UNMISS-Report-LOWRES.pdf>.

³³ Kilroy, W. and Ryan, K. (2024). Institutionalising an Emergency Response: 'Protection of Civilians' Sites at UN Bases in South Sudan as a Way to Deal with Violence Against Communities. *Civil wars*, 26(1), pp.1–34. doi:<https://doi.org/10.1080/13698249.2024.2302724>.

³⁴ EPON (Effectiveness of Peace Operations Network) (2019). Assessing the Effectiveness of the United Nations Mission in South Sudan / UNMISS. [online] EPON. Available at: <https://collections.unu.edu/eserv/UNU:7595/EPON-UNMISS-Report-LOWRES.pdf>.

³⁵ EPON (Effectiveness of Peace Operations Network) (2019). Assessing the Effectiveness of the United Nations Mission in South Sudan / UNMISS. [online] EPON. Available at: <https://collections.unu.edu/eserv/UNU:7595/EPON-UNMISS-Report-LOWRES.pdf>.

³⁶ Kilroy, W. and Ryan, K. (2024). Institutionalising an Emergency Response: 'Protection of Civilians' Sites at UN Bases in South Sudan as a Way to Deal with Violence Against Communities. *Civil wars*, 26(1), pp.1–34. doi:<https://doi.org/10.1080/13698249.2024.2302724>.

violence, and establishing a protective environment³⁷. Although the PoC sites are given unofficial priority status and absorb many of the mission's resources, hundreds of thousands of civilians in urban and rural areas remain in need of humanitarian aid. Therefore, UNMISS personnel must address these issues simultaneously, as outlined in the official UNMISS Protection of Civilians Strategy, 15 September 2014³⁸. As part of these efforts and mainly to address the 2nd tier of the PCS (protecting from physical violence), high visibility patrolling of certain areas has been ordered by UNMISS, and the use of force is effectively allowed by personnel in cases of danger being presented to civilians. The mission also collaborates with local Civil Society Organisations (CSOs) such as the South Sudan Human Rights Defenders Network (SSHRDN)³⁹, creating early warning systems to prevent incidents of violence having detrimental effects on internally displaced persons (IDPs), as well as making the reporting of such events more manageable. Through these cooperative efforts, UNMISS can strengthen its preventative measures and support more robust protection frameworks within the PoCs.

3.4. Humanitarian aid

UNMISS also facilitated humanitarian aid by establishing safe passage for individuals trying to escape during heightened violence and conflict, especially in otherwise inaccessible regions. By sending humanitarian convoys and rehabilitating supply roads, the mission delivered

life-saving humanitarian aid to more than 100,000 people⁴⁰ mostly living in rural areas, some of which were often conflict-prone. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA)⁴¹, even the people living in high-constraint areas in the West and North-East of South Sudan, such as Western Bahr el Ghazal and Longochuk, in which access is complicated due to the presence of armed groups and checkpoints, were able to receive some form of humanitarian assistance via UNMISS⁴². By facilitating external assistance, the mission is vital in delivering support and resources that can help improve their well-being and resilience. This initiative addresses crucial needs that the IDPs might not have met otherwise.

3.5. Legal action

Furthermore, UNMISS's Human Rights Division (UNMISS HRD) were actively involved in creating reports that documented the human rights violations, extra-judicial killings and sexual violence crimes that were committed against the South Sudanese since the outbreak of the war. In a specific report documenting an attack on Bentiu in Unity State in October 2014⁴³ official findings

³⁷ United Nations (2015). Report of the Secretary-General on South Sudan. [online] Available at: <https://documents.un.org/doc/undoc/gen/n14/249/82/pdf/n1424982.pdf>.

³⁸ UNMISS Protection of Civilians Strategy, 15 September 2014, para 31.

³⁹ South Sudan Human Rights Defenders Network (SSHRDN) (2020). Our organization - South Sudan Human Rights Defenders Network. [online] South Sudan Human Rights Defenders Network. Available at: <https://sshrdn.org/about-us/our-organization/>.

⁴⁰ EPON (Effectiveness of Peace Operations Network) (2019). Assessing the Effectiveness of the United Nations Mission in South Sudan / UNMISS. [online] EPON. Available at: <https://collections.unu.edu/eserv/UNU:7595/EPON-UNMISS-Report-LOWRES.pdf>.

⁴¹ UN Office for the Coordination of Humanitarian Affairs (2018). South Sudan: Humanitarian Access Snapshot (September 2018) - South Sudan. [online] ReliefWeb. Available at: <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-access-snapshot-september-2018>.

⁴² United Nations Mission in South Sudan and United Nations Human Rights Office of the High Commissioner (2015). The State of Human Rights in the Protracted Conflict in South Sudan. [online] Available at: https://unmiss.unmissions.org/sites/default/files/human_rights_update_report_of_4_december_2015_final.pdf.

⁴³ UNMISS (2014). Special Report: Attack on Bentiu, Unity State, 29 October 2014. [online] Available at:

https://unmiss.unmissions.org/sites/default/files/unmiss_hrd_-_attack_on_bentiu_october_2014.pdf.

were evident in showing that there had been intentional targeting of civilians by armed forces and that women, in particular, had been abducted and subject to sexual abuses during the attack. For example, witnesses observed and reported 4 SPLM-IO groups entering the Catholic Church in Dere, in which more than 150 people had taken refuge. A short while later, people witnessed the killing of a 15-17-year-old boy from a group of 11 men outside the church by an SPLM-IO soldier, and the remaining ten were soon killed⁴⁴. These reports were invaluable in raising awareness in both the international community and the South Sudanese government of the atrocities endured by the South Sudanese people over the years. Following the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), signed into effect in Addis Ababa, Ethiopia, in 2018⁴⁵, these reports are permitted to be used by prosecutors on both the national and international stage if deemed necessary, to urge accountability for “serious human rights violations, abuses, war crimes, or crimes against humanity”⁴⁶. Therefore, UNMISS was involved not only in providing humanitarian aid to the South Sudanese but also in pursuing legal action, focusing on international accountability for crimes committed during the civil war.

⁴⁴ UNMISS (2014). Special Report: Attack on Bentiu, Unity State, 29 October 2014.

[online] Available at:

https://unmiss.unmissions.org/sites/default/files/unmiss_hrd_-_attack_on_bentiu_october_2014.pdf.

⁴⁵ Intergovernmental Authority on Development (2018). REVITALISED AGREEMENT ON THE RESOLUTION OF THE CONFLICT IN THE REPUBLIC OF SOUTH SUDAN (R-ARCSS) ADDIS ABABA, ETHIOPIA 12 SEPTEMBER 2018. [online] Available at:

<https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>.

⁴⁶ Intergovernmental Authority on Development (2018). REVITALISED AGREEMENT ON THE RESOLUTION OF THE CONFLICT IN THE REPUBLIC OF SOUTH SUDAN (R-ARCSS) ADDIS ABABA, ETHIOPIA 12 SEPTEMBER 2018. [online] Available at:

<https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>.

4. Differences and difficulties

Although the United Nations and its specialized branches have played an unmistakably crucial role in helping the displaced persons in Myanmar and South Sudan, their interventions have differed mainly in scope, nature, and effectiveness. The analysis of the difficulties and shortcomings of the interventions are based on the following objective criteria for “success”:

- Immediate humanitarian impact (e.g. lives saved, physical aid packages delivered)
- Sustainability of interventions (e.g. long-term infrastructure, repatriation plans)
- Accountability mechanisms (e.g. addressing legal and systemic barriers).

It is also recognized that it is infrequent, albeit impossible, for third-party interventions to be perfect and provide unmitigated humanitarian aid.

4.1. Nature of interventions

In South Sudan, UNMISS's primary goal is to protect civilians from physical violence, primarily by establishing PoC camps. This allows the fleeing groups to find “safe havens” within their periphery, where they can receive immediate protection from physical attacks and receive food, water, sanitation services, and medicine. With the creation of these PoC sites came a strategic base for the UN peacekeepers, from which monitoring and intervention are facilitated.

Contrastingly, in Myanmar, UNICEF and UNHCR concentrated their efforts on facilitating safe passage to Bangladesh for the Rohingya people. The goal of the

intervention largely stemmed from adhering to the needs of the displaced populations following cross-border displacement to neighboring countries, namely Bangladesh.

The UN was, therefore, more focused on deterring ethnic conflict and violations of humanitarian law on a wide scale by ensuring the safety of those residing in the PoC sites in South Sudan; “Without UNMISS, there would have been a genocide here” was the sentiment shared by many South Sudanese to the Global Observatory⁴⁷. This reflects the importance of physical safety in a country plagued by civil war, consisting of armed conflict and widespread danger for unprotected civilians.

In Myanmar, the Rohingya ethnic minority was subject to targeted ethnic cleansing, forcing them to seek refuge in bordering countries, which was the foremost cause for UN intervention. Facilitating the transition and accommodation to other countries became UNICEF and UNHCR's priority following the outbreak of violence in Rakhine State.⁴⁸

4.2. Shortcomings

In South Sudan, while the PoC sites established by UNMISS are vital, there are no guarantees that the mission will be able to cover far more territory and people if the sites are phased out due to political or economic reasons⁴⁹.

This presents barriers to the sustainability of the UN's operations in the country, as refugee camps, such as those in Cox's Bazar, do not form long-term infrastructure able to safely and effectively accommodate refugees by an adequate humanitarian standard. Furthermore, the success of the immediate humanitarian impact received by the Rohingyas has suffered changes since the food rations were cut by 30% in 2023 due to a lack of funding for the UN World Food Programme (WFP)⁵⁰. This caused 90% of the camp to lack access to adequate diets by November of that same year, and many have had to ration their food for month-long periods. This constitutes a severe case of food insecurity, contributing to the shortcomings of the UN's interventions for the Rohingya.

Within the refugee camps, refugees who were repatriated to Myanmar were often not adequately informed about the process and what awaited them upon their arrival; this went against the UNHCR's responsibilities. UNHCR personnel also assumed the insufficient effort to reduce abuses in specific areas in the camps, and when field staff criticized this, they were effectively removed from the operation⁵¹. This shows that UN involvement in specific Rohingya camps was flawed, and their shortcomings were often concealed from the public, indicating limited effectiveness of accountability mechanisms for interventions concerning the Rohingya.

⁴⁷ The Global Observatory (2019). Impact of UN Mission in South Sudan Complicated by Dilemmas of Protection. [online] IPI Global Observatory. Available at: <https://theglobalobservatory.org/2019/12/impact-un-mission-south-sudan-complicated-by-dilemmas-of-protection/>.

⁴⁸ UNHCR (2018). UNHCR steps up call for unhindered access in Myanmar's northern Rakhine state | UNHCR. [online] UNHCR. Available at: <https://www.unhcr.org/news/briefing-notes/unhcr-steps-call-unhindered-access-myanmars-northern-rakhine-state>.

⁴⁹ Norwegian Refugee Council (2017). PROTECTION OF CIVILIANS SITES LESSONS FROM SOUTH SUDAN FOR FUTURE OPERATIONS. [online] Available at: https://www.nrc.no/globalassets/pdf/reports/poc-sites_lessons-from-south-sudan-copy.pdf.

⁵⁰ European Civil Protection and Humanitarian Aid Operations (2024). Food ration cuts in Bangladesh: a year of struggles and hope for Rohingya refugees - European Commission. [online] civil-protection-humanitarian-aid.ec.europa.eu. Available at: https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/stories/food-ration-cuts-bangladesh-year-struggles-and-hope-rohingya-refugees_en.

⁵¹ Faye, M. (2021). A forced migration from Myanmar to Bangladesh and beyond: humanitarian response to Rohingya refugee crisis. *Journal of International Humanitarian Action*, 6(1), pp.1–7. doi:<https://doi.org/10.1186/s41018-021-00098-4>.

Additionally, facilitating the voluntary relocation of thousands of internally displaced people and effectively creating homogeneous ethnic areas might benefit South Sudan in the short term, but it will likely reinforce ethnic rifts, which is not a sustainable approach to establish in the wake of civil war, according to the Global Observatory⁵². Moreover, a report published by the UN Office for the Coordination of Human Affairs (OCHA) shows that more than 4.3 million people still require humanitarian aid in South Sudan⁵³. It also shows that the lack of funding in specific mission sectors is flagrant. For example, of the \$255 million needed for the refugee response in South Sudan, only \$70.4 million was received. This presents a serious shortcoming of the value of the humanitarian aid provided to the South Sudanese, as it effectively lacked sufficient funding to complete the mission's preliminary goals. Furthermore, accountability for improper conduct by UN forces is difficult due to the nationality-based immunities granted to the peacekeepers, which make them not subject to South Sudanese law⁵⁴. Legal barriers are significant for UNMISS, particularly regarding its ability to hold the government and rebel forces accountable for serious human rights violations. The South Sudanese legal system

is weak and does not facilitate the operation of independent bodies within its territory⁵⁵.

4.3. Safe return, or lack thereof

The UN inevitably has limited reach in Myanmar. Safe return, or “repatriation”, of the refugees to the homes they were expelled from is either impossible, difficult or very undesirable. Refugees who arrived in the Bangladesh camps in 2019 reported that harassment, forced labour, and arbitrary arrest were still common in Myanmar⁵⁶. They also revealed not only the unwillingness of the government to guarantee safe conditions for returnees but also their adoption of certain policies that are actively worsening the situation, such as the requirement for Rohingyas to carry with them a National Verification Card (NVC) at all times⁵⁷. More than 400 villages were damaged or destroyed during “clearance operations” carried out by the military⁵⁸, creating a severe barrier to safe return for the Rohingyas.

Similarly, in South Sudan, safe return is not guaranteed by UNMISS, as there is no promise that ethnic, physical and sexual violence will not remain an occurrence in the places from which internally displaced peoples (IDPs) fled⁵⁹. As

⁵² The Global Observatory (2019). Impact of UN Mission in South Sudan Complicated by Dilemmas of Protection. [online] IPI Global Observatory. Available at: <https://theglobalobservatory.org/2019/12/impact-un-mission-south-sudan-complicated-by-dilemmas-of-protection/>.

⁵³ OCHA Financial Tracking Service (2023). South Sudan Humanitarian Response Plan 2023 | Financial Tracking Service. [online] Unocha.org. Available at: <https://fts.unocha.org/plans/1111/summary>.

⁵⁴ United Nations General Assembly (1946). No. 4 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS Adopted by the General Assembly of the United Nations on 13 February 1946 CONVENTION SUR LES PRIVILÈGES ET IMMUNITÉS DES NATIONS UNIES. [online] Available at: <https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf>.

⁵⁵ UN General Assembly (2024). Evaluation of the contribution of the United Nations Mission in South Sudan to strengthening the rule of law and accountability in South Sudan :: report of the Office of Internal Oversight Services. [online] United Nations Digital Library System. Available at: <https://digitallibrary.un.org/record/4038535?v=pdf>.

⁵⁶ Sullivan, D. (2019). Abuse or exile: MYANMAR'S ONGOING PERSECUTION OF THE ROHINGYA. [online] Available at: <https://d3jwam0i5codb7.cloudfront.net/wp-content/uploads/2023/03/BangladeshFINAL.pdf>.

⁵⁷ Potter, R. and Win, K. (2019). NATIONAL VERIFICATION CARDS -A BARRIER TO ROHINGYA REPATRIATION Burma Human Rights Network. [online] Available at: https://progressivevoicemyanmar.org/wp-content/uploads/2019/07/NVC-A_barrier_To_Rohingya_Repatriation_Report_by_BHRN.pdf.

⁵⁸ Selth, A. (2018). MYANMAR'S ARMED FORCES AND THE ROHINGYA CRISIS. [online] Available at: <https://www.usip.org/sites/default/files/2018-08/pw140-myanmars-armed-forces-and-the-rohingya-crisis.pdf>.

⁵⁹ Forced Migration Review (2024). Shared obstacles to return: Rohingya and South Sudanese - Forced Migration Review. [online] Forced Migration Review. Available at: https://www.fmreview.org/return/sullivan/#_edn1.

was previously established, the PoCs were meant to be a temporary solution to an imminent influx of thousands of refugees. Still, they became semi-permanent places of residence for thousands who had had their homes destroyed and systematically looted by armed forces⁶⁰ at the beginning of the conflict. The latter events caused repatriation to be extremely difficult and often unwanted by many South Sudanese, as their relocation would mean a lack of security, lesser access to humanitarian aid, and insufficient information sharing⁶¹.

4. Conclusion

This study underscores the necessity for the UN to integrate stronger accountability mechanisms and sustainable repatriation strategies into its interventions. Where governments are unable to accept accountability or reduce state and opposition-led violence, the UN can create intermittent and permanent camps to house refugees in Myanmar and South Sudan, providing them with sanctuary following periods of extreme and ethnic-based violence.

Differences have been found between the UN's involvement in Myanmar and South Sudan. Aside from the fact that they present as inherently different conflicts, the issues in South Sudan are primarily focused on providing physical protection from violence, often stemming from the SPLM-IO opposition group. In

contrast, the Rohingyas sought refuge and humanitarian aid in Bangladesh following an ethnically driven violent outbreak in Rakhine state.

In both crises, the UN has been met with particular limitations, mainly regarding safe return processes and legal obstacles preventing it from attaining a larger scope of distressed populations. In South Sudan, threats of violence hinder progress in reducing refugees' reliance on the PoC sites. In Myanmar, the lack of government protection and the destruction of homes make the Rohingyas' return undesirable.

Future efforts should prioritize collaborative frameworks with host nations and address the root causes of displacement to prevent recurring crises. UN officials and personnel may use the events in South Sudan and Myanmar as an example of the vitality of humanitarian aid to displaced peoples, both internationally and internally. By taking further legal action and increasing funding for refugee camps and PoC sites, issues such as overcrowding, poor sanitation, and crime can be avoided in a bid to reduce the tangible effects of ethnically motivated violence in vulnerable countries.

⁶⁰ Amnesty International (2017). South Sudan: Killings, mass displacement and systematic looting as government forces purge civilians from Upper Nile. [online] Amnesty International. Available at: <https://www.amnesty.org/en/latest/news/2017/06/south-sudan-government-forces-purge-civilians-from-upper-nile/>.

⁶¹ Forced Migration Review (2024). Shared obstacles to return: Rohingya and South Sudanese - Forced Migration Review. [online] Forced Migration Review. Available at: https://www.fmreview.org/return/sullivan/#_edn1

6. Bibliography

1. Amnesty International (2017). South Sudan: Killings, mass displacement and systematic looting as government forces purge civilians from Upper Nile. [online] Amnesty International. Available at: <https://www.amnesty.org/en/latest/news/2017/06/south-sudan-government-forces-purge-civilians-from-upper-nile/>.
2. Aufiero, P. and Tut Pur, N. (2021). South Sudan at a Crossroads. [online] Human Rights Watch. Available at: <https://www.hrw.org/news/2021/07/09/south-sudan-crossroads>.
3. BRAC (2021). South Sudan – BRAC International. [online] Bracinternational.org. Available at: <https://bracinternational.org/south-sudan/#our-programmes>.
4. CERF (2016). Who We Are | CERF. [online] Un.org. Available at: <https://cerf.un.org/about-us/who-we-are>.
5. Damanik, A.F. (2016). THE ROLE OF THE UNITED NATIONS CHILDREN’S FUNDS (UNICEF) IN HANDLING ROHINGYA CHILDREN REFUGEES IN BANGLADESH 2016-2018. *Journal of International Islamic Law, Human Right and Public Policy*, [online] 2(1), pp.47–64. doi:<https://doi.org/10.59733/jishup.v2i1.47>.
6. Doctors Without Borders (2020). Timeline: A visual history of the Rohingya refugee crisis. [online] Doctors Without Borders - USA. Available at: <https://www.doctorswithoutborders.org/latest/timeline-visual-history-rohingya-refugee-crisis>.
7. Doctors without Borders (2022). The Rohingya: The world’s largest stateless population. [online] Médecins Sans Frontières Australia | Doctors Without Borders. Available at: <https://msf.org.au/rohingya-worlds-largest-stateless-population>.
8. Dwi, R. and Nur Aulia Safira (2024). The Role of the United Nations in Handling The Rohingya and Uighur Conflict in 2017–2022. *Advances in Social Science, Education and Humanities Research/Advances in social science, education and humanities research*, [online] pp.795–804. doi:https://doi.org/10.2991/978-2-38476-236-1_85.
9. EPON (Effectiveness of Peace Operations Network) (2019). Assessing the Effectiveness of the United Nations Mission in South Sudan / UNMISS. [online] EPON. Available at: <https://collections.unu.edu/eserv/UNU:7595/EPON-UNMISS-Report-LOWRES.pdf>.
10. European Civil Protection and Humanitarian Aid Operations (2024). Food ration cuts in Bangladesh: a year of struggles and hope for Rohingya refugees - European Commission. [online] civil-protection-humanitarian-aid.ec.europa.eu. Available at: https://civil-protection-humanitarian-aid.ec.europa.eu/news-stories/stories/food-ration-cuts-bangladesh-year-struggles-and-hope-rohingya-refugees_en.
11. Faye, M. (2021). A forced migration from Myanmar to Bangladesh and beyond: humanitarian response to Rohingya refugee crisis. *Journal of International Humanitarian Action*, 6(1), pp.1–7. doi:<https://doi.org/10.1186/s41018-021-00098-4>.
12. Forced Migration Review (2024). Shared obstacles to return: Rohingya and South Sudanese - Forced Migration Review. [online] Forced Migration

- Review. Available at:
https://www.fmreview.org/return/sullivan/#_edn1.
13. Human Rights Watch (2014). South Sudan: Ethnic Targeting, Widespread Killings. [online] Human Rights Watch. Available at:
<https://www.hrw.org/news/2014/01/16/south-sudan-ethnic-targeting-widespread-killings>.
 14. Intergovernmental Authority on Development (2018). REVITALISED AGREEMENT ON THE RESOLUTION OF THE CONFLICT IN THE REPUBLIC OF SOUTH SUDAN (R-ARCSS) ADDIS ABABA, ETHIOPIA 12 SEPTEMBER 2018. [online] Available at:
<https://docs.pca-cpa.org/2016/02/South-Sudan-Peace-Agreement-September-2018.pdf>.
 15. Joint Data Center on Forced Displacement (2020). Refugees who mean business: Economic activities in and around the Rohingya settlements in Bangladesh. [online] Joint Data Center. Available at:
https://www.jointdatacenter.org/literature_review/refugees-who-mean-business-economic-activities-in-and-around-the-rohingya-settlements-in-bangladesh/.
 16. Kilroy, W. and Ryan, K. (2024). Institutionalising an Emergency Response: 'Protection of Civilians' Sites at UN Bases in South Sudan as a Way to Deal with Violence Against Communities. *Civil wars*, 26(1), pp.1–34.
doi:<https://doi.org/10.1080/13698249.2024.2302724>.
 17. Kipgen, N. (2013). Addressing the Rohingya Problem. *Journal of Asian and African Studies*, 49(2), pp.234–247.
doi:<https://doi.org/10.1177/0021909613505269>.
 18. Norwegian Refugee Council (2017). PROTECTION OF CIVILIANS SITES LESSONS FROM SOUTH SUDAN FOR FUTURE OPERATIONS. [online] Available at:
https://www.nrc.no/globalassets/pdf/reports/poc-sites_lessons-from-south-sudan-copy.pdf.
 19. OCHA Financial Tracking Service (2023). South Sudan Humanitarian Response Plan 2023 | Financial Tracking Service. [online] Unocha.org. Available at:
<https://fts.unocha.org/plans/1111/summary>.
 20. Potter, R. and Win, K. (2019). NATIONAL VERIFICATION CARDS -A BARRIER TO ROHINGYA REPATRIATION Burma Human Rights Network. [online] Available at:
https://progressivevoicemyanmar.org/wp-content/uploads/2019/07/NVC-A_barrier_To_Rohingya_Repatriation_Report_by_BHRN.pdf.
 21. Selth, A. (2018). MYANMAR'S ARMED FORCES AND THE ROHINGYA CRISIS. [online] Available at:
<https://www.usip.org/sites/default/files/2018-08/pw140-myanmars-armed-forces-and-the-rohingya-crisis.pdf>.
 22. South Sudan Human Rights Defenders Network (SSHRDN) (2020). Our organization - South Sudan Human Rights Defenders Network. [online] South Sudan Human Rights Defenders Network. Available at:
<https://sshrdn.org/about-us/our-organization/>.
 23. Stamnes, E. (2015). The United Nations Mission in the Republic of South Sudan (UNMISS): Protecting Civilians in a Volatile Environment. [online] Available at:
<https://www.files.ethz.ch/isn/193787/NUPI-Policy-Brief-24-15-Stamnes-3.pdf>.
 24. Strategic Executive Group (2019). Joint Response Plan For Rohingya Humanitarian Crisis: March-December 2018.
<https://reliefweb.int/sites/reliefweb.int/files/resources/JRP%20for%20Rohingya%20Humanitarian%20Crisis%20-%20FOR%20DISTRIBUTION.PDF>.

25. Sullivan, D. (2019). Abuse or exile: MYANMAR'S ONGOING PERSECUTION OF THE ROHINGYA. [online] Available at: <https://d3jwam0i5codb7.cloudfront.net/wp-content/uploads/2023/03/BangladeshFINAL.pdf>.
26. The Global Observatory (2019). Impact of UN Mission in South Sudan Complicated by Dilemmas of Protection. [online] IPI Global Observatory. Available at: <https://theglobalobservatory.org/2019/12/impact-un-mission-south-sudan-complicated-by-dilemmas-of-protection/>.
27. UN General Assembly (2024). Evaluation of the contribution of the United Nations Mission in South Sudan to strengthening the rule of law and accountability in South Sudan :: report of the Office of Internal Oversight Services. [online] United Nations Digital Library System. Available at: <https://digitallibrary.un.org/record/4038535?v=pdf>.
28. UN News (2024). Millions impacted by 'catastrophic and massive floods' in Bangladesh. [online] UN News. Available at: <https://news.un.org/en/story/2024/09/1154036>.
29. UN Office for the Coordination of Humanitarian Affairs (2018). South Sudan: Humanitarian Access Snapshot (September 2018) - South Sudan. [online] ReliefWeb. Available at: <https://reliefweb.int/report/south-sudan/south-sudan-humanitarian-access-snapshot-september-2018>.
30. UN Security Council (2013). Resolution 2132 (2013) /: adopted by the Security Council at its 7091st meeting, on 24 December 2013. [online] United Nations Digital Library System. Available at: <https://digitallibrary.un.org/record/762863?ln=en&v=pdf>.
31. UNHCR (2018). UNHCR steps up call for unhindered access in Myanmar's northern Rakhine state | UNHCR. [online] UNHCR. Available at: <https://www.unhcr.org/news/briefing-notes/unhcr-steps-call-unhindered-access-myanmars-northern-rakhine-state>.
32. UNHCR (2023a). Inside the world's Five Largest Refugee Camps. [online] www.unrefugees.org. Available at: <https://www.unrefugees.org/news/inside-the-worlds-five-largest-refugee-camps/>.
33. UNHCR (2023b). Rohingya emergency. UNHCR. [online] 29 Mar. Available at: <https://www.unhcr.org/emergencies/rohingya-emergency>.
34. UNHCR (2023c). Rohingya Refugee Crisis Explained. [online] www.unrefugees.org. Available at: <https://www.unrefugees.org/news/rohingya-refugee-crisis-explained/>.
35. UNHCR (2023d). South Sudan Refugee Crisis Explained. [online] Unrefugees.org. Available at: <https://www.unrefugees.org/news/south-sudan-refugee-crisis-explained/>.
36. UNHCR (2023e). South Sudan situation. [online] Global Focus. Available at: <https://reporting.unhcr.org/operational/situations/south-sudan-situation>.
37. UNHCR and Yale Y-RISE (2022). THE IMPACT OF FINANCIAL ASSISTANCE THROUGH VOLUNTEER PROGRAMMES IN COX'S BAZAR REFUGEE CAMPS. [online] UNHCR Operational Data Portal (ODP). Available at: https://data.unhcr.org/en/documents/details/93863?_gl=1.
38. UNICEF USA (2022). Inside Look: How UNICEF Supports Rohingya Refugees in Bangladesh. [online] UNICEF USA. Available at:

- <https://www.unicefusa.org/stories/inside-look-how-unicef-supports-rohingya-refugees-bangladesh>.
39. United Nations (2010). The Human Right to Water and Sanitation Media Brief 1 UN-Water Decade Programme on Advocacy and Communication and Water Supply and Sanitation Collaborative Council. [online] Available at: https://www.un.org/waterforlifedecade/pdf/human_right_to_water_and_sanitation_media_brief.pdf.
40. United Nations (2015). Report of the Secretary-General on South Sudan. [online] Available at: <https://documents.un.org/doc/undoc/gen/n14/249/82/pdf/n1424982.pdf>.
41. United Nations (2024). Far from the Headlines: Myanmar - The Rohingya crisis. [online] United Nations Western Europe. Available at: <https://unric.org/en/myanmar-the-rohingya-crisis/>.
42. United Nations (n.d.). UNMISS. [online] UNMISS. Available at: <https://unmiss.unmissions.org>.
43. United Nations Children's Fund (2018). FUTURES IN THE BALANCE: BUILDING HOPE FOR A GENERATION OF ROHINGYA CHILDREN. [online] Available at: <https://www.unicef.org/media/95336/file/UNICEF-Child-Alert-Rohingya-Aug-2018-EN.pdf>.
44. United Nations Development Programme (n.d.). Strengthening Disaster Risk Management and Community Resilience in Cox's Bazar. [online] UNDP. Available at: <https://www.undp.org/bangladesh/projects/strengthening-disaster-risk-management-and-community-resilience-coxs-bazar>.
45. United Nations General Assembly (1946). No. 4 CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS Adopted by the General Assembly of the United Nations on 13 February 1946 CONVENTION SUR LES PRIVILÈGES ET IMMUNITÉS DES NATIONS UNIES. [online] Available at: <https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf>.
46. United Nations General Assembly (2017). Human Rights Council Thirty-fourth session Resolution adopted by the Human Rights Council on 24 March 2017 34/22. Situation of human rights in Myanmar. [online] Available at: <https://documents.un.org/doc/undoc/gen/g17/081/98/pdf/g1708198.pdf>.
47. United Nations Mission in South Sudan and United Nations Human Rights Office of the High Commissioner (2015). The State of Human Rights in the Protracted Conflict in South Sudan. [online] Available at: https://unmiss.unmissions.org/sites/default/files/human_rights_update_report_of_4_december_2015_final.pdf.
48. UNMISS (2014). Special Report: Attack on Bentiu, Unity State, 29 October 2014. [online] Available at: https://unmiss.unmissions.org/sites/default/files/unmiss_hrd_-_attack_on_bentiu_october_2014.pdf.
49. Wanjala, M. (2019). EXAMINING THE ROLE OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 IN FOSTERING INCLUSIVE AND SUSTAINABLE PEACE IN SOUTH SUDAN.
50. World Health Organisation (2022). Dengue in Rohingya refugee/Forcibly Displaced Myanmar Nationals (FDMN) camps in Cox's Bazar - Bangladesh. [online] www.who.int. Available at: <https://www.who.int/emergencies/disease-outbreak-news/item/2022-DON401>.

The Importance of Regulating Cyber Security On a Global Scale

Malaika Mokashi

SciencesPo Paris- Reims
Columbia University

E-mail: malaika.mokashi@sciencespo.fr

Published 27th January 2025

Abstract

Russia's use of misinformation tactics and cyber warfare in various democratic global elections is being used as a strategy to threaten democratic countries. On a larger scale, Russia's cybersecurity attacks represent a shift in recent international diplomacy where social media and technology are used to threaten a nation's sovereignty. Using descriptive research, key cases of Russian interference including the US 2016, 2024 Presidential Election, and war in Ukraine will prove that these Russian tactics threaten national security and challenge democracy. Hopefully, this will help to shed light on the importance of regulating cybersecurity more heavily on a global scale.

Keywords: Cybersecurity, Misinformation, Russia, Democracy, Elections, Propaganda, Cyber warfare, Artificial intelligence (AI)

I. Introduction

At a time when information travels at the speed of light, the fine line between truth and manipulation has become increasingly blurred, making cyberspace a conduit for threatening democracy and political life as we know it today. As technology has continued to grow over the last couple of decades, cybersecurity and misinformation have become dominant within international relations and political campaigns. It's very easy for countries to deliberately spread misinformation to push a certain political agenda. This can be done through social media, news outlets, and cyber warfare. Russia has been at the forefront of using these tactics to lessen the power of

multiple democratic systems, most notably during the 2016 US presidential election¹ which brought these issues to light for the first time. Since then, Russia² has been accused of attempting to change voter perceptions towards a specific candidate across North America and Europe.

As a whole, Russian cyberwarfare campaigns could threaten democracy. Elections are the way to connect

¹ "Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident." 2017. DNI.gov. https://www.dni.gov/files/documents/ICA_2017_01.pdf.

² "Fact Sheet: What We Know about Russia's Interference Operations." 2019. German Marshall Fund. <https://www.gmfus.org/news/fact-sheet-what-we-know-about-russias-interference-operations>.

people to political sovereignty and power. Without fair elections, public trust will decline, and political legitimacy will no longer be entrusted to the people. Further, through a technological lens, using cyber warfare gives a country the ability to impact others without actual military engagement. This could become deadly, again threatening the balance of powers in international relations, leading to more diplomatic tensions across the globe.

Russia's use of misinformation tactics and cyber warfare in various democratic global elections is being used as a strategy to destabilize democratic countries³. On a larger scale, Russia's cybersecurity attacks represent a shift in recent international diplomacy where social media and technology are used to threaten a nation's sovereignty. Using descriptive research, key cases of Russian interference including the US 2016, 2024 Presidential Election, and war in Ukraine will prove that these Russian tactics threaten national security and challenge democracy. Hopefully, this will help to shed light on the importance of regulating cybersecurity more heavily on a global scale.

II. 2016 US Presidential Election

Russia has long faced diplomatic tensions with the United States of America, but these issues were exacerbated during the alleged Russian government interference in the

³ "Fact Sheet: What We Know about Russia's Interference Operations." 2019. German Marshall Fund. <https://www.gmfus.org/news/fact-sheet-what-we-know-about-russias-interference-operations>.

2016 US presidential election. After alleged reports of Russian meddling in propelling forward presidential candidate Donald Trump's campaign, the National Intelligence Council has since conducted an investigation on the matter and determined with strong confidence that the Russian government (primarily led by Putin) led a campaign to separate citizens of the United States and in a greater sense, undermine democracy.

A declassified joint report (ICA)⁴ published by the National Intelligence Council and the Director of National Intelligence for the United States of America evaluated claims of the Russian campaign, revealing the strategy used by Putin and the Russian government to, "undermine the integrity of the U.S electoral process." This was the first recorded time the Russian government has been so direct and overt with their efforts to impact a US election, a reflection of the increasing division between the United States and Russia as well as personal conflict between Putin and presidential candidate Hillary Clinton.⁵

Discontent with the growing influence of global democracy in modern times, the Russian government (namely Vladimir Putin) has attempted to keep the

⁴ "Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident." 2017. DNI.gov. https://www.dni.gov/files/documents/ICA_2017_01.pdf.

⁵ "Fact Sheet: What We Know about Russia's Interference Operations." 2019. German Marshall Fund. <https://www.gmfus.org/news/fact-sheet-what-we-know-about-russias-interference-operations>.

forefront of these democratic states (such as the United States) at bay in order to establish the legitimacy of their own dictatorial state power. Leading up to the 2016 election, Putin held strong discontent for Hillary Clinton due to her past remarks as Secretary of State denouncing him, as well as for her part in (allegedly) commencing widespread protests against the Russian regime throughout 2011 and 2012.

But unhappiness with Secretary Clinton's past actions wasn't the only motivator for providing a push towards Presidential Candidate Trump. According to the ICA report, the Russian Government also saw Trump as president as an opening to combat the Islamic State in Iraq and the Levant (ISIL). Putin and his advisors anticipated that Trump's foreign policy was more likely to align with Russia's interest in counterterrorism efforts than past Presidential administrations, which were hesitant to coordinate closely with Russia. As a culmination of these various factors, Putin and the rest of the Russian government quickly became greater proponents of Presidential candidate Donald Trump, who they believed would be more supportive of Russian wishes.

In the June leading up to the Presidential election, President Putin did not outrightly publicly support President Trump. However, it soon became clear that Putin and his advisors were more favorable to this candidate, as he and his advisors became outspoken about supporting Trump's foreign policy and outlook towards

counterterrorism. Further, behind the scenes, a Russian influence campaign ran through the media was at play to ensure that the outcome of the election would support Russia's ambitions⁶. The ICA report determined that the Russian influence campaign mainly worked by questioning Secretary Clinton's legitimacy through a multitude of ways including cyber activity, state-funded media, third-party intermediaries, and social media "trolls." By using multiple different ways to undercut Clinton's support, the Russian government was able to go majorly undetected across the course of the election. This strategy of Russian media campaigns has been used various different times, allowing the Russian government to influence internal conflicts within nation-states for personal political gain.

The major ways in which the Russian influence campaign worked included hacking into US electoral boards, spreading propaganda, and using knowledge gained from Russian intelligence to manipulate the US Presidential campaign. The National Intelligence Council found that Russian intelligence groups operated multiple "cyber operations" on individuals and groups related to the Democratic and Republican political parties. Specifically, in June of 2015, a Russian intelligence group obtained access of Democratic National Committee networks and retained this access for almost a full year. It's suspected that

⁶ "Background to "Assessing Russian Activities and Intentions in Recent US Elections": The Analytic Process and Cyber Incident." 2017. DNI.gov. https://www.dni.gov/files/documents/ICA_2017_01.pdf.

these cyber-operations likely led to the leaking of the personal email accounts of Secretary Clinton and others associated with the Democratic party, leading to scandal and outrage that severely decreased the likelihood of Clinton being elected president in 2016. These operations were likely done through the General Staff Main Intelligence Directorate, otherwise known as the GRU, who used different websites (such as DCLeaks.com and WikiLeaks) to release the information gained through these cyber-operations.

The Russian government has a history of questioning the US electoral process, oftentimes condemning it and being overtly against it. Yet at the same time, there were multiple Russian cyber intrusions into state and local electoral boards. Researching the US electoral system and technology used to carry it out, which likely had no influence on vote tallying, still provides proof into Russian interference during the 2016 campaigns.

And most prominently, Russia utilized a plethora of propaganda in order to try and turn the US election into Trump's favor. Through their own state media, Russian media was oftentimes providing a heroic and positive image of Trump while portraying Secretary Clinton in a negative manner. However, beyond simply internal propaganda, the Internet Research Agency of Russia was likely the manager of multiple "troll accounts" on various social media platforms that spread misinformation in support of President-Elect Donald Trump.

Russian media has consistently denounced multiple parts of the United States government, including the economic system, national debt, electoral process, and structure of the government. However, the use of unregulated and unauthorized cybersecurity breaches in order to tip the US election in another way can easily cross the line and threaten the structure of democracy within the United States as it is known today. Without facing major consequences for the interference within the 2016 election, there is no limit as to why Russia wouldn't do it again in future elections, this time even perhaps in more outwardly dangerous ways.

III. 2024 US Presidential Election

In fact, these very fears may have come true merely eight years later during the course of the 2024 US presidential elections. While very little investigation has been conducted and very little interference has been confirmed due to the recent state of the election, there seems to be some evidence that Russian interference was present during the 2024 US election as well.⁷

In the days leading up to the election, multiple US media sources reported that multiple fake bomb threats were sent to different polling places across the country, most prominently in swing states (the seven states that

⁷ Jingnan, Huo. 2024. "Foreign influence efforts reached a fever pitch during the 2024 elections." NPR. <https://www.npr.org/2024/11/09/nx-s1-5181965/authorities-say-they-found-evidence-of-foreign-powers-trying-to-influence-the-election>.

would likely decide the fate of the election). While no bombs were actually found at any of these locations, these threats led to temporarily closed polls which could have prevented individuals from exercising their right to vote as well as increasing the amount of time that it would take to count the votes accurately.

The FBI currently states that these bomb threats were sent from Russian internet domains. Still, it's important to note that an individual from any country can send an email from a Russian email address and it's likely that other foreign powers also played a role in the production of some of these threats. However, the FBI has not made a decisive claim on this matter as of now. It's suspected that Iran and China also led online influence campaigns targeting the election, likely by also spreading polarizing messages of misinformation to influence American voters and preventing a fair election from taking place.

In a case study presented by CNN news channel⁸ Russia has also continued its pattern of using social media in order to influence the election in President-elect Trump's favor. CNN found that a Russian agent actually paid an online influencer to post a video that made false accusations of voter fraud to aid Vice President Kamala Harris. This video gained millions of views, and it

isn't alone, thousands of such videos were spread across the internet, once again spreading misinformation about the US presidential elections. There were also reports that election offices faced hackers attempting to gain access to their networks across the country, leaving reason to believe that foreign interference may be behind some of these disturbances.

As a whole, Russia continues to be hopeful about Trump's foreign policy in retracting aid during the war in Ukraine, while other countries, such as China and Iran currently have tensions with the United States⁹, and all could potentially be perpetrators of cyber-operations in the form of misinformation to influence the recent election. After a lack of repercussions stemming from the 2016 and 2020 US elections, Russia is unafraid to hide their role in influencing the election. This leads to greater questions as to what will happen to democracy and legitimacy within the United States if this power and behavior continue to remain unchecked.

Taking the basis of election interference from 2016 and earlier, cyber operations have evolved into an even greater danger leading into the 2024 elections, allowing countries such as Russia to expand their influence into the United States.

⁸ "The Feds are still grappling with a deluge of disinformation that targeted the US election." 2024. CNN. <https://edition.cnn.com/2024/11/08/politics/election-disinformation-federal-investigators/index.html>.

⁹ Barnes, Julian E. 2024. "How Russia Openly Escalated Its Election Interference Efforts." The New York Times. <https://www.nytimes.com/2024/11/07/technology/russia-us-election-interference.html>.

IV. Russia/Ukraine War

While a great majority of cyber operations originating from Russia are related to election campaigns as a way to undermine democracy, Russia also uses such influence campaigns to change the manner in which they wage war. The most recent prominent example of this is seen during the current Russia/Ukraine War, in which there have been multiple publicly recognized cyber-operations in Ukraine.

When Russia invaded Ukraine, multiple people insisted that this conflict was an example of a “cyber war.” Through attacks on satellites, such as during the operation against Viasat Inc’s KA-SAT satellite which diminished network connectivity in Ukraine and surrounding countries such as France and Germany, experts speculated that Russia was planning to use forms of cyber-warfare to further their military agenda.¹⁰ The general public feared what would be the effect of an all-out artificially intelligent manner of waging warfare. However, as time went on it soon became clear, cyber operations were not necessarily the deciding factor in the Russian/Ukrainian War on the battlefield; however the potential impacts of cyber operations in the long term and within future foreign conflict pose a threat to the safety of nations as a whole. Ukraine was generally able to defend themselves from these

attempted cyber attacks, largely due to their past experience dealing with such issues, and the vast amount of international aid given to them in order to fend off the Russian army. To combat this, Russia has recently attempted to also utilize cyber attacks on Ukrainian allies (like those in NATO, Switzerland, Canada etc.) in order to try and weaken support¹¹, but only time will tell what the effect of cyber warfare holds on future military combat.

Rather, the biggest way in which Russian cyber operations have played a role in the war is through the spread of propaganda to try and decrease support towards Ukraine. In Moscow, disinformation campaigns have run rampant, leading many Russian citizens and those consuming Russian media to also position themselves for the Russian cause. The spread of misinformation has been analyzed by various intelligence sources, the Canadian Centre for Cyber Security finding that cyber operations have “almost certainly sought to degrade, disrupt, destroy, or discredit Ukrainian government, military, and economic functions, secure footholds in critical infrastructures, and to reduce the Ukrainian public’s access to information.” This shows a shift in the use of cyber tools by Russia who have begun using cybertools as more of intelligence-gathering purposes rather than purely cyber warfare.

¹⁰ Cyber threat activity related to the Russian invasion of ... Accessed December 3, 2024. <https://www.cyber.gc.ca/sites/default/files/cyber-threat-activity-associated-russian-invasion-ukraine-e.pdf>.

¹¹ Mueller, Grace B., Benjamin Jensen, Brandon Valeriano, Ryan C. Maness, and Jose M. Macias. “Cyber Operations during the Russo-Ukrainian War.” CSIS. Accessed December 3, 2024. <https://www.csis.org/analysis/cyber-operations-during-russo-ukrainian-wa>

Yet these recent events have led to a greater questioning as to how cyber operations and attacks should be regulated, specifically within international law and norms. As stated earlier, if Russia's cyber power remains unchecked, it's incomprehensible how much damage could potentially be done, especially as other countries begin to use cyber warfare in tandem. Since the beginning of the Ukraine-Russia War, the UN has passed a set of "voluntary norms" to regulate and limit cyber behavior, both during war and peace.¹² However, while passing these norms was relatively agreed upon, the question of how to apply them is relatively difficult, especially as these issues are just becoming prevalent today. More private corporations and private hackers are involved with cyber operations over simply governmental figures, making it difficult to prevent cybersecurity breaches from occurring as a violation of international human rights war. Who exactly should be prosecuted for cybercrimes and how still remains vague and incomprehensive and the courts (such as the International Criminal Court) are now left to decide the scope of limits on cyber operations in terms of prosecution on a case-by-case basis.

V. Conclusion

¹² Matamis, Joaquin. "False Alarms: Reflecting on the Role of Cyber Operations in the Russia-Ukraine War • Stimson Center." Stimson Center, March 5, 2024. <https://www.stimson.org/2024/false-alarms-role-of-cyber-operations-in-the-russia-ukraine-war/>.

At the end of this analysis, It remains clear that cyber operations place a massive burden on security on a global scale. More definite limits of regulations should be created before countries such as Russia continue to cross the ethical line of cyber operations without consequences or pushback.

In the age of modern democracy today, cyber protection is becoming increasingly vital during the course of elections and in greater times of war as well. The European Union has attempted to put some policy in place regulating cybersecurity, but as of now, all of these policies are relatively new.

One such example is the creation of the EU cyber security agency (otherwise known as the ENSA) to attempt to regulate policy on cybersecurity. In their time, they have passed a number of acts to place limits on cyber-warfare and manage security, hoping to prevent countries like Russia from taking advantage of developing AI before rules are put in place.¹³

Some of these acts include the Cyber Resilience Act which tries to ensure security on hardware and security products, the Cybersecurity Act which placed a permanent mandate on countries of the EU to manage issues regarding cyberwarfare, and the Cyber Solidarity Act

¹³ "Cybersecurity Policies | Shaping Europe's digital future." n.d. Shaping Europe's digital future. Accessed December 3, 2024. <https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-policies>.

which tried to improve the response to cyber threats across the EU. As of now, the European Union is primarily focusing on putting more money and resources to fund research into digital security. Simply put, time will tell if these policy changes are truly effective.

The United States has also tried to put similar policies in place, outlining their proposed guidelines in their newest “United States International Cyberspace and Digital Policy Strategy.” The US Department of State predicts cybersecurity and regulation to become a prevalent issue as AI continues to progress, fearing, “The rapid growth of AI technology, however, comes with the significant risk that its use may exacerbate inequality and economic instability, stifle competition, cause consumer harm, aggravate discrimination and bias, invade privacy, enhance malicious cyber activity, and improve authoritarian capabilities for surveillance and repression.” Specifically, the United States is trying to take advantage of the private sector and civil society to fund research and better security development. Further, they are considering it utmost priority to try to partner with emerging economies in the development of AI technology.¹⁴ Their plan primarily focuses on promoting an inclusive and open digital ecosystem, aligning digital rights and data

governance with international partners, and countering threats to cyberspace.

Overall, at the alarming rate that AI continues to grow and develop, the next decade will be essential to set the precedent for future cybersecurity regulation. The current regulatory framework being developed is largely untested and has set only foundational guidelines as of now. In the coming years, it’s important to continue to nuance and add to these policies in protecting democracy as we see it today, the implications of cybersecurity only exponentially increasing as time continues to go on.

¹⁴ “United States International Cyberspace & Digital Policy Strategy - United States Department of State.” n.d. State Department. Accessed December 3, 2024. <https://www.state.gov/united-states-international-cyberspace-and-digital-policy-strategy/#future>.

VI. Bibliography

- “Background to “Assessing Russian Activities and Intentions in Recent US Elections”: The Analytic Process and Cyber Incident.” 2017. DNI.gov. https://www.dni.gov/files/documents/ICA_2017_01.pdf.
- “Fact Sheet: What We Know about Russia's Interference Operations.” 2019. German Marshall Fund. <https://www.gmfus.org/news/fact-sheet-what-we-know-about-russias-interference-operations>.
- Barnes, Julian E. 2024. “How Russia Openly Escalated Its Election Interference Efforts.” The New York Times. <https://www.nytimes.com/2024/11/07/technology/russia-us-election-interference.html>.
- “The Feds are still grappling with a deluge of disinformation that targeted the US election.” 2024. CNN. <https://edition.cnn.com/2024/11/08/politics/election-disinformation-federal-investigators/index.html>.
- Jingnan, Huo. 2024. “Foreign influence efforts reached a fever pitch during the 2024 elections.” NPR. <https://www.npr.org/2024/11/09/nx-s1-5181965/authorities-say-they-found-evidence-of-foreign-owners-trying-to-influence-the-election>.
- Cyber threat activity related to the Russian invasion of ... Accessed December 3, 2024. <https://www.cyber.gc.ca/sites/default/files/cyber-threat-activity-associated-russian-invasion-ukraine-e.pdf>.
- Matamis, Joaquin. “False Alarms: Reflecting on the Role of Cyber Operations in the Russia-Ukraine War • Stimson Center.” Stimson Center, March 5, 2024. <https://www.stimson.org/2024/false-alarms-role-of-cyber-operations-in-the-russia-ukraine-war/>.
- Mueller, Grace B., Benjamin Jensen, Brandon Valeriano, Ryan C. Maness, and Jose M. Macias. “Cyber Operations during the Russo-Ukrainian War.” CSIS. Accessed December 3, 2024. <https://www.csis.org/analysis/cyber-operations-during-russo-ukrainian-war>.
- “Cybersecurity Policies | Shaping Europe's digital future.” n.d. Shaping Europe's digital future. Accessed December 3, 2024. <https://digital-strategy.ec.europa.eu/en/policies/cybersecurity-policies>.
- “United States International Cyberspace & Digital Policy Strategy - United States Department of State.” n.d. State Department. Accessed December 3, 2024.

[https://www.state.gov/united-states-international-cyberspace-and-digital-policy-strategy/#future.](https://www.state.gov/united-states-international-cyberspace-and-digital-policy-strategy/#future)

Nayib Bukele's presidency in El Salvador: to what extent is widespread support for exercising sovereignty in the population's interest a justification for violating human rights?

Marcello Nazari

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Dual Degree in Law and International Relations

E-mail: mnazari.ieu2024@student.ie.edu

Published 27th January 2025

Abstract

Since the end of the Civil War in 1992, the Central American country of El Salvador has been negatively impacted by the illegal activities of numerous criminal cartels, locally known as *maras*. In 2015, violence had reached an all-time high, and the media labelled the country as “the murder capital of the world”. The demand for increased security and law enforcement led to the election in early 2019 of the young presidential candidate Nayib Bukele, who promised to deliver a significant blow to gang-related crimes and corruption. In March 2022, after an initially cautious approach based on mediation, the executive's strategy took a dramatic turn: the security forces were militarised, mass arrests ensued, imprisonment directives were tightened, and a state of exception (*estado de excepción*) was declared, which partially suspended individual rights and freedoms. As for 2024, El Salvador claims to have one of the lowest murder rates in the world while also having imprisoned 1.6 per cent of its entire population: tens of thousands of arbitrary detainments have been made, hundreds of people have died as a result of torture in prisons, and the population is concerned with the excessive power given to law enforcement bodies. Despite this, Bukele has one of the highest approval rates in Latin America and has recently been elected for a second term. This paper aims to explore the more profound implications of Salvadoran politics, explaining why specific perspectives would deem the excessive use of internal sovereignty as justifiable to uphold the population's interests. Moreover, the impact of socio-economic grievances on establishing a “culture of violence” shall also be discussed, as they provide a valuable framework to understand how a nation can be willing to give up its fundamental freedoms and accept human rights abuses in exchange for security.

Keywords: Nayib Bukele, El Salvador, sovereignty, human rights, violence, punitive justice, law enforcement.

1. Introduction

The phenomenon of gang violence in El Salvador has impacted the country on a multitude of levels, as these

groups exert their influence by means of weak

government, social divisions and economic disparity.¹ The election of the young outsider candidate Nayib Bukele in the 2019 presidential vote has put on the table the question of whether widespread violence can be dealt with while also respecting the individual rights of citizens.

Historically, the rise of organised crime can be traced back to the 1990s, during which a quarter of El Salvador's population at the time (about 5 million in 1990) migrated or fled as a result of the civil war (1980-1992), with large numbers coming to large cities such as Los Angeles.² Fueled by protection and identity needs, many components of the Salvadoran youth joined up through gang culture, leading to the creation of two major groups: Barrio 18, also known as M-18, and Mara Salvatrucha (MS-13).³ In response to this, between 1998 and 2014, the US immigration authorities authorised 300,000 deportations of immigrants with criminal records, including large numbers of gang members,⁴ a decision ultimately having a "spillover effect".⁵ Thousands of Salvadoran deportees returned to their estranged families and communities with limited employment opportunities, eventually forming cliques

that became integrated into M-18 or MS-13.⁶ These small groups ended up becoming powerful political actors, exerting control over Salvadoran citizens through terror and violence.⁷

By 2015, El Salvador had become the "murder capital of the world"⁸, with the highest global murder rate, about 103 homicides for every 100,000 citizens: it was the country's most deadly year since the end of the civil war in 1992.⁹ According to mid-2017 estimates, gangs were responsible for 50% of total homicides, with 60,000 active members, a number that skyrockets to 400,000 when considering collaborators and close family relatives.¹⁰ Such figures outweighed the capacities of the Salvadoran law enforcement body, which only deployed about 38,000 officers, including both policemen and military personnel.¹¹ Moreover, the phenomenon is not limited to murder since extortion, affecting primarily micro and small businesses, deprived El Salvador of 3% of its Gross Domestic Product (GDP) in 2016.¹²

In this context of poor living conditions and ever-present violence, the election of Nayib Bukele in February 2019 reflected a shared demand for increased

¹ Anna Sofchek, "Breaking the Democratic Fabric: Assessing the Impact of Gang Violence in El Salvador," (Master Thesis, Naval Postgraduate School, 2023): 1, <https://www.hsdl.org/c/view?docid=883406>.

² Mneasha Gellman, "The Democracy Crisis in El Salvador: An Overview (2019-2022)," *CeMeCA's REGIONAL EXPERT PAPER SERIES 4* (September 2022): 4, https://www.researchgate.net/profile/Mneasha-Gellman/publication/372621719_The_Democracy_Crisis_in_El_Salvador_An_Overview/links/64c0046ec41fb852dd9b84f0/The-Democracy-Crisis-in-El-Salvador-An-Overview.pdf.

³ Ibid. 5.

⁴ Maria Micaela Sviatschi, "Spreading Gangs: Exporting US Criminal Capital to El Salvador," *American Economic Review* 112, no. 6 (2020): 1, https://www.micaelasviatschi.com/wp-content/uploads/2020/09/making_agang_9x1x2020.pdf.

⁵ Ibid. 5.

⁶ Gellman, "The Democracy Crisis in El Salvador: An Overview (2019-2022)," 5.

⁷ Ibid.

⁸ International Crisis Group, *Miracle or Mirage? Gangs and Plunging Violence in El Salvador* (International Crisis Group, 8 July 2020), 2, <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/81-miracle-or-mirage-gangs-and-plunging-violence-el-salvador>.

⁹ Ibid.

¹⁰ Roberto Valencia, "El país de las maras," *El Faro*, 10 June 2018, <https://elfaro.net/es/201806/columnas/21997/El-pa%C3%ADs-de-las-maras.htm>.

¹¹ UN General Assembly, *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on Her Visit to El Salvador*, (UN General Assembly, 23 April 2018), 4.

¹² International Crisis Group, "Miracle or Mirage? Gangs and Plunging Violence in El Salvador", 6.

security.¹³ Having formed his political party, *Nuevas Ideas* (New Ideas), he ran as a populist leader, mobilising political support and upending the country's entrenched two-party system.¹⁴ Upon assuming office, the Bukele administration applied challenging crime reduction strategies and implemented controversial policies.¹⁵ For instance, in April 2020, amidst the global COVID-19 pandemic, images of supposed gang members, shown shirtless, lined up in rows and on top of one another were released by state authorities.¹⁶ This revealed cruel and unusual punishment methods, which also violated any of the accepted social distancing norms.¹⁷ In parallel to the worsening of prison conditions, Bukele indicated that extrajudicial killings would no longer be recorded,¹⁸ a decision that undermines the overall accountability of law enforcement and justifies an excessive use of force during police operations.

In recent years, the government has claimed that such policies were necessary, as they have contributed to the overall decrease in violence. However, El Salvador under the current administration remains a country with high

levels of human rights abuses, especially if forced disappearances are considered: between January 2020 and June 2022, police data registered 4,060 cases of missing individuals, 25% of which still active.¹⁹ Additionally, Amnesty International has claimed that the country is being engulfed in a crisis, and the organisation's director for the Americas openly criticised Bukele for "failing to keep his word"²⁰ —in June 2019, the recently elected president vowed to implement transformational human rights changes.²¹

Consequently, sovereignty provides a valuable framework to draw significant conclusions about Nayib Bukele's agenda when discussing how gang violence can be effectively tackled while respecting individual freedoms. In political theory, sovereignty is defined as "the ultimate overseer or authority in the decision-making process of the state and the maintenance of order".²² Within the Salvadoran context, this definition underlines some fundamental points of contention that this paper aims to explore. Firstly, whether the undermining action of an internal group, namely the gangs and their illegal activities, towards a state's sovereign powers can justify the use of violent and extreme means of repression. Moreover, the

¹³ Jonathan D. Rosen, Sebastián Cutrona and Katy Lindquist, "Gangs, violence, and fear: punitive Darwinism in El Salvador," *Crime, Law and Social Change* 79 (4 July 2022), 182, <https://doi.org/10.1007/s10611-022-10040-3>.

¹⁴ Gellman, "The Democracy Crisis in El Salvador: An Overview (2019-2022)," 6.

¹⁵ Rosen, Cutrona and Lindquist, "Gangs, violence, and fear: punitive Darwinism in El Salvador," 182.

¹⁶ Wilfredo Pineda, "El Salvador Lines up semi-naked gang members," *Reuters*, 28 April 2020, <https://www.reuters.com/article/world/uk/el-salvador-lines-up-semi-naked-gang-members-for-grim-prison-photos-idUSKCN22A0GK/>.

¹⁷ "El Salvador: COVID-19 Doesn't Excuse Bukele's Attacks on Rule of Law," *Washington Office on Latin America (WOLA)*, 29 April 2020, <https://www.wola.org/2020/04/el-salvador-covid-19-bukele-attack-rule-of-law/>.

¹⁸ Parker Asmann and Eimhin O'Reilly, "InSight Crime's 2019 Homicide Round Up," *InSight Crime*, 28 January 2020, <https://insightcrime.org/news/insight-crime-2019-homicide-round-up/>.

¹⁹ Vinicius Madureira, "El Salvador Registers 4,060 Disappeared People under President Nayib Bukele," *OCCRP*, 21 November 2022, <https://www.occrp.org/en/news/el-salvador-registers-4060-disappeared-people-under-president-nayib-bukele>.

²⁰ "El Salvador: President Bukele engulfs the country in a human rights crisis after three years in government," *Amnesty International*, 2 June 2022, <https://www.amnesty.org/en/latest/news/2022/06/el-salvador-president-bukele-human-rights-crisis/>.

²¹ "El Salvador: President Bukele pledges to respect human rights," *Amnesty International*, 24 June 2019, <https://www.amnesty.org/en/latest/news/2019/06/el-salvador-amnistia-internacional-se-reune-con-presidente-bukele-2/>.

²² "Sovereignty," *Encyclopaedia Britannica*, 13 September 2024, <https://www.britannica.com/topic/sovereignty>.

psychological impact of decades of violence must be assessed to understand the rise of Bukele and the shared acceptance of “punitivism” as a way to uphold law and order nationally. Finally, alternative solutions in policy and lawmaking must be provided to put forward a proactive stance, thus going beyond mere passive observation and description of the Salvadoran issue.

The aforementioned concept of sovereignty, as well as the validity of punitivist narratives, is going to be broken down through the lenses of several political theories, including realism, constructivism, Galtung’s triangle of violence and Maslow’s hierarchy of needs.

Overall, this article explores the extent to which political support and the claim to act in the name of the people’s interests can justify violating individual freedoms at the hands of the authorities. Hence, the research process shows how a predominantly violent and unjust society eventually leads to the expansion of a popularly endorsed authoritarian regime, which can turn into institutional practice the abuse of human rights in the name of law and order.

II. Gang violence and the Erosion of Internal Sovereignty

To better understand the detrimental effect of organised crime on the capabilities of the Salvadoran state and the increase of institutionalised repression, Max Weber’s definition of sovereignty and its dual dimensions shall be incorporated within the decade-long conflict between the Salvadoran government and the local *maras*.

2.1 Max Weber’s “Monopoly over Violence”

The 20th-century German sociologist Max Weber, in his book *The Vocation Lectures*, identifies the state with several characteristics, including “the form of human community that (successfully) lays claim to the monopoly on legitimate physical violence”.²³ According to this perspective, violence in a society cannot be legitimised unless it is used by the state through the mobilisation of police or military force, for example. Therefore, no other group should be able to compete for the monopoly of violent capabilities within that same society. As for its dimensions, sovereignty is both internal and external; the former refers to the supreme authority within one’s territory, and the latter relates to the fact that all states enjoy the same status on the international level.²⁴ For the sake of the research question, a more profound focus will be given to the former aspect.

Provided the terms mentioned above and their definitions, clear connections can be made with the socio-political situation of El Salvador. In fact, following Weber’s perspective, if the Salvadoran government is not the sole body legitimately exerting violence, it cannot be considered sovereign. Furthermore, since, in this case, violence refers to an issue within the country’s borders, the argument that El Salvador lacks internal sovereignty

²³ Max Weber, *The vocation lectures* (Indianapolis: Hackett Publishing Company, 2004), 33.

²⁴ Eric Brahm, “Sovereignty,” *The Conflict Information Consortium*, September 2004, <https://www.beyondintractability.org/essay/sovereignty>.

can also be put forward. Hence, even more profound implications are underlined: the government is *de jure* the country's only sovereign body, but *de facto*, the presence of armed criminal organisations effectively undermines the polity's control over its internal affairs. In political science, a state that cannot project authority over its territory and people can be deemed as a "failed" one, although other forms of criteria are also applied.²⁵ This definition includes examples such as Somalia, torn apart by warlordism, and Afghanistan, which became effectively dominated by the Taliban extremist group despite the existence of an internationally recognized government.²⁶

2.2 A "Fragile" Model of Sovereignty

Although El Salvador does not check the complete requirements to be considered a failed state, the argument presented above is partially reflected in the development of the current Salvadoran democratic institutions. Following the 1980-1992 civil war, which had been the result of years of military rule, the ingrained normalisation of violence at a societal level came to be challenging for democratic consolidation, as the country lacked effective political and social arenas.²⁷ During the post-conflict transition, the government failed to rebuild internal sovereignty in two ways. Firstly, those responsible for the widespread wartime human rights abuses documented by the Truth Commission

findings of 1993, including sexual violence, assassinations and massacres, were not punished, as the General Amnesty Law for the Consolidation of Peace (Ley de Amnistía General para la Consolidación de la Paz) was approved that same year.²⁸ Secondly, political and socio-economic issues were not addressed²⁹: although laws that protect individuals from insecurity are in place, such as a law against gender-based violence, these are not enforced in the majority of cases, with corruption running rampant among the police and judiciary.³⁰ As a result, a democratic social contract did not come to be, as marginalised groups were not given reciprocity of rights and responsibilities.³¹ In the end, *postbellum* El Salvador failed to provide the means for creating and strengthening a solid apparatus of sovereignty, with excessive grievances remaining undealt under the facade of a seemingly democratic system.

The young democracy's fragile model of sovereignty, inhibited by its failure to build a functioning civil society, mirrors its poor response to early gang expansion. According to a 1993 survey, half of the Salvadoran urban population reported the presence of *maras* in their neighbourhoods, a figure that did not prompt any significant governmental actions.³² Instead, the main focus became the re-establishment of national security forces, thus ignoring the root, structural causes behind the increase of gang membership and crime in

²⁵ "Failed state," *Encyclopædia Britannica*, 30 September 2024, <https://www.britannica.com/topic/failed-state>.

²⁶ *Ibid.*

²⁷ Sofcheck, "Breaking the democratic fabric," 19.

²⁸ Gellman, "The Democracy Crisis in El Salvador: An Overview (2019-2022),"

²⁹ Sofcheck, "Breaking the democratic fabric," 20.

³⁰ Gellman, "The Democracy Crisis in El Salvador: An Overview (2019-2022),"

³¹ *Ibid.*

³² Thomas C. Bruneau, Lucía Dammert, and Elizabeth, *Maras: Gang Violence and Security in Central America* (Austin, TX: University of Texas Press, 2021), 140.

general.³³ This strategy would eventually develop into a doctrine known as *mano dura* (iron fist), arguably the backbone of Nayib Bukele's current policy.

2.3 Theoretical Approaches and Criticisms

Overall, several perspectives can be used to analyse how the lack of internal sovereignty in El Salvador eventually led to the expansion of violent zero-tolerance strategies.

On the one hand, realism emphasises the primary concern of promoting national security: even violent means, such as militarising security forces and more rigid governmental policies, are necessary for the state's survival. In the context of El Salvador, the approach against gangs should be amoral.³⁴ As Hans Morgenthau argues, morality should be avoided in policymaking: provided that every political action is directed towards keeping, increasing or demonstrating power, so-called "moral" policies based on idealism can lead to weakness – and possibly the destruction or domination of a state by a competitor.³⁵ Consequently, a realist stance rejects implementing any ethical considerations when discussing the government's repression of criminal groups since they are simply a competitor for control over national sovereignty.

On the other hand, a constructivist stance criticises the poor transition process, as it did not lead to the

upholding of shared principles of justice and legitimacy.³⁶ As argued by John Rawls in his book *A Theory of Justice*, political principles are established as part of a "bargaining contract": parties are rationally motivated by their self-interests to move beyond the noncooperative baseline and arrive at a mutually advantageous arrangement.³⁷ If this process fails or does not occur, a noncooperative baseline is established, returning each side to its prior position.³⁸ This framework can be applied in El Salvador. Considering how the post-war period left the grievances of a large part of the population unresolved, it is unlikely that any significant cooperation between the state and its citizens would occur without long-lasting social peace, thus allowing for the expansion of alternative socio-economic structures such as gangs.

Finally, a further point of discussion is put forward by the peace and violence school of thought, primarily represented by the political theorist Johan Galtung. According to this perspective, violence as a social phenomenon is made up of three main types: direct, which is visibly exercised by an actor, structural, a system maintaining social injustice on a multitude of levels, and cultural, a series of societal beliefs justifying the presence of the two aforementioned types.³⁹ By using Galtung's lens, the social, cultural and political structure of El Salvador comes out as being deeply

³³ Sofcheck, "Breaking the democratic fabric," 22.

³⁴ Sandrina Antunes and Isabel Camisão, "Introducing Realism in International Relations Theory," *E-International Relations*, 27 February 2018, <https://www.e-ir.info/2018/02/27/introducing-realism-in-international-relations-theory/>.

³⁵ Ibid.

³⁶ "Political constructivism," *Internet Encyclopedia of Philosophy* (Accessed on Monday October 28th, 2024), <https://iep.utm.edu/political-constructivism/#H5>.

³⁷ Ibid.

³⁸ Ibid.

³⁹ "The definition of violence according to Johan Galtung," *Rhizome against Polarization* (Accessed on Monday October 28th, 2024), <https://rap.education/en/background-knowledge/violence/>.

affected by all three aspects: the country has suffered from civil conflict in the past and gang violence in the present (direct violence) that resulted from a lack of socio-political rights and ingrained inequalities (structural violence). Such a situation had the long-lasting effect of making the population excessively familiar with aggression and brutality, converting it into the conventional way to settle societal disputes (cultural violence).⁴⁰ The ultimate result is a fragile sovereign state willing to metaphorically “fight fire with fire”.⁴¹ As a result, the only reasonable option for national institutions to reduce the issue of violent crime is the implementation of even more brutal and inhumane policies of repression rather than assessing the source of the grievances.

III. The Rise and Establishment of *Manodurismo* in El Salvador

Discussing how violent and inhumane law enforcement practices have become accepted as legitimate by a large part of the population requires analyzing how the iron fist became widespread in the first place. For this reason, a short description of governmental policies during previous and current legislations is going to be provided.

3.1 Former Responses and the Early Strategies of the Bukele Administration

⁴⁰ Sofcheck, “Breaking the democratic fabric,” 21.

⁴¹ Manuel Meléndez-Sánchez and Alberto Vergara, “The Bukele Model: Will it spread?,” *Journal of democracy* 35, Number 3 (July 2024): 85, <https://doi.org/10.1353/jod.2024.a930429>.

Since the administration of President Francisco Flores (1999-2004), successive governments have had *mano dura* as the preferred state response to the increasing threat of gangs. The focus of these administrations has primarily been on an increased role of the army in public security and harsher anti-*maras* laws, such as the 2015 Supreme Court ruling declaring the groups as “terrorist”.⁴² As a result, this approach ended up creating a permissive environment for police and military abuses, especially considering the overall weakness of accountability mechanisms: indiscriminate mass detentions, excessive use of force and the creation of death squads reportedly resulted in several extrajudicial killings of both gang members and civilians.⁴³ In 2017, the use of lethal force had caused 10.27% of the total number of violent deaths that year, a fifteen-fold increase compared to 2011.⁴⁴ This resulted in the Salvadoran security forces becoming the least trusted law enforcement body in Latin America, according to a 2018 survey,⁴⁵ while the country’s per capita prison population rate was declared the second highest globally in the same year.⁴⁶ By the time of the establishment of the Funes cabinet in 2009, this strategy had only led to shortcomings and a worsening of security levels.⁴⁷

⁴² International Crisis Group, “Miracle or Mirage? Gangs and Plunging Violence in El Salvador”, 7.

⁴³ Ibid.

⁴⁴ “Monitor del uso de la fuerza letal en América Latina: Un estudio comparativo de Brasil, Colombia, El Salvador, México y Venezuela (2019),” *Monitor Fuerza Letal*, September 2019, 88.

⁴⁵ International Crisis Group, “Miracle or Mirage? Gangs and Plunging Violence in El Salvador”, 8.

⁴⁶ Ibid.

⁴⁷ Ibid.

As part of his presidential campaign, Bukele stated his intention to change El Salvador's security policy by unveiling his Cuscatlán Plan, aiming to strengthen law and order through a series of strategies that included improving the working conditions of police forces and equipping them with new investigative technology.⁴⁸ After being elected, he announced the Territorial Control Plan,⁴⁹ consisting of seven "phases" that mirror what was previously stated in the Cuscatlán Plan, with a total cost of \$575 million for the 2019-2021 period.⁵⁰ Initially focusing on 22 prioritised Salvadoran municipalities, its measures saw permanent deployment of law enforcement patrols, mass detentions and the distribution of new personal equipment to the officers involved.⁵¹ However, Bukele's "New Deal" on fighting violent gang activity did not just include an increase in government spending for the country's internal security budget: his Plan faced a reduction in funding from the Legislative Assembly, which at the time was still under the control of his political adversaries.⁵² The Bukele cabinet opted to negotiate with the *maras* by offering perks, protection from extradition, softer policing and

other concessions,⁵³ a strategy that had also been tried by previous governments, although with flawed design and implementation.⁵⁴ With the dominant organised groups agreeing to reduce gang violence, the homicide rate during Bukele's first two years as president halved,⁵⁵ although it should also be noted that between the peak of 2015 (107 per 100,000) and 2018, a 50% decrease in total murders had already occurred.⁵⁶

3.2 Failure of "Gang Diplomacy" and implementation of the "Régimen de Excepción"

Nevertheless, on 26 March 2022, likely due to a failure in the negotiations between the *maras* and the government,⁵⁷ dozens of lives were lost to gang retaliation: a total of 62 Salvadoran citizens were murdered, making it the deadliest day in the country's recent history.⁵⁸ In response to this, the traditional *mano dura* approach made a dramatic return, as the following day, a nationwide crackdown began.⁵⁹ Authors Meléndez-Sánchez and Vergara recognize three fundamental characteristics of the so-called "Bukele Model":

⁴⁸ Ibid. 9.

⁴⁹ Beatriz Calderón and Francisco Alemán, "Lo que se sabe del 'Plan Control Territorial' implementado este jueves por el Gobierno," *La Prensa Gráfica*, 20 June 2019, <https://www.laprensagrafica.com/elsalvador/Lo-que-se-sabe-del-Plan-Control-Territorial-implementado-este-jueves-por-el-Gobierno-20190620-0254.html>.

⁵⁰ Walter Sibrián, "¿De dónde provendrán los \$575.2 millones para financiar el plan 'Control Territorial' hasta 2021?," *La Prensa Gráfica*, 11 July 2019, <https://www.laprensagrafica.com/elsalvador/De-donde-provendran-los-575.2-millones-para-financiar-el-plan-Control-Territorial-hasta-2021-20190711-0302.html>.

⁵¹ International Crisis Group, "Miracle or Mirage? Gangs and Plunging Violence in El Salvador," 10.

⁵² Gabriel Campos Madrid, "Bukele presentó fase III del Plan Control Territorial," *La Prensa Gráfica*, 1 August 2019, <https://www.laprensagrafica.com/elsalvador/Bukele-presento-fase-III-del-Plan-Control-Territorial-20190731-0512.html>.

⁵³ Meléndez-Sánchez and Vergara, "The Bukele Model: Will it spread?," 87.

⁵⁴ International Crisis Group, "Miracle or Mirage? Gangs and Plunging Violence in El Salvador," 8.

⁵⁵ Meléndez-Sánchez and Vergara, "The Bukele Model: Will it spread?," 87.

⁵⁶ Manuel Meléndez-Sánchez, "Bukele Has Defeated El Salvador's Gangs—for Now. How? And What Does It Mean for the Region?" *Lawfare*, 27 March 2023, www.lawfaremedia.org/article/bukele-has-defeated-el-salvadors-gangsnow-how-and-what-does-it-mean-region.

⁵⁷ Meléndez-Sánchez and Vergara, "The Bukele Model: Will it spread?," 88.

⁵⁸ Roberto Valencia, "Bukele y las maras | La pandilla Barrio 18-Sureños da nuevos detalles sobre la negociación con el gobierno de El Salvador," *BBC News Mundo*, 29 April 2022, <https://www.bbc.com/mundo/noticias-america-latina-61267322>.

⁵⁹ "Pleno legislativo aprueba régimen de excepción para frenar ola de violencia," *Prensa Asamblea Legislativa*, 27 March 2022, <https://www.asamblea.gob.sv/node/12062>.

- **The suspension of constitutional rights:** the supermajority enjoyed by Bukele's political party in the national congress allowed the approval of a state of emergency (*régimen de excepción*), suspending several individual rights and guarantees of due process. Such a "regime of exception" has been maintained for the past two years.⁶⁰

- **Mass arrests:** authorities intended to dismantle *las maras* by wiping them away.⁶¹ In two years, a total of 78,000 arrests have been made.⁶²

- **Punitive legal reforms:** these include harder sentencing guidelines, a lowered age of responsibility for gang-related crimes and mass trials.⁶³

The immediate results of this massive, prolonged operation were quickly manifested. Violent crimes and activities were drastically reduced, with the country having, by January 2024, the second-lowest homicide rate in the Americas.⁶⁴ Some newspapers, such as the authoritative *El Faro*, claimed that Bukele and his Cabinet had "dismantled" gang presence in the country.⁶⁵ Such a radical intervention undoubtedly played a role in his 2024 re-election, with approval ratings as high as 90%.⁶⁶

Despite this, the other face of the model must also be assessed, as these measures came at a high cost for human rights and individual freedoms.⁶⁷ In a report released by Human Rights Watch in December 2022, violations against citizens were reported to be carried out "repeatedly and across the country" by the security forces, while some high-profile officials, and even President Bukele himself, were accused of "incentivizing abuses".⁶⁸ Documented human rights violations include arbitrary arrests, enforced disappearance and tortures.⁶⁹ Moreover, many deaths in custody suggest state responsibility, for a total of 90 casualties.⁷⁰ In parallel to this, the Bukele Cabinet has also recently been accused of "undercounting homicides" since the 2022 crackdown.⁷¹ This phenomenon occurs in two main ways. On the one hand, various *maras* began burying more bodies of their victims in unmarked mass graves rather than simply killing them in public. Starting in 2021, the government began excluding such discoveries as they were deemed "a common occurrence" in a country that had suffered from 12 years of civil war.⁷² For instance, a total of 60 previously unknown burial sites were found in 2023 only.⁷³ On the other hand, the

⁶⁰ Meléndez-Sánchez and Vergara, "The Bukele Model: Will it spread?," 88.

⁶¹ Ibid.

⁶² Vera Bergengruen, "How Nayib Bukele's 'Iron Fist' Has Transformed El Salvador," *Time*, 29 August 2024, <https://time.com/7015598/nayib-bukeles-iron-fist-el-salvador/>.

⁶³ Meléndez-Sánchez and Vergara, "The Bukele Model: Will it spread?," 88.

⁶⁴ "El Salvador says murders fell by 70% in 2023 as it cracked down on gangs," *Reuters*, 3 January 2024,

<https://www.reuters.com/world/americas/el-salvador-says-murders-fell-70-2023-it-cracked-down-gangs-2024-01-03/>.

⁶⁵ Carlos Martínez, Efrén Lemus, and Óscar Martínez, "Bukele Government Dismantled Gang Presence in El Salvador," *El Faro*, 3 February 2023, https://elfaro.net/en/202302/el_salvador/26694/Bukele-Government-Dismantled-Gang-Presence-in-El-Salvador.htm.

⁶⁶ Bergengruen, "How Nayib Bukele's 'Iron Fist' Has Transformed El Salvador".

⁶⁷ Meléndez-Sánchez and Vergara, "The Bukele Model: Will it spread?," 88.

⁶⁸ "We Can Arrest Anyone We Want," *Human Rights Watch*, 7 December 2022, <https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el>.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Jeremy Giles, "The Problem With El Salvador's Crime Numbers," *Foreign Policy*, 8 August 2024,

<https://foreignpolicy.com/2024/08/08/el-salvador-bukele-crime-homicide-prison-gangs/>.

⁷² Ibid.

⁷³ Williams Sandoval, "Número de osamentas encontradas incrementó en año 2023," *La Prensa Gráfica*, 12 February 2024, <https://www.laprensagrafica.com/elsalvador/Numero-de-osamentas-encontradas-incremento-en-ano--2023-20240211-0060.html>.

authorities progressively stopped taking into account figures involving victims of operations conducted by law enforcement forces, as these deaths are considered “legal interventions”.⁷⁴ Additionally, official estimates ignore the deaths of inmates within the prison system, with data proving that a total of 91 individuals were killed during detention between 2022 and 2024.⁷⁵ Ultimately, if this data is applied to the official murder rate of 2.4 per 100,000 inhabitants, which deemed 2023 as “the safest year in the history of El Salvador”,⁷⁶ a new figure (4.5 per 100,000) emerges, with a total undercount of 47%.⁷⁷

With this being said, it is clear that the decrease in the deaths related to gang violence has significantly undermined the overall enjoyment of personal freedom and human rights by the citizens of El Salvador. As a result, questions on the possible reasons behind civil society’s apparent acceptance of such a situation surface the debate.

3.3 Understanding Punitivism: Utilitarian and Humanistic Views on Societal Security

The article *Gangs, violence, and fear: punitive Darwinism in El Salvador* explores how fear of the populace is used to win votes, thus driving appetite for

punitive measures.⁷⁸ The overarching argument is that the public’s distrust towards the state’s ability to deliver justice makes drastic crime reduction more acceptable, even if the respect for individual freedoms and human rights ends up being eroded.⁷⁹ With a general concern about insecurity growing among Western countries since the 1970s,⁸⁰ an expanding theoretical framework has been developed across different social science disciplines.⁸¹

Utilitarianism, although discussed through its many varieties, is broadly defined as “the view that the morally right action is the one that produces the most good”.⁸² In terms of state power and its capabilities, the 18th-century English economist and philosopher Jeremy Bentham argued that the legitimacy of a government should be based on the extent to which it promotes the greatest amount of happiness for the highest amount of citizens.⁸³ Consequently, this perspective explains punitivism as the result of citizens feeling threatened,⁸⁴ thus leading to punitive attitudes among the population.⁸⁵ An example of this phenomenon is the support of capital punishment under the cultural

⁷⁸ Rosen, Cutrona and Lindquist, “Gangs, violence, and fear: punitive Darwinism in El Salvador,” 175.

⁷⁹ Ibid. 176.

⁸⁰ Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (Oxford: Oxford University Press, 1997), 4, <http://ndl.ethernet.edu.et/bitstream/123456789/15748/1/181.pdf>.

⁸¹ Rosen, Cutrona and Lindquist, “Gangs, violence, and fear: punitive Darwinism in El Salvador,” 177.

⁸² “The History of Utilitarianism,” *Stanford Encyclopedia of Philosophy*, 27 March 2009 (Accessed on Monday November 4th, 2024), <https://plato.stanford.edu/entries/utilitarianism-history/>.

⁸³ Ibid.

⁸⁴ Shadd Maruna, Amanda Matravers and Anna King, “Disowning our Shadow: A Psychoanalytic Approach to Understanding Punitive Public Attitudes,” *Deviant Behaviour* 25, n. 3 (2004): 277, <https://www.tandfonline.com/doi/abs/10.1080/01639620490431228>.

⁸⁵ Rosen, Cutrona and Lindquist, “Gangs, violence, and fear: punitive Darwinism in El Salvador,” 177.

⁷⁴ Giles, “The Problem With El Salvador’s Crime Numbers”.

⁷⁵ “Análisis de las personas fallecidas, como consecuencia de la aplicación del Régimen de Excepción en El Salvador (01 Abril 2022 - 15 Junio 2024),” Socorro Jurídico Humanitario, El Salvador, 24 June 2024, 14, https://freight.cargo.site/m/G1872215785111931953159795416165/sjhumanitario_analisis.pdf.

⁷⁶ “El 2023 fue el año más seguro en la historia de El Salvador,” Policía Nacional Civil, 3 January 2024, <https://www.pnc.gob.sv/el-2023-fue-el-ano-mas-seguro-en-la-historia-del-el-salvador/>.

⁷⁷ Giles, “The Problem With El Salvador’s Crime Numbers”.

assumption that it is an effective means to prevent and control criminal behaviour.⁸⁶ In the context of El Salvador, a utilitarian perspective emphasises how *mano dura* is simply the product of collective concern within one of the most dangerous societies in the Western hemisphere, which ultimately became reflected in the electoral success of Bukele and his model. Therefore, punitive approaches are seen as justifiable since they have brought about a progressive reduction in crime rates and a rise in the overall sense of security within the country.

Conversely, humanistic approaches are critical of such views and provide alternative ways to understand human well-being. Humanism is a multifaceted theory that emphasises looking at individual and stress concepts, including free will, self-efficacy, and self-actualization.⁸⁷ In psychology and social behaviour, Abraham Maslow's Hierarchy of Needs model represents a valuable framework for applying humanistic approaches to real-life case studies. As he explained in the 1943 paper *A Theory of Human Motivation* and the book *Motivation and Personality*,⁸⁸ Maslow held the belief that human beings have an inborn desire to achieve self-actualization, defined as "the realisation of a person's potential, self-fulfilment,

seeking personal growth and peak experiences".⁸⁹ Nevertheless, to achieve this ultimate goal, some more basic needs must be met first, including physiological demands, safety, love/belonging and esteem.⁹⁰ Safety, in particular, holds the second tier within the hierarchy and is expressed by an individual's ordering of the environment they live in to reduce exposure to risk, threat or harm.⁹¹

This model draws clear parallels with the context of El Salvador and showcases the futility of increased police repression. Eliminating violence through mass arrests and tougher imprisonment procedures simply restores a fragile societal peace that fails to address the broader socio-economic issue that fuels the expansion of gang activity in the first place. Although experiencing a lower murder rate, many Salvadorans are still struggling with basic survival due to a lack of education system, scarce employment opportunities and poor housing conditions, the lack of which does not allow them to reach their full potential within the Hierarchy. Moreover, the perception of safety does not only entail a lack of direct violence but also a shared sense of trust and collaboration among all sections of society,

⁸⁶ Charles W. Thomas and Samuel C. Foster, "A sociological perspective on public support for capital punishment," *American Journal of Orthopsychiatry* 45, n. 4 (1975), 641, <https://psycnet.apa.org/doiLanding?doi=10.1111%2Fj.1939-0025.1975.tb01192.x>.

⁸⁷ Kendra Cherry, "How Humanistic Psychology Can Help You Live a Better Life," *verywellmind* (Accessed on Wednesday November 6th, 2024), <https://www.verywellmind.com/what-is-humanistic-psychology-2795242>.

⁸⁸ Kendra Cherry, "Maslow's Hierarchy of Needs," *verywellmind* (Accessed on Wednesday November 6th, 2024), <https://www.verywellmind.com/what-is-maslows-hierarchy-of-needs-4136760>.

⁸⁹ Saul McLeod, "Maslow's Hierarchy of Needs," *SimplyPsychology* (Accessed on Wednesday November 6th, 2024), <https://www.simplypsychology.org/maslow.html#:~:text=Self%2Dactualization%20needs%20are%20the,personal%20growth%2C%20and%20peak%20experiences>.

⁹⁰ Ibid.

⁹¹ Randy Pollard and Shamekia Thomas, "Maslow's Hierarchy of Needs: Safety & Security," *study.com* (Accessed on Wednesday November 6th, 2024), https://study.com/academy/lesson/maslows-safety-needs-examples-definition-quiz.html?srltid=AfmBOopaGCPAhhkgP_wvrzOymAZT3EIWouBcegGvisrPt6vXuRNKBvmE.

particularly between state authorities and citizens. However, the current administration has repeatedly failed to do so, with many testimonies stating that “anyone can be arbitrarily captured” with the accusation of being a gang affiliate.⁹² These illegitimate arrests usually carry no evidence proving that the detainees are involved in criminal activities. Usually, the victims are trade unionists and political opponents, but there are also numerous cases of marginalised economic groups, such as informal vendors, being threatened if they dare to question the actions of the police.⁹³ The ending result can be described as a “constant state of tension”⁹⁴: the fear of violent crime is slowly being substituted by the unsafe and arbitrary justice system established by President Nayib Bukele.

IV. Proactive suggestions for a policy change

Several factors must be considered when discussing changes to El Salvador’s current policy framework. Firstly, the likelihood of Bukele’s policy spreading to other Latin American countries needs to be examined, as the popularity of *manodurismo* in the region often gives politicians electoral incentives to follow repressive strategies.⁹⁵ Moreover, the international community’s role shall also be assessed since its influence could act as a powerful “cordon sanitaire” to contain the spreading of

authoritarian tendencies. Finally, a series of holistic humanitarian suggestions, as proposed by Human Rights Watch, must be put forward so that the basis for an alternative way forward can be effectively laid down.

According to Meléndez-Sánchez and Vergara, there is a possibility that the popularity of the Bukele model will be short-lived.⁹⁶ Kurt Weyland explains that policy diffusion, in which the wave of emulation caused by the initial enthusiasm is often overcome by the challenges brought about by replicating the original success of the strategy.⁹⁷ Consequently, the early appeal that the new Salvadoran *manodurismo* has had on countries such as Honduras and Ecuador could diminish if these emulators fail to obtain results comparable to those of the Bukele administration.⁹⁸ However, it is also important to note that as long as the threat of violence undermines Latin America, civil society will likely continue to demand harsher state action, clearing a path for further violations of individual liberties and the erosion of the rule of law.⁹⁹ Nevertheless, this cycle can be ended if government policy can bring results within democratic norms and institutions,¹⁰⁰ with strategies that involve transparent policing, an improved anti-corruption system and justice-sector reforms.¹⁰¹ With this being said, such goals cannot be achieved if

⁹² Carlos S. Maldonado, “Bukele’s hell in El Salvador: a country submerged in a police state,” *El País International*, 31 July 2024, <https://english.elpais.com/international/2023-07-30/bukeles-hell-in-el-salvador-a-country-submerged-in-a-police-state.html>.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Meléndez-Sánchez and Vergara, “The Bukele Model: Will it spread?,” 87.

⁹⁶ Ibid. 95

⁹⁷ Kurt Weyland, “Theories of Policy Diffusion: Lessons from Latin American Pension Reform,” *World Politics* 57 (January 2005): 265, <http://www.jstor.org/stable/25054294>.

⁹⁸ Meléndez-Sánchez and Vergara, “The Bukele Model: Will it spread?,” 96.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Gustavo Flores-Macías, “The Costs of El Salvador’s Crime Crackdown,” *Foreign Affairs*, 20 March 2024, <https://www.foreignaffairs.com/central-america/bukele-costs-salvadors-crime-crackdown>.

public perception still deems *mano dura* as the best short-term solution to bring down violent crimes,¹⁰² thus shifting the previously mentioned concept of the development of a culture of violence towards a more ideological spectrum.

Moving on to the role of external foreign entities, Nelson Renteria argues that El Salvador's membership in several intergovernmental organizations, such as the Organization of American States (OAS), can restore at least some optimism that the country is concretely capable of reversing its current situation.¹⁰³ On the one hand, José Miguel Cruz suggests the United States, given their power, influence and proximity,¹⁰⁴ should work with the international community and pro-democracy Central American interest groups to design and establish a regional monitoring body composed of notable personalities with a proven commitment in fighting corruption and upholding the rule of law.¹⁰⁵ On the other hand, Anna Sofcheck insists on a more top-down approach that implements economic sanctions to combat corruption and institutional misbehaviour, thus holding both politicians and security forces accountable for their actions.¹⁰⁶ An example of this is the Global Magnitsky

program, which targets those connected to serious human rights abuse, corrupt actors, and their enablers.¹⁰⁷ However, previous uses of such sanctions in the context of El Salvador, as seen in two specific cases from 2021¹⁰⁸ and 2022¹⁰⁹ respectively, were limited to corruption allegations and did not address the violation of basic individual liberties.¹¹⁰ Nevertheless, adopting penalties against Salvadoran officials is the first important step in sending a powerful message of opposition to Bukele and his policies, pushing the current cabinet to end the abuses.¹¹¹ Finally, Sofcheck advocates for the international community to foster economic opportunities for the region.¹¹² In recent years, funding has been obtained from the "Call to Action" plan and the Partnership for Central America, which collectively have received nearly \$4.2 billion from the private sector to enhance prosperity on a multitude of levels, to bring down economic inequality in El Salvador.¹¹³ In the long run, these efforts will be crucial

¹⁰² Isabel G. Laterzo, "Progressive Ideology and Support for Punitive Crime Policy: Evidence from Argentina and Brazil," *Comparative Political Studies* 57 (July 31, 2023): 1003, <https://doi.org/10.1177/0010414023119301>.

¹⁰³ Nelson Renteria, "El Salvador Ends Anti-Corruption Accord with OAS, Dismaying U.S.," *Reuters*, June 5 2021, <https://www.reuters.com/world/americas/salvadoran-attorney-general-ends-anti-corruption-accord-with-oas-2021-06-04/>.

¹⁰⁴ Sofcheck, "Breaking the democratic fabric," 73.

¹⁰⁵ José Miguel Cruz, "Fighting Gangs to Dismantle Democracy: How Anti-Crime Policies Have Contributed to the Authoritarian Drift in Central America," *Brown Journal of World Affairs* 29, no. 1 (Fall/Winter 2022): 54, <https://bjwa.brown.edu/29-1/fighting-gangs-to-dismantle-democracy-how-anti-crime-policies-have-contributed-to-the-authoritarian-drift-in-central-america/>.

¹⁰⁶ Sofcheck, "Breaking the democratic fabric," 73.

¹⁰⁷ United States Department of State, *Global Magnitsky Human Rights Accountability Act Annual Report*, 23 February 2024, <https://www.federalregister.gov/documents/2024/02/23/2024-03532/global-magnitsky-human-rights-accountability-act-annual-report#:~:text=This%20sanctions%20program%2C%20which%20targets,combating%20corruption%20around%20the%20world.>

¹⁰⁸ United States Department of Treasury, *Treasury Issues Sanctions on International Anti-Corruption Day*, 9 December 2021, <https://home.treasury.gov/news/press-releases/jy0523>.

¹⁰⁹ United States Department of Treasury, *Treasury Sanctions Over 40 Individuals and Entities Across Nine Countries Connected to Corruption and Human Rights Abuse*, 9 December 2022, <https://home.treasury.gov/news/press-releases/jy1155>.

¹¹⁰ Amanda Strayer and Suchita Uppal, "Human Rights Abuses in Bukele's El Salvador Demand Sanctions," *Human Rights First*, 7 November 2023, <https://humanrightsfirst.org/library/human-rights-abuses-in-bukeles-el-salvador-demand-sanctions/>.

¹¹¹ *Ibid.*

¹¹² Sofcheck, "Breaking the democratic fabric," 75.

¹¹³ The White House, *Fact Sheet: Vice President Harris Launches Next Phase of Public-Private Partnership for Northern Central America*, 6 February 2023, <https://www.whitehouse.gov/briefingroom/statements-releases/2023/02/06/fact-sheet-vice-president-harris-launches-next-phase-of-public-private-partnership-for-northern-central-america/>.

to tackling the socio-economic factors contributing to El Salvador's instability.¹¹⁴

In connection with this aspect, the last point to be made regarding the possible changes in policy that El Salvador should embrace to avoid its full descent into violent authoritarianism is a series of holistic humanitarian suggestions outlined in a late 2022 Human Rights Watch report. The investigation not only aims to spread awareness about the widespread human rights abuses in the country but also provides the basis for an alternative way forward, which takes into account the root causes of gang violence. Firstly, the Salvadoran government should increase its efforts to tackle issues such as poverty, socio-economic exclusion, and educational prospects.¹¹⁵ According to UNICEF data, multidimensional indigence in El Salvador is concentrated in families with children, and the out-of-school rate for lower secondary education in 2020 was almost 70% higher than the average Latin American figures.¹¹⁶ ¹¹⁷ When the youth faces poverty, lack of access to economic opportunities and violence at home or school, it is not surprising that a large part of people who join gangs in El Salvador do so at age 15 or younger.¹¹⁸ As a result, the report pushes for the expansion of violence-prevention strategies to support

Salvadoran children, including the “Urban Centers of Wellbeing and Opportunity” (Centros Urbanos de Bienestar y Oportunidades, CUBO), as well as a path of reintegration for former affiliates of the *maras*.¹¹⁹ Additionally, authorities need to review the country's laws and policies, encouraging a focus on criminal prosecutions of violent abuses committed by senior or chronic perpetrators, as opposed to a broad focus on gang membership, with suspects being prejudged based on clothing, where they live, tattoos or family relationships. Such prosecution methods can undermine police legitimacy and lead to prison overcrowding, a situation that eventually strengthens the gangs' organizational capacities.¹²⁰ In parallel, the penitentiary system should follow the United Nations Standard Minimum Rules for the Treatment of Prisoners. This can be done by ensuring access to adequate and timely medical care, adequate food, water, and sanitation in prisons: compliance to the rules shall be monitored under international humanitarian organizations, with unimpeded access to the jails and regular meetings with the detainees.¹²¹ On a final note, the legislative branch, when considering the excessive growth of the executive, must show signs of institutional strength and accountability by ratifying several international agreements for the protection of individual liberties, including:

- the International Convention for the Protection of All Persons from Enforced Disappearance,

¹¹⁴ Sofcheck, “Breaking the democratic fabric,” 75.

¹¹⁵ “We Can Arrest Anyone We Want.”

¹¹⁶ UNICEF, “Country Office Annual Report 2021. El Salvador,” 2021, 1, <https://www.unicef.org/media/116261/file/El-Salvador-2021-COAR.pdf>.

¹¹⁷ UNICEF, *Education in Latin America at a crossroads*, 2022, 25-55, <https://www.unicef.org/lac/media/37791/file/Education%20in%20Latin%20America%20and%20the%20Caribbean%20at%20a%20crossroads.pdf>.

¹¹⁸ Alberto Martínez Reyes and José Javier Navarro Pérez, “¿Atracción o Reclutamiento? Causas que Motivan el Ingreso en Las Pandillas de los/as Adolescentes Salvadoreños/as”, *Revista Prisma Social* 23 (2018), <https://revistaprismasocial.es/article/view/2732>.

¹¹⁹ “We Can Arrest Anyone We Want.”

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

- the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment,
- the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.¹²²

Overall, the report dramatically emphasises how the aforementioned structural changes in El Salvador's doctrine for preventing and fighting gang-related crimes can likely have long-lasting, positive effects in reducing the overarching insecurity and the authoritarian tendencies lurking under the Bukele administration.

On a final note, although the applicability and ultimate effectiveness of the aforementioned policy suggestions are up for debate and do not entirely reflect the most recent developments concerning the case study of El Salvador, researching and outlining a possible change of direction for the Central American country represents a proactive stance for socio-political problem-solving. Doing so can be preferable to simply describing and assessing the events occurring nationally and internationally within the Salvadoran context.

V. Conclusion

According to Max Weber's traditional conception of sovereignty, Nayib Bukele's strategy of strengthening El Salvador's security forces and enabling stricter legislation on those responsible for gang-related offences is justified. The country's internal sovereignty was arguably under threat due to the excessive power held by

the various *maras* nationwide since the state should only have a monopoly over the use of violence in society.

Moreover, Nayib Bukele's popularity can be considered a supporting factor for the continuity of his policies: polls and elections have highlighted a high degree of satisfaction among the Salvadoran population, with many believing the country has finally achieved a tangible internal peace after decades of violence. It is essential to notice that the democratisation process in a Latin American country such as El Salvador may not strictly follow the standard imposed by successful Western models, especially when considering the difficulties brought about by the post-Civil War transition period. Therefore, democratic and political awareness should be considered when examining the electorate's responsiveness to Bukele and his agenda. However, the executive's exercise of sovereignty has been excessively violent and unlawful, especially in light of clear violations of human rights. Mass trials, illegitimate arrests and searches without warrants are only some of the many cases of abuse that the Salvadoran police and armed forces can perpetrate under the *estado de excepción*, which has now been active for more than two years and a half.¹²³ In addition to this, dozens of inmates are reported to have died as a result of torture and

¹²² Ibid.

¹²³ "CIDH publica informe sobre Estado de excepción y derechos humanos en El Salvador," *Comisión Interamericana de Derechos Humanos*, 4 September 2024, <https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/prensa/comunicados/2024/207.asp>.

beatings in the country's detention facilities,¹²⁴ thus providing further evidence of how the Bukele administration is no longer respecting due process or any basic standards of humane imprisonment.

Furthermore, the claim that *manodurismo* is perceived to be necessary by the Salvadoran civil society fails to account for the years of continuous violence and lack of security that the population has been enduring since the beginning of the Civil War. As no other alternatives seemed to be viable, the rise of a populist leader with autocratic tendencies, such as Nayib Bukele, who promised quick and efficient results, was accepted by a country desperately willing to lessen its grievances. Nevertheless, the circle of violence did not disappear as many would have hoped. Instead, it shifted its centre from gang crime to institutionalised police abuses.

Finally, the only victims of El Salvador's recent five-year-long political season are the Salvadoran people themselves, despite the constant claims of popular mandate made by President Bukele. According to the World Bank, the total poverty rate has increased from 26.8% in 2019 to 30.3% in 2023.¹²⁵ Furthermore, around 10% of the population was estimated to be living in extreme poverty last year, compared to just over 5% in 2019.¹²⁶ While the reduced levels of gang violence have

increased growth and job creation,¹²⁷ the root factors that inhibit socio-economic disparity are still very much present, particularly among marginalised groups such as women and the youth.

In conclusion, the Bukele administration's use of sovereignty is not justified. It has progressively weakened the government's accountability for its actions while committing human rights violations under the claim of protecting national security. In a political context characterised by growing populist and authoritarian movements, Nayib Bukele's ability to gain such an excessive amount of power underlines the extent of the ideological crisis that the traditional Western model of democracy has been experiencing worldwide.

¹²⁴ Bryan Avelar, "Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele's prisons," *El País International*, 29 May 2024, <https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html>.

¹²⁵ "El Salvador Overview: Development news, research, data," *World Bank* (Accessed on Wednesday November 6th 2024), <https://www.worldbank.org/en/country/elsalvador/overview>.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

Bibliography

“Análisis de las personas fallecidas, como consecuencia de la aplicación del Régimen de Excepción en El Salvador (01 Abril 2022 - 15 Junio 2024).” Socorro Jurídico Humanitario, El Salvador, 24 June 2024.
https://freight.cargo.site/m/G1872215785111931953159795416165/sjhumanitario_analisis.pdf.

Antunes, Sandrina and Camisã, Isabel. “Introducing Realism in International Relations Theory.” *E-International Relations*. August 5, 2018.
<https://www.e-ir.info/2018/02/27/introducing-realism-in-international-relations-theory/>.

Asmann, Parker and O’Reilly Eimhin. “InSight Crime’s 2019 Homicide Round Up.” *Insight Crime*. 28 January 2020.
<https://insightcrime.org/news/insight-crime-2019-homicide-round-up/>.

Avelar, Bryan. “Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele’s prisons.” *El País International*, 29 May 2024.
<https://english.elpais.com/international/2023-05-29/in-mates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html>.

Beckett, Katherine. *Making Crime Pay: Law and Order in Contemporary American Politics*. Oxford: Oxford University Press, 1997.

Bergengruen, Vera. “How Nayib Bukele’s “Iron Fist” Has Transformed El Salvador.” *Time*, 29 August 2024.

<https://time.com/7015598/nayib-bukeles-iron-fist-el-salvador/>.

Brahm, Eric. “Sovereignty.” *The Conflict Information Consortium*. September 2004.
<https://www.beyondintractability.org/essay/sovereignty>.

Bruneau, Thomas C., Enrique Desmond Arias, Thomas Bruneau, José Miguel Cruz, Lucía Dammert, Clifford Gyves, Florina Cristiana Matei, et al. *Maras: Gang violence and security in Central America*. Austin: University of Texas Press, 2021.

Calderón, Beatriz and Alemán, Francisco. “Lo que se sabe del ‘Plan Control Territorial’ implementado este jueves por el Gobierno.” *La Prensa Gráfica*, 20 June 2019.
<https://www.laprensagrafica.com/elsalvador/Lo-que-se-sabe-del-Plan-Control-Territorial-implementado-este-jueves-por-el-Gobierno-20190620-0254.html>.

Cherry, Kendra. “How Humanistic Psychology Can Help You Live a Better Life.” *verywellmind*. Accessed on Wednesday November 6th, 2024.
<https://www.verywellmind.com/what-is-humanistic-psychology-2795242>.

Cherry, Kendra. “Maslow’s Hierarchy of Needs.” *verywellmind*. Accessed on Wednesday November 6th, 2024.
<https://www.verywellmind.com/what-is-maslows-hierarchy-of-needs-4136760>.

“CIDH publica informe sobre Estado de excepción y derechos humanos en El Salvador.” *Comisión Interamericana de Derechos Humanos*, 4 September 2024.

<https://www.oas.org/es/cidh/jsForm/?File=/es/cidh/preNSA/comunicados/2024/207.asp>.

Cruz, José Miguel. “Fighting Gangs to Dismantle Democracy: How Anti-Crime Policies Have Contributed to the Authoritarian Drift in Central America.” *Brown Journal of World Affairs* 29, no. 1 (Fall/Winter 2022): 45–57.

[https://bjwa.brown.edu/29-](https://bjwa.brown.edu/29-1/fighting-gangs-to-dismantle-democracy-how-anti-crime-policies-have-contributed-to-the-authoritarian-drift-in-central-america/)

[1/fighting-gangs-to-dismantle-democracy-how-anti-crime-policies-have-contributed-to-the-authoritarian-drift-in-central-america/](https://bjwa.brown.edu/29-1/fighting-gangs-to-dismantle-democracy-how-anti-crime-policies-have-contributed-to-the-authoritarian-drift-in-central-america/).

D. Rosen, Jonathan, Cutrona, Sebastián and Lindsquit, Katy. “Gangs, violence, and fear: punitive Darwinism in El Salvador.” *Crime, Law and Social Change* 79 (4 July 2022): 175-194. <https://doi.org/10.1007/s10611-022-10040-3>.

“El 2023 fue el año más seguro en la historia de El Salvador.” Policía Nacional Civil, 3 January 2024. <https://www.pnc.gob.sv/el-2023-fue-el-ano-mas-seguro-en-la-historia-del-el-salvador/>.

“El Salvador: Bukele Pledges to Respect Human Rights.” *Amnesty International*, August 8, 2022. <https://www.amnesty.org/en/latest/news/2019/06/el-salvador-amnistia-internacional-se-reune-con-presidente-bukele-2/>.

“El Salvador says murders fell by 70% in 2023 as it cracked down on gangs.” *Reuters*, 3 January 2024. <https://www.reuters.com/world/americas/el-salvador-says-murders-fell-70-2023-it-cracked-down-gangs-2024-01-03/>.

“El Salvador Overview: Development news, research, data.” *World Bank*. Accessed on Wednesday November 6th (2024). <https://www.worldbank.org/en/country/elsalvador/overview>.

“Failed state.” *Encyclopedia Britannica*. 30 September 2024. <https://www.britannica.com/topic/failed-state>.

Flores-Macías, Gustavo. “The Costs of El Salvador’s Crime Crackdown.” *Foreign Affairs*, 20 March 2024. <https://www.foreignaffairs.com/central-america/bukele-costs-salvadors-crime-crackdown>.

Gellman, Mneesha. “The Democracy Crisis in El Salvador: An Overview” (2022). Emerson Authors, Researchers, & Creators. 1352. <https://digitalcommons.emerson.edu/arc/1352>.

Giles, Jeremy. “The Problem With El Salvador’s Crime Numbers.” *Foreign Policy*, 8 August 2024. <https://foreignpolicy.com/2024/08/08/el-salvador-bukele-crime-homicide-prison-gangs/>.

International Crisis Group. *Miracle or Mirage? Gangs and Plunging Violence in El Salvador*.

International Crisis Group, 8 July 2020. <https://www.crisisgroup.org/latin-america-caribbean/central-america/el-salvador/81-miracle-or-mirage-gangs-and-plunging-violence-el-salvador>.

Laterzo, Isabel G. "Progressive Ideology and Support for Punitive Crime Policy: Evidence from Argentina and Brazil." *Comparative Political Studies* 57, no. 6 (July 31, 2023): 999–1034. <https://doi.org/10.1177/00104140231193011>.

Madrid, Gabriel Campos. "Bukele presentó fase III del Plan Control Territorial." *La Prensa Gráfica*, 1 August 2019. <https://www.laprensagrafica.com/elsalvador/Bukele-presento-fase-III-del-Plan-Control-Territorial-20190731-0512.html>.

Madureira, Vinicius. "El Salvador Registers 4,060 Disappeared People under President Nayib Bukele." *OCCRP*, 21 November 2022. <https://www.occrp.org/en/news/el-salvador-registers-4060-disappeared-people-under-president-nayib-bukele>.

Maldonado, Carlos S. "Bukele's hell in El Salvador: a country submerged in a police state." *El País International*, 31 July 2024. <https://english.elpais.com/international/2023-07-30/bukeles-hell-in-el-salvador-a-country-submerged-in-a-police-state.html>.

Maruna, Shadd, Amanda Matravers, and Anna King. "Disowning Our Shadow: A Psychoanalytic Approach

to Understanding Punitive Public Attitudes." *Deviant Behavior* 25, no. 3 (May 2004): 277–99. <https://doi.org/10.1080/01639620490431228>.

Martínez, Carlos, Lemus, Efren and Martínez, Oscar. "Bukele Government Dismantled Gang Presence in El Salvador." *El Faro*, 3 February 2023. https://elfaro.net/en/202302/el_salvador/26694/Bukele-Government-Dismantled-Gang-Presence-in-El-Salvador.htm.

McLeod, Saul. "Maslow's Hierarchy of Needs." *SimplyPsychology*. Accessed on Wednesday November 6th, 2024. <https://www.simplypsychology.org/maslow.html#:~:text=Self%2Dactualization%20needs%20are%20the,personal%20growth%2C%20and%20peak%20experiences>.

Meléndez-Sánchez, Manuel. "Bukele Has Defeated El Salvador's Gangs—for Now. How? And What Does It Mean for the Region?" *Lawfare*, 27 March 2023. www.lawfaremedia.org/article/bukele-has-defeated-el-salvadors-gangsnow-how-and-what-does-it-mean-region.

Meléndez-Sánchez, Manuel and Vergara, Alberto. "The Bukele Model: Will It Spread?" *Journal of Democracy* 35, no. 3 (2024): 84–98. <https://dx.doi.org/10.1353/jod.2024.a930429>.

"Monitor del uso de la fuerza letal en América Latina: Un estudio comparativo de Brasil, Colombia, El Salvador, México y Venezuela (2019)." *Monitor Fuerza Letal*. September 2019.

Renteria, Nelson. "El Salvador Ends Anti-Corruption Accord with OAS, Dismaying U.S." *Reuters*, June 5 2021. <https://www.reuters.com/world/americas/salvadoran-attorney-general-ends-anticorruption-accord-with-oas-2021-06-04/>.

Pineda, Wilfredo. "El Salvador Lines up semi-naked gang members." *Reuters*, 28 April 2020. <https://www.reuters.com/article/world/uk/el-salvador-lines-up-semi-naked-gang-members-for-grim-prison-photos-idUSKCN22A0GK/>.

"Pleno legislativo aprueba régimen de excepción para frenar ola de violencia." *Prensa Asamblea Legislativa*, 27 March 2022. <https://www.asamblea.gob.sv/node/12062>.

"Political constructivism." *Internet Encyclopedia of Philosophy*. Accessed on Monday October 28th, 2024. <https://iep.utm.edu/political-constructivism/#H5>.

Pollard, Randy, and Shamekia Thomas. "Maslow's Hierarchy of Needs: Safety & Security." *study.com*. Accessed on Wednesday November 6th, 2024. https://study.com/academy/lesson/maslows-safety-need-examples-definition-quiz.html?srltid=AfmBOopaGC PAhbkgP_wvrzOymAZT3EIWouBcegGvisrPt6vXuRNKBvmE.

"President Bukele Engulfs El Salvador in a Human Rights Crisis after Three Years in Government." *Amnesty International*, January 26, 2023. <https://www.amnesty.org/en/latest/news/2022/06/el-salvador-president-bukele-human-rights-crisis/>.

Reyes, Alberto Martínez, and José Javier Navarro Pérez. "¿Atracción o Reclutamiento? Causas Que Motivan El Ingreso En Las Pandillas de Los/as Adolescentes Salvadoreños/As." *Revista Prisma Social* 23 (2018). <https://revistaprismasocial.es/article/view/2732>.

Sandoval, Williams. "Número de osamentas encontradas incrementó en año 2023." *La Prensa Gráfica*, 12 February 2024. <https://www.laprensagrafica.com/elsalvador/Numero-de-osamentas-encontradas-incremento-en-ano-2023-20240211-0060.html>.

Sibrián, Walter. "¿De dónde provendrán los \$575.2 millones para financiar el plan 'Control Territorial' hasta 2021?" *La Prensa Gráfica*, 11 July 2019. <https://www.laprensagrafica.com/elsalvador/De-donde-provendran-los-575.2-millones-para-financiar-el-plan-Control-Territorial-hasta-2021-20190711-0302.html>.

Sofchek, Anna. "Breaking the Democratic Fabric: Assessing the Impact of Gang Violence in El Salvador." Master Thesis. Naval Postgraduate School, September 2023.

“Sovereignty.” *Encyclopaedia Britannica*. 13 September 2024. <https://www.britannica.com/topic/sovereignty>.

Strayer, Amanda, and Suchita Uppal. “Human Rights Abuses in Bukele’s El Salvador Demand Sanctions.” *Human Rights First*, 7 November 2023. <https://humanrightsfirst.org/library/human-rights-abuses-in-bukeles-el-salvador-demand-sanctions/>.

Sviatschi, Maria Micaela. “Spreading Gangs: Exporting US Criminal Capital to El Salvador.” *American Economic Review* 112, no. 6 (2020). https://www.micaelasviatschi.com/wp-content/uploads/2020/09/making_agang9x1x2020.pdf.

“The definition of violence according to Johan Galtung.” *Rhizome against Polarization*. Accessed on Monday October 28th, 2024. <https://rap.education/en/background-knowledge/violence/>.

“The History of Utilitarianism.” *Stanford Encyclopedia of Philosophy*, 27 March 2009. Accessed on Monday November 4th, 2024. <https://plato.stanford.edu/entries/utilitarianism-history/>.

Thomas, Charles W., and Samuel C. Foster. “A Sociological Perspective on Public Support for Capital Punishment.” *American Journal of Orthopsychiatry* 45,

no. 4 (July 1975): 641–57. <https://doi.org/10.1111/j.1939-0025.1975.tb01192.x>.

The White House. *Fact Sheet: Vice President Harris Launches Next Phase of Public-Private Partnership for Northern Central America*, 6 February 2023. <https://www.whitehouse.gov/briefingroom/statements-releases/2023/02/06/fact-sheet-vice-president-harris-launches-next-phase-of-public-private-partnership-for-northern-central-america/>.

UN General Assembly. *Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on Her Visit to El Salvador*. UN General Assembly, 23 April 2018.

UNICEF. “Country Office Annual Report 2021. El Salvador.” 2021. <https://www.unicef.org/media/116261/file/El-Salvador-2021-COAR.pdf>.

UNICEF. *Education in Latin America at a crossroads*, 2022. <https://www.unicef.org/lac/media/37791/file/Education%20in%20Latin%20America%20and%20the%20Caribbean%20at%20a%20crossroads.pdf>.

United States Department of State. *Global Magnitsky Human Rights Accountability Act Annual Report*. 23 February 2024. <https://www.federalregister.gov/documents/2024/02/2>

3/2024-03532/global-magnitsky-human-rights-accountability-act-annual-report#:~:text=This%20sanctions%20program%2C%20which%20targets,combatting%20corruption%20around%20the%20world.

United States Department of Treasury. *Treasury Issues Sanctions on International Anti-Corruption Day*. 9 December 2021. <https://home.treasury.gov/news/press-releases/jy0523>.

United States Department of Treasury, *Treasury Sanctions Over 40 Individuals and Entities Across Nine Countries Connected to Corruption and Human Rights Abuse*, 9 December 2022, <https://home.treasury.gov/news/press-releases/jy1155>.

Valencia, Roberto. "Bukele y las maras | La pandilla Barrio 18-Sureños da nuevos detalles sobre la negociación con el gobierno de El Salvador." *BBC News Mundo*, 29 April 2022. <https://www.bbc.com/mundo/noticias-america-latina-61267322>.

Valencia, Roberto. "El país de las maras," *El Faro*, 10 June 2018. <https://elfaro.net/es/201806/columnas/21997/El-pa%C3%ADs-de-las-maras.htm>.

Weber, Max. *The vocation lectures*. Indianapolis: Hackett Pub, 2004.

"We Can Arrest Anyone We Want." *Human Rights Watch*, 7 December 2022. <https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el>.

Weyland, Kurt. "Theories of Policy Diffusion Lessons from Latin American Pension Reform." *World Politics* 57, no. 2 (January 2005): 262–95. <https://doi.org/10.1353/wp.2005.0019>.

WOLA. "El Salvador: Covid-19 Doesn't Excuse Bukele's Attacks on Rule of Law." WOLA, April 30, 2020. <https://www.wola.org/2020/04/el-salvador-covid-19-bukele-attack-rule-of-law/>.

Democratic Backsliding and Military Coups in West Africa: Strategies to Reverse Erosion and Strengthen Political Stability

Erica Njoki

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: enjoki.ieu2022@student.ie.edu

Published 27th January 2025

Abstract

The increased rate of democratic backsliding and military coups within West Africa has defaced two decades of progress in governance and stability in the region. This paper, therefore, looks into democratic backsliding and military coups to identify the underlying factors that have contributed to this trend and the adequacy of regional and international interventions. Drawing on case studies of recent coups in Mali, Guinea, Burkina Faso, and Niger, the analysis examines how constitutional manipulation, economic hardship, and weakened institutions create environments that are permissive of both democratic erosion and military intervention. Based on a review of academic literature and policy evaluations, the study suggests actionable strategies to reverse democratic erosion, strengthen institutional resilience, and reinforce regional political stability. It argues that addressing underlying socio-economic challenges and developing solid democratic institutions are critical in countering this growing tide of authoritarianism.

Keywords: Democratic Backsliding, West African Military Coups

I. Introduction

Democratic backsliding and military coups have become increasingly prevalent in West Africa over the past few years, marking a significant reversal of the democratic gains made in the region since the 1990s¹. This trend has been particularly pronounced in French-speaking West African countries, where military takeovers have occurred since 2020. Mali experienced two coups in 2020 and 2021,

followed by Guinea in 2021 and Burkina Faso twice in 2022. Niger joined this list with a military takeover in July 2023, leading to the emergence of what some call the "Coup Belt," stretching across the Sahel region². The coups have often occurred in a context of widespread disregard for political and civil liberties, worsening insecurity, and growing economic difficulties.

¹ ("West Africa Civil Society's Solutions to Reverse Democratic Backsliding in French-speaking Countries," n.d.)

² ("West and Central Africa," n.d.)

Several factors have contributed to this democratic backsliding. These include growing dissatisfaction among citizens with the processes and outcomes of democratic governance, which have failed to meet widespread expectations for economic well-being. The manipulation of constitutions and election results to extend mandates, the threat of violent extremism (particularly in the Sahel), and the emergence of external forces and influences have also played significant roles³. Additionally, weak opposition parties, fragmented political landscapes, and clientelism within political structures have further undermined democratic institutions⁴.

The response from regional organisations, particularly the Economic Community of West African States (ECOWAS), has been mixed. While ECOWAS has made efforts to strengthen resilience against these threats, including revising its Regional Protocol on Democracy and Good Governance, its effectiveness in preventing coups and restoring democratic order has been limited⁵. The organisation has sometimes imposed economic sanctions and threatened military intervention, but achieving consensus among member states for decisive action has proven challenging⁶.

This trend of democratic backsliding and military coups represents a significant challenge to stability and progress

in West Africa. It has led to a shift in regional dynamics, with some new military regimes severing ties with traditional Western allies, particularly France, and seeking support from other powers like Russia⁷.

The topic of democratic backsliding and military coups in West Africa is timely and crucial, offering deep insights into the region's political, economic, and social landscape. The recent surge in democratic regression threatens hard-won progress, with far-reaching implications for stability, economic growth, and human rights across West Africa. This paper will examine this phenomenon to uncover the underlying factors—such as pervasive corruption, weak institutional frameworks, and persistent socio-economic challenges—that contribute to instability. Additionally, this exploration highlights shifting geopolitical dynamics as some West African nations pivot from traditional Western alliances in search of new partnerships. The rise in authoritarian tendencies also questions the efficacy of regional bodies like ECOWAS in upholding democratic norms. A comprehensive understanding of these issues allows policymakers to devise strategies that not only support democratic resilience but also address the fundamental causes of instability, ultimately promoting lasting peace and prosperity in the region. Given these stakes, strengthening democratic institutions is essential to countering democratic backsliding, reducing the incidence of military coups, and fostering political stability across West Africa. Thus, the thesis of this study posits that *democratic backsliding*

³ Venkataraman, M. 2023. "Democratic Backsliding in Africa? Autocratization, Resilience, and Contention", by Leonardo R. Arriola, Lise Rakner and Nicolas Van De Walle (Eds.)." *Africa Review* 15 (3): 342–46. [Link](#).

⁴ Ka-Admin, and Ka-Admin. 2023. "Democratic Backsliding in Africa: Understanding the Current Challenges." *Kujenga Amani* (blog). October 24, 2023. [Link](#).

⁵ ("West Africa Civil Society's Solutions to Reverse Democratic Backsliding in French-speaking Countries," n.d.)

⁶ Annor, Ignatius. 2023. "Does Niger's Coup Affirm Democratic Backsliding Theories in West Africa?" *Voice of America*, July 31, 2023. [Link](#).

⁷ Lawal, Shola. 2024. "West Africa's 'Coup Belt': Did Mali's 2020 Army Takeover Change the Region?" *Al Jazeera*, August 27, 2024. [Link](#).

significantly heightens the likelihood of military coups in the region but that well-crafted policies reinforcing democratic institutions can reverse this trend and secure stability.

II. Historical context of democracy and coups in West Africa

Following independence from colonial powers in the late 1950s and early 1960s, many West African countries adopted Western-style democratic systems. However, this period was short-lived, as the region soon became plagued by military coups and authoritarian regimes, particularly during the Cold War era of the 1960s to 1980s⁸. This tumultuous period saw frequent unconstitutional government changes, with the 1970s being particularly notorious for military takeovers⁹.

A significant shift occurred in the 1990s, often called the "third wave of democratisation" in Africa. This period witnessed a resurgence of democratic governance across West Africa, with many countries transitioning to multi-party systems and holding relatively free and fair elections. Regional organisations like ECOWAS were crucial in promoting and safeguarding democratic norms during this time. The early 2000s saw further consolidation of democratic practices, with several peaceful transfers of power and improved electoral processes in countries like Ghana, Senegal, and Nigeria.

However, the recent wave of coups since 2020, particularly in francophone West African countries, has raised concerns

⁸ Omilusi, Mike. n.d. "Democratic Rollback in West Africa: Coup Contagion, Sittight Tyrants and Best Options for Regional Organizations." Department of Political Science, Ekiti State University, Ado Ekiti/NIGERIA. Accessed November 7, 2024. [Link](#).

⁹ Vora, Aman. 2024. "Democracies Are Failing Democracy - Brown Political Review." Brown Political Review. January 27, 2024. [Link](#).

about a reversal of these democratic gains. This new trend echoes the instability of earlier decades. Still, it occurs in a different global context, with factors such as the fight against extremism, changing geopolitical alignments, and persistent socio-economic challenges playing significant roles¹⁰. The current situation reflects the ongoing struggle to establish and maintain stable democratic systems in a region with a complex history of political transitions and military interventions¹¹.

III. Recent instances of coups

In recent years, military coups have resurgent in West Africa, particularly Mali, Guinea, and Burkina Faso¹². Mali experienced two coups in quick succession, first in August 2020 and then in May 2021. The initial coup ousted President Ibrahim Boubacar Keita amid widespread protests against corruption and the government's inability to address growing insecurity¹³. Colonel Assimi Goita, who led both coups, eventually installed himself as president, repeatedly postponing promised elections¹⁴. In Guinea, a military coup led by Lieutenant Colonel Mamady Doumbouya overthrew President Alpha Condé on September 5, 2021. This coup was seen as relatively peaceful, with minimal loss of life, and came in the wake of

¹⁰ Omilusi, Mike. n.d. "Democratic Rollback in West Africa: Coup Contagion, Sittight Tyrants and Best Options for Regional Organizations." Department of Political Science, Ekiti State University, Ado Ekiti/NIGERIA. Accessed November 7, 2024. [Link](#).

¹¹ "West Africa's 'Coup Belt': Did Mali's 2020 Army Takeover Change the Region?" *Al Jazeera*, August 27, 2024. [Link](#).

¹² "West Africa's 'Coup Belt': Did Mali's 2020 Army Takeover Change the Region?" *Al Jazeera*, August 27, 2024. [Link](#).

¹³ Nsaibia, Héni. 2023. "Fact Sheet: Attacks on Civilians Spike in Mali as Security Deteriorates Across the Sahel." ACLED. September 22, 2023. [Link](#).

¹⁴ "Military Coup on September 5, 2021 in Guinea | Institute for African Studies." n.d. [Link](#).

controversial constitutional changes that allowed Condé to seek a third term¹⁵.

In January and September 2022, Burkina Faso experienced two coups, further destabilising the region¹⁶. These coups have been attributed to various factors, including dissatisfaction with civilian governments' handling of security issues, allegations of corruption, and economic challenges¹⁷. The trend has raised significant concerns about democratic backsliding in the region and has challenged the effectiveness of regional organisations like ECOWAS in maintaining political stability¹⁸.

IV. Manifestations of democratic backsliding

Democratic backsliding in West Africa has manifested in several concerning ways over the past few years¹⁹. One prominent indicator has been the manipulation of constitutions to extend presidential terms, as seen in Guinea, where former President Alpha Condé changed the constitution to run for a third term, sparking widespread protests and ultimately leading to a military coup²⁰. Another manifestation is the erosion of electoral integrity, with several countries experiencing controversial elections marred by irregularities, voter suppression, and politically motivated prosecutions of opposition leaders. For instance, Nigeria saw postponed elections and significant

irregularities in 2019, while Senegal witnessed the jailing of opposition candidates²¹.

The region has also seen a decline in civil liberties and freedom of expression. In Benin, once considered a beacon of democracy in the area, there has been a spate of politically motivated prosecutions against opposition and anti-government leaders, culminating in an internet blackout during elections²². Similarly, Togo experienced a partial internet and communications blackout during its 2020 election²³. The rise of military coups, as seen in Mali, Guinea, Burkina Faso, and Niger, represents perhaps the most dramatic manifestation of democratic backsliding. These coups have often been justified by citing failures of civilian governments to address security threats and economic challenges and have sometimes received public support, indicating a growing disillusionment with democratic governance in the region²⁴.

Furthermore, there has been a noticeable weakening of institutional checks and balances, with executives increasingly capturing legislatures and judiciaries. This trend has been accompanied by a decline in press freedom and the repression of civil society organisations in several countries²⁵. The overall effect has been a significant reversal of the democratic gains made in the region since the 1990s,

¹⁵ ACCORD. 2022. "Implications of Mali's Latest Coup for Sahel and West Africa – ACCORD." February 8, 2022. [Link](#).

¹⁶ GUINEA: POST-COUP ASSESSMENT OF SOCIAL, POLITICAL, AND ECONOMIC RISKS. (n.d.). [Link](#)

¹⁷ "What Caused the Coup in Burkina Faso? | ISS Africa." n.d. ISS Africa. <https://issafrica.org/iss-today/what-caused-the-coup-in-burkina-faso>.

¹⁸ ACCORD. 2022. "Implications of Mali's Latest Coup for Sahel and West Africa – ACCORD." February 8, 2022. [Link](#).

¹⁹ "Democracies Are Failing Democracy - Brown Political Review." Brown Political Review. January 27, 2024. [Link](#).

²⁰ Claudia, Bonney Amamoo. 2022. "Democratic Backsliding in West Africa." 2022. [Link](#).

²¹ "GCSP Publication | Understanding the Crisis of Democracy in West Africa and the Sahel," n.d.

²² Solace Global. 2024. "West African Democracy Part 2: Backsliding in the Region - Solace Global." April 18, 2024. [Link](#).

²³ Omilusi, Mike. n.d. "Democratic Rollback in West Africa: Coup Contagion, Sittight Tyrants and Best Options for Regional Organizations." Department of Political Science, Ekiti State University, Ado Ekiti/NIGERIA. Accessed November 7, 2024. [Link](#).

²⁴ "West Africa's 'Coup Belt': Did Mali's 2020 Army Takeover Change the Region?" *Al Jazeera*, August 27, 2024. [Link](#).

²⁵ Stocker, Santiago. 2023. "West Africa's Grim Trajectory." *Just Security*. August 11, 2023. [Link](#).

with Freedom House reclassifying several West African countries from "Free" to "Partly Free" status in recent years²⁶.

V. Literature Review

Nancy Bermeo's theoretical framework on democratic backsliding emphasises the concept of "executive aggrandisement," whereby elected leaders gradually erode democratic norms and institutions to consolidate their authority. Unlike overt power seizures through coups, executive aggrandisement is often more subtle and insidious, as leaders weaken checks and balances, manipulate electoral processes, and curtail civil liberties under the guise of legitimate governance. This concept is increasingly relevant to understanding contemporary forms of democratic erosion, where democratic institutions are hollowed out from within rather than abruptly overthrown.

In *How Democracies Die*, Steven Levitsky and Daniel Ziblatt focus on the critical role of informal democratic norms and the dangers posed by intense political polarisation²⁷. They argue that the stability of democratic systems relies not only on formal institutions but also on unwritten norms of mutual tolerance and political restraint. When political actors disregard these norms, viewing opponents as existential threats, democratic systems are at greater risk of destabilisation. According to Levitsky and Ziblatt, polarisation fosters an environment

where anti-democratic actions are rationalised as necessary to protect the state from perceived adversaries.

Bermeo's concept of executive aggrandisement is especially pertinent to understanding the political trajectory leading up to recent coups in West Africa. In several instances, democratically elected leaders gradually eroded vital democratic institutions, setting the stage for military intervention. For example, in Mali, President Ibrahim Boubacar Keïta's administration faced accusations of corruption, mismanagement, and executive overreach before his removal in the 2020 coup. Similarly, in Niger, President Mohamed Bazoum's government was criticised for consolidating power and failing to address pressing security and economic concerns, culminating in his ouster in 2023. These cases illustrate how sustained democratic backsliding, marked by the erosion of institutional checks, can create a political vacuum in which military actors feel compelled—or justified—to intervene.

Levitsky and Ziblatt's emphasis on political polarisation and the breakdown of democratic norms also holds relevance for West Africa, where economic hardship has intensified social and political divisions. Financial crises, marked by high unemployment, inflation, and widespread inequality, have fueled public discontent and made citizens more susceptible to anti-democratic rhetoric. Leaders of recent coups have often portrayed themselves as saviours of the nation, framing their actions as necessary responses to corrupt elites who, they claim, threaten the survival of the state. This rhetoric aligns with Levitsky and Ziblatt's argument that extreme polarisation can foster a political

²⁶"Democracies Are Failing Democracy - Brown Political Review." Brown Political Review. January 27, 2024. [Link](#).

²⁷ ("How Democracies Die: What History Reveals About Our Future" by Steven Levitsky and Daniel Ziblatt, n.d.)

climate where leaders justify anti-democratic measures as essential for national survival.

The importance of informal democratic norms, as outlined by Levitsky and Ziblatt, is evident in the persistent challenges West African nations face. While many of these countries possess the formal structures of democracy, the absence of deep-rooted democratic norms and a culture of tolerance weakens the resilience of their institutions. The frequent intervention of military forces in the political sphere underscores a lack of commitment to the norm of civilian control over the armed forces, reflecting the fragility of democratic culture in the region.

Economic hardship plays a dual role in democratic backsliding in West Africa. On the one hand, economic instability erodes public trust in democratic governance, leading some to support authoritarian alternatives that promise stability and rapid development. On the other hand, political elites' pursuit of wealth and resources often accompanies democratic erosion, as leaders who aim to consolidate power undermine democratic institutions to protect their interests. This cycle of economic instability and political authoritarianism not only weakens democratic structures but also deepens economic inequalities, further fueling the conditions for backsliding.

VI. Quantitative Analysis

Democratic backsliding often precedes and increases the likelihood of coups. A 2022 analysis by Dahl and Gleditsch found that the probability of both democratic and autocratic changes increases substantially in the aftermath

of a coup, highlighting the destabilising effect of coups on political systems²⁸. This suggests that coups can accelerate or exacerbate existing trends of democratic erosion. The same study found that coups in the context of popular mobilisation are more likely to spur democratic change, with the impact of popular mobilisation on democratic change almost doubling in the presence of a coup. Conversely, in the absence of popular mobilisation, successful coups are likelier to foster autocratic change.

Data from a comprehensive study by Miller (2016) examining coups from 1950 to 2008 provides further insights. The research found that coups against dictatorships rarely lead to democratisation. In the post-Cold War period, only about 14% of coups against dictatorships resulted in a transition to democracy within two years. Instead, coups were more likely to lead to the establishment of new dictatorships, with a 27% increase in the likelihood of transition from one autocracy to another in the post-Cold War era²⁹.

The impact of coups on democratic quality is also evident in repression levels. Using an annual latent measure of repression, Miller's study found that coups that launch new dictatorships are followed by an increase in repression in the calendar year after the coup compared to the year before it. In contrast, the rare coups that lead to democracy are associated with decreased repression³⁰.

²⁸ Kallmer, Brent. 2024. "On Democratic Backsliding | Journal of Democracy." *Journal of Democracy*. May 2, 2024. [Link](#).

²⁹ Dahl, Marianne. 2023. "Clouds With Silver Linings: How Mobilization Shapes the Impact of Coups on Democratization." *European Journal of International Relations*. [Link](#).

³⁰ Derpanopoulos, George, Erica Frantz, Barbara Geddes, and Joseph Wright. 2016. "Are Coups Good for Democracy?" *Research & Politics* 3 (1). [Link](#).

Recent research has also examined the role of populism in democratic backsliding and its relationship to coups. A 2018 analysis by Mounk and Kyle showed that since 1990, out of 13 right-wing populist governments elected, five have brought about significant democratic backsliding. Similarly, out of 15 left-wing populist governments elected, five have led to substantial democratic backsliding. This suggests a correlation between populist governance and an increased risk of democratic erosion, which can create conditions conducive to coups.

A study by Albrecht et al. (2021) using the Coup Agency and Mechanisms (CAM) dataset found that the position of coup plotters in the military and political hierarchy is a significant predictor of coup outcomes. They differentiated between "combat officer" and "elite officer" coups, finding that successful combat officer coups in autocracies were more likely to result in regime breakdown and potential democratic openings than elite officer coups, which tended to lead to regime recalibration³¹.

Miller (2016) analysed coups from 1950 to 2008, finding that in the post-Cold War period, only about 14% of coups against dictatorships resulted in a transition to democracy within two years. However, coups were associated with a 27% increase in the likelihood of transition from one autocracy to another in the post-Cold War era. The study also found that coups launching new dictatorships were followed by increased repression, while the rare coups

leading to democracy were associated with decreased repression³².

Gassebner et al. (2016) performed an extreme bounds analysis testing over 66 factors across more than 3 million model permutations. They found slow economic growth rates, previous coup experiences, and other forms of political violence particularly robust predictors of coups. Their analysis used monthly data from 1952 to 2011 for 164 countries, employing region- and country-fixed effects models.

The International Monetary Fund (2024) used machine learning techniques to identify coup predictors, finding that economic stressors (low growth, high inflation, weak external positions), political instability, and conflict increased coup likelihood. They noted that these factors had non-linear effects and interacted in complex ways with structural weaknesses like poverty, exclusion, and weak governance. Their model performed well in predicting out-of-sample coups, including recent coups in the Sahel region³³.

A logistic regression analysis of survey data from Latin America and the Caribbean, reported by Vanderbilt University (2022), found that age, wealth, education level, and gender significantly influenced attitudes towards executive coups. Older, wealthier, and more educated individuals were less likely to find executive coups justifiable, with education having the most substantial

³¹ "Coup Agency and Prospects for Democracy." 2021. *International Studies Quarterly* 65 (4): 1052–63. [Link](#).

³² 2016. "Are Coups Good for Democracy?" *Research & Politics* 3 (1). [Link](#).

³³ Gassebner, Martin, Jerg Gutmann, and Stefan Voigt. 2016. "When to Expect a Coup D'état? An Extreme Bounds Analysis of Coup Determinants." 2016. [Link](#).

effect (10 percentage point decrease in justification likelihood for the highest education level compared to the lowest)³⁴.

VII. Qualitative Analysis

7.1 Mali

Mali's democratic trajectory has significantly deteriorated recently, particularly since 2020. Once considered a model of democratisation in West Africa following its transition to multi-party democracy in 1991, Mali has experienced a series of setbacks that have severely undermined its democratic institutions and processes.

The country's democratic backsliding became particularly pronounced with the military coup in August 2020, which ousted President Ibrahim Boubacar Keita. This coup was preceded by months of protests against alleged corruption, economic woes, and the government's inability to address growing insecurity, especially in the northern and central regions. The coup was followed by another in May 2021, further consolidating military control over the country's governance.

According to data from the Varieties of Democracy Institute, Mali's polyarchy and liberal democracy scores plummeted following these coups. The country's 2022 liberal democracy score was lower than in 1991, indicating a severe regression in democratic norms and practices. This decline corresponded with international sanctions and the withdrawal of several foreign interventions, including

Mali's suspension from ECOWAS and the African Union³⁵.

The military junta that took power has been accused of increasingly authoritarian practices. Human Rights Watch reports that the human rights situation in Mali significantly deteriorated in 2023, with the government cracking down on media and opposition voices, narrowing civic space. The junta has used coercive means to suppress dissent, including arbitrary detention, judicial harassment, and criminal prosecution against media, religious leaders, and civil society³⁶.

Mali's democratic erosion is also evident in its institutional weaknesses. The International IDEA's Global State of Democracy Indices show Mali performs poorly in Representation, Rights, and Rule of Law. While the country maintains high Participation and Civic Engagement performance, it ranks among the bottom 25% globally in multiple factors of Representation, the rule of law, basic Welfare, and electoral participation.

The junta's actions have further undermined democratic processes. In April 2023, it indefinitely suspended the activities of all political parties and associations, justifying this move as related to an ongoing national peace dialogue. This suspension responded to political parties' demands to return to constitutional order and presidential elections.

³⁴ Orbay, Deniz. 2022. "Who Finds Executive Coups Justifiable?" Vanderbilt University. Accessed November 30, 2024. [Link](#).

³⁵ UNU-WIDER : Report : Mali: desk study on aid and democracy. (n.d.). UNU WIDER.

<https://www.wider.unu.edu/publication/mali-desk-study-aid-and-democracy>

³⁶ "Mali | Global State of Democracy." n.d. The Global State of Democracy. [Link](#).

The legitimacy of democratic processes has also been questioned. In June 2023, a referendum to approve constitutional amendments, including changes granting more powers to the president, saw only 39% of eligible voters participate, with some regions not holding the referendum. This low turnout raises concerns about the fairness and validity of the process. Ongoing security challenges compound Mali's democratic backsliding. The state's monopoly on force is challenged in certain regions, with Islamist armed groups and ethnic militias increasing their influence, particularly in central and northern Mali. This instability has led to a humanitarian crisis, with millions requiring assistance and hundreds of thousands displaced. The withdrawal of the UN peacekeeping mission (MINUSMA) in December 2023, at the request of the Malian government, has raised further concerns about civilian protection and human rights monitoring in the country³⁷.

7.2 Burkina Faso

Burkina Faso's democratic trajectory has been marked by significant upheaval and regression in recent years. The country had made notable strides towards democracy following the 2014 popular uprising that ousted long-time president Blaise Compaoré. This uprising, known as the "Black Spring," was a powerful example of transformative popular mobilisation that thwarted Compaoré's attempt to extend his 27-year rule by altering constitutional term limits.

The 2014 uprising led to a transition period that initially showed promise. The United States Institute of Peace³⁸ reported that the transition benefited from a culture of dialogue and consensus and a vast, resilient network across negotiating groups. This period saw the passage of crucial legislation on issues such as corruption and judicial independence. The transition culminated in free and fair elections in November 2015, widely regarded as a success for Burkina Faso's democratic aspirations.

Since 2020, Burkina Faso's democratic progress has faced severe setbacks, marked by two military coups in 2022 that have significantly eroded the gains made in previous years. In January 2022, the first coup ousted democratically elected President Roch Kaboré, while a second in September installed Captain Ibrahim Traoré as the head of the interim military government. Several factors have contributed to this democratic backsliding. Since 2015, the country has struggled with a growing jihadist insurgency that has severely impacted national security and led to widespread public dissatisfaction, with Burkina Faso ranking second globally in terms of terrorism impact by 2023. Public support for democracy has also declined sharply, with Afrobarometer surveys indicating a drop from 80% in 2015 to around 50% in 2022, while support for military rule has risen. Persistent economic hardships have further fueled public frustration with democratic governance, and the democratic institutions established after 2014 have proven fragile in the face of these mounting security and financial challenges.

³⁷"Mali." 2024. Human Rights Watch. January 11, 2024. [Link](#)

³⁸Mobilization, negotiation, and transition in Burkina Faso. (n.d.). United States Institute of Peace. [Link](#)

The current military junta, led by Captain Traoré, has taken steps that further undermine democratic norms. In May 2024, the junta extended military rule for five more years until July 2029, reneging on previous commitments to hold elections and restore civilian rule. Traoré has stated that elections are "not a priority" and that security must come first.

The regime has also become increasingly repressive. There are reports of a "calculated assault on civil society," including curbs on media freedom and the expulsion of foreign journalists critical of the regime. The human rights situation has deteriorated considerably, with both Islamist armed groups and military forces committing abuses. Internationally, Burkina Faso has shifted its alliances. The country has cut ties with traditional Western partners like France and established more robust relations with countries like Russia. In January 2024, Burkina Faso withdrew from ECOWAS, further isolating itself from regional democratic norms and oversight.

7.3 *Niger*

Niger's recent democratic backsliding is most notably marked by the military coup that occurred on July 26, 2023. Before the coup, Niger had been making strides in democratic governance. President Mohamed Bazoum, who was ousted in the coup, had come to power through a democratic election in 2021, marking the country's first peaceful transfer of power since independence. Under Bazoum's leadership, Niger had been seen as a critical ally for Western nations in the fight against extremism in the

Sahel region. However, the coup revealed underlying tensions and vulnerabilities in Niger's democratic system. The country has a history of military interventions, with this being the fifth successful coup since independence in 1960. This suggests a persistent fragility in Niger's democratic institutions and civil-military relations.

The coup leaders, calling themselves the National Council for the Safeguard of the Homeland (CNSP), justified their actions by citing a "deteriorating security situation" and "poor economic and social governance." However, experts suggest that personal political motivations, notably President Bazoum's plan to remove General Omar Tiani, the head of the presidential guard, may have precipitated the coup.³⁹

In the aftermath of the coup, Niger has experienced a rapid erosion of democratic norms and civil liberties. According to Amnesty International⁴⁰, the military authorities have cracked down on opposition, media, and peaceful dissent. This includes arbitrary arrests, restrictions on freedom of expression, and the suppression of pro-democracy demonstrations. The coup has also had significant regional and international implications. It has been broadly condemned by the international community, including critical stakeholders like the United States, France, the European Union, and ECOWAS. The Economic Community of West African States (ECOWAS) even

³⁹ 2016. "Are Coups Good for Democracy?" *Research & Politics* 3 (1).

⁴⁰ Amnesty International. 2024. "Niger: Rights in Free Fall a Year After Coup." July 26, 2024. [Link](#).

considered military intervention and imposed sanctions to pressure the junta to reinstate Bazoum⁴¹.

The coup has also raised concerns about the fight against extremism in the Sahel. While the coup leaders cited security concerns as a justification, past experiences in Mali and Burkina Faso suggest that military takeovers often lead to a deterioration in security conditions and an increase in terrorist attacks. Furthermore, the coup has led to shifts in Niger's international alignments. There have been indications of growing anti-French sentiment and potential closer ties with Russia, mirroring trends seen in other coup-affected countries in the region.

7.4 A Case of Stable Democracies

Ghana is a bastion of democracy in West Africa, with a history of nearly three decades of peaceful power transitions. Since emerging from a one-party state, Ghana has institutionalised democratic practices and good governance. The country's leaders have consistently prioritised democratic norms over personal power, demonstrating a commitment to cultivating the next generation of leaders. This adherence to democratic principles has helped Ghana maintain stability despite facing challenges such as rising public debt, inflationary pressures, and concerns over human rights issues.

Ghana's democratic success offers several lessons for the region. It shows that a country can transition from instability to becoming a multi-party bastion of stability

with consistent effort and commitment from political elites. Ghana's experience underscores the importance of institutionalising democratic practices and prioritising good governance for long-term stability and economic development⁴². The country's leaders have demonstrated that believing in democracy more than individual power can create a resilient political system.

Senegal, like Ghana, has been admired as a cornerstone of democratic stability in West Africa. The country has a strong reputation for the solidity of its governing institutions. This was recently demonstrated during a constitutional crisis in March 2024, when the Constitutional Council ruled against President Macky Sall's attempt to postpone elections. The president's immediate compliance with this ruling showcased the strength of Senegal's democratic institutions and the respect for the rule of law⁴³.

Senegal's recent crisis and resolution highlight the importance of strong, independent institutions in maintaining democratic stability. The Constitutional Council's firm stance in upholding democratic principles, even under political pressure, demonstrates how robust institutions can safeguard democracy during times of tension. This event has not only strengthened Senegal's

⁴¹Annor, Ignatius. 2023. "Does Niger's Coup Affirm Democratic Backsliding Theories in West Africa?" Voice of America, July 31, 2023. [Link](#).

⁴²Amid a Region Rife with Coups and Instability, Ghana is a Democratic Bulwark. (n.d.). United States Institute of Peace. [Link](#)

⁴³Senegal just saved its democracy. That helps all West Africa. (n.d.). United States Institute of Peace. [Link](#)

democratic credentials but has also provided a positive example for the entire region.⁴⁴

Ghana and Senegal demonstrate that democracy can work effectively in Africa with a genuine commitment to democratic principles and strong institutions. These countries serve as counterexamples to the narrative of democratic backsliding in the region, showing that peaceful transitions of power and respect for constitutional norms are achievable and sustainable in West Africa.

VIII. Policy Evaluation

Current policies to prevent democratic erosion focus on several key areas, but their effectiveness has been mixed. One primary approach has been supporting pro-democracy political parties to resist erosion. The International Republican Institute (IRI) research highlights strategies such as blocking nominations of anti-democratic candidates, emphasising opponents' autocratic intentions, forming cross-party alliances, and avoiding electoral boycotts. These strategies aim to strengthen democratic institutions within the political system⁴⁵.

However, the effectiveness of these party-focused approaches has been limited in cases where autocratic leaders have already consolidated power. In such situations, external pressure and support for civil society become more critical. The European Parliament's recent call for

action against the erosion of EU values in member states demonstrates a shift towards more assertive policies at the supranational level. This includes monitoring justice systems, corruption levels, media freedom, and protecting civil society and vulnerable groups.⁴⁶

International diplomatic pressure has shown some success in specific cases. The quick and coordinated response from the international community during Senegal's recent constitutional crisis helped reinforce democratic norms and institutions. This suggests that well-calibrated diplomatic interventions can be effective when timed correctly and aligned with local democratic forces.

However, current policies often fail to address the root causes of democratic backsliding. Recent research has challenged the assumption that socioeconomic failures drive citizens to embrace anti-democratic leaders. Instead, the failure to constrain predatory political ambitions appears to be a more significant factor. This insight suggests that policies should focus more on strengthening checks and balances and supporting institutions that can limit executive overreach⁴⁷.

There is also growing recognition of the need for regional approaches to preventing democratic erosion. Senegal's success in preserving its democracy, contrasted with the failures in neighbouring countries like Mali and Burkina

⁴⁴ Melly, P. (2024, March 21). Democracy in West Africa: Why Senegal's election crisis matters. Chatham House – International Affairs Think Tank. [Link](#)

⁴⁵ 2024. "Enabling Pro-Democracy Parties to Resist Democratic Erosion." International Republican Institute. October 31, 2024. [Link](#).

⁴⁶ "Parliament Calls for Action Against the Erosion of EU Values in Member States | News | European Parliament." n.d. [Link](#).

⁴⁷ Godfrey, Mary Kate. 2024. "Misunderstanding Democratic Backsliding | Journal of Democracy." Journal of Democracy. November 20, 2024. [Link](#).

Faso, highlights the importance of supporting and leveraging regional democratic alliances. Policies that promote cooperation and mutual support among democratic countries in regions facing backsliding pressures could be more effective than isolated interventions. Economic policies creating opportunities, particularly for youth, are increasingly crucial for long-term democratic stability. However, these policies must be carefully designed to avoid reinforcing patronage networks or exacerbating inequalities that can fuel anti-democratic sentiments.⁴⁸

VIII.I Effectiveness of Regional and International Interventions

Regional organisations have shown varying effectiveness in intervening to prevent or resolve conflicts. One of the most successful examples of regional intervention was ECOWAS's involvement in Liberia and Sierra Leone in the 1990s. The Economic Community of West African States Monitoring Group (ECOMOG) played a crucial role in ending the civil wars in these countries and paving the way for democratic transitions. This intervention demonstrated that regional organisations can effectively address complex conflicts when they have sufficient political will and resources⁴⁹.

The European Union has also shown effectiveness in its interventions, particularly in the Balkans. For instance, the EU's involvement in Kosovo provided crucial technical

assistance and resources that helped reshape domestic politics and enforce peace. This success highlights the potential of well-resourced regional organisations to make significant contributions to post-conflict reconstruction and stabilisation.⁵⁰

However, not all regional interventions have been as successful. While important, the African Union's efforts in Somalia have been hampered by limited resources and reliance on external funding. This case illustrates that regional organisations' effectiveness can be constrained by their financial and logistical capabilities⁵¹. International interventions, often led by the United Nations, have also shown mixed results. UN peacekeeping missions have been crucial in stabilising many conflict zones, but their effectiveness has varied widely. Successful cases like the UN mission in Sierra Leone (UNAMSIL) contrast with less effective interventions like the UN mission in Rwanda (UNAMIR) during the 1994 genocide⁵².

The effectiveness of both regional and international interventions often depends on the level of coordination between different actors. The case of Sierra Leone, where ECOWAS, the UN, and the UK worked together, demonstrates how complementary efforts can lead to more successful outcomes. Conversely, a lack of coordination or

⁴⁸ Carothers, Thomas, and Benjamin Press. 2022. "Understanding and Responding to Global Democratic Backsliding." [Link](#).

⁴⁹ Nathan, Laurie. 2010. "THE PEACEMAKING EFFECTIVENESS OF REGIONAL ORGANISATIONS." [Link](#).

⁵⁰ Guest Blogger for the Internationalist. 2013. "Regional Organizations and Humanitarian Intervention." Council on Foreign Relations, July 22, 2013. [Link](#).

⁵¹ Cha, Kiho. 2022. "Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations." [Link](#).

⁵² "As Geopolitical Tensions Escalate, United Nations, Regional Organizations Must Strengthen Cooperation, Preventive Diplomacy, Speakers Tell Security Council | Meetings Coverage and Press Releases." 2023. October 20, 2023. [Link](#).

conflicting approaches can undermine the effectiveness of interventions.

IX. Policy Recommendations

One effective strategy is to support and empower pro-democracy political parties to resist democratic erosion. Research by the International Republican Institute (IRI) highlights several successful tactics, including blocking nominations of anti-democratic candidates, emphasising the autocratic intentions of opponents, forming cross-party alliances, and avoiding electoral boycotts.⁵³ Democracy, Human Rights, and Governance (DRG) funders can support parties in implementing these strategies through capacity building, data analysis, and fostering inter-party dialogue. Investing in civil society organisations and independent media has proven crucial in countries like Senegal, where a vibrant civic space was vital in preserving democracy during recent constitutional crises⁵⁴.

The European Union's approach, as outlined in its European Democracy Action Plan, provides a comprehensive framework for upholding constitutional norms and the rule of law. Key measures include promoting free and fair elections, strengthening media freedom, and countering disinformation (1). The EU has implemented legislation to ensure greater transparency in political advertising and revised regulations on funding

European political parties. They have also established a joint operational mechanism for electoral resilience to address risks to elections, particularly regarding disinformation and cyber-related threats. These measures demonstrate the importance of a multi-faceted approach that addresses the legal framework and the broader information ecosystem.

Digital technologies have emerged as powerful tools for promoting transparency and accountability in democratic processes. The United Nations Development Programme (UNDP) highlights several successful digital initiatives. For example, the iReport system, developed by UNDP in collaboration with the United Nations International Computing Centre, empowers national actors to strengthen early warning and response systems during elections. It has been used to monitor electoral violence, human rights violations, and other critical issues⁵⁵. Another example is the "Your Rights on the Internet" digital campaign, which educates citizens about content moderation policies on major social media platforms and their impact on freedom of expression online. These initiatives demonstrate how digital tools can be leveraged to increase citizen participation, promote transparency, and improve accountability in democratic processes⁵⁶.

Implementing these strategies, measures, and approaches requires a holistic approach considering each country or

⁵³ "Protecting Democracy." 2021. European Commission. November 25, 2021. [Link](#).

⁵⁴ Senegal just saved its democracy. That helps all West Africa. (n.d.). United States Institute of Peace. [Link](#)

⁵⁵ "UNDP Digital Guides - Strengthening Democratic Institutions and Processes." n.d. [Link](#).

⁵⁶ BJensen. 2024. "Enabling Pro-Democracy Parties to Resist Democratic Erosion." International Republican Institute. October 31, 2024. [Link](#).

region's unique context. As seen in the contrast between Senegal and its coup-affected neighbours, investing in long-term democratic institution-building, including support for civil society and independent media, can significantly affect a country's ability to withstand democratic crises. Furthermore, addressing underlying economic and social issues, particularly youth unemployment and inequality, is essential for sustaining democratic gains and preventing backsliding.

X. Conclusion

The recent rise of military coups and the decline of democracy in West Africa highlight the fragility of political institutions in the region. Although regional and international interventions, such as those led by ECOWAS and the African Union, aim to restore stability, their effectiveness has often been limited due to inconsistent enforcement and insufficient resources. To reverse these troubling trends, a comprehensive approach is crucial. This approach should focus on strengthening democratic norms, addressing socio-economic inequalities, and supporting civil society. Successful examples, such as the resilience of democratic institutions in Ghana and Senegal, illustrate that a commitment to constitutional integrity and public accountability can foster stability even under challenging circumstances. Moving forward, policies should prioritize long-term institution-building, inclusive governance, and regional cooperation to reduce the risks of authoritarianism and ensure sustainable political development in West Africa.

XI. BIBLIOGRAPHY

- “Are Coups Good for Democracy?” *Research & Politics* 3 (1).
<https://doi.org/10.1177/2053168016630837>.
- “As Geopolitical Tensions Escalate, United Nations, Regional Organizations Must Strengthen Cooperation, Preventive Diplomacy, Speakers Tell Security Council | Meetings Coverage and Press Releases.” 2023. October 20, 2023.
<https://press.un.org/en/2023/sc14548.doc.htm>.
- “Coup Agency and Prospects for Democracy.” 2021. *International Studies Quarterly* 65 (4): 1052–63.
<https://academic.oup.com/isq/article/65/4/1052/638347>
- “Democracies Are Failing Democracy - Brown Political Review.” Brown Political Review. January 27, 2024.
<https://brownpoliticalreview.org/2024/01/democracies-are-failing-democracy/>.
- “Enabling Pro-Democracy Parties to Resist Democratic Erosion.” International Republican Institute. October 31, 2024.
<https://www.iri.org/news/enabling-pro-democracy-parties-to-resist-democratic-erosion/>.
- “GCSP Publication | Understanding the Crisis of Democracy in West Africa and the Sahel,” n.d.
- “*How Democracies Die: What History Reveals About Our Future*” by Steven Levitsky and Daniel Ziblatt, n.d.
- “Mali | the Global State of Democracy.” n.d. The Global State of Democracy.
<https://www.idea.int/democracytracker/country/mali>.
- “Mali.” 2024. Human Rights Watch. January 11, 2024.
<https://www.hrw.org/world-report/2024/country-chapters/mali>.
- “Military Coup on September 5, 2021 in Guinea | Institute for African Studies.” n.d.
<https://www.inafran.ru/en/node/1092>.
- “Parliament Calls for Action Against the Erosion of EU Values in Member States | News | European Parliament.” n.d.
<https://www.europarl.europa.eu/news/en/press-room/20240223IPR18084/parliament-calls-for-action-against-the-erosion-of-eu-values-in-member-states>.
- “Protecting Democracy.” 2021. European Commission. November 25, 2021.
https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/protecting-democracy_en.
- “UNDP Digital Guides - Strengthening Democratic Institutions and Processes.” n.d.
<https://digitalguides.undp.org/guide/strengthening-democratic-institutions-and-processes>.
- “West Africa Civil Society’s Solutions to Reverse Democratic Backsliding in French-speaking Countries,” n.d.
- “West Africa’s ‘Coup Belt’: Did Mali’s 2020 Army Takeover Change the Region?” *Al Jazeera*, August 27, 2024.
<https://www.aljazeera.com/news/2024/8/27/west-africas-coup-belt-did-malis-2020-army-takeover-change-the-region>.
- “West and Central Africa,” n.d.

“What Caused the Coup in Burkina Faso? | ISS Africa.” n.d. ISS Africa.
<https://issafrica.org/iss-today/what-caused-the-coup-in-burkina-faso>.

ACCORD. 2022. “Implications of Mali’s Latest Coup for Sahel and West Africa – ACCORD.” February 8, 2022.
<https://www.accord.org.za/analysis/implications-of-malis-latest-coup-for-sahel-and-west-africa/>.

Amid a Region Rife with Coups and Instability, Ghana is a Democratic Bulwark. (n.d.). United States Institute of Peace.
<https://www.usip.org/publications/2023/10/amid-region-rife-coups-and-instability-ghana-democratic-bulwark>

Amnesty International. 2024. “Niger: Rights in Free Fall a Year After Coup.” July 26, 2024.
<https://www.amnesty.org/en/latest/news/2024/07/niger-rights-in-free-fall-a-year-after-coup/>.

Annor, Ignatius. 2023. “Does Niger’s Coup Affirm Democratic Backsliding Theories in West Africa?” *Voice of America*, July 31, 2023.
<https://www.voaafrica.com/a/does-nigers-coup-affirm-democratic-backsliding-theories-in-west-africa-/7202180.html>.

BJensen. 2024. “Enabling Pro-Democracy Parties to Resist Democratic Erosion.” International Republican Institute. October 31, 2024.
<https://www.iri.org/news/enabling-pro-democracy-parties-to-resist-democratic-erosion/>.

Carothers, Thomas, and Benjamin Press. 2022. “Understanding and Responding to Global Democratic Backsliding.”

<https://carnegieendowment.org/research/2022/10/understanding-and-responding-to-global-democratic-backsliding?lang=en>.

Cha, Kiho. 2022. “Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations.”
https://ciaotest.cc.columbia.edu/olj/shjdir/v3n2/shjdir_v3n2h.pdf.

Claudia, Bonney Amamoo. 2022. “Democratic Backsliding in West Africa.” 2022.
<https://montevallo.dspace.direct.org/entities/publication/0b1a65e2-e9e0-4beb-86c7-71b7483e5809>.

Dahl, Marianne. 2023. “Clouds With Silver Linings: How Mobilization Shapes the Impact of Coups on Democratization.” *European Journal of International Relations*. <https://doi.org/10.1177/13540661221143213>.

Derpanopoulos, George, Erica Frantz, Barbara Geddes, and Joseph Wright. 2016. “Are Coups Good for Democracy?” *Research & Politics* 3 (1).
<https://doi.org/10.1177/2053168016630837>.

Gassebner, Martin, Jerg Gutmann, and Stefan Voigt. 2016. “When to Expect a Coup D’état? An Extreme Bounds Analysis of Coup Determinants.” 2016.
<https://hdl.handle.net/10419/156099>.

Godfrey, Mary Kate. 2024. “Misunderstanding Democratic Backsliding | Journal of Democracy.” *Journal of Democracy*. November 20, 2024.
<https://www.journalofdemocracy.org/articles/misunderstanding-democratic-backsliding/>.

Guest Blogger for the Internationalist. 2013. “Regional Organizations and Humanitarian

- Intervention.” *Council on Foreign Relations*, July 22, 2013. <https://www.cfr.org/blog/regional-organizations-and-humanitarian-intervention>.
- Ka-Admin, and Ka-Admin. 2023. “Democratic Backsliding in Africa: Understanding the Current Challenges.” *Kujenga Amani* (blog). October 24, 2023. <https://kujenga-amani.ssrc.org/2022/09/20/democratic-backsliding-in-africa-understanding-the-current-challenges/>
- Kallmer, Brent. 2024. “On Democratic Backsliding | Journal of Democracy.” *Journal of Democracy*. May 2, 2024. <https://journalofdemocracy.org/articles/on-democratic-backsliding/>.
- Lawal, Shola. 2024. “West Africa’s ‘Coups Belt’: Did Mali’s 2020 Army Takeover Change the Region?” *Al Jazeera*, August 27, 2024. <https://www.aljazeera.com/news/2024/8/27/west-africas-coups-belt-did-malis-2020-army-takeover-change-the-region>.
- Melly, P. (2024, March 21). *Democracy in West Africa: Why Senegal’s election crisis matters*. Chatham House – International Affairs Think Tank. <https://www.chathamhouse.org/2024/03/democracy-west-africa-why-senegals-election-crisis-matters>
- Mobilization, negotiation, and transition in Burkina Faso. (n.d.). United States Institute of Peace. <https://www.usip.org/publications/2021/03/mobilization-negotiation-and-transition-burkina-faso>
- Mullen, Jonathan. 2022. “Democratic Backsliding in Mali?  - Democratic Erosion.” *Democratic Erosion Consortium* (blog). October 15, 2022. <https://www.democraticerosion.com/2022/10/14/democratic-backsliding-in-mali-%EF%BF%BC/>.
- Nathan, Laurie. 2010. “THE PEACEMAKING EFFECTIVENESS OF REGIONAL ORGANISATIONS.” <https://www.files.ethz.ch/isn/123449/WP81.2.pdf>.
- Nsaibia, Héni. 2023. “Fact Sheet: Attacks on Civilians Spike in Mali as Security Deteriorates Across the Sahel.” *ACLEDA*. September 22, 2023. <https://acleddata.com/2023/09/21/fact-sheet-attacks-on-civilians-spike-in-mali-as-security-deteriorates-across-the-sahel/>.
- Omilusi, Mike. n.d. “Democratic Rollback in West Africa: Coup Contagion, Sittight Tyrants and Best Options for Regional Organizations.” Department of Political Science, Ekiti State University, Ado Ekiti/NIGERIA. Accessed November 7, 2024. <https://doi.org/10.47478/lectio.1454452>.
- Orbay, Deniz. 2022. “Who Finds Executive Coups Justifiable?” *Vanderbilt University*. Accessed November 30, 2024. <https://www.vanderbilt.edu/lapop/insights/IO957en.pdf>.
- Senegal just saved its democracy. That helps all West Africa*. (n.d.). United States Institute of Peace. <https://www.usip.org/publications/2024/04/senegal-just-saved-its-democracy-helps-all-west-africa>
- Stocker, Santiago. 2023. “West Africa’s Grim Trajectory.” *Just Security*. August 11, 2023. <https://www.justsecurity.org/87578/west-africas-grim-trajectory/>.

UNU-WIDER : Report : Mali: desk study on aid and democracy. (n.d.). UNU WIDER.

<https://www.wider.unu.edu/publication/mali-desk-study-aid-and-democracy>

Venkataraman, M. 2023. “Democratic Backsliding in Africa? Autocratization, Resilience, and Contention , by Leonardo R. Arriola, Lise Rakner and Nicolas Van De Walle (Eds.).” *Africa Review* 15 (3): 342–46. <https://doi.org/10.1163/09744061-bja10107>

Vora, Aman. 2024. “Democracies Are Failing Democracy - Brown Political Review.” *Brown Political Review*. January 27, 2024. <https://brownpoliticalreview.org/2024/01/democracies-are-failing-democracy/>.

Diplomacy and Justice: Exploring the US-China Counternarcotic Working Group

Lucas Olaciregui Company

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: lolaciregui.ieu2022@student.ie.edu

Published 27th of January 2025

Abstract

This paper explores the intricate dynamics of the historic collaboration between the United States of America and the People's Republic of China (PRC). United in the fight against the production and proliferation of fentanyl, the leading global superpowers have successfully created and engaged in the U.S-China Counternarcotics Working Group, with diplomatic relations serving as the foundation of progress. A focus on transparency, communication and collaboration imposed by the Biden administration has facilitated an unprecedented level of official cooperation. Nonetheless, Chinese participation is strongly contingent on its satisfaction with American relations, posing an intricate challenge for American policy makers and representatives. Though still in its early stages of development, the Counternarcotics Working Group will likely face one of its most challenging obstacles: the impending Trump presidency. The next four years have the potential to unravel the already established cooperation and inhibit its ability to produce results in the future.

Keywords: U.S-China Relations, Diplomacy, Narcotics, International Cooperation, Fentanyl

1. Introduction

A sense of *deja vu* overwhelms Americans as the opioid epidemic continues to grow and its effects become evident. The last two decades have seen an increase in the presence of lethal narcotics which pose grave health concerns for the American public. Fentanyl has become a prolific killer amounting to an unprecedented number of fatalities due to its lethality in small doses. By tracing the international narcotic supply chain, it is evident that the majority of fentanyl is produced outside the U.S., specifically China and Mexico. Though the majority of fentanyl produced as

a final product is fabricated in Mexican drug labs, the necessary precursor materials are manufactured in Chinese pharmaceutical companies.¹ Due to the sheer size of the Chinese pharmaceutical industry, and the lax regulations in place, fentanyl precursor materials have been steadily falling into the hands of international drug cartels. To address these issues at their root, the United States and China officially opened channels of cooperation and collaboration through the U.S-China Counternarcotics

¹ Martinez-Fernandez, Andres, and Andrew J. Harding. "Holding China and Mexico Accountable for America's Fentanyl Crisis." *The Heritage Foundation*. The Heritage Foundation, September 9, 2024. [Link](#).

Working Group. Due to the nature of the two participating members, the success of the initiative is vulnerable to the momentary nature of diplomatic relations. This paper will aim to explore the nuances of the fentanyl epidemic, China's role and responsibility and the necessities for successful cooperation.

II. An Opioid Strong Enough to Bring Down a Global Hegemon

Fentanyl is a synthetically produced receptor-stimulating opioid, first produced in 1960 by Dr. Paul Janssen in Beerse, Belgium.² Originally intended to be administered as an analgesic (implemented to relieve pain) and as an anaesthetic, it has quickly become one of the most lethal illicit drugs in American markets. The pharmaceutical unicorn is said to be over 10 times more potent than phenoperidine (an analgesic opioid), 50 times more potent than heroin and 100-200 times more potent than morphine.³ The production and regulation of pharmaceutical grade fentanyl in the United States quickly took hold throughout the latter part of the 20th century. Fentanyl excelled in its intended form of use, as a pain suppressant. Nonetheless, fentanyl carries highly addictive properties.

Towards the end of the century, and most notably in the 2000s-2010s, the market for illicit fentanyl grew exponentially. Illicit manufacturers of fentanyl expanded into an international drug ring. Clandestine production labs, primarily financed and managed by Mexican drug

cartels, began to sprout up dramatically increasing the tonnage of illegally produced fentanyl entering the U.S.. The black market for fentanyl has allowed for the mass production and trafficking of an extremely addictive and destructive narcotic which has had disastrous effects on the American people.

Fentanyl's addictiveness is derived from two main aspects: the almost instantaneous euphoric sensation users receive from consumption and its devastating symptoms of withdrawal. Addicts to the opioid often suffer symptoms of nausea, general pain, and an overall inability to feel happiness without being under the influence of the analgesic. It is this very aspect that has allowed fentanyl to take hold of the illicit drug market in the United States, essentially reviving Nancy Reagan's "War on Drugs". The opioid is often used to adulterate other illegal narcotics such as cocaine and heroin. This entails that users of other narcotics may unwillingly be exposed to the devastating effects of fentanyl. As drug cartels are not subject to quality controls and regulations when mixing narcotics, oftentimes the amount of fentanyl used to doctor drugs may be of a lethal dosage. Only 2 milligrams of fentanyl in its powder state is enough to prove lethal to the average person. According to the U.S. Drug Enforcement Administration (DEA), fentanyl-related overdose fatalities in the United States have been steadily increasing since 2011. To give perspective, the amount of synthetic opioid (primarily fentanyl) related deaths in the United States in 2011 amounted to roughly 2,700. In 2021, fentanyl was responsible for over 70,000 deaths in the United States continuing to rise between 2022 and 2024, reaching a high

² Millar, Abi, and Abi Millar. "Fentanyl: Where Did It All Go Wrong?" *Pharmaceutical Technology*, February 27, 2018. [Link](#).

³ Drug Enforcement Agency. "Ficha Informativa Sobre Drogas." *Departamento de Justicia/Administración De Control De Drogas*. Drug Enforcement Agency, October 2022. [Link](#).

of 75,000 fentanyl-related fatalities in 2023, accounting for 70% of all drug-related deaths with a further 38,000 deaths caused by other synthetic opioids.⁴ From 2021 to 2023, more American lives were lost to fentanyl (approximately 222,000 deaths) compared to American lives lost in the First World War (1917-1919; 117,000 deaths).⁵ Every day, an average of two hundred Americans lose their lives to fentanyl.

Not only has the fentanyl market had an intensely detrimental effect on the livelihood of the American population, it has also exacerbated enormous pressures on the American health care system and economic institutions. According to the Joint Economic Committee (JEC) in partnership with the Centers for Disease Control and Prevention (CDC), the dramatic increase in fentanyl usage was stimulated due to the COVID-19 Pandemic.⁶ Apart from the obvious effect on drug related fatalities, the uprise in fentanyl usage coupled with the pandemic has had important consequences for recovering drug users and their surrounding communities (family, friends, etc.). The pandemic saw a shift to remote health work, disrupting the treatment being received by recovering users, oftentimes performed in a face-to-face setting. The CDC states that the pandemic contributed to an increase in relapses, and subsequently an increase in fatalities. As the synthetic opioid situation has become increasingly relevant in American politics, both federal and state governments have

been forced to address the issue. In 2019, the federal government approved \$1.8 billion in grants to strengthen local governments abilities to combat the ever prominent opioid epidemic. The Biden administration enacted the American Rescue Plan (ARP) in 2021, dedicating \$5.5 billion to mental health and substance abuse prevention programs. Other government initiatives to tackle the opioid epidemic include the State Opioid Response grants in 2022, accruing \$1.5 billion, and CDC grants amounting to \$932 million awarded to all 50 states.⁷ The amount of people over the age of 12 who have been reported to suffer from opioid use disorder in 2020 reached a staggering 2.7 million (up from 1.9 million in 2019).⁸ As to the economic burden that the Opioid Crisis has had on the U.S., it is estimated that in 2020 alone, the cost of opioid use disorder and overdoses have amounted to a staggering \$1.47 trillion.⁹ It is evident that fentanyl has positioned itself as an extremely dangerous and harmful narcotic not only to the American people but to the health and federal institutions, which are indirectly affected. Having established the evidently detrimental effects the fentanyl trade is having on the United States, it is important to analyse how and where illicit fentanyl is being produced and how the US-China Counternarcotics Working Group is pivotal to addressing the epidemic.

⁴ Drug Enforcement Administration. "DEA: National Drug Threat Assessment 2024." *U.S Department of Justice*, May 2024. [Link](#).

⁵ Martinez-Fernandez, Andres, and Andrew J. Harding. "Holding China and Mexico Accountable for America's Fentanyl Crisis." *The Heritage Foundation*. The Heritage Foundation, September 9, 2024. [Link](#).

⁶ Beyer, Don. "The Economic Toll of the Opioid Crisis Reached Nearly \$1.5 Trillion in 2020." *Join Economic Committee Democrats*. Joint Economic Committee Democrats, 2020. [Link](#).

⁷ Beyer, Don. "The Economic Toll of the Opioid Crisis Reached Nearly \$1.5 Trillion in 2020." *Join Economic Committee Democrats*. Joint Economic Committee Democrats, 2020. [Link](#).

⁸ Substance Abuse and Mental Health Services Administration. "Key Substance Use and Mental Health Indicators in the United States: Results From the 2020 National Survey on Drug Use and Health." *Substance Abuse and Mental Health Services Administration*, 2020. [Link](#).

⁹ Beyer, Don. "The Economic Toll of the Opioid Crisis Reached Nearly \$1.5 Trillion in 2020." *Join Economic Committee Democrats*. Joint Economic Committee Democrats, 2020. [Link](#).

III. Chinese Responsibility in the Growing U.S. Fentanyl Crisis

It is difficult at first to see clearly how China plays a large enough role in the fentanyl trade for an international working group to be established between two direct global competitors. China has held the world's largest chemical industry since 2011 and has continuously expanded both domestic production and international exports. Moreover, China plays a pivotal role in the production of fentanyl and various precursor materials that eventually enter the American illicit drug market. China is home to an extensive list of manufacturing companies which produce fentanyl or fentanyl precursor chemicals (chemicals that can be used to produce fentanyl). The Chinese government has approved grants to 5 of the largest, domestic pharmaceutical companies including Yichang Humanwell Pharmaceutical, Jiangsu Nhwa Pharmaceutical, China National Pharmaceutical Industry Corporation, Changzhou Siyao Pharmacy, and Henan Lingrui Pharmaceutical.¹⁰ These pharmaceutical companies have been granted licences to legally produce fentanyl active pharmaceutical ingredients (APIs), transdermal patches and injections, strictly for medicinal purposes. It is important to note that none of these API manufacturers are permitted to sell their products directly to American markets, as they have not obtained Food and Drug Administration (FDA) approval. According to the Drug Administration Law of the People's Republic of China, these select pharmaceutical companies are solely permitted

to sell their products to three national wholesalers: Chongqing Pharmaceutical, Shanghai Pharmaceutical and Sinopharm.¹¹ These wholesalers are then tasked to supply the medical institutions in their designated areas. Despite the strict domestic regulations these Chinese pharmaceutical companies are subject to, it is the underregulated precursor producing chemical companies that are at the focal point of US foreign policy. According to Zongyuan Zoe Liu at the Council on Foreign Relations, there exist over 160,000 precursors-producing chemical companies in China, which are not held to the same level of regulation as the API manufacturers.¹² These chemical companies produce chemical intermediates which can be easily used to produce fentanyl. Chemicals produced in these companies are not regulated through the need for pharmaceutical production licences. A lack of regulation allows them to freely produce fentanyl precursor chemicals that are then trafficked to clandestine labs in Mexico via Chinese and Mexican cartel relations. The United States is of the understanding that China is the leading source of fentanyl related products which eventually are consumed by the American public. The identification of this understanding has led the United States to seek Chinese cooperation in disrupting the global fentanyl supply chain at its source.

¹⁰ Liu, Zongyuan Zoe. "Fentanyl Supply Chains in China: Chinese Fentanyl Makers and Domestic Circulation." *Council on Foreign Relations*, August 8, 2024. [Link](#).

¹¹ "Drug Administration Law of the People's Republic of China," n.d. [Link](#).

¹² Liu, Zongyuan Zoe. "Fentanyl Supply Chains in China: Chinese Fentanyl Makers and Domestic Circulation." *Council on Foreign Relations*, August 8, 2024. [Link](#).

IV. The U.S.-China Counternarcotics Working Group

The US-China Counternarcotics Working Group was officially inaugurated on the 30th of January, 2024.¹³ The working group establishes an unprecedented level of bilateral cooperation between the United States and China on the supply and distribution of fentanyl and its precursor chemicals. The initiative represents a monumental step forward in China-US relations spearheaded by their heads of state: President Joseph Biden (USA) and President Xi Jinping (China). The summit was directed by the Deputy Assistant to the President and Deputy Homeland Security Advisor Jennifer Daskal, and several executive representatives of the US Department of Homeland Security, Department of Justice, Department of State, Department of the Treasury and the White House were present.¹⁴ The working group not only aims to address the supply of fentanyl, but to target all illicit precursor chemicals and equipment used in the manufacturing of related products. Beyond that, with the direction of the US Department of Justice, a heightened emphasis has been placed on addressing the illicit financing of the pertaining criminal organisations (a crackdown on money laundering). Lastly, the governments of both global powers have vowed to maintain clear and honest lines of communication and share information and intelligence to ensure cohesion and a successful implementation.

¹³ United States Department of State. "Launch of United States-People's Republic of China Counternarcotics Working Group - United States Department of State," February 1, 2024. [Link](#).

¹⁴ 贺霞婷. "Sino-US Counternarcotics Working Group Launched." World - Chinadaily.com.cn, n.d. <https://www.chinadaily.com.cn/a/202401/31/WS65ba6ce7a3104efcbdae8fcc.html>.

As the bilateral cooperation agreement is relatively young, noticeable effects on the fentanyl supply chain remain to be seen but great strides have been made in US-China cooperation. Even before the announcement of the formation of the counter narcotic working group, China began to demonstrate its willingness and belief in bilateral cooperation. In 2019 and 2020, the Chinese government began to crack down on websites selling fentanyl precursor chemicals to criminal organisations. China's National Narcotic Control Commission has enforced rigorous monitoring on the production and exportation of precursor chemicals and API manufacturers. Facilitated by the bilateral working group, China has expanded its list of monitored substances including 456 narcotic and psychotropic substances and 38 precursor chemicals.¹⁵ Not only has China shown determination to cooperate with the United States, but it has also begun to reestablish working connections with international fora, such as the United Nations, in the narcotic control sector. In addition, China has signed 50 intergovernmental cooperation agreements with more than 30 countries and international organisations.¹⁶

One of the most important aspects of the working group is an increased cooperation on Chinese money laundering methods. Crucial to the US Department of Justice is the exploration of the financial pillars of the responsible criminal organisations. China, which has historically been reluctant to cooperate with American

¹⁵ "News: April 2022 – UNODC: Three Precursors of the Most Common Synthesis Routes Used in Illicit Fentanyl Manufacture Now Under International Control," n.d. [Link](#).

¹⁶ 马清. "Anti-narcotics Cooperation Receives Boost." Chinadaily.com.cn. [Link](#).

indictments, has agreed to maintain cooperation with the United States in anti-money laundering (AML). The presence of representatives of leading Chinese banks and financial institutions has proved pivotal to the disruption of the financial flows of international criminal organisations. Chinese money laundering operations have solidified their position as an integral part of the international fentanyl trade, notably through their *partnership* with renowned Mexican drug cartels.¹⁷ The use of national banks (unveiled by US indictments and investigations) and casinos has allowed Chinese money laundering organisations to effectively bypass AML regulations and transfer large amounts of money from country to country.

Increased Chinese cooperation is a major takeaway from the working group. Beijing has demonstrated its commitment to tackling counter narcotic operations and employing a more transparent approach to collaboration. There are several aspects that indicate China's inclination to continue cooperation both bilaterally with the United States and multilaterally with other countries and international organisations. China's increased responsiveness to American intelligence agencies and a consistent two-way flow of information has exemplified China's determination to continue cooperation. Furthermore, the Chinese government's increased monitoring and regulation of its colossal pharmaceutical and chemical industry coupled with an enhancement in bilateral security and law enforcement operations suggests

that China is aware of its culpability in the global fentanyl distribution network. Lastly, to increase regulation of the sale of precursor chemicals, China has contemplated the adoption of Know Your Customer (KYC)¹⁸ laws which will allow for efficient methods of tracking major buyers of intermediate chemical products. KYC laws require the selling party, in this case precursor chemical manufacturers, to request and archive several personal information of product purchasers.

V. Diplomacy as the Foundation of Cooperation

The history of bilateral cooperation between the United States and China on narcotic measures existed before the establishment of the counter narcotic working group, but due to diplomatic and strategic measures, cooperation severely deteriorated in 2020. There are several aspects which led China to disrupt cooperation, several of which are due to a poor direction in US foreign policy. Increased American military and navy presence in the South China Sea and the Asia-Pacific region as a whole heightened tensions between Beijing and Washington. Chinese involvement early on in the Ukraine-Russia war received public condemnation from the Biden administration. China facilitated Russian evasion of western sanctions, expanding its oil and gas purchases since the start of the Russian war. The Biden administration further accused Beijing of providing Russia with enhanced military technology, including drones and fighter jets. It was the US Speaker of the House, Nancy Pelosi's visit to Taiwan that culminated in the end of counternarcotics cooperation

¹⁷ "Federal Indictment Alleges Alliance Between Sinaloa Cartel and Money," June 18, 2024. [Link](#).

¹⁸ Bruhin, Natasha. "KYC in China – Identity Verification Requirements and Considerations." Trulioo, August 26, 2024. [Link](#).

between the two global superpowers. After a civil war in 1949, Taiwan and mainland China split but China maintains its claim over the island. Despite the US's long-standing "one-China policy", Speaker Pelosi's visit was viewed by Beijing as an act of sovereign recognition by the United States. The accumulation of these events led Beijing to dissolve cooperation almost entirely.¹⁹

The diplomatic relationship between the two countries is crucial to the potentially long term success of the working group. The United States and China should aim to maintain competitive interactions which respect the diplomatic policies of the other. Bilateral tensions and conflicts will only invite diminishing levels of cooperation. It is in the United States's interest to maintain relatively strong diplomatic relations with China to ensure the success of their pursuit against the fentanyl epidemic. As the Deputy Director of China National Narcotics Control Commission, Yu Haibin, stated: "The crisis in the U.S. is not manufactured by China; rather, its roots lie within the United States itself."²⁰ It is clear that China is not under the impression that they are strictly and solely responsible for the opioid epidemic in the United States.

VI. Obstacles to International Cooperation

The renewal of international cooperation between US and China, which facilitated the creation of the Counternarcotics Working Group, was catalysed by a

combination of tough US diplomacy and a Chinese initiative to mitigate reputational costs. As previously mentioned, Sino-American relations deteriorated noticeably in 2020, reprieving cooperation in counter-narcotic operations. In an attempt to foster cooperation, the United States lifted sanctions on the Institute of Forensic Science in China which had been previously isolated by the U.S Department of Commerce in 2020 for "engaging in activities contrary to the foreign policy interest of the United States" (human rights abuses). In 2023, the Biden administration enacted a series of foreign policies aimed at coercing China into reviving ties.²¹ In July of 2023, the United States enacted a global community to fight against the distribution and manufacture of a wide array of illicit drugs, including fentanyl. The Global Coalition to Address Synthetic Drug Threats²² counted with the commitment of over 100 countries and international organisations, with the notable absence of the People's Republic of China. Beijing has long prided itself as having a strict and effective control on the production and distribution of narcotics under its jurisdiction, but its demonstrated absence raised international doubts on its commitment to the cause.

In September of 2023, President Biden signed off on the Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year

¹⁹ Associated Press. "Explainer: Why Pelosi Went to Taiwan, and Why China's Angry." *Voice of America*, August 3, 2022. <https://www.voanews.com/a/explainer-why-pelosi-went-to-taiwan-and-why-china-s-angry-/6684414.html>.

²⁰ "China Cites U.S. Demand as a Top Concern Ahead of Talks on Fentanyl Smuggling." *Voice of America*, January 26, 2024. <https://www.nbcnews.com/news/world/us-china-fentanyl-talks-opioids-drugs-epidemic-precursor-rcna135399>.

²¹ Ching, Nike. "US Lifts Sanctions on Chinese Institute to Seek Fentanyl Cooperation." *Voice of America*, November 16, 2023. [Link](#).

²² House, White. "Memorandum on Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024." The White House, September 15, 2023. [Link](#).

2024,²³ which identifies countries as major drug transit or illicit drug producing countries, as seen by the United States. In this edition of the memorandum, China was included. Biden's inclusion of China on what is known as the "Major List" severely harmed Beijing's reputation in regards to its counter-narcotic operations. But the measure which perhaps most notably pressured China into renewing cooperation came from the U.S Department of Justice and its powerful indictments of Chinese chemical companies in October of 2023. In cooperation with the DEA and the US Department of the Treasury, 28 Chinese companies and individuals were indicted on claims of involvement in the international proliferation of illicit drugs, primarily fentanyl. Companies such as Hebei Shenghao Import and Export Company, Lihe Pharmaceutical Technology Company, Henan Ruijiu Biotechnology Company, Xiamen Wonderful Biotechnology Company, and Hanhong Medicine Technology Company were charged with conspiring to traffic fentanyl and precursor chemicals along with involvement in international money laundering schemes.²⁴ The ground-breaking indictments were supplemented with multiple congressional hearings in which China's culpability in the US fentanyl epidemic was assessed. The United States reinforced these measures by denying visas to various Chinese executives and officials. These diplomatic pressures exerted on China by the United States began to

deteriorate China's global standing as an anti-narcotic regime. To secure geostrategic ambitions, China was 'coerced' into establishing cooperation with the United States and renewing its position as a strict regulator of narcotics trafficking.

VII. Analysis of the Counternarcotics Working Group

The increased cooperation between the United States and China on the production and distribution of fentanyl and its intermediate chemical products has, for now, proved to be a sane initiative. The operation has bolstered lines of communication between Beijing and Washington D.C., and has resulted in the implementation of stricter regulations on behalf of the Chinese government. An increase in common intelligence and information has allowed the United States to more accurately understand the function of Chinese money laundering organisations and enact powerful indictments to the responsible entities. Furthermore, the increased participation of China in international fora pertaining to the control of international narcotic distribution has bolstered the global initiative.

The success of the working group is directly contingent on the strength of diplomatic relations between both countries. As the United States and China continue their international rivalry for global influence and power, maintaining fruitful long-term relationships will be a delicate situation to be navigated by the US Department of State and the Chinese Ministry of Foreign Affairs.

²³ House, White. "Memorandum on Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024." The White House, September 15, 2023. [Link](#).

²⁴ "China-Based Chemical Manufacturing Companies and Employees Indicted," October 24, 2024. [Link](#).

VIII. What Another Trump Presidency Means for the Working Group

At the time of writing, Donald Trump has been re-elected to serve as the 47th President of the United States of America. He is set to take office on the 20th of January 2025. The change in presidency may have a meaningful impact on the future success of the cooperative initiative. As previously expressed, the working group was consolidated under the Biden administration, which despite maintaining certain competitive aspects with China, has progressively lowered tensions between the two superpowers which had emerged under Trump's first presidential term (2016-2020). To understand the potential attitudes expected of the US Department of State under a Trump administration, we can recall his previous attitudes during his term as the 45th President of the United States. Most notably, Donald Trump initiated a trade war with China, applying tariffs averaging to 18% on Chinese goods.²⁵ Not only did he implement these policies, but in aggressive rhetoric during his recent presidential campaign, he has floated the idea of tripling tariffs. Furthermore, Trump has claimed he will aim to reduce American dependence on Chinese products and services in all critical areas, as well as publicly rejecting all Chinese territorial claims in the South China Sea. Lastly, in 2016, Donald Trump became the first U.S President since 1979²⁶ to maintain direct communication with his Taiwanese counterpart.

²⁵ Council on Foreign Relations. "Donald Trump's Foreign Policy Positions," n.d. [Link](#).

²⁶ Kubersky, Refael. "What Trump Has Promised to China in a Second Term." *FRONTLINE*, November 27, 2024. [Link](#).

As previously expressed, the success of the counter narcotic working group is highly dependent on the fluidity of American-Chinese diplomatic relations. Donald Trump has made clear his intentions at disrupting economic collaboration with China, an area of conflict which will most certainly spark tension between the two. Since the end of the Chinese Civil War in 1949, Taiwan has always been a sensitive topic. The United States has pledged to stand by its "one China" policy, but Donald Trump has already demonstrated his willingness to defy such agreements. Trump's aggressive rhetoric clearly signals the potential for a future deterioration of relations between China and the United States, and such a situation would greatly incapacitate the working group's ability to continue providing results. Overall, the Trump presidency does not seem like a beneficial event for the future performance of the international initiative, but only time will tell.

VIV. Conclusion

Since the fall of the Soviet Union in 1991, global competition from the American perspective has greatly shifted towards China, the world's second largest economy and military power. Competition and tensions have been increasingly heightened in the last couple of decades through economic competitiveness and geopolitical strife. The quality of diplomatic relations between the two has fluctuated between fruitful periods of communication and periods of limited diplomatic interactions. Nonetheless, the rapid and rampant effects of fentanyl on the American population forced the Biden administration to seek resolve, looking at their main competitor for assistance. Through sound diplomacy and the restoration of strong diplomatic

ties, Beijing has recognised its responsibility in the American fentanyl epidemic and has sought to amend the situation through cooperation and collaboration. The US-China Counternarcotics Working Group was established to efficiently and effectively disrupt the flow of fentanyl in international supply chains, aiming to counteract the actions of international drug cartels. Since its inception, the initiative has proved successful through the implementation of pharmaceutical regulations on Chinese manufacturers. Now, the working group faces a new challenge in the form of the 47th President of the United States, Donald Trump. A world leader notoriously aggressive and hostile towards China, Trump's vision of American foreign policy regarding the People's Republic will likely increase tensions and inhibit progressive diplomacy. Diplomatic relations are the key for the cohesion of the working group, and without them being productive, China is likely to end collaborative efforts, as it has done before. While competing with China, in order to keep combatting the fentanyl crisis, it is in the United States' best interest to facilitate a diplomatic atmosphere that still allows room for cooperation in mutually beneficial initiatives, such as the working group.

X. Bibliography

- United States Department of State. "2020 International Narcotics Control Strategy Report - United States Department of State," April 13, 2022. <https://www.state.gov/2020-international-narcotics-control-strategy-report>.
- Associated Press. "Explainer: Why Pelosi Went to Taiwan, and Why China's Angry." *Voice of America*, August 3, 2022. <https://www.voanews.com/a/explainer-why-pelosi-went-to-taiwan-and-why-china-s-angry-/6684414.html>.
- Bruhin, Natasha. "KYC in China – Identity Verification Requirements and Considerations." Trulioo, August 26, 2024. <https://www.trulioo.com/blog/kyc/kyc-china#:~:text=Procedures%20to%20ensure%20compliance%20with%20Know%20Your%20Customer,requirement%20to%20comply%20with%20Anti-Money%20Laundering%20%28AML%29%20laws>.
- "China Cites U.S. Demand as a Top Concern Ahead of Talks on Fentanyl Smuggling," January 26, 2024. <https://www.nbcnews.com/news/world/us-china-fentanyl-talks-opioids-drugs-epidemic-precursor-rcna-135399>.
- "China-Based Chemical Manufacturing Companies and Employees Indicted," October 24, 2024. <https://www.justice.gov/opa/pr/china-based-chemical-manufacturing-companies-and-employees-indicted-alleged-fentanyl>.
- Ching, Nike. "US Lifts Sanctions on Chinese Institute to Seek Fentanyl Cooperation." *Voice of America*, November 16, 2023. <https://www.voanews.com/a/us-lifts-sanctions-on-chinese-institute-to-seek-fentanyl-cooperation-/7358446.html>.
- DEA Intelligence. "Counterfeit Prescription Pills Containing Fentanyl: a Global Threat." *DEA*. DEA Intelligence, July 2016. <https://www.dea.gov/sites/default/files/docs/Counterfeit%2520Prescription%2520Pills.pdf>.
- Dews, Fred, and Vanda Felbab-Brown. "The Fentanyl Pipeline and China's Role in the US Opioid Crisis." *Brookings*, October 1, 2024. <https://www.brookings.edu/articles/the-fentanyl-pipeline-and-chinas-role-in-the-us-opioid-crisis/>.
- Council on Foreign Relations. "Donald Trump's Foreign Policy Positions," n.d. <https://www.cfr.org/election2024/candidate-tracker/donald-trump>.
- "Drug Administration Law of the People's Republic of China," n.d. http://www.npc.gov.cn/englishnpc/c2759/c23934/202012/t20201229_384168.html.
- Drug Enforcement Administration. "DEA: National Drug Threat Assessment 2024." *U.S. Department of Justice*, May 2024. <https://www.dea.gov/sites/default/files/2024-05/5.23.2024%20NDTA-updated.pdf>.
- Drug Enforcement Agency. "Ficha Informativa Sobre Drogas." *Departamento de Justicia/Administración De Control De Drogas*. Drug Enforcement Agency, October 2022. <https://www.dea.gov/sites/default/files/2024-04/Fentanilo%202022.pdf>.
- "Federal Indictment Alleges Alliance Between Sinaloa Cartel and Money," June 18, 2024. <https://www.justice.gov/opa/pr/federal-indictment-alleges-alliance-between-sinaloa-cartel-and-money-launderers-linked>.
- Felbab-Brown, Vanda. "The Limits of Renewed US-China Counternarcotics Cooperation." *Brookings*, April 16, 2024. <https://www.brookings.edu/articles/the-limits-of-renewed-us-china-counternarcotics-cooperation/>.
- "US-China Relations and Fentanyl and Precursor Cooperation in 2024." *Brookings*, February 29, 2024. <https://www.brookings.edu/articles/us-china-relations-and-fentanyl-and-precursor-cooperation-in-2024/>.

- Ferragamo, Mariel. "These Eight Charts Show Why Fentanyl Is a Huge Foreign Policy Problem." *Council on Foreign Relations*, December 21, 2023. <https://www.cfr.org/article/these-eight-charts-show-why-fentanyl-huge-foreign-policy-problem>.
- United States Department of State. "Global Coalition to Address Synthetic Drug Threats - United States Department of State," March 14, 2024. <https://www.state.gov/globalcoalition/>.
- Greenwood, Lauren, and Kevin Fashola. "Illicit Fentanyl From China: An Evolving Global Operation." *Economic and Security Review Commission*. Economic and Security Review Commission, August 24, 2021. Accessed December 4, 2024. https://www.uscc.gov/sites/default/files/2021-08/Illicit_Fentanyl_from_China-An_Evolving_Global_Operation.pdf.
- United States Department of State. "Highlighting U.S. and Global Efforts to Address the Health and Security Threats of Synthetic Drugs Through Global Cooperation - United States Department of State," September 26, 2023. <https://www.state.gov/highlighting-u-s-and-global-efforts-to-address-the-health-and-security-threats-of-synthetic-drugs-through-global-cooperation/>.
- White House. "Memorandum on Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024." The White House, September 15, 2023. <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/09/15/memorandum-on-presidential-determination-on-major-drug-transit-or-major-illicit-drug-producing-countries-for-fiscal-year-2024/>.
- "Justice Department Announces Eight Indictments Against China-Based," October 4, 2023. <https://www.justice.gov/opa/pr/justice-department-announces-eight-indictments-against-china-based-chemical-manufacturing>.
- Kubersky, Refael. "What Trump Has Promised on China in a Second Term." *FRONTLINE*, November 27, 2024. <https://www.pbs.org/wgbh/frontline/article/trump-china-second-term/>.
- United States Department of State. "Launch of United States-People's Republic of China Counternarcotics Working Group - United States Department of State," February 1, 2024. <https://www.state.gov/launch-of-united-states-peoples-republic-of-china-counternarcotics-working-group/>.
- Liu, Zongyuan Zoe. "Fentanyl Supply Chains in China: Chinese Fentanyl Makers and Domestic Circulation." *Council on Foreign Relations*, August 8, 2024. <https://www.cfr.org/blog/fentanyl-supply-chains-china-chinese-fentanyl-makers-and-domestic-circulation>.
- "Fentanyl Supply Chains in China: Chinese Fentanyl Makers and Domestic Circulation." *Council on Foreign Relations*, August 8, 2024. <https://www.cfr.org/blog/fentanyl-supply-chains-china-chinese-fentanyl-makers-and-domestic-circulation>.
- "What Is China's Role in Combating the Illegal Fentanyl Trade?" *Council on Foreign Relations*, September 12, 2024. <https://www.cfr.org/expert-brief/what-chinas-role-combating-illegal-fentanyl-trade>.
- Mann, Brian. "Critics Wary as China Promises Tighter Fentanyl Controls." *NPR*, August 30, 2024. <https://www.npr.org/2024/08/29/nx-s1-5089978/fentanyl-china-precursors>.
- Martinez-Fernandez, Andres, and Andrew J. Harding. "Holding China and Mexico Accountable for America's Fentanyl Crisis." *The Heritage Foundation*. The Heritage Foundation, September 9, 2024. <https://www.heritage.org/sites/default/files/2024-09/BG3851.pdf>.
- Millar, Abi, and Abi Millar. "Fentanyl: Where Did It All Go Wrong?" *Pharmaceutical Technology*, February 27, 2018.

- <https://www.pharmaceutical-technology.com/features/fentanyl-go-wrong/>.
- “News: April 2022 – UNODC: Three Precursors of the Most Common Synthesis Routes Used in Illicit Fentanyl Manufacture Now Under International Control,” n.d.
<https://www.unodc.org/LSS/Announcement/Details/b152bda5-5d71-4f7e-9d68-1bdd9af04a83>.
- Pergolizzi, Joseph, Peter Magnusson, Jo Ann K. LeQuang, and Frank Breve. “Illicitly Manufactured Fentanyl Entering the United States.” *Cureus*, August 27, 2021.
<https://pmc.ncbi.nlm.nih.gov/articles/PMC8476199/pdf/cureus-0013-00000017496.pdf>.
- Pike, John. “Readout of the U.S.-PRC Bilateral Counternarcotics Working Group Inaugural Meeting,” n.d.
<https://www.globalsecurity.org/security/library/news/2024/01/sec-240130-whitehouse01.htm#:~:text=On%20January%2030%2C%20the%20United%20States%20and%20the,and%20trafficking%20of%20illicit%20synthetic%20drugs%2C%20including%20fentanyl>.
- Select Committee on the CCP. “Select Committee Unveils Findings Into CCP’s Role in American Fentanyl Epidemic - REPORT & HEARING | Select Committee on the CCP,” September 27, 2024.
<https://selectcommitteeontheccp.house.gov/media/press-releases/select-committee-unveils-findings-ccp-s-role-american-fentanyl-epidemic-report>.
- Substance Abuse and Mental Health Services Administration. “Key Substance Use and Mental Health Indicators in the United States: Results From the 2020 National Survey on Drug Use and Health.” *Substance Abuse and Mental Health Services Administration*, 2020.
<https://www.samhsa.gov/data/sites/default/files/reports/rpt35325/NSDUHFFRPDFWHTMLFiles2020/2020NSDUHFFR1PDFW102121.pdf>.
- Team, By Reality Check. “Fentanyl Crisis: Is China a Major Source of Illegal Drugs?,” September 23, 2018.
<https://www.bbc.com/news/world-45564744>.
- United States Department of State. “International Narcotics Control Strategy Report.” *United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs*, March 2021.
<https://www.state.gov/wp-content/uploads/2021/02/International-Narcotics-Control-Strategy-Report-Volume-I-FINAL-1.pdf>.
- “International Narcotics Control Strategy Report.” *United States Department of State*. United States Department of State, March 2023.
<https://insightcrime.org/wp-content/uploads/2023/03/INCSR-2023-Vol-1.pdf>.
- Wang, Chao, Nicholas Lassi, Xiaohan Zhang, and Vinay Sharma. “The Evolving Regulatory Landscape for Fentanyl: China, India, and Global Drug Governance.” *International Journal of Environmental Research and Public Health*, February 12, 2022.
<https://pmc.ncbi.nlm.nih.gov/articles/PMC8871795/pdf/ijerph-19-02074.pdf>.
- “Year in Review: DEA Innovates to Fight Fentanyl.” Drug Enforcement Administration, January 29, 2024.
<https://www.dea.gov/press-releases/2024/01/29/year-review-dea-innovates-fight-fentanyl>.
- 王晗. “China-US Counternarcotics Working Group Inaugurated in Beijing on Tuesday.” World - Chinadaily.com.cn, n.d.
<https://www.chinadaily.com.cn/a/202401/30/WS65b91454a3104efcbdae8be1.html>.
- 贺霞婷. “Sino-US Counternarcotics Working Group Launched.” World - Chinadaily.com.cn, n.d.
<https://www.chinadaily.com.cn/a/202401/31/WS65ba6ce7a3104efcbdae8fcc.html>.
- 马清. “Anti-narcotics Cooperation Receives Boost.” Chinadaily.com.cn, n.d.
<https://global.chinadaily.com.cn/a/202402/01/WS65bad150a3104efcbdae8ff8.html>.

COVID and Cartel Wars: The Pandemic's Impact on Narcotrafficking in Chile and Argentina

Agustín Plaza De Los Reyes Álvarez

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in Law and International Relations

Email: aplazadelosr.ieu2023@student.ie.edu

Published 27th of January 2025

Abstract

What would happen if two problems were amplified between them, and governments could not mitigate their consequences? In recent decades, narcotrafficking has been a defining feature in Latin America's transnational criminal activities and its regional socio-political landscape. The Southern Cone has portrayed a relatively effective response towards these potential threats compared to its neighbouring countries. Nevertheless, significant shifts were noticed during the later stages of the COVID-19 pandemic in the southern region, with an increase in illicit activities related to drug cartels. Through a comparative analysis of Chile and Argentina, examining their political histories and analyzing their relationship with both issues, this paper explores the impact of COVID-19 governmental policies on the development of the drug market and its adaptive strategies to the sanitary crisis. Despite sharing regional power status, the countries' conflicting political conditions before, and during the pandemic, led to contrasting responses, by illustrating divergent dynamics on the narcotrafficking issue. First, a historical context will be discussed, as well as narcotrafficking's influence in the Southern Cone, including COVID-19's impact on both Chile and Argentina. Finally, a comparative approach to both countries will be provided with policy proposals to address these issues.

Keywords: Narcotrafficking, Transnational Crime, Drug Market, Illicit Activities, COVID-19, Governmental Policies, Chile, Argentina, Southern Cone.

I. Introduction

According to the United Nations Office on Drugs and Crime (UNODC), narcotrafficking - traditionally known as drug trafficking or drug trade - "is a global illicit trade involving the cultivation, manufacture, distribution, and sale of substances that are subject to drug prohibition laws."¹ Directly associated with organized criminal factions, it is their primary source of revenue, among other

sectors of the black economy, such as arms trafficking, human trafficking, and migrant trafficking, comprising on a local scale, a spectrum of minor crimes. The Southern Cone region —comprising Argentina, Chile, Paraguay, Uruguay, and the South of Brazil— has displayed rigorous rhetoric against drug cartels coming from the North. Particularly: Mexico, in which cartels generate between 19 and 29 billion USD from drug sales in the US;² Colombia;

¹ UNODC. *UNODC World Drug Report*. 2010. [Link](#)

² CNN Editorial Research. "Mexico Drug War Fast Facts". March, 2022. [Link](#)

and Peru, considering the vulnerability of its borders due to their geographical remoteness and insufficient state presence, thus being strategic checkpoints for drug trade.³ Furthermore, recent coordinated efforts in Chile and Argentina have illustrated the complexity of this issue. For instance, on October 30th, 2024, a narco-plane carrying 475 kilos of cocaine was intercepted by an operation comprising the Air Force, the Joint Aerospace Command and the National Gendarmeries, in Santiago del Estero.⁴ Similarly, on October 25th of the same year, a joint operation with the West Metropolitan Prosecutor's Office and the PDI (*Policía de Investigaciones*) seized 55 homes and 33 arrested suspects associated with a criminal organization in the district of Maipu in Santiago de Chile.⁵ These examples illustrate the ongoing situation in both countries, labelled as uncommon in comparison with previous years and with their reputation, being traditionally labeled as the South-American “oasis free of crime.”⁶

II. Historical Context

The political context of both countries plays a pivotal role in understanding the current circumstances. In Chile, during President Piñera's administration, social discontent

defined the last trimester of 2019 -known as *estallido social*- manifested in protests against the State's inability to satisfy the citizenry's socio-economic needs, particularly in major metropolitan areas. Both peaceful demonstrations and riots shaped the Chilean social landscape before the pandemic and the new constitutional project.⁷

In the case of Argentina, on October 27th, 2019, Alberto Fernández, with Cristina Fernández de Kirchner as Vice-President, won the election against former President Macri, paving the way for the redevelopment of Peronism in the public administration.⁸ The new government inherited a long historical burden of political instability and critical socioeconomic conditions, considering that 40% of the population is below the poverty line.⁹ During his campaign, Fernández promised negotiations with the International Monetary Fund (IMF) and suggested rescheduling the debt due dates to solve the crisis. However, in the following months after the election and the onset of the pandemic, the country faced severe socio-economic devastation compounded with a debt crisis of colossal proportions.¹⁰

Both countries exhibit differences in the economic and political spectrum. However, polarization and ineffective

³ O. Quiñones Marriaga. “Transnational Consequences of the Colombia - FARC Peace Process.” *Revista Seguridad y Poder Terrestre*, 3 no. 2 (2024). [Link](#)

⁴ De Los Santos, G. “Interceptaron una Avioneta Narco, Secuestraron 475 Kilos de Cocaína y Detuvieron al Piloto”, *La Nación*, October, 2024. [Link](#)

⁵ Arriaza, J. “Tráfico de Drogas: PDI Logra Detener a más de 30 Personas tras Operativo en 55 Domicilios de la RM”, *La Tercera*, October, 2024. [Link](#)

⁶ Ariet, A. “Chile ya no es un Oasis ante el Crimen Organizado,” *DW*, May, 2024. [Link](#)

⁷ Riffo-Pavón I. “El Estallido Social Chileno de 2019: Un Estudio A Partir De Las Representaciones E Imaginarios Sociales En La Prensa.” *Revista Mexicana de Ciencias Políticas y Sociales*, 66 no. 243 (2021). [Link](#)

⁸ GIGA Focus Latin America. “Argentina 2019: Broken Economy, Strengthened Democracy”, 2019. [Link](#)

⁹ GIGA, “Argentina 2019.”

¹⁰ Choroszczucha, S. “Argentina: Descontento Ciudadano en medio de la Crisis Sanitaria.” *Agenda Pública*. September, 2020. [Link](#); and GIGA, “Argentina 2019.”

administrative action -customary traits in the past- became more pronounced in the months leading up to the health crisis.

III. Narcotrafficking in the Southern Cone

Moreover, the influence of narcotrafficking in South America is not new. It has impacted governmental dynamics both directly and indirectly, shaped by factors such as territory, demographics, time period, and administration. Driven by globalization, its transnational trait facilitated a quick development of adaptive strategies in response to societal and technological shifts.

Although one may assume that borders play a protective role, Riquelme (2019) states that Latin America is a boundaryless hub for transnational organized crime, where regional networks and trade arrangements extend into the global sphere, which has been fueled by the expansion of drug cartels from Mexico, the proliferation of trafficking routes through Africa to Europe, and a significant rise in the global narcotics demand.¹¹ According to the UNODC, narcotrafficking in the Latino-Caribbean space has been a lucrative business for producers, transporters, and dealers, generating over \$150,000 billion, considering it is the biggest cocaine and marihuana producer.¹² On this matter, an increase in coca cultivation and cocaine production in

South America has been linked with a growing demand from the Global North - comprising the United States and the European Union. This demand has transformed the international drug trade's *modus operandi* by affecting non-production countries through the illegal use of their ports. Furthermore, stringent controls in Colombia, Peru, and Brazil have led to a shift in drug trafficking routes southward.¹³

Regarding our region of interest, the domestic demand for narcotics is notorious, bearing in mind that Chile is the main marihuana consumer. Closely followed by Argentina, it keeps high levels of consumption of both marihuana and cocaine, with interregional and intertemporal variations, which are still relatively lower levels in comparison to Brazil, Mexico, and the Caribbean.¹⁴ Even so, the expansion of northern cartel networks is showcased in the manipulation of non-traditional ports, such as the Chilean port of San Antonio, the Argentinean port of Buenos Aires, and the Uruguayan port of Montevideo.¹⁵ These port centers have grown considerably in terms of commercial streams, but have several vulnerabilities due to the lack of recognition of maritime drug trafficking, even though the sea routes are widely used for global trafficking, in addition to the low level of police capacity and the significant institutional corruption.¹⁶ For instance, the

¹¹ Riquelme Rivera, J., Salinas Cañas, S., and Franco Severino, P. "El Crimen Organizado Transnacional (COT) en América del Sur: Respuestas Regionales." *Estudios Internacionales (Santiago)*, 51 no.192 (2019). [Link](#)

¹² Jimenez García, F. "Lucha contra el Narcotráfico en América Latina-Caribe. La Labor de la Organización de Estados Americanos (OEA)". *Revista de Estudios en Seguridad Internacional*, 7, no. 1 (2021), pp. 161-166. [Link](#)

¹³ Sampó, C. and Troncoso, V. "Cocaine trafficking from non-traditional ports: examining the cases of Argentina, Chile and Uruguay." *Trends Organ Crim* 26, 235-257 (2023). [Link](#)

¹⁴ Flom, H. "Política, Policía y Violencia: Regulación del Narcotráfico en el Cono Sur." *Revista de Estudios en Seguridad Internacional*, 4, no. 1, (2018), pp. 17-53. [Link](#)

¹⁵ Sampó et al. "Cocaine trafficking."

¹⁶ Sampó et al. "Cocaine trafficking."

security of the port of Buenos Aires is managed by the Customs and the *Prefectura Naval*, who face legal challenges when it comes to checking containers for three reasons: 1) according to port's officers, state control is limited; even if there is technology available, no political decision has commanded to do so; 2) the controls are flexible, given the competition with Montevideo's port, and 3) the international treaties between Paraguay and Bolivia, stating that they can use the port for transit, disables the Prefectura's intervention given their jurisdiction. This last point was evidenced by the discovery in 2021 of a cocaine cargo in Antwerp and Hamburg coming from Buenos Aires, which had been in transit from Paraguay.¹⁷

Likewise, Chile is no exception, given its porous borders with Bolivia and Peru, the lack of police control, and its long coastline which facilitates access for drug traffickers.¹⁸ From its ports, cocaine shipments destined for Europe, the United States, Oceania, and Asia are re-exported through non-traditional ports.¹⁹ Paraguay is responsible for the majority of cannabis contraband entering the country, but Colombian *crepey* - a variation of marihuana - has grown in popularity, and domestically grown marijuana is also part of the market.²⁰ Global seizure of grass Cannabis registered in Latin America and the Caribbean increased from 20% in 2012 to 30% in 2013, given the large seizures in Paraguay,

Colombia and Brazil, which translated into an increase of almost 60% of the volume seized in South America, which rose from 821 to 1,308 tons.²¹

IV. Covid 19's Impact

As previously mentioned, the impact of the COVID-19 pandemic on the international drug market is well-evidenced. Given the social context and the pre-existing development of transnational criminal organizations in the Southern Cone, the response to the sanitary crisis will be discussed to establish a clear relationship.

According to a report from EUROPOL, in the early stages of the pandemic, in the EU, a shift in supply-demand dynamics was expected to disrupt illegal supply channels, consumer stockpiling of certain drugs, and supply shortages in essential chemicals used in drug production, which would impact production output and inflation.²² This shift is defined as the primary cause behind the development of illicit activities in Argentina and Chile, reflecting the pandemic's impact on the drug market's economic model and the domestic economies of these countries.

Argentina

In Argentina, the federal government implemented several health measures, including a nationwide mandatory

¹⁷ Sampó et al. "Cocaine trafficking."

¹⁸ Global Initiative Against Transnational Organized Crime, "Chile", Índice Global de Crimen Organizado, 2023. [Link](#).

¹⁹ Global Initiative, Índice Global de Crimen Organizado "Chile."

²⁰ Global Initiative, Índice Global de Crimen Organizado "Chile."

²¹ Ministerio de Justicia, UNODC, Fiscalía General de la Nación. *Informe Técnico de la Caracterización Química, Taxonómica y de Mercado de la Marihuana Producida Y Consumida en el País*. 2015. [Link](#)

²² EUROPOL. *Pandemic Profiteering: How Criminals Exploit the COVID-19 Crisis*. March 2020. [Link](#)

quarantine, and a temporary border blockade, which helped mitigate the spread of COVID 19, but significant deficits in key areas were reported, and inequalities accentuated the risks faced by the low-income population. In this regard, 4 million people live in densely populated neighbourhoods and face significant housing shortages, with limited access to basic services.²³ Subsequently, the economy contracted by 5% to 7% of GDP in 2020, driven by lower exports, declining prices, capital outflows, greater uncertainty around consumption and investment, as well as fiscal deterioration, with the recession impacting tax revenue and the adopted measures expanding public spending.²⁴

Chile

In Chile, the country dealt with strong pressures due to social unrest, with low poverty levels but high inequality (GINI coefficient of 44 points), along with the demands of the middle class and widespread perceptions of inequality which led to severe disruptions in the functioning of the productive sector, particularly affecting small and medium enterprises (SMEs) in urban centres.²⁵ At the beginning of the pandemic, a projected increase in the fiscal deficit was reported, alongside reduced demand from China (Chile's top copper buyer) compounded by a decline in international copper prices, regardless of the final export

destination.²⁶ In the first two weeks, the sanitary strategy focused on regulating the population's mobility to prevent the spread of the virus, however, the authorities soon began to give guidelines and interim solutions, leading to a gradual and episodic approach to confinement known as the *Plan Paso a Paso*.²⁷ On a regional scale, different contagion "waves" hit the country, with a considerable impact in the Metropolitan Region in 2020, which saw the highest number of cases.²⁸ In 2021, sporadic, but frequent, waves were reported across all regions of the country.²⁹

V. Chile's Case

Regarding narco trafficking, Chile's case has evidenced a strong commitment against the expansion of narco trafficking networks. For example, the State has ratified key international agreements, such as the 2000 UN Convention against Transnational Organized Crime and its Protocols, which were later incorporated into Chilean domestic law in 2004 through Decree No. 342 by the Ministry of FA, introducing new regulations and crimes to modernize the judicial system.³⁰ Additionally, the recent *Política Nacional contra el Crimen Organizado 2022-2027*, marks critical progress, due to the recognition of the importance of this issue, while also establishing strategies

²³Bastos, F. R. et al. "El Impacto del COVID-19 En Las Economías De La Región Del Cono Sur." *Informe macroeconómico de América Latina y el Caribe 2020: Políticas para combatir la pandemia*, 10 (2020): 4. [Link](#)

²⁴Bastos et al. "El Impacto del Covid-19", 5.

²⁵Bastos et al. "El Impacto del Covid-19", 16.

²⁶Bastos et al. "El Impacto del Covid-19", 17-18.

²⁷Gonzales L. "Desde el Estallido Social Chileno a la Pandemia COVID-19: Aproximaciones de un Cambio Profundo". *Revista de Comunicación y Salud*, 10, no. 2 (2020): 417-429. [Link](#)

²⁸"COVID-19 en Chile, Análisis de su Impacto por Olas y Regiones". Ayala A, et. al. 2023. [Link](#)

²⁹Gonzales. "Desde el Estallido Social Chileno."

³⁰Meersohn, P. G. et. al. "Crimen Organizado: Análisis y Desafíos para Chile." *Revista De Derecho Y Ciencias Sociales*, 29 (2023): 241-277. [Link](#)

on how to address narcotrafficking on a normative, institutional, operational, and resource scale.³¹ These efforts are no coincidence since the growing concern of Chilean society on security matters underlines the impact of narcotrafficking groups in specific areas of the territory. To illustrate, the *Encuesta Nacional Urbana de Seguridad Ciudadana* of 2022³² placed the security issue as a priority, emphasizing the need for legislative projects regulating criminal networks that have been appropriating stateless territories in the borders, and creating anti-democratic pressure on government institutions and their markets.³³

In particular, the northern macro zone -comprising the regions of Arica y Parinacota, Tarapacá, Antofagasta, and Atacama- has been a criminal activity hotspot. More specifically, the region has been a circulatory center for Peruvian, Colombian, Venezuelan, and Haitian immigrants looking to settle in the country, creating a singular dynamic at the border. Precisely, the extensive northern border between Peru, Chile, and Bolivia -extending 1000 kilometers, and comprising official and clandestine routes from Arica and Colchane- has witnessed both the constant entrance of Latin-American migrants and the transit of drug trafficking and other illicit crimes (human and migrant trafficking) despite border controls.³⁴

During the sanitary crisis, between March and May 2022, 20,291 foreigners entered illegally, a 135% increase compared to the same period in 2021, which coincided with a rise in the of drugs seized: the first and fourth trimesters of 2020 reached 14,3 and 12,6 tons, respectively.³⁵ These periods coincided with the pre and post-closure of borders as a health measure to prevent COVID-19 spreading.³⁶ According to the same report cited, the strategy used by transnational criminal organizations, such as the Venezuelan criminal organization *Tren de Aragua*, was to exploit the arrival of a large number of irregular immigrants.³⁷ These migrants were coerced into smuggling drugs by carrying oval capsules inside their bodies or hiding the substances in their luggage when crossing the border.³⁸ This highlights the adaptive strategies that narcotrafficking has recently adopted as a way to “blend in” into the migration streams and confuse the authorities. Authorities that were already allocated across the border and focused - in terms of resources and operations - on the sanitary crisis. However, it is wrong to presume that all efforts have always been worthless since coordinated strategies between the three bordering countries have been effective. For instance, in 2017, a tri-national operation in the northern macro zone succeeded. Authorities installed various checkpoints and seized 2.2 tons of drugs in 14 days.³⁹ This prevented the

³¹Chilean Ministry of Internal Affairs and Public Security. *Política Nacional Contra el Crimen Organizado*. December 2022. [Link](#)

³² [Link](#).

³³Meersooh, P. G. et. al. “Crimen Organizado.”

³⁴ Bravo Acevedo, G. “Migraciones, Narcotráfico y Frontera, la Situación en la Macrozona Norte de Chile, 2020-2022.” *Diálogo Andino*, no.73 (2024). [Link](#)

³⁵ Bravo. “Migraciones, Narcotráfico y Frontera.”

³⁶ Bravo. “Migraciones, Narcotráfico y Frontera.”

³⁷ Bravo. “Migraciones, Narcotráfico y Frontera.”

³⁸ Bravo. “Migraciones, Narcotráfico y Frontera.”

³⁹Chilean Ministry of Foreign Affairs. “Control del Narcotráfico en Zonas Fronterizas,” *Chile en el Exterior*, November, 2017. [Link](#)

distribution of 5 million narcotic doses and \$10 million in revenue.⁴⁰ Still, during the pandemic, several vulnerable areas did not have effective control. For this reason, state capacity was questioned, given the use of empty spaces in the border for smuggling and trading with the involvement of the biggest cocaine producers in Latin America, such as Peru and Bolivia.⁴¹

On top of that, COVID-19 intensified the pre-existing inequalities and social demands, which created the perfect environment for the development of drug-related illicit activities. According to Gomez (2022), the causes of narco-trafficking in Chile are mainly the following: i) inequality, in terms of income, opportunities access and fragility of agricultural communities, since agriculture is often associated with poverty; ii) economic incentives, where the absence of state subsidies, aid, and general public monitoring led communities to replace these elements with economic incentives offered by the drug cartels; and iii) narco-trafficking takes advantage of political consequences and socio-economic phenomena directly related with state absence.⁴² This is supported by the findings of Centro de Estudio y Análisis del Delito (2024). Between 2017 and 2023, micro-trafficking, drug production and substance trafficking reached high levels.⁴³ In 2006, 5,653 crimes were

registered. This number rose to 15.974, in 2017; and 16,630, in 2023.⁴⁴ Micro-trafficking saw a massive increase, while drug production arrests remained low ranging between 2700 and 1500 detentions.⁴⁵

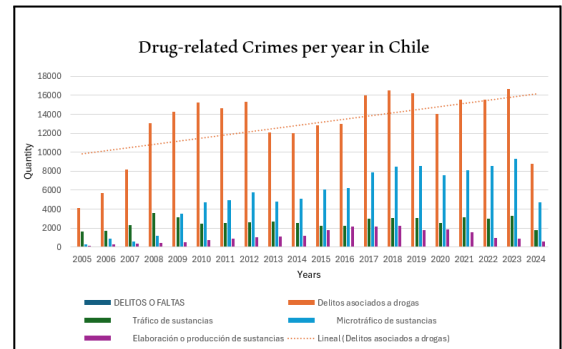


Fig. 1: Graph on Drug-related Crimes per year in Chile.

Source: Portal CEAD, 2024.

VI. Argentina's Case

Alternatively, Argentinian society was impacted on several fronts during this period, on which familiar issues for the Argentinian population were magnified, and new problems emerged in a non-traditional manner. When the pandemic began, Argentina was already in a serious economic crisis, with an urgent need to settle the external debt (representing 90% of its GDP at the time) and negotiate with the IMF, since SMEs, which generated 75% of employment in the country, were the ones suffering the most because of the lockdown, among other exceptional circumstances.⁴⁶ Precisely, according to a survey by the Argentine Confederation of Medium-sized Enterprises (CAME), more than 41,000 SMEs closed in 2020, while

⁴⁰Chilean Ministry of Foreign Affairs. "Control del Narcotráfico."

⁴¹ Ovando C, et. al. "Dimensiones Tradicionales y Emergentes de la Seguridad Fronteriza Chilena del Extremo Norte de Chile." *Estudios Fronterizos*, 21, (2020). [Link](#)

⁴² Gómez F. "Perspectivas sobre el Narcotráfico y su Situación en Chile", 2020. [Link](#)

⁴³ Centro de Estudios y Análisis del Delito (CEAD). *Estadísticas Delictuales*. 2024. [Link](#)

⁴⁴ CEAD. *Estadísticas Delictuales*.

⁴⁵ CEAD. *Estadísticas Delictuales*.

⁴⁶"Impacto de la Pandemia COVID-19 en Argentina y el Escenario Regional", Puente M. Lopez A. May 2021, p.54. [Link](#)

unemployment increased from 8.9 to 11%, a figure that reflected only formal employment between 2019 and 2020 (taking into account that 40% of work is informal).⁴⁷

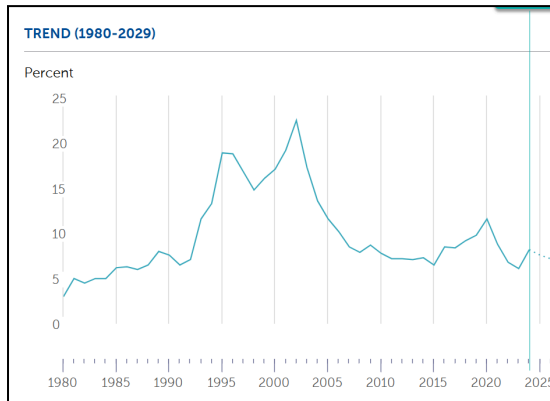


Fig. 2.: Graph on Unemployment Rate per Year in Argentina.
Source: International Monetary Fund, 2024.

As expected, social discontent rose, but the sanitary restrictions of COVID-19 have curtailed the demonstrations. This does not mean that the problems that sparked them have been overcome, instead a pessimistic post-pandemic scenario has been predicted for Argentina: highly socio-economically vulnerable, and an expected rebirth of protests, which could also become increasingly violent.⁴⁸

Fernandez's national government took office in December 2019, marking the return of Peronism after four years under Mauricio Macri's government. Macri, the former mayor of the city of Buenos Aires, led a coalition between his party, the center-right Republican Proposal, the *Unión Cívica Radical*, and the *Coalición Cívica*, both

social democratic.⁴⁹ Thus, it is evident that Peronism's victory was the consequence of the political unity of its various factions -divided since the 2013 legislative election. Additionally, the level of polarization in the election, as both candidates concentrated 88% of the valid votes, reflected the fragmentation of Argentine politics around the Kirchnerism/anti-Kirchnerism cleavage.⁵⁰

As this transition was underway when COVID emerged, the Argentinean State initiated a series of coordinated efforts, such as the monopolization of respirators in a landmark partnership with autonomous governments to favor collaborative solutions, and implement health measures within its provinces and municipalities.⁵¹ Nonetheless, this posed a challenge for synergic action. The breaking point of the consensus came with the government's untimely retention of the Buenos Aires Federal Co-participation Funds to create a Financial Strengthening Fund for the province of Buenos Aires.⁵² As the period of collaboration came to an end, the prior growing opposition was coupled. And so, the effects of uncertainty were mitigated, and Argentinean politics were reorganized in the Kirchnerism - Anti-Kirchnerism conflict.⁵³

As the narco trafficking problem was pushed into a secondary plane, cartels and organizations reinvented themselves and persisted, including: *Cartel de Sinaloa*,

⁴⁹"Argentina, Políticas y Conflictos en la Pandemia del Coronavirus COVID-19", Cravacuore D. 2021. p. 164. [Link](#)

⁵⁰ Ibid. p.165.

⁵¹ Ibid. p.170.

⁵² Ibid. p.172.

⁵³ Ibid. p.176.

⁴⁷Ibid.

⁴⁸Ibid, p.61.

Cartel Jalisco de Nueva Generación and *Los Gallegos* (faction of the *Cartel Tren de Aragua*), adapting to the sudden border closures and the new legal scenario.⁵⁴

Similar to the case in Chile, Argentina remained a key transit country for the regional cocaine trade, mainly smuggled through the sparsely populated northwestern region, as the Argentina-Bolivia border is a heavily traveled route that also connects Paraguay. And through maritime routes, that across the Atlantic connect to Europe and Asia.⁵⁵

On the same line, in the triple border between Brazil, Paraguay, and Argentina -particularly in Foz de Iguazú, Ciudad del Este, and Puerto Iguazú- two Brazilian criminal organizations, *Comando Vermelho* and *Primeiro Comando da Capital*, both with a clear hierarchical structure, have participated in the region's illicit activities. The authorities have not been able to define the scope of their activities -what is trafficked in the triple border, or if this traffic is provided by smaller criminal gangs from Brazil, Argentina and Paraguay.⁵⁶ According to Armed Conflict Location and Event Data (ACLED) (2024), the expansion of the *Comando Vermelho* into Rio's West Zone contributed to a 50% surge in political violence in 2023.⁵⁷ As the gang

sought to reclaim territories long dominated by police militias, violence has remained high ever since, causing a serious threat for Brazil's neighbouring countries in the East and South.^{58,59}

Despite the seemingly catastrophic scenario, which resembles the situation in the Mexican-U.S border, the Administration acted decisively. Federal Forces increased cocaine seizures by 70%, and synthetic drugs by 19% compared to 2019, confiscating 73,781 kilos of drugs between January and September 2024.⁶⁰ According to Patricia Bullrich, Minister of Security under Milei's current administration, Argentina is currently at the forefront of South-America's fight against drug trafficking. Evidenced with the gradual improvement on drug control, after initiating 13% more procedures, which resulted in a 16% increase in the number of arrests for drug trafficking crimes.⁶¹

⁵⁴ "Los Dos Principales Cártels de la Droga Mexicanos Aterrizan en Chile". *El País*, by R. Montes, and A. Santos-Cid, June 2022. [Link](#); AND Puente M. Lopez A. May 2021. [Link](#)

⁵⁵ "Global Organized Crime Index". Global Initiative Against Transnational Organized Crime, 2023. [Link](#)

⁵⁶ "El Crimen en América Latina: Desorden, Fragmentación y Transnacionalidad", Uribe P. December, 2021. [Link](#)

⁵⁷ "Regional Overview of Latin America and the Caribbean, August 2024". *Armed Conflict Location and Event Data (ACLED)*, September, 2024. [Link](#)

⁵⁸ "Red Command Advances in Triple Border Between Brazil, Colombia, Peru". *Diálogo Américas*, by Nelza Oliveira, October 2024. [Link](#);

⁵⁹ "Regional Overview of Latin America and the Caribbean, August 2024". *Armed Conflict Location and Event Data (ACLED)*, September, 2024. [Link](#)

⁶⁰ "Cifras Récord en la Lucha Contra el Narcotráfico: Incremento del 70% en la Incautación de Cocaína en 2024". Gobierno de Argentina, October, 2024. [Link](#)

⁶¹ *Ibid.*

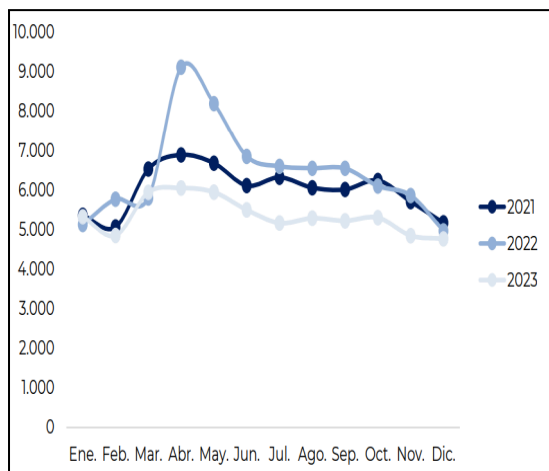


Fig. 3: Graph on Violations against Law 23.737, regarding the possession and distribution of drugs per year in Argentina. Source: Argentinian Ministry of National Security and NDEC, July 2024.⁶²

VII. Policy Analysis

Both Chile and Argentina portray similarities and differences on the same issue. Regarding their demographic dynamics, both countries illustrate similar patterns in illicit activities, as borders and vulnerable areas in big cities are the main hotspots for transnational criminal organizations. In cities like Rosario, Santa Fe, Antofagasta, and Santiago, illicit actors have obeyed state measures, such as curfews, while also imposing their own rules and providing aid in response to gaps left by insufficient state actions.⁶³ Their influence is evident in activities such as vending, and other small-scale commerce, where control over local street space is key.⁶⁴

⁶²“Informe del Sistema Nacional de Información Criminal: Año 2023”, Sistema Nacional de Información Criminal - Sistema Alerta Temprana (SNIC - SAT), Ministerio de Seguridad de la Nación and NDEC, July 2024. [Link](#)

⁶³Davis, DE., and Hilgers, T., 2022. [Link](#)

⁶⁴Ibid, p. 242.

The pandemic has amplified calls for urban sovereignty at the local level. These demands come partly from shared commitments or a sense of “imagined community” that unites residents with both legal and illegal governing actors to navigate the crisis, consequently creating ungovernable areas challenging the States’ capacity to act according to the rule of law.⁶⁵ Consequently, many criminal groups at an international level, presumably influenced by the gap in the legal supply, took advantage of existing infrastructures through the network and home delivery to sell online through open or clandestine networks such as the Deep Web, which has adapted its intractability.⁶⁶

Similarly, both countries have suffered political transitions and social discontent at different scales, which has intensified the polarization, macroeconomic shift, and pre-existing inequalities, giving room to transnational criminal organizations. It is wrong to assume that the phenomenon has been identical in both scenarios, given the divergent political histories and administrative control of their respective territories. On the one hand, Chile transitioned from Piñera’s pro-neoliberal agenda, led by a right and center-right winged coalition, to a social-democrat approach, led by left-wing parties under Gabriel Boric’s administration since 2022, in the middle of a social and sanitary crisis generally defined by a constitutional dilemma. On the other hand, Argentina transitioned in 2019 from a similar liberal administration towards a Peronist ideology under Fernández and

⁶⁵ Ibid, p.252.

⁶⁶“Impacto del COVID-19 en Distintas Formas Delictivas”. Agustina, J. R., et al. 2020. p.20-21. [Link](#)

Kischner, however, in late 2023 Milei won the presidential elections paving the way for a libertarian-populist project on which several transformations are expected in the public administration.

Under this pretext, Chile has recommended coordinated prevention and persecution of transnational organizations and illicit drug trafficking, with a goal of zero micro trafficking on a municipal scale and more efficiency in border controls of chemical substances for the elaboration of narcotics. In order to mitigate drug cartels' economic incentive and an extensive review of judicial mechanisms to sanction these activities.⁶⁷ As for Argentina, the aim is to break the connection between organized crime and territorial violence; through the coordination of federal agencies, the 24 jurisdictions, the State and international organizations that promote security policies (OAS and UN for instance), to consolidate the influence of INTERPOL, AMERIPOL and the links, among others, with EUROPOL.⁶⁸

Assuming a critical perspective, these measures seem to be convincing in the short-term, as it is customary in Latin American presidential regimes to implement policies labelled as *mano dura* ("tough hand"), which are politically convincing when it comes to security crises. Nevertheless, this allows a progressive militarization of state security forces, the legalization of gun possession among civilians and immunity for police officers in service, which may

contribute to increasing illicit activities within societies, as well as a weakening perception towards the state and the rule of law, considering the history of social uprisings in both countries.⁶⁹ Under this argument, only the symptoms will be addressed instead of the origin of the cause. The logical relationship between cause and effect will be completely ignored, including the deep-rooted institutional issues that have been unaddressed even before the mainstream development of the drug market.

As an alternative, a Human Rights narrative is proposed, in line with International Law initiatives, that include establishing a Corte Penal Sudamericana, which would guarantee the integration of juridical norms of UNASUR member states.⁷⁰ However, a unanimous consensus would still be needed, so more efforts are required to materialise this initiative, and also design other new solutions.

VIII. Conclusion

In conclusion, there is a clear relationship between COVID-19 and the expansion of narcotrafficking in Chile and Argentina, which offers a general representation of this challenge in the Southern Cone region. Several countries are involved, even some outside of the continent. Meanwhile, transnational criminal organizations are exploiting the current vulnerabilities of their Administrations, such as immigration, ineffective state control, and the sanitary crisis' "leftovers". However, this must not be mistaken with a causal statement. Even if these

⁶⁷"Plan Nacional contra el Narcotráfico, 2014-2022" Ministerio del Interior y Seguridad Pública, Gobierno de Chile, 2014. [Link](#)

⁶⁸"Plan Federal de abordaje del Crimen Organizado 2021-2023" Ministerio de Seguridad Argentina, 2021. [Link](#)

⁶⁹Jimenez Garcíá, F, 2021. [Link](#)

⁷⁰ Riquelme Rivera, J., Salinas Cañas, S., and Franco Severino, P, 2019.

phenomena are correlated, there is no empirical evidence to confidently establish causality between COVID-19, the immigration crisis, social inequality, and the narco-trafficking business.

Henceforth, the region has been impacted by their local grievances and institutional flaws which date back to the pandemic and the mainstream character of narco-trafficking. It is precise to note that one is intensifying the other's outcomes.

Finally, solutions have been developed by both governments, but more efforts are required to propose a holistic crisis-management approach aligned with democratic principles, the rule of law, and international cooperation between neighbouring countries - even if their internal policies are not in the same ideological framework - to efficiently eradicate the networks' influence in remote municipalities, and modernise their security bodies, so they cannot reach highly populated areas. Lastly, given the complexity of the issue, research in other sectors, such as social psychology or education, is recommended, in the hope of acquiring perspective on recruitment processes, the community-cartel relationship, and their belief systems.

Bibliography

- Agustina, José Ramon, et al. "Impacto del COVID-19 en Distintas Formas Delictivas". *Fundación para la Investigación Aplicada en Delincuencia y Seguridad*. 2020.
- Ariet, Andrea. "Chile ya no es un Oasis ante el Crimen Organizado". In *Deutsche Welle*. May, 2024.
- Arriaza, Javiera. "Tráfico de Drogas: PDI Logra Detener a más de 30 Personas tras Operativo en 55 Domicilios de la RM". *La Tercera*. October, 2024.
- Ayala, Andrés, et. al. "COVID-19 en Chile, Análisis de su Impacto por Olas y Regiones". In *Revista Médica de Chile*, Vol. 151, No. 3. March, 2023.
- Bravo Acevedo, Guillermo. "Migraciones, Narcotráfico y Frontera, la Situación en la Macrozona Norte de Chile, 2020-2022". In *Diálogo Andino*, No. 73. March, 2024.
- Centro de Estudios y Análisis del Delito (CEAD). *Estadísticas Delictuales*. 2024.
- Choroszczucha, Sandra. "Argentina: Descontento Ciudadano en medio de la Crisis Sanitaria". *Agenda Pública: Análisis de Políticas Públicas*. September, 2020.
- Crevacuore Daniel. "Argentina, Políticas y Conflictos en la Pandemia del Coronavirus COVID-19" In *AFDUAM*, No. 3, pp. 163-176. 2021.
- Davis, Diane E., and Hilgers, Tina. "The Pandemic and Organized Crime in Urban Latin America: New Sovereignty Arrangements or Business as Usual?". In *Journal of Illicit Economies and Development*, Vol. 4, No. 3, pp. 241-256. December, 2022.
- De Los Santos, Germán. "Interceptaron una Avioneta Narco, Secuestraron 475 Kilos de Cocaína y Detuvieron al Piloto". In *La Nación: Seguridad*. October, 2024.
- EUROPOL. "Pandemic Profiteering: How Criminals Exploit the COVID-19 Crisis". March 2020.
- Flom, Hernán. "Política, Policía y Violencia: Regulación del Narcotráfico en el Cono Sur". In *Revista de Estudios en Seguridad Internacional*, Vol. 4, No. 1, pp. 17-53. 2018.
- Global Initiative Against Transnational Organized Crime. "Global Organized Crime Index". 2023.
- Gómez Álvarez, Felipe. "Perspectivas sobre el Narcotráfico y su Situación en Chile". In *Repositorio Académico de la Universidad de Chile*, Facultad de Derecho, Universidad de Chile. 2020.
- Gonzales Suazo, Loreto. "Desde el Estallido Social Chileno a la Pandemia COVID-19: Aproximaciones de un Cambio Profundo". In *Revista de Comunicación y Salud*, Universidad de Valparaíso, Vol. 10, No. 2, pp. 417-429. September, 2020.
- Greene Meersooh, Pía, Astraín Rubio, Camila, and Salas Kuscevic, Catalina. "Crimen Organizado: Análisis y Desafíos para Chile". In *Revista de Derecho y Ciencias Sociales*, Universidad San Sebastián, No. 29, pp. 241-277. 2023.
- International Monetary Fund. "Unemployment Rate Percent". 2024.
- Jimenez Garcíá, Francisco. "Lucha contra el Narcotráfico en América Latina-Caribe. La Labor de la Organización de Estados Americanos (OEA)". In *Revistas de Estudios en Seguridad Internacional*, Universidad Rey Juan Carlos, Vol. 7, No. 1, pp. 161-166. 2021.
- Lins Franciotti, Julia, Calderón Fuentes, Laura, and Arocha, María Fernanda. "Latin America and the Caribbean Overview: August 2024." In *ACLEDA*. September, 2024.
- Llanos, Mariana, and Maia, Jayane. "Argentina 2019: Broken Economy, Strengthened Democracy". In *GIGA Focus Latin-America*, No. 6. November, 2019.
- Ministerio del Interior y Seguridad Pública. "Plan Nacional contra el Narcotráfico, 2014-2022". 2014.

- Ministerio del Interior y Seguridad Pública. “Política Nacional Contra el Crimen Organizado”. In *Subsecretaría del Interior*. December, 2022.
- Ministerio de Justicia, UNODC, Fiscalía General de la Nación. “Informe Técnico de la Caracterización Química, Taxonómica y de Mercado de la Marihuana Producida Y Consumida en el País”. 2015.
- Ministerio de Relaciones Exteriores. “Control del Narcotráfico en Zonas Fronterizas”. In *Chile en el Exterior*. November, 2017.
- Ministerio de Seguridad. “Cifras Récord en la Lucha Contra el Narcotráfico: Incremento del 70% en la Incautación de Cocaína en 2024”. In *Gobierno de Argentina: Noticias*. October, 2024.
- Ministerio de Seguridad. “Plan Federal de abordaje del Crimen Organizado 2021-2023”. In *Gobierno de Argentina: Seguridad*. 2021.
- Montes, Rocío, and Santos-Cid, Alejandro. “Los Dos Principales Cárteles de la Droga Mexicanos Aterrizan en Chile”. In *El País: México*. June, 2022.
- Oliveira, Nelza. “Red Command Advances in Triple Border Between Brazil, Colombia, Peru”. In *Diálogo Américas*. October, 2024.
- Ovando Cristian, et. al. “Dimensiones Tradicionales y Emergentes de la Seguridad Fronteriza Chilena del Extremo Norte de Chile”. In *Estudios Fronterizos*, Vol. 21. August, 2020.
- Puente Oliveira, María Lourdes, and Lopez Llovet, Antonio. “Impacto de la Pandemia COVID-19 en Argentina y el Escenario Regional”. In *Unidad de Investigación y Cooperación*, No. 56, pp. 51-71. May, 2021.
- Riffo-Pavón, Ignacio, Basulto, Oscar, and Segovia, Pablo. “El Estallido Social Chileno de 2019: Un Estudio A Partir De Las Representaciones E Imaginarios Sociales En La Prensa”. In *Revista Mexicana de Ciencias Políticas y Sociales*, Vol. 66, No. 243, pp. 345-368. June, 2021.
- Riquelme Rivera, Jorge, Salinas Cañas, Sergio, and Franco Severino, Pablo. “El Crimen Organizado Transnacional (COT) en América del Sur: Respuestas Regionales”. In *Estudios Internacionales*, Universidad de Chile, Vol. 51, No. 192. April, 2019.
- Rodriguez Bastos, Fabiano. et al. “El Impacto Del COVID-19 En Las Economías De La Región Del Cono Sur”. In *BID/Vicepresidencia de Países: Departamento de Países del Cono Sur*. April, 2020.
- Sampó, Carolina, and Troncoso, Valeska. “Cocaine Trafficking From Non-Traditional Ports: Examining the Cases of Argentina, Chile and Uruguay”. In *Trends in Organized Crime*, Vol. 26, pp. 235–257. January, 2022.
- Sistema Nacional de Información Criminal - Sistema Alerta Temprana (SNIC - SAT), Ministerio de Seguridad de la Nación and NDEC. “Informe del Sistema Nacional de Información Criminal”, July 2024.
- UNODC. “UNODC World Drug Report”. 2010.
- Uribe P. “El Crimen en América Latina: Desorden, Fragmentación y Transnacionalidad”. In *Análisis del Real Instituto Elcano*, No. 103. 2021.

China's Belt and Road Initiative and Kenya: Debt Trap or Development?

Paul Prinz

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Dual Degree in Business and International Relations

E-mail: pprinz.ieu2022@student.ie.edu

Published 27th of January 2025

Abstract

This research paper examines the implications of the Belt and Road Initiative (BRI) on Kenya and the disputed narrative of debt-trap diplomacy. The paper explores both sides of the double-edged sword of Chinese economic engagement, namely the issuance of unsustainable loans to seize strategic assets on the one hand, and the refusal of the debt-trap allegations and the emphasis on economic benefits for recipient countries on the other hand. Through the case study of Kenya and its relationship with China, this study poses that while Chinese investments have led to Kenya's economic growth, they pose risks of trade imbalances and dependencies. The paper concludes that whilst claims of the Chinese Debt Trap remain unsubstantiated in Kenya, the government needs to be cautious in future borrowing practices to mitigate further risks.

Keywords: Belt and Road Initiative (BRI), Chinese debt-trap diplomacy, Foreign Direct Investment (FDI), Sino-African trade, Economic growth, Debt sustainability, Strategic assets

I. Introduction

In 2017, China Merchants Port Holdings Company (CMPort) and the government of Sri Lanka signed a 99-year lease for the Port of Hambantota. This event has been characterized by many as being the initial example of Chinese Debt-Trap Diplomacy, which refers to the practice of China providing large loans to developing countries, with the alleged intention of trapping the borrower in a cycle of debt and eventually gaining control over strategic assets or resources of the borrower state. In Sri Lanka's case, their total debt burden was 78% of the GDP in 2017, whilst they were unable to repay their debts to their

Chinese lenders. The only way out of this situation for the local government was a "debt for equity swap," essentially, letting CMPort take over the Port, to lower the amount of debt they must pay back.¹

Chinese investment has been sharply increasing all over the globe ever since the announcement of the Belt and Road Initiative (BRI) in 2013.² But with these increasing

¹ Christopher Alden, "Understanding Debt and Diplomacy: China, 'debt Traps' and Development in the Global South," Monograph (London, UK: LSE IDEAS, London School of Economics and Political Science, January 2020), <https://www.lse.ac.uk/ideas>.

² Statista, "China: Total Investment in BRI Countries 2021," Statista, accessed December 16, 2022, <https://www.statista.com/statistics/1274991/china-total-investment-in-belt-and-road-countries/>.

investments, there is also growing fear that China will exploit the desperation of developing countries to entice them with condition-less loans (in comparison to the IMF) to lure them into their Debt-Trap. This has been especially argued for African countries.³

In many African countries, the issue of Chinese debt has been a subject of concern for some time. Many have taken on significant loans from China to fund infrastructure projects, including the construction of railway lines and the expansion of roads or airports. However, there have been allegations that these loans come with unfavorable terms and may not be beneficial to the countries' long-term economic development. Some have argued that the African countries' debt to China is unsustainable and could lead to a debt crisis or even a loss of sovereignty if they are unable to pay back the loans. But what is really behind these allegations? Is China's only interest in Africa economic and political exploitation or is the West once again overreacting? To what extent is China's economic presence in Africa detrimental to the countries? Is the Chinese Debt Trap a myth or is it a reality?

To answer these questions, two separate schools of thought can be advanced. On the one hand, there is the Debt Trap school of thought, mostly represented by Western scholars and local media outlets, that tries to shed a bad light on China. This school claims that China exploits African countries such as Kenya and their

desperation to get funds to finance its infrastructure projects and stimulate growth, by lending them unsustainable amounts of money that they will not be able to repay and thus will lead to a loss of sovereignty and economic disadvantages. On the other hand, there is the School of Thought, which claims that the Chinese Debt trap is essentially a myth, and that there are no negative political and economic implications yet. The latter school gives a more coherent view of what the situation is right now in all the affected countries, although there might potentially arise some negative implications for the African Countries in the future.

This paper argues that the more economic relations a country has with China, the more economic gains it receives. To explore this hypothesis, this paper will analyze China's economic relations with Kenya, i.e., how China is involved economically in Kenya and which economic sectors it affects. After analyzing China's economic presence some consequences can thus be drawn, some being positive, and some being negative. This paper will show a correlation between the level of Chinese investing in Kenya and the potential economic benefits that Kenya receives. Kenya is of course not the only case in which China has been accused of practicing its Debt-Trap Diplomacy and of being detrimental to the country's economies. The precipitous expansion of the Belt and Road initiative to other countries will certainly lead to a lot of similar cases as the one in Kenya in the future.

II. Literature Review: The Chinese Debt Trap, myth or reality?

³ Joseph Onjala, "China's Development Loans and the Threat of Debt Crisis in Kenya," *Development Policy Review* 36, no. S2 (2018): 0710–28, <https://doi.org/10.1111/dpr.12328>.

There can be identified two distinct Schools of Thought concerning the effects of the Economic Relations between China and the countries touched by the BRI. The first one claims that a Chinese scheme to give loans to developing countries knowing that they will be unable to pay them back in order to seize their assets exists. The opposing side argues that there is no proof whatsoever of a deliberative “Debt Trap” strategy pursued by China and that Chinese investments are largely beneficial to the economies of the affected countries. Yet it also points out that if there are no issues right now, some might arise in the future. The second school gives a more coherent overview of what is currently happening.

The term “Debt-Trap” was first mentioned by Brahma Chellaney, a Professor of Strategic Studies at the New Delhi-based Center for Policy Research, in 2017. He argues that China has used infrastructure financing as a tool to extend its influence and gain strategic leverage over recipient countries. He asserts that China has used infrastructure financing to gain control over strategic assets, such as ports and energy infrastructure, and that this has created a risk of debt distress for recipient countries. Additionally, he states that China is using its infrastructure financing to advance its own interests rather than the needs of recipient countries, by prioritizing Chinese materials and labor rather than supporting local businesses.⁴ Other authors such as Kisero claim that the concept of the debt trap can in fact be applied to Kenya. He claims that Kenya

has taken on too many loans and they went into too many opaque agreements with China to finance its infrastructure projects such as the Standard Gauge Railway and thus risking having to exchange key strategic infrastructure to clear their debt, just like Sri Lanka.⁵ Finally, it can be added that, as pointed out by Eickhoff, many public officials from the US such as the Secretary of the Treasury Janet Yellen, or officials of Western organizations such as the World Bank’s President, David Malpass, have voiced concerns about countries taking on “predatory” Chinese loans and thus risking losing their assets and sovereignty to China.⁶

On the other side of the spectrum, there are several scholars who argue that the “Chinese Debt-Trap” does not exist, that there are no concrete facts to prove its existence, and that Chinese investments are actually beneficial to the affected countries. Deborah Brautigam, the Director of the China Africa Research Initiative at Johns Hopkins University’s School of Advanced International Studies, claims that there is no evidence whatsoever of China pursuing a deliberate strategy of embedding countries into debt to exploit them. She adds that even for the so-often-stated case of the lease of Hambantota Port in Sri Lanka, “the evidence for this project being part of a Chinese master plan is thin.”⁷ Furthermore, Sanghi and Johnson state that Chinese investments in Kenya are

⁴ Brahma Chellaney, “China’s Debt-Trap Diplomacy,” Project Syndicate, January 23, 2017, <https://www.project-syndicate.org/commentary/china-one-belt-one-road-loans-debt-by-brahma-chellaney-2017-01>.

⁵ Jaindi Kisero, “Kenya Must Avoid China Debt Trap or Fall into Sri Lanka Pit,” Nation, July 4, 2020, <https://nation.africa/kenya/blogs-opinion/opinion/kenya-must-avoid-china-debt-trap-or-fall-into-sri-lanka-pit-41354>.

⁶ Karoline Eickhoff, “Chinese Mega Projects in Kenya: Public Controversies around Infrastructure and Debt in East Africa’s Regional Hub,” Megatrends Afrika, May 2022.

⁷ Deborah Brautigam, “Misdiagnosing the Chinese Infrastructure Push,” The American Interest (blog), April 4, 2019, <https://www.the-american-interest.com/2019/04/04/misdiagnosing-the-chinese-infrastructure-push/>.

important and beneficial to the Kenyan economy. In addition to that, they underline that debt could become unsustainable soon if the Kenyan government keeps getting loans, but there are only a few economic or political problems yet.⁸ Moreover, Osman supports the claims that there is no Chinese Debt Trap by pointing out that China has reassured itself in the lending contract, that there will be a repayment made by numerous means -such as through the Standard Gauge Railways earnings- and not through giving up assets should the Kenyan government be unable to repay their debts. Moreover, he also says that Kenya itself has denied all allegations of having agreed to anything remotely close to a debt-for-equity swap.⁹ Alden finally points out that China itself has publicly pledged to give potential borrowers projections about debt sustainability and potential risks at the BRI summit in 2019, thus promoting transparency and refuting all claims of a deliberate “Debt Trap Diplomacy.”¹⁰

The second school of thought is more compelling because the first one does not have enough proof to be considered true. As a matter of fact, Chinese investment can be seen as mainly beneficial for the affected countries, vitalising the economy, creating job opportunities, and generally leading to a more prosperous and stable future for these States. This leads us to the following thesis: Chinese economic expansion under the form of the Belt

and Road Initiative is essentially beneficial to the affected countries.

IV. Research Design

To assess the hypothesis that economic relations with China yield a lot of benefits for lower-developed countries, we will focus on the case of Kenya. This country is of a very high strategic value to China, allowing it to access the rest of East Africa with its Belt and Road Initiative. For this reason, Kenya has been subject to strong Chinese investment and is thus a very good example of how Chinese loans can affect the economic and political situation of a country. To prove the previously mentioned hypothesis, we will assess a World Bank Report about Chinese investments in Kenya (Sanghi and Johnson, 2016), other reports on Chinese loans, and their economic effects (Otele, 2022), and secondary literature such as academic papers tackling not only the economic but also political effects of Chinese and Kenyan economic relations (Alden, 2020; Onjala, 2018; Osman, 2021; Were, 2018; Eickhoff, 2022; Stone et. al, 2022).

V. China and Kenya: A strong economic relationship

China and Kenya have had close economic ties for quite some time now. Ever since the announcement of the Belt and Road Initiative, these ties were fortified, because of Kenya’s strategic position on the Indian Ocean, geographically linking the BRI and Eastern Africa. For this reason, China has gradually increased its Foreign Direct

⁸ Apurva Sanghi and Dylan Johnson, “Deal or No Deal: Strictly Business for China in Kenya?” (World Bank, Washington, DC, 2016), <https://doi.org/10.1596/1813-9450-7614>.

⁹ Faiza Omar Osman, “China’s Debt Trap Diplomacy in Africa,” 2021.

¹⁰ Alden, “Understanding Debt and Diplomacy.”

Investment in Kenya, totaling approximately 840 million US dollars between 2013 and 2021.¹¹

China invests in many ways in Kenya. First, they do so through bilateral trade. The Asian giant is a major trading partner for the African country, importing goods such as tea, horticultural products, or minerals and exporting machinery and electrical equipment used for Kenya's big construction projects.¹² China is a very big importer of goods to Kenya, whilst being only a small export market.¹³ This is best illustrated by Otele who points out that there is a trade imbalance between the two countries, which is largely in favor of China. As a matter of fact, between 2015 and 2019, 3% of the total trade value of the two countries was Kenyan exports to the Asian country, whilst 97% were Chinese exports to Kenya.¹⁴

Second, China is investing in Kenya through Bank loans. The Chinese Export-Import Bank (EXIM) plays a huge role in this process. In fact, as pointed out by Were, China is Kenya's biggest source of external debt, being responsible for a whopping 66% of it in 2018¹⁵. This amount has only increased in the years since then. Kenya has taken on these big amounts of loans to finance their "megaprojects" as mentioned by Eickhoff.¹⁶ These projects

are mostly infrastructure projects, almost completely sponsored by Chinese loans. In addition to that, Chinese state-backed companies are granted contracts to construct the infrastructure and do so using cheaply imported Chinese machinery, whilst the Kenyan government gets to be the proprietor of the built infrastructure.¹⁷ The most important infrastructure projects so far are the Eldoret Special Economic Zone which is an industrial Park; the Thwake Multipurpose Dam and of course the Mombasa-Malaba Standard Gauge Railway, which is especially important because it connects the coast (Port of Mombasa on the Indian Ocean) with the inner land and consequently also with the other East African countries.¹⁸ The Standard Gauge Railway, which is built by the China Road and Bridge Corporation is the most ambitious project so far, receiving two 1.6-billion-dollar loans from the Chinese government and the Exim Bank.¹⁹ It is also important to mention that Chinese loans are especially attractive to developing countries because unlike World Bank or IMF loans, they come without the conditions of economic and political liberalization, which already had negative effects on Kenya in the 20th century.²⁰

Finally, they also invest in Kenya through foreign direct investment (FDI) and the installation of some companies in Kenya. This involves Chinese companies setting up operations in Kenya and investing in local businesses or industries. According to Sanghi and Johnson, there were more than 400 Chinese private or State-owned firms

¹¹ Oscar M. Otele, "China-Kenya Relations: Economic Benefits Set against Regional Risks | Merics," accessed December 3, 2022, <https://merics.org/en/china-kenya-relations-economic-benefits-set-against-regional-risks>.

¹² Otele, "China-Kenya Relations."

¹³ Sanghi and Johnson, Deal or No Deal.

¹⁴ Otele, "China-Kenya Relations."

¹⁵ Anzette Were, "Debt Trap? Chinese Loans and Africa's Development Options," Africa Portal, August 31, 2018, <https://www.africaportal.org/publications/debt-trap-chinese-loans-and-africas-development-options/>.

¹⁶ Eickhoff, "Chinese Mega Projects in Kenya: Public Controversies around Infrastructure and Debt in East Africa's Regional Hub."

¹⁷ Sanghi and Johnson, Deal or No Deal.

¹⁸ Otele, "China-Kenya Relations."

¹⁹ Osman, "China's Debt Trap Diplomacy in Africa."

²⁰ Onjala, "China's Development Loans and the Threat of Debt Crisis in Kenya."

spreading across a large variety of sectors ranging from manufacturing to tourism, that had operations in China in 2016. Most of the Chinese FDI in Kenya is directed toward communications, energy, and the mineral extraction sector.²¹

It becomes apparent that China willingly has a lot of economic interactions with Kenya. But what are the effects of this relationship? Is it beneficial for Kenya to rely that much on one State? And is China pursuing an opaquer strategy rather than simply wanting to help out a developing country in need of money?

VI. Economic and political effects of Chinese investments in Kenya: Between Risks and Benefits

On the one hand, it can be clearly seen that Chinese investments are beneficial for Kenya. In fact, the large importations of cheap Chinese goods such as machines and phones are beneficial to the overall economy of the country. Because of the cheap imported goods, most retailers and consumers gain,²² since the latter spend less money on goods and the retailers make more sales and gain more money. Therefore, there can be a legitimate claim that the economy is more efficient thanks to China's imports. In addition to that, it must be mentioned that thanks to the "megaprojects" such as the Standard Gauge Railway, which were financed with Chinese loans, the country becomes more attractive economically as pointed out by Sanghi and Johnson: "improvement in infrastructure will help lower the cost of doing business,

attract more investment, and enhance productivity."²³ In effect, if there are lower costs of transportation, more investors, and businesses from all over the world will turn towards Kenya which would benefit greatly from investment (in terms of more jobs and higher GDP) and might become a business hub in the future, connecting Eastern Africa with the rest of the world. Moreover, it is also important to mention that thanks to Chinese FDI and the installation of Chinese firms in Kenya, there are more job opportunities for the local population. As pointed out by Sanghi and Johnson, 78% of the employees in Chinese companies in Kenya in 2016 were locals, which stands in contrast with the Western accusations that Chinese firms only hire Chinese workers and are thus detrimental to the local economies. This does, however, not mean that this phenomenon applies to every country involved in the BRI.

Overall, China's investments in Kenya have helped to boost economic development and create job opportunities in the country. Therefore, it can be said that Kenya could go into a period of growth, in which its citizens become wealthier and its overall economy prospers, which will thus lead to higher demands towards the state -such as better healthcare, and a good education-, leading to a government that has to work more towards the general will of the people and the wellbeing of society, and eventually to an overall more stable political situation.

On the other hand, it must be pointed out that Chinese investments do not only bring positive effects but in the case of Kenya yield numerous political constraints and

²¹ Sanghi and Johnson, "Deal or No Deal."

²² Sanghi and Johnson, "Deal or No Deal."

²³ Sanghi and Johnson, "Deal or No Deal."

negative consequences. Indeed, there can be a legitimate claim that Sino-Kenyan trade relationships are very one-sided and only beneficial to China. As pointed out earlier by Otele, there is a trade imbalance largely in favor of China.²⁴ The Asian giant is in fact able to offload its cheaply manufactured products and make a profit, whilst they spend only a fraction of its export profits on its imports from Kenya. In addition to that, because of the cheap price of Chinese products, these importations are fatal for Kenyan producers and manufacturers, because Kenyan consumers turn their back on them since they are unable to keep up with the low Chinese prices and thus go bankrupt. Also, the fact that the China Road and Bridge Corporation imports cheaper Chinese machinery and construction material instead of buying it from local producers is detrimental to the latter and leads to bankruptcy.

Furthermore, there are numerous claims that Kenya's debt towards China has reached unsustainable levels already and that Kenya will struggle even more to repay that debt in the future since it keeps on rising and is already higher than the World Bank's recommended amount of 15-20% of GDP, sitting at over 34% in 2021.²⁵ Moreover, some argue that China's investments in infrastructure are there to facilitate resource transportation and extraction, only benefitting China and even labeling it

"neo-colonialism".²⁶ Additionally, it is necessary to point out that should Kenya be unable to repay their debt directly, China will be repaid by a fraction of the earnings of the Standard Gauge Railway, thus reducing its profitability. This shows clearly that China is in Kenya to make a profit, they want to make sure that they don't lose out on their investment and will do whatever is necessary to get repaid and profit. Yet there are no signs of the Chinese Debt Trap, meaning that they will not seize Kenyan assets to get repaid.

As well as that, it can be claimed that if Kenya falls into a position in which they owe the Chinese government huge sums of money or if they want more loans, this can have negative political consequences such as losing its sovereignty in terms of internal and external political decisions. This means that should they want more loans or some of their debt forgiven they might have to stand on the same side as China on the international stage, such as accepting the "One China Doctrine" by not recognizing Taiwan (which they already do) or voting in China's favor in the United Nations.²⁷ Also, it must be mentioned, that should the Kenyan economy suffer, be less efficient and lead to many people falling into poverty, this has of course also political consequences, such as a less satisfied population, that might accept more authoritarian ideas as long as they promise to liberate them from their misery, or

²⁴ Otele, "China-Kenya Relations."

²⁵ "Kenya External Debt: % of GDP, 2006 – 2022 | CEIC Data," accessed December 25, 2022, <https://www.ceicdata.com/en/indicator/kenya/external-debt--of-nominal-gdp>.

²⁶ Xiaochen Su, "Why Chinese Infrastructure Loans in Africa Represent a Brand-New Type of Neocolonialism," accessed December 7, 2022, <https://thediomat.com/2017/06/why-chinese-infrastructure-loans-in-africa-represent-a-brand-new-type-of-neocolonialism/>.

²⁷ Randall W. Stone, Yu Wang, and Shu Yu, "Chinese Power and the State-Owned Enterprise," *International Organization* 76, no. 1 (2022): 229–50, <https://doi.org/10.1017/S0020818321000308>.

officials trying to get the best out of the situation for themselves by stealing and disregarding the greater good, thus leading to a less stable political situation.

However, it remains to be seen if all these negative effects come to life since most of them, except for the negative effects of Chinese trade, are only hypothetical consequences that might only turn into reality under certain circumstances.

VII. Conclusion

In Conclusion, we can say that Chinese economic expansion is largely beneficial to the affected countries as was demonstrated in the case study of Kenya. Chinese investment can in fact potentially bring economic benefits to the countries that receive it, such as by creating jobs, contributing to infrastructure development, and increasing trade. Nevertheless, it remains to be seen whether the countries will be able to repay their debts, or if they will face serious economic and political issues in the future because they accepted the Chinese loans. These negative consequences do not however include the Chinese Debt Trap since there is no single proof of it as of now.

Nonetheless, every country must be careful and make a calculated decision when it comes to accepting a loan, whether it comes from China or the USA since economic development and business decisions always yield a certain risk and thus must be very well thought through before they are made.

Overall, it is going to be important for recipient countries to carefully consider the potential benefits and

risks of accepting Chinese investment, and to take steps to mitigate any potential negative impacts. This might involve negotiating fair and transparent investment agreements, implementing appropriate regulatory frameworks, and taking steps to protect the interests of domestic industries and workers.

VIII. Bibliography

- Alden, Christopher. "Understanding Debt and Diplomacy: China, 'Debt Traps' and Development in the Global South." Monograph. London, UK: LSE IDEAS, London School of Economics and Political Science, January 2020.
<https://www.lse.ac.uk/ideas>.
- Brautigam, Deborah. "Misdiagnosing the Chinese Infrastructure Push." *The American Interest* (blog), April 4, 2019.
<https://www.the-american-interest.com/2019/04/04/misdiagnosing-the-chinese-infrastructure-push/>.
- Chellaney, Brahma. "China's Debt-Trap Diplomacy." Project Syndicate, January 23, 2017.
<https://www.project-syndicate.org/commentary/china-one-belt-one-road-loans-debt-by-brahma-chellaney-2017-01>.
- Eickhoff, Karoline. "Chinese Mega Projects in Kenya: Public Controversies around Infrastructure and Debt in East Africa's Regional Hub." *Megatrends Afrika*, May 2022.
- "Kenya External Debt: % of GDP, 2006 – 2022 | CEIC Data." Accessed December 25, 2022.
<https://www.ceicdata.com/en/indicator/kenya/external-debt-of-nominal-gdp>.
- Kisero, Jaindi. "Kenya Must Avoid China Debt Trap or Fall into Sri Lanka Pit." *Nation*, July 4, 2020.
<https://nation.africa/kenya/blogs-opinion/opinion/kenya-must-avoid-china-debt-trap-or-fall-into-sri-lanka-pit-41354>.
- Onjala, Joseph. "China's Development Loans and the Threat of Debt Crisis in Kenya." *Development Policy Review* 36, no. S2 (2018): O710–28.
<https://doi.org/10.1111/dpr.12328>.
- Osman, Faiza Omar. "China's Debt Trap Diplomacy in Africa," 2021, 73.
- Otele, Oscar M. "China-Kenya Relations: Economic Benefits Set against Regional Risks | Merics." Accessed December 3, 2022.
<https://merics.org/en/china-kenya-relations-economic-benefits-set-against-regional-risks>.
- Sanghi, Apurva, and Dylan Johnson. *Deal or No Deal: Strictly Business for China in Kenya?* World Bank, Washington, DC, 2016.
<https://doi.org/10.1596/1813-9450-7614>.
- Statista. "China: Total Investment in BRI Countries 2021." Statista. Accessed December 16, 2022.
<https://www.statista.com/statistics/1274991/china-total-investment-in-belt-and-road-countries/>.
- Stone, Randall W., Yu Wang, and Shu Yu. "Chinese Power and the State-Owned Enterprise." *International Organization* 76, no. 1 (2022): 229–50.
<https://doi.org/10.1017/S0020818321000308>.
- Su, Xiaochen. "Why Chinese Infrastructure Loans in Africa Represent a Brand-New Type of Neocolonialism." Accessed December 7, 2022.
<https://thediplomat.com/2017/06/why-chinese-infrastructure-loans-in-africa-represent-a-brand-new-type-of-neocolonialism/>.
- Were, Anzette. "Debt Trap? Chinese Loans and Africa's Development Options." *Africa Portal*, August 31, 2018.
<https://www.africaportal.org/publications/debt-trap-chinese-loans-and-africas-development-options/>.

Implications of the Proposed EU-Mercosur Free Trade Accord: Challenges for European Agriculture and Policy Responses

Jaime Sanz

School of Politics, Economics and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: jsanz.ieu2022@student.ie.edu

Published 27th January 2025

Abstract

The EU-Mercosur trade deal has sparked heated debate. While it promises economic benefits like reduced tariffs and increased trade, European farmers fear the influx of cheaper imports produced under looser regulations. These imports threaten the sustainability and profitability of local agriculture, already under strain from environmental mandates and rising costs. Farmers argue that EU policies like the Common Agricultural Policy (CAP) favor large operations and unfairly burden smaller farms, adding to their challenges. This study examines the ongoing tension between the EU's trade goals, the pressures on its primary sector, and its commitment to sustainability. It also considers the broader geopolitical stakes, including the risk of losing influence in Latin America to competitors like China, should the agreement face further delays.

Keywords: EU-Mercosur Trade Agreement, Tariff Elimination, Agricultural Subsidies, Common Agricultural Policy

I. Introduction

Is this the end for European Agriculture? Four years ago, the EU announced its planned free trade accord with MercoSur. A trade deal that is supposed to get rid of all tariffs for all goods produced in the four South American members of MERCOSUR at their entry into Europe. After the agreement was made public in June 2019, European farmers began rioting and manifesting. Hundreds of tractors began choking the biggest European cities, such as Brussels, Rome and Berlin.

The Covid-19 pandemic made it impossible for European farmers to sustain themselves. Prices have since gone down while costs have gone up. All of this combined with the threat of a new deal that will bring new competitors, with different regulations and cheaper costs of production. This paper will thus focus on how the EU is dealing with this recurring problem, as well as possible outcomes of the Common Agricultural Policy (CAP) being put forward. Moreover the paper will explore the EU's motivations for developing a liberal market with other trading groups, like MERCOSUR. The EU must decide and reword its food production. It is vital to

understand that the primary sector is not any industry that reword. A lack of self-sufficient food production results in two major fears: dependance on external resources and changes in demographic composition. Harming the rural population's only source of income will force cities to enlarge. However, before delving into the consequences, the paper will begin by describing the Mercosur agreement and the farmer's current situation, and analysing the EU's policies at the heart of the problem, to understand its repercussions.

II. Background: EU-Mercosur Agreement

To understand if the EU is risking the preservation of its primary sector, it is crucial to first define what the EU and Mercosur trade agreement is and what implications it has for European Farmers. This deal has been in negotiations for over 20 years, and was announced in 2019 at the G20 summit. However, this free trade agreement has not been ratified yet, and has therefore, not entered into force.

The current trade relationship between Mercosur and the EU can be described as The EU is Mercosur's biggest trade and investment partner. They have a robust and mutually beneficial relationship, as the EU is its second biggest trade in goods partner (EU Commission). In 2021, the EU's exports to the four Mercosur countries amounted to a total of €45 billion, while Mercosur's exports to the EU totaled €43 billion.¹ The objective of the trade agreement is to eliminate 93% of the tariffs for Mercosur

imports to Europe, leaving the rest with a preferential tariff treatment. This will create a much more accessible European market for Mercosur's agricultural products, such as beef, poultry and sugar. The trade is expected to provide the EU with a 91% elimination of tariffs to its exports. At the same time, the deal will increase Mercosur's exports outstandingly, allowing the South American countries to export up to 99,000 tons of beef per year. This is almost triple the amount from 2020's 34,000 tons.² The European Commission expects the trade agreement to save €4,5 billion worth of duties.

Furthermore, after the deal was announced at the G20 Summit in Japan, it faced severe backlash. The reason for it is that the deal places European farmers at a serious risk by lowering prices of what, while also forcing them to compete against other producers in an unfair market with different regulations for different competitors. This will make it difficult for European farmers to sustain themselves. European agricultural regulations prioritize factors in line with sustainable development. Certain regulations force farmers to keep arable land without farms or to reduce the use of pesticides. These regulations ensure a high quality of production and the integrity of the sector for maintaining environmental procedures. However the influx of cheaper products, that would come from MERCOSUR countries, could threaten the sustainability of agricultural production, undermining the standards and threatening the jobs of European farmers. Furthermore the entry of cheaper products would mean the lowering of

¹ EU Commission. *EU trade relations with Mercosur*. n.d. EU Trade. Accessed March 27, 2024.

² Messad, Paul. "[France reaffirms opposition to EU-Mercosur deal as farmers' protests mount.](#)" *Euractiv*, January 29, 2024.

certain standards that the European farmers hold if they want to survive.

The European Union policies regarding the primary sector, led by the Common Agricultural Policy (CAP), have been facing lots of debate and criticism by the European agriculture community. Although their spending is part of 60% of the EU's budget, their attempt to increase the quality of food and to transition into more sustainable production processes is causing serious scrutiny and distress.

Some examples of stringent policies introduced by the CAP are requirements to minimize tillage, to grow and cover crops between seasons, to grow all kinds of crops during the growing seasons and to maintain arable land without crops. All of this is aimed at addressing pressing environmental concerns like soil erosion, chemical usage reduction, and biodiversity preservation. However, these mandates have inadvertently burdened farmers, with a solution that has led to a loss of competitiveness in the global market.

The reallocation of their budget to sustainable efforts enlarges the claims of farmers' unjust market competition. With a budget of €55 billion, their efforts of modernization have been turning down. More than 70% of those €55 billion is spent on direct payments to farmers, which were created to provide vital safety to them. There is also a lot of skepticism with this system, mainly requiring greater transparency regarding the funds spent and how they are allocated to the different farms. Nonetheless, one of the concerns with direct payments is that certain

payments are only awarded if the farmers complete a certain number of sustainable commitments. Therefore they are forced to adapt to certain regulatory standards, which inevitably have high costs associated with them, in order to receive the subsidies offered by the Union.

As part of the renewal of the CAP, new measures have been introduced. These include provisions requiring farmers to allocate at least 4% of arable land to non-productive features, along with implementing crop rotations and a reduction in the use of fertilizers by a minimum of 20%.³ This type of policies have also affected European farmers on an international level. This has made them lose competitiveness against importers, that is, without even accounting for the implications of the Mercosur agreement. All coupled with inflation has made direct payments lose much of their value.

As a consequence, farmers all over Europe have protested, in countries such as Italy, France and Belgium where farmers are concerned by the cheap imports of countries with different standards. Conversely in Germany, farmers have been concerned about the tax rebate on vehicles.⁴ This has led to farmers driving their tractors around the largest European cities in protest, and even to the egging of the European parliament.

The European Commission has also launched initiatives such as the "Farm and Fork" strategy, meant to make food

³ Gozzi, Laura. 2024. ["Why Europe's farmers are taking their anger to the streets."](#) *BBC*, January 26, 2024.

⁴ Cokelaere, Hanne, and Bartosz Brzeziński. 2024. ["Europe's farmer protests are spreading. Here's where and why."](#) *Politico*, January 31, 2024.

systems fair, healthy and environmentally friendly. Such initiatives launched by the European Commission aim to drive positive environmental outcomes while addressing critical challenges such as climate change mitigation and adaptation. By promoting sustainable practices and biodiversity conservation, these efforts aim to reverse biodiversity loss and safeguard ecosystems. The Commission also prioritizes food security, nutrition and public health, striving to ensure universal access to safe, nutritious and sustainable food sources.⁵ The free trade agreements and such sustainable aims, have suffocated European farmers against competition. This has forced them to enter a market where their production costs increase, and the prices of their goods decrease, thus decreasing farmers' profit margins. Many farmers have, as a consequence, tried to extend their means of production by buying more land and machinery, which has however had the opposite effect of increasing farmers' debts.

All of this is sparking a lot of criticism for the European Union. As a result, some have adopted a firm stance against neo-liberal policies, asking for protectionist policies, and renouncing to sustainable ones. Others have suggested establishing a more liberal market in Europe, consequently ending farmers' livelihoods.

European farmers, on one hand, have expressed their dissatisfaction with the work done by the CAP for the last 60 years. For instance, the European Coordination Via Campesina (ECVC), a European grassroots organization

⁵ ["Farm to Fork Strategy - European Commission."](#) n.d. Language selection | Food Safety. Accessed march 26, 2024.

run by farmers, insists that only large scale farms tend to be favored by the CAP. Around 80% of the subsidies given by the CAP only reach 20% of European farms,⁶ boosting the maldistribution of subsidies. Subsidies which were introduced almost 30 years ago to fender reform effects. Despite there being no real reason for their existence as having proven to be inequitable, the payment system persists. Furthermore, in 2015 a total of €25 billion given in direct payment ended up going to farms that already had a higher income than the medium farm.⁷ Instead of supporting farms in need, the CAP supported farms that already had prosperous incomes. This misallocation of funds only perpetuates existing inequalities in the agricultural sector, taking the resources from growing farms who need it the most. In addition, this misallocation of resources undermines the initial purpose of direct payments which is to give financial assistance to struggling farms, which is why the CAP is facing repeated criticism. Although the EU has its reasons and arguments to defend some of their actions, it's rather the accumulation of those actions that left European farmers in crisis and therefore saving an action is not enough.

III. EU's response to the negative reception of the CAP

As the discourse surrounding the CAP intensifies, the EU finds itself compelled to justify its policies. Before

⁶ Courtine, Emma. 2021. ["Green Deal, the Farm to Fork \(F2F\) strategy and climate."](#) European Coordination Via Campesina.

⁷ W. Scown, Murray, Mark V. Brady, and Kimberly A. Nicholas. 2020. ["Billions in Misspent EU Agricultural Subsidies Could Support the Sustainable Development Goals."](#) *One Earth* 3 p2 (August).

delving into the CAP, it is important to consider the effects that climate change has on farmland and how the primary sector can scale pollution by itself. Making an effort to mitigate the effects of farming for climate change is both crucial for those involved in the sector and for the rest of the population.

With the introduction of longer and more manifesting extreme weather conditions, the production of food is impacted negatively. Farmers will have to cut production more often if the conditions get worse, which may lead to food shortages. Studies conducted by the European commission show how agriculture is responsible for 10% of the EU's greenhouse gas emissions. The land where this is produced from is filled with carbon storages, which are at risk of being released into the atmosphere. Therefore, the management of these vulnerable areas is key to stopping the risk of more greenhouse gas emissions. Similarly, the way in which production is being conducted in this land can also affect the extent of the emissions.⁸ Agriculture suggests that policies such as the Farm and Fork strategy have made it difficult to meet sustainability objectives. Smaller farms have especially suffered the effects of these policies. For this reason, , different organizations such as the ECVC have suggested implementing subsidy capping and redistributable subsidies to allow small farms to make the transition into more sustainable production.

⁸ Environment, Alliance. "[Evaluation study of the impact of the CAP on climate change and greenhouse gas emissions.](#)" European Commission, Directorate-General for Agriculture and Rural Development: Brussels, Belgium (2019).

In essence, policies forwarded by the European Commission have made farmers' lives more difficult, especially with the CAP's imposition of unfair prices of what upon farmers. Since the 1980s, various regulations ensuring fair prices for European farmers have been dismantled.⁹ This is the consequence of the so promising free trade agreements that the EU shows faith in. In order to quell ongoing protests, the EU is planning to change mandatory regulations to voluntary. While in doing so they are trying to seek an easy path for European farmers, this is triggering environmental measures that are already existing in the CAPs sustainable model. All of this comes from a leak of EU executive plans to cut CAP funding and a change in the enforcement of Good Agricultural and Environmental Conditions (GAEC). For example, GAEC 6 and GAEC 7 are foreseeing a change. Having previously mandated an obligation to keep a certain amount of arable land safe from production, the new plan is to make member states form a 'green scheme,' rewarding those who keep setting different kinds of crops in their growing seasons instead of obligating them to do it. The GAEC 8, similarly, makes the maintenance of non-productive features in farms obligatory in order to improve biodiversity.¹⁰ This change in policies seems risky but is encouraged by farmers, such as Natasha Foote, a peasant farmer and now journalist working in a NGO that pursues

⁹ Odoy, Morgan, and Vincent delobel. 2024. "[Farmers' protests in Europe and the deadend of neoliberalism.](#)" *Al Jazeera*, February 25, 2024.

¹⁰ Foote, Natasha, and Hannes Lorenzen. 2024. "[Green CAP on the Chopping Block - Commission to Cut CAP's Environmental Ambitions with no Impact Assessment.](#)" *ARC2020*, March 13, 2024.

for better rural policies. She explains how these reforms are simple and flexible. She argues that making Member States more responsible for checking the compliance of the GAECs will allow them to be more flexible and make frequent changes depending on extreme weather conditions. Furthermore, she discusses how this proposal will allow small farms to get rid of checks and controls more easily. Being obligated to leave arable land without producing is a bigger burden to small farms due to their already small amounts of yield, thus, this type of flexibility will allow them to produce more.

This proposal will also affect organic farmers. Organic farmers tend to be more environmentally friendly, the CAP will not make them comply with certain environmentally friendly requirements such as GAEC 6 which they already comply with. This also makes farmers less likely to protest against the CAP, which is largely beneficial to them. Despite its benefits, these changes still have significant risks and drawbacks, enforcing new enemies such as environmentalists, and going against environmental measures such as the SDG Goals and 2030 Agenda.

On the other hand, several EU coalitions and civil society organizations have disagreed with the derogation of GAEC 8 and spoken against it in a letter arguing how the derogation of GAECs 1, 6, 7, 8 will undermine Member States obligations to support the environmental and

climate ambition.¹¹ They argue that the environmental progress made from 2014-2020 will be lost through this. Even more so, this period wasn't able to decrease a loss of biodiversity, thus their statement that removing the necessity of having non-productive arable land will encourage a bigger loss on already decaying biodiversity. They quote how the European Commission has already stated how important these GAECs are in the fight against climate change, biodiversity loss and environmental issues. Therefore, the European Commission already recognizes the importance of these policies. Implementing short and medium Restate the last sentence it is super difficult to decipher Instead, they state how the farmers protests should not be used as a pretense for them to loosen their strictness on the environment-related policies, and that these protests come in place of free trade agreements, such as Mercosur which introduces new competition which is impossible to compete with. They also reiterate how the distribution of funds relate a bigger portion to the large farms. For these reasons, EU coalitions encourage the EU Commission to create "meaningful policies" that actually make a difference in accomplishing better conditions for European farmers? such as the redistribution of funds reframing the inequitable profits of farms .

The intention of changing environmental policies' to comply with what has only made a part of the public happy yet it affects the reputation of the CAP. While it may seem obvious that both environmentalists and farmers

¹¹ Ursula von der Leyen. "[Joint letter to the EU Commission to reconsider the loosening of the CAP's green architecture.](#)" *EU Commission*. 2024.

have a common enemy, which is the free trade deal, this raises the question of why the CAP doesn't kill two birds with one bullet by withholding the deal? This is due to the EU's pushing of the EU-Mercosur free trade accord, as the EU expresses the need for preferential access to Latin American countries as part of the deal as this will boost exports and create more jobs by limiting protectionism and barriers to trade. While Mercosur is one of the EU's biggest partners, they also claim that this trade agreement stipulates that Mercosur must follow EU trade and environmental guidelines. While many environmentalists worry how this trade deal will affect the environment, and the continuity of the environmental value agenda pursued by the EU, the European commission dictates that both economic blocks must agree to follow this agenda. The EU has also made clear the importance of the trade agreement in maintaining free trade, while the world economy chokes under growing protectionism.

The trade also favors the European market more than the Latin American market, as in the deal, MERCOSUR countries will scrap tariffs on 91% of EU imports, covering key goods such as vehicles and machinery. Meanwhile, the EU will open up 95% of its imports from MERCOSUR, including 82% of agricultural products¹². European firms will then be the first to enter the Mercosur market with the same procedures as the local ones– this will allow them to conduct trade without dealing with tariffs and customs. Prior to this, they could only enter the market with

¹² Banco de España. “[The EU-Mercosur Trade Agreement and its Impact on the European Economies.](#)” *Banco de España's Economic Bulletin*, (March 2024).

subsidiaries- Firms made in Latin America but controlled by a European parent company. The EU also holds a competitive advantage in most trading sectors with MERCOSUR, particularly in the supply of higher technology products. Most European exports to MERCOSUR consist of machinery, vehicles, chemicals, pharmaceuticals and electric products. All these products have to pay bigger tariffs than the concentration of agricultural products that MERCOSUR exports. This is shown the following to graphs made in a study conducted by Banco de España:

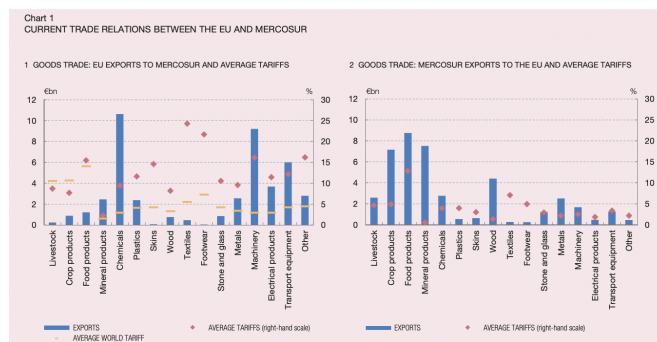


Fig. 1: Current Trade Relations between the EU and Mercosur.

Source: Banco de España. 2019.

As shown in Chart 1, exports received by Mercosur have much higher tariffs than the goods they export to the EU. However on the European side, the highest tariffs are placed on food products from which Mercosur economically benefits the most. This is the source of the conflict. It, however, remains that European companies will hugely benefit from lower tariffs as these pose the best chances for growth in the industries that the EU specialises, including the textile and footwear industries, analysts speculate. This is prevalent in countries such as

Spain and Portugal which, additionally, have linguistic ties to the American continent. The agreement will essentially improve the existing trade relations between Portugal and Spain with South American nations. For example, Spain's trade with South America now represents 4.5% of its economy,¹³ figures which are heavily underestimated, and which will continue to connect Europe and South America, with the expectation of growth in the future. This opportunity is however not expected to exist for long, as Mercosur's biggest trading partner, China, might get the continent to itself. Forcing a new deal with itself. Every time the Mercosur deal is delayed, South America gets closer to China. For instance, Uruguay has always been more inclined to sign a trade deal with China rather than the EU. Since China is already exporting the most in Latin America, a deal between them would most likely surpass the EU in numbers. Last year Uruguay was already entering formal talks between an agreement with China. Mercosur also has its biggest destination of exports to China. What's more, China plans to invest \$250million on the continent. European corporations, in retaliation, aim for their firms to relocate their supply chains away from China in an effort to develop South America's industry and escape the dependency on China in the process. However, if the trade deal does not materialise, and Mercosur falls under Chinese influence, this would signify a double loss to the EU: increasing dependence on Chinese industries and losing a potential new partner to China.

¹³ Lacerda, Antonio. 2024. "[The bigger picture: The case for an EU-Mercosur free trade deal.](#)" *European Council on Foreign Relations*, January 15, 2024.

Moving on, in order to defend itself, the European Commission showed in a letter how it has stored information of how their subsidies work and methods that they use in order to make European farming, equal and safe. Farmers still fight the spending methods of the CAP, yet the policy has its own methods to stop the negative claims from the farmers. Things such as disproportionate distributions of funds have an explanation or are trying to be tackled. For example, the clearance of accounts procedure clarifies, through regular inspections, that the payments made by member states are done correctly. Audits ensure the security and accessibility of the European budget in an annual report. The CAP tries to be as transparent as possible with these public reports. Despite this, protestors argue that nobody knows who receives these funds- although these are publicly accessible. Most farmers expostulate the direct payments, as they mostly benefit bigger farms. The CAP defends this by stating that funds are distributed depending on the size of the area farmed as according to them 20% of the largest farmers in the EU own over 80% of arable land. Despite this, more than half of the income beneficiaries are from small farms.¹⁴

The CAP also has payments for small farmers, called PSFs. These aim to reduce administrative burden, and maintain the rural areas where small farms are crucial to local populations. However, once a farm has applied and been granted a PSF, they cannot receive any other funds. The payments are usually given per hectare and the

¹⁴ European Commission. n.d. [The Common Agricultural Policy: Separating fact from fiction.](#)

maximum amount which may be given per farmer is €1250. Another form of Direct Payment the CAP subsidized is basic income support for sustainability, or BISS. The BISS is put in place with the aim of making the average salary of farmers grow to reach the average salary of other sectors, while making the farms more sustainable. In this case, the aid is not given for production means as now, farmers can produce whatever product they decide This allows them to change production based on current demands.

V. Conclusion

Despite the primary sector's disagreement, the CAP arguably tries to ensure sustainable and equal farming practices across Europe- yet their efforts can only reach a certain extent. However, in terms of the EU- MercoSur Agreement, it is the EU which will benefit the most, due to a rise in its exports. Therefore the EU will most likely take a liberal approach and engage in free trade in order to benefit EU citizens. This would mean lowered food prices for European consumers. While this negatively impacts European farmers, it benefits EU citizens. Despite this, the EU remains in a tricky position, where its actions will have a large Brussels Effect. This term describes how different countries outside of the EU tend to copy certain regulatory measures that the EU implements.¹⁵ More recently, the EU's regulatory protectionism has sunk their previous

emphasis of free trade and other nations' opportunities to grow.

The MERCOSUR agreement has sparked a chain reaction. The more time is taken to ratify the trade deal the less chances for the deal to ever happen. If this is the case, we will see the Brussels Effect take action as other countries begin to impose trade barriers. This could be the worst case scenario for the EU. While the EU should not underscore the effects this will have on its primary sector, it should not underscore its effect on global trade- this being one of the key reasons for, as the EU admits, the Mercosur agreement to be so crucial.

¹⁵ Abbott, Roderick, Matthias Bauer, and Dyuti Pandya. 2024. "[EU Autonomy, the Brussels Effect, and the Rise of Global Economic Protectionism](#)." *ECIPE*, February 13, 2024.

VI. List of Figures

1. **Figure 1:** Current Trade Relations between the EU and Mercosur. 8

VII. Bibliography

- EU *trade relations with Mercosur*. European Commission. (2024, March 27). https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/merc-osur_en
- Messad, P. (2024, September 29). *France reaffirms opposition to EU-mercotur deal as farmers' protests Mount*. Euractiv. <https://www.euractiv.com/section/agriculture-food/news/france-reaffirms-opposition-to-eu-mercotur-deal-as-farmers-protests-mount/>
- Gozzi, L. (2024, January 27). *Why Europe's farmers are taking their anger to the streets*. BBC News. <https://www.bbc.com/news/world-europe-68095097>
- Cokelaere, H., & Brzeziński, B. (2024, March 7). *Europe's farmer protests are spreading. here's where and why*. POLITICO. <https://www.politico.eu/article/farmer-protest-euro-pe-map-france-siege-paris-germany-poland/>
- Farm to fork strategy*. European Commission . (2024, March 26). https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en
- Courtine, E. (2021). *Key messages on the farm to fork strategy*. eurovia.org. <https://www.eurovia.org/publications/farm-to-fork-strategy-key-messages-from-ecvc/>
- Scown, M. W., Brady, M. V., & Nicholas, K. A. (2020, August). *Billions in Misspent EU Agricultural Subsidies Could Support the Sustainable Development Goals*. One Earth. [https://www.cell.com/one-earth/pdf/S2590-3322\(22\)00589-9.pdf](https://www.cell.com/one-earth/pdf/S2590-3322(22)00589-9.pdf)
- Evaluation study of the impact of the cap on climate change ...* European Commission . (2018, October). <https://www.sipotra.it/wp-content/uploads/2019/07/Evaluation-study-of-the-impact-of-the-CAP-on-climate-change-and-greenhouse-gas-emissions.pdf>
- Ody, M., & Delobel, V. (2024, February 25). *Farmers' protests in Europe and the deadend of Neoliberalism*. Al Jazeera. <https://www.aljazeera.com/opinions/2024/2/25/farmers-protests-in-europe-and-the-deadend-of-neoliberalism>
- Foote, N. (2024, March 17). *Green cap on the chopping block - commission to cut cap's environmental ambitions with no impact assessment*. Agricultural and Rural Convention. <https://www.arc2020.eu/green-cap-on-the-chopping-block-commission-to-cut-caps-environmental-ambitions-with-no-impact-assessment/>
- von der Leyen, U. (2024, March). *Joint letter to the EU Commission to reconsider the loosening of the CAP's green architecture*. European Commission . <https://eeb.org/wp-content/uploads/2024/03/Joint-letter-to-the-EU-Commission-to-reconsider-the-loosening-of-the-CAPs-green-architecture.pdf>
- Economic Bulletin*. Banco de España. (2019, March 20). <https://www.bde.es/wbe/en/publicaciones/analisis-economico-investigacion/boletin-economico/1-2019.html>
- Demarais, A. (2024, January 15). *The bigger picture: The case for an EU-Mercotur Free Trade deal*. ECFR. <https://ecfr.eu/article/the-bigger-picture-the-case-for-an-eu-mercotur-free-trade-deal/>
- The common agricultural policy: Separating fact from fiction*. Eu. (n.d.). https://agriculture.ec.europa.eu/system/files/2019-05/cap-separating-facts-from-fiction_en_0.pdf
- Bauer, M., & Pandya , D. (2024). *EU autonomy, the Brussels effect, and the rise of global economic protectionism*. ECIPE. <https://ecipe.org/publications/eu-autonomy-brussels-effect-rise-global-economic-protectionism/>

Virtual Frontlines: Analysing the Role of Cyberspace in State-Sponsored Conflict and Techno-authoritarianism

Ananya Singh

Sciences Po, Paris, France, Flame University, India.
International Security

E-mail: anya.singh0511@gmail.com

Published 27th of January 2025

Abstract

This paper examines the dual threats of techno-authoritarianism and cyber aggression in an era of increasing global dependency on information and communication technologies (ICT). With nation-states weaponizing cyberspace for strategic objectives, both domestically and internationally, this paper highlights the gaps in international law and security frameworks to address these acts. Case studies, including the Iran-Israel cyber conflicts and China's Digital Silk Road initiative, will be used to illustrate the geopolitical implications of cyberwarfare and digital authoritarianism. Lastly, the paper concludes by advocating for a Transnational Digital Security Framework, emphasizing multilateral collaboration, equitable governance, and the development of binding international norms to mitigate cyber insecurity.

Keywords: Techno-authoritarianism, Cyberwarfare, State-sponsored, Security Frameworks, Global Governance

I. Introduction

“Mass communication, in a word, is neither good nor bad; it is simply a force and, like any other force, it can be used either well or ill. Used in one way, the press, the radio and the cinema are indispensable to the survival of democracy. Used in another way, they are among the most powerful weapons in the dictator’s armoury.” — Aldous Huxley, *Brave New World Revisited*.

The increasing global dependency on ICT (information and communication technology) and its

corresponding growing vulnerabilities have led to the newfound threat of cyberspace being used as a battleground for states to not only pursue attacks on foreign threats but also attain authoritative control on and combat opposition in its own populace. This dual threat of techno-authoritarianism and cyber aggression reflects a paradigm shift where the lines between national security and accountability are becoming increasingly blurred— especially due to the lack of cohesive international legal frameworks to address such acts of aggression.

Techno-authoritarianism is the use of digital tools and technologies by authoritarian leaders and governments usually in order to increase control or limit freedom. Its use forms a vast expanse including collecting data on a state's populace without explicit consent, surveillance, disinformation campaigns, internet shutdowns, curtailing free speech online, hacking national/voting databases, and IT warfare etc (Polyakova and Meserole). Events in recent years have confirmed suspicions that the internet can be used to further destabilise democracies and prop up autocracies. Examples of this range from the infamous Cambridge Analytica scandal in which millions of Facebook users' data was collected for political actors to the attacks on the integrity of various elections including the US and Philippines in 2016 (Shahbaz). The highlight of this issue is exemplified by the facial recognition software used by China to profile Uyghur Muslims and Hong Kong protestors (Hillman, 2021). However, these belligerent measures are not limited to a domestic context. Nations have historically used cyberspace as a platform to wage shadow warfare and surreptitiously attack others. China has also exported its techno-authoritarianism through its Digital Silk Road initiative as part of its BRI (Belt and Road Initiative) wherein it has sold AI and surveillance systems to over 18 countries and the interest in these technologies is only set to rise (Chatzky, 2020). The issue of cyberwarfare has recently been brought back to the spotlight with the Israeli pager attacks on Hezbollah, and there is a history of the use of IT warfare by Israel

and its Intelligence agency, MOSSAD, with its regional enemies such as Iran. Several nations at the forefront of addressing cyberwarfare have given it legitimacy by incorporating it as one of the pillars in their mainstream national doctrines of security and warfare, such as the US Pentagon in 2011. However, individual nations are not equipped to be able to completely manage transnational cyber threats alone.

In the politics of emerging digital warfare, the ability to engage with a degree of separation and plausible deniability makes it difficult to apply existing rules of engagement and international laws. There does not exist a formal mechanism or body wherein to address acts of cyberwarfare and digital authoritarianism undertaken by nations. This transnational collective threat requires the integration of traditional standards and rules of acts of aggression into cyberspace. Governments can no longer act in silos— it necessarily calls for collaboration across levels and institutions. Some nations are also at higher risk of facing cyber insecurity than others due to the increased vulnerability of their digital critical infrastructure and need multilateral cooperation to build resilience against cyberattacks. Therefore, it is necessary to develop a resilient approach towards managing global cyber insecurities which is equitable, multilateral, and preemptive. Hence, this paper seeks to provide a comprehensive analysis of existing relevant international law and security frameworks to demonstrate the gap in the literature in terms of accountability for states' belligerent actions in the digital space. To conclude, it advocates for global

governance to outline the legalities of cyberspace conduct with recommendations for the creation of a Transnational Digital Security Framework.

II. Research Questions, Methodology and Theoretical Basis

II. i Research Question-

- What are the current gaps and challenges in international law and security frameworks to address acts of aggression in the cyberspace by nation-states?

This further includes the two sub-questions of 'How have states weaponised information technology to meet their belligerent strategic objectives?' and 'How can a global governance system help address issues of cyber-insecurity?'

II.II Methodology-

The research paper employs a mixed-methods framework with a hybrid of qualitative methods for research analysis. It is descriptive in providing an account of the dual forms of aggressive use of cyberspace by nations, explanatory in depicting why there is a lack of formal mechanisms to address such aggressions, and normative in its final legal and policy recommendations provided at the end. The secondary qualitative data is collected through a thorough review of the contemporary literature on the research questions and this is supplemented with quantitative data from studies by data analysis organisations in the

field of International Relations such as the Freedom House, AI Global Surveillance (AIGS) Index, ACLED, Amnesty International, etc wherever applicable as well as data from a study by Dragu et al wherein the quantitative and qualitative justification of the negative use of digital tools by authoritarians is demonstrated. It quotes international law, treaties, and multilateral agreements extensively to evaluate the state of current frameworks in addressing this challenge. It uses theoretical frameworks arising from the study of geopolitics, principles from the IR field of realism, concepts such as complex interdependence by Robert O. Keohane and Joseph S. Nye Jr, and liberal institutionalism as its underlying basis. Additionally, there are practical examples provided throughout to justify the claims made in this paper along with a focused case study of the history of cyberwarfare between Israel and Iran along with its allies.

II.III Theoretical Framework-

A theoretical framework within which the issue of cybersecurity can be studied is based on a linkage of emerging ICT to enhanced vulnerability of nation-states to establish complex interdependence. Robert O. Keohane and Joseph S. Nye Jr., defined interdependence as correlative interactions among actors as a consequence of 'international transactions-flows of money, goods, people and messages across international boundaries' (Nye, 2011, 285). While there has been extensive research on the first three factors, it is

the last one that is slowly gaining traction in contemporary research. Keohane and Nye have written on “Power and Interdependence in the Information Age”(1998) and highlighted the extent to which the “new world” of cyber merges with the “traditional world” which rests on the basis of geography (Keohane & Nye Jr., 1998, 81-94). No states are left insulated from cyberwarfare, including the continental states of USA or UK who were seen to have great defensive strength based on their geography in Mahan’s theory. Rather, states and non-state actors can now acquire global power despite being landlocked (Sprout, 1954, 24). Mackinder emphasised the role of integration and communication linkages between Eurasia and Africa as the reason for their predicted dominance on global power (Topalidis et al., 2024). However, in today’s globalised world, all nations and NSAs are integrated into the global order, with even critical supply chains being transcontinental. Therefore, every actor has the ability to shift the dynamics of the multipolar international order.

Irrespective of the fluid nature of cyberspace, it will require governance and authority structures for containment. As a result, global institutions will play a key role based on the theory of liberal institutionalism (Topalidis et al., 2024). The nature of complex interdependence is impacted greatly by advances in the cyber domain resulting in an expansion of cross-connecting channels of communications in global politics across different actors. This leads to a situation

in world politics, where there exists a multitude of nation-states harbouring multiple channels of contact that link the different societies without any imposition of the state or fixed hierarchy of issues. In fact, the network of information flows bypasses the territorial boundary of the state and has engendered a system which is not reigned in by state sovereignty. The close linkage between emerging technologies and power politics will impact the patterns and networks of cooperation and conflict based on strategic imperatives which in turn will influence the outcomes, viz. norms and institutions. This paper will apply the concepts of complex interdependence to analyse how nation-states collaborate or compete in the field of cyber security.

III. Virtual Frontlines: Cyberwarfare as a Geopolitical Strategy

The role of geopolitics in cyber attacks has revealed how national vulnerabilities in the cybersecurity domain need to be contextualised at a regional and global level. Cybersecurity has changed the face of global conflicts and impacted the way wars are fought and attacks are launched on enemies. This involvement blurs the lines between politically motivated cyber operations and cyberwar, complicating legal responses. Nation-states play a significant role as “threat actors and danger to society and other states” when they pursue tactics of cyberattacks with examples such as the Chinese PLA army’s alleged cyberattack division (Cavelty & Egloff, 2019, 42).

Existing geopolitical stressors coupled with turmoils in Europe and West Asia, challenging health of the economy and elections scheduled in major countries have created the right mix for cyber volatility to pose an imminent threat to geopolitical security. The forces of globalisation have paved the way for geopolitical unrest in one region to result in a major cybersecurity challenge spillover to other regions. Additionally, nations and actors can launch attacks across continents to destabilise their enemies with no identification. This is seen in Russia's cyberattacks on Ukraine with the motivation to attain a buffer region and frontier territory against the EU regional domain, and to expand their territorial lebensraum based on Ratzel's organic theory to acquire key resources (Sprout, 1954, 32). Russia's cyber tactics have included shutting down power grids, government websites, banking institutions, satellite services provided by private companies like SpaceX, etc. Additionally, China has been known to cyberattack critical infrastructure on foreign US bases such as the military base on the Guam island in the Pacific ocean which poses a geopolitical threat to them (Proctor, 2022). Cyberattacks are also a way for distant nations such as North Korea to overcome their geographical boundaries to attack their adversaries such as the US.

State-of-the-art targeted attacks on critical infrastructure is the latest covert weapon employed in geopolitical conflicts. Critical infrastructure refers to

assets, systems and networks - such as communications, data storage or processing, financial services and markets, water and sewerage, energy, healthcare and medical, higher education and research, food and grocery, transport, space technology; and the defence industry sector - whether physical or virtual, which are considered so vital that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof (Rege and Bleiman, 2020). This is not limited to national infrastructure only— The US database for example incorporates external major trading ports, weapons manufacturers, international pharmaceutical manufacturers, etc. Any interruption or severance of these systems would result in strategic risks of major consequence in those sectors as well as have repercussions across geographies.

Two critical aspects in the cyber security space as identified by (Cavelty & Wenger, 2020) are - 1) the low entry costs for disruptive cyber "weapons" and 2) the high vulnerability of critical infrastructures, which are dependent on digital technologies. This dependency has raised the cyber security issue into the realm of "high politics" of national and global security concerns. Contemporary cyberattacks on infrastructure are being executed with a plethora of objectives. This includes goals of exertion of influence and force, sabotaging national security and economic growth, endangering public health and safety, subversion of critical infrastructures and so on (Choucri, 2013). While the

energy sector is a prime target of cyber-attacks against critical infrastructure, other sectors such as telecommunications, ports and critical manufacturing industries are also vulnerable. States and non-state actors are able to extract sensitive security data from remote untraceable locations through espionage and can engage in sabotage operations damaging critical infrastructures e.g. electrical grids, financial institutions, healthcare systems, and so on. Additionally, cyber warfare can integrate such operations with traditional military offensives. A recent example of a transnational cyberattack on critical infrastructure is of the 2017 NotPetya malware employed primarily against Ukraine, which shut down its major national institutions and electric grids. The attack then became global with reports extending to the USA, UK, France, etc.

IV. A Case Study of Iran-Israel Cyber Conflicts

West Asia is exceptionally plagued by cyber warfare, with state actors such as UAE and Saudi Arabia being accused, along with NSAs such as Hezbollah or Hamas. This case study focuses on the use of cyberattacks between Iran and Israel as the two biggest perpetrators using this as a strategy part of their larger conflicts. Such cyberwarfare tactics are being used as retaliatory measures by either party after the recent conflagrations and cyberattacks in the region have massively surged since October 7th. One of the biggest instances of a cyberattack on critical infrastructure was the impact of Stuxnet on Iran's Natanz nuclear facilities (Farewell,

2023), which has been repeated in 2024. It is viewed by many theorists as the first cyberweapon and was allegedly used bilaterally by the USA and Israel to pursue their geopolitical goals of destabilising Iran's nuclear programme. A cyberattack had better results on a risk-benefit analysis compared to conducting an airstrike on the base. Stuxnet also went ahead to create collateral damage transnationally in other countries, it is unclear whether intentionally or unintentionally. It evolved into a transnational threat with attacks on Russia, Indonesia, India, etc (Farewell, 2023). Similar attacks on a variety of Iran's critical infrastructure have continued up to this date.

An interesting allegation also is that further attacks on the Natanz did not arise from external countries, rather, it was done by dissident groups within the nation such as the Irani Cheetahs of the Homeland group who accepted blame for a later attack (Gol, 2020). Similarly, there has been a sharp rise in cyberattacks conducted by extremist groups supported by Iran such as the hezbollah against the critical infrastructure of Israel and infiltrating into infrastructures such as international airports as well. This involves the complex growing role of non-state actors, specifically, domestic cybercrime within cyberwarfare. Iran has conducted several state-backed cyberattacks and supported the NSAs part of its axis of resistance to pursue the same. They allegedly attempted a major attack on the Israeli water and sewage system, which was a direct unprecedented target on civilian critical infrastructure (Siman-Tov,

2020). Additionally, they also gained control of the floodgates of the transcontinental New York-based dams. This demonstrates the critical impact of cyberwarfare as attacks taken out against common civilians. Iran has also been victim to other cyberattacks blamed on Israel on its critical infrastructure including one in Shahid Rajaei which is a key shipping harbour where over 50% of Iran's imports and exports take place. Iranian attackers have also been accused of extending to private enterprises such as Saudi's Aramco oil company (Siman-Tov, 2020). These attacks, while directed at a key target nation, had an immense global impact on energy resources and international trade. Iran and Israel's cyberwarfare against each other is a key case study that encompasses the involvement of both state and non-state actors, governments and private enterprises, and military and civilian-directed attacks. It demonstrates the ability of a regional cyberwarfare campaign to extend beyond regional boundaries and exacerbating a global dilemma.

V. Beyond the Battlefield: Cyberpower for Digital Authoritarianism

One of the oldest feats of technology- Gutenberg's printing press was first seen as a method for Catholics to further their power; however, the very same technology was used against the Catholics leading to the Protestant revolution. Drawing a parallel, current digital advancements are seen as a way to further the authoritarians' stronghold. The belligerent use of

cyberspace extends beyond attacks on enemy nations to attacks on a country's own populace by the leaders to attain control and suppress any opposition. Digital technologies are a double-edged sword. While technology's advancement brings a larger scope for mobilisation and communication among individuals which can be used to counter undemocratic regimes, the regimes can counter this by using technology to prevent these in the first place (Dragu et al 4).

Three such key case studies analysed within prominent literature arise from China. They include China's facial recognition software used in protests (Mozur); China's social credit system (Lee); and the export of digital surveillance systems as part of the Digital Silk Road (DSR) through the Belt and Road Initiative (BRI) (Chatzky et al.). China has been reported to use facial recognition technology in their surveillance of protests. Every public sphere is fitted with surveillance tools and when protests like the one in Hong Kong in 2019 occur, the protestors are immediately identified. Every person can be surveilled without their consent. This is an easy mechanism often used to shut down any opposition present which makes it fundamentally undemocratic. (Mozur) This is combined with their social credit system which is governmental monitoring of individuals and companies alike to give them a score of how trustworthy they are. This score is based on their financial and social behaviour, in accordance with the expectations of the Chinese government (Lee). These two examples primarily demonstrate the extent and

capabilities of the Chinese state to use their digital tools against their own populace. What takes this a step further is that this technology is no longer restricted to just 2 nations in this world. Through exports and trade, these nations are able to cause other states to adopt their techniques and therefore, worsen the global decline in democracies.

The main concern regarding this is tied in with China's Belt and Road initiative, and its latest addition of the Digital Silk Road initiative. The BRI is a massive infrastructural trade project launched in 2013 covering a geographical expanse of East Asia to Europe. Bringing China a level of power, connectivity and trade opportunities reminiscent of dynastic times. However, there is considerable opposition to this endeavour. Primarily since it frequently exploits countries with misleading contracts and supports other authoritarian regimes (Chatzky et al.). Over 18 countries have purchased AI and surveillance systems and the interest in these technologies is only set to rise. Left unchecked without any protection for human rights, this will further the rise of authoritarians globally (Polyakova and Meserole).

Often referred to as the "Firehose of Falsehood" Propaganda Model, Russia is the second nation party to blame within existing literature and research studies from various think tanks. (Paul and Matthews) They have undertaken prominent propaganda disseminating campaigns in their peripheral regions of Ukraine and

Georgia; supported their campaigns in foreign conflict areas like Syria and Afghanistan; as well as allegedly made an attempt to interfere with the 2016 US election (Jozwiak).

Western nations aren't blame free either—the USA has historically been at the centre of controversy regarding surveillance and disinformation too. Post 9/11, the enactment of the patriot act and the revelations provided by Edward Snowden are infamous tales of US surveillance (Pilkington). The patriot act used national security letters in order to allow the government to track citizens and obtain data on them through private or third-party companies. The Snowden documents proved the existence of NSA surveillance on US citizens. The USA and its ally European states were also an equal match to Russia in terms of spreading disinformation and propaganda during the Cold War period (Whitton and John 152). The argument for this is not solely historical, the USA and the European States are perennial subjects of surveillance capitalist endeavours. The Facebook and Cambridge Analytica scandal exemplified this in how two private companies were able to acquire and sell the data of millions of people for a political campaign (Ozer and Conley). The European Court of Justice's judgement on "Schrems II" of 16 July 2020 affirmed this. Officially stating that the EU-US "Privacy Shield" agreement does not provide an adequate level of protection for personal data because of insufficient human rights safeguards for access to data by the US government surveillance programmes.

VI. Evaluation of Current International Cybersecurity Frameworks

There are increasing accusations made against nations for participating in cyberwarfare, yet no formal mechanism to address it. This has created a collective threat perception which points to the need for integration of existing rules of international intervention at different levels. Defence partnerships on cybersecurity are also required to mitigate belligerent threats. Concerns over cybersecurity are no longer confined to the territorial boundaries of a nation, hence, it calls for enhanced efforts towards regional securitisation. It becomes imperative to adopt a collaborative, preemptive and resilient approach to cybersecurity risk management.

In the politics of emerging digital technologies, the ability to engage in disruptive actions with a degree of separation and deniability makes it difficult to apply existing rules of engagement and international laws in the cybersecurity space. Governments can no longer act in silos— it necessarily calls for collaboration across levels and institutions. Richard Haass, President of the Council on Foreign Relations points out that “Cyber is exactly at the point today where nuclear was maybe 50 years ago, where people are beginning to think, what sort of rules do we set up? What sort of arrangements do we put into place?” (Haass, 2010). Measures are being taken at the level of national governments as well

as regional and international organisations to engage in coordination efforts and come up with a framework that places a binding legal and juridical system such as the Budapest Convention on Cybercrime of the Council of Europe. Internationally, nation-states in 2013 came to a consensus that international law, including the U.N. Charter is applicable to cyberspace. However, while the UN charter decrees against the use of force— it remains unclear at what point a cyber attack can be deemed as a use of force or aggression. A cyber attack on critical infrastructure could cripple people’s lives too demonstrated with recent attacks on electricity grids or water systems. The UN General Assembly has established working groups to report on cybersecurity matters such as the application of international law, emerging threats, norm establishment for its use by states, international cooperation, capacity building, etc to bring clarity to such grey areas. These are formulated into UN resolutions such as the UN GGE 2015 endorsed non-binding, voluntary rules on preventing nation-states from launching a cyber offensive on the critical infrastructure of another nation-state or its cyber security response teams, during peaceful times (Choucri, 2013). It is imperative for the GGE to re-group to continue drafting norms based on mandates of international law for cyber attacks after its failure to attain consensus in 2017. There are various capacity-building initiatives that have emerged over time e.g.- International Telecommunications Union (ITU), the Global Forum on Cyber Expertise (GFCE), etc. In 2023, 40 states have proposed a Programme of Action

(PoA) for formalising a singular entity, a permanent UN forum on cyberspace (Choucri, 2013). Endeavours such as this are necessary to create a basis for collaboration on cybersecurity.

VII. Conclusion: Crafting a Global Digital Security Framework

It is not adequate to have forums only for the exchange of information. It is of immediate importance to carve out a clear space for international cooperation to counter cyber attacks on critical infrastructure backed by regulations that incorporate public-private partnerships. This would require coming to a consensus on developing a code of conduct and appropriate mechanisms at the national, regional and global levels. The lack of binding treaties and agreements on cyber security issues aids the ongoing practices of covert cyber attacks. There is progress being made to this end with the first UN cybersecurity alliance of the International Multilateral Partnership Against Cyber Threats (IMPACT) but this acts as a resource centre, rather than true diplomatic multilateral engagement (Choucri, 2013). Diplomatic engagements help create the groundwork for further cooperation and can help answer such questions in a multipolar regionalised world order. Cyber diplomacy can assume a pivotal role in cultivating global partnerships, creating global standards and securing the preservation of critical infrastructure. Cyber-diplomacy is needed to maintain a constant dialogue between countries to develop norms

of accountable government behaviour in cyberspace and address disagreements between role-players (Maizland, 2020). Additionally, cyber diplomacy between nations can lead to an intelligence-sharing agreement which can allow for a robust offensive to be conducted upon identification of the cyberattack. The resiliency of critical infrastructures can be built through joint capacity-building and specialised training endeavours. A proactive approach towards safeguarding critical infrastructure is necessary and can be achieved through regional collaboration. For key advanced cyber-power nations, a policy of non-aggression pacts may be utilised as a confidence-building measure. Going beyond securitisation, regional or bilateral defence partnerships can also be constructed to formulate cyber attack responses and improve offensive capabilities under the mandates of international law.

To conclude, cybersecurity is a global geopolitical threat which impacts the critical infrastructure of countries and interconnected transnational systems which requires further international frameworks and regional collaboration to manoeuvre. This research paper aims to contribute to further academic scholarship required to formulate an IR theory to incorporate an understanding of cyber security as a new frontier of warfare and its underlying geopolitical implications.

References

- Cavelty, M. D., & Egloff, F. (2019, June 14). The politics of cybersecurity: Balancing different roles of the states. *St Antony's International Review*, 15(1), 37–57. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3403971. Accessed October 5, 2024.
- Cavelty, M. D., & Wenger, A. (2020). Cyber security meets security politics: Complex technology, fragmented politics, and networked science. *Contemporary Security Policy*, 41(1), 5–32. <https://doi.org/10.1080/13523260.2019.1678855>. Accessed October 5, 2024.
- Chatzky, A., et al. (2020, January 28). China's massive Belt and Road Initiative. Council on Foreign Relations. <https://www.cfr.org/background/chinas-massive-belt-and-road-initiative#chapter-title-0-6>. Accessed October 8, 2024.
- Choucri, N. (2013, October 22). Institutions for cyber security: International responses and global imperatives. Wikipedia. <https://www.tandfonline.com/doi/full/10.1080/02681102.2013.836699>. Accessed October 25, 2024.
- Davis, L. E. (2003). Globalization's security implications. RAND Corporation. https://www.rand.org/pubs/issue_papers/IP245.html. Accessed October 8, 2024.
- Dragu, T., & Lupu, Y. (2021). Digital authoritarianism and the future of human rights. *International Organization*, 75(4), 1–27. <https://doi.org/10.1017/s0020818320000624>. Accessed October 4, 2024.
- Farwell, J. P., & Rohozinski, R. (2011). Stuxnet and the future of cyber war. *Survival*, 53(1), 23–40. <https://doi.org/10.1080/00396338.2011.555586>. Accessed October 5, 2024.
- Gol, J. (2020, July 6). Iran blasts: What is behind mysterious fires at key sites? BBC. <https://www.bbc.com/news/world-middle-east-53305940>. Accessed October 28, 2024.
- Hillman, J. E. (2021, November 17). Techno-authoritarianism: Platform for repression in China and abroad. Center for Strategic and International Studies. <https://www.csis.org/analysis/techno-authoritarianism-platform-repression-china-and-abroad>. Accessed October 7, 2024.
- Jozwiak, R. (2021, September 22). Researcher says raw voting data points to massive fraud in United Russia's Duma victory. Radio Free Europe. <https://www.rferl.org/a/russia-election-fraud-shpilkin/31472787.html>. Accessed October 27, 2024.
- Keohane, R. O., & Nye, J. S. Jr. (1998). Power and interdependence in the information age. *Foreign Affairs*, 77(5), 81–94. <https://doi.org/10.2307/20049052>. Accessed October 5, 2024.
- Lee, A. (2020, August 9). What is China's social credit system and why is it controversial? South China Morning Post. <https://www.scmp.com/economy/china-economy/article/3096090/what-chinas-social-credit-system-and-why-it-controversial>. Accessed October 29, 2024.
- Maizland, L. (2020, June 10). The emergence of cyber diplomacy in an increasingly post-liberal cyberspace. Council on Foreign Relations. <https://www.cfr.org/blog/emergence-cyber-diplomacy-increasingly-post-liberal-cyberspace>. Accessed October 27, 2024.
- Mozur, P. (2019, July 26). In Hong Kong protests, faces become weapons. *The New York Times*. <https://www.nytimes.com/2019/07/26/technology/hong-kong-protests-facial-recognition-surveillance.html>. Accessed October 29, 2024.
- Nye, J. S. (2011). The future of power. *PublicAffairs*. Accessed October 5, 2024.

- Ozer, N., & Conley, C. (2018, March 23). After the Facebook privacy debacle, it's time for clear steps to protect users. American Civil Liberties Union. <https://www.aclu.org/news/privacy-technology/after-facebook-privacy-debacle-its-time-clear-step-s-protect>. Accessed November 5, 2024.
- Paul, C., & Matthews, M. (2016). The Russian "Firehose of Falsehood" propaganda model: Why it might work and options to counter it. RAND Corporation. <https://www.rand.org/pubs/perspectives/PE198.html>. Accessed November 5, 2024.
- Pilkington, E. (2021, September 4). 'Panic made us vulnerable': How 9/11 made the US surveillance state – and the Americans who fought back. The Guardian. <https://www.theguardian.com/world/2021/sep/04/surveillance-state-september-11-panic-made-us-vulnerable>. Accessed November 5, 2024.
- Polyakova, A., & Meserole, C. (2019, August 27). Exporting digital authoritarianism: The Russian and Chinese models. Foreign Policy at Brookings. https://www.brookings.edu/wp-content/uploads/2019/08/FP_20190827_digital_authoritarianism_polyakova_meserole.pdf. Accessed October 28, 2024.
- Proctor, P. (2022, June 10). How geopolitics impacts the cyber-threat landscape. Gartner. <https://www.gartner.com/en/newsroom/press-releases/2022-06-10-how-geopolitics-impacts-the-cyber-threat-landscape>. Accessed October 8, 2024.
- Rudner, M. (2013). Cyber-threats to critical national infrastructure: An intelligence challenge. *International Journal of Intelligence and Counter-Intelligence*, 26(3), 453–481. <https://doi.org/10.1080/08850607.2013.780552>. Accessed October 5, 2024.
- Siman-Tov, D. (2020, June 3). A new level in the cyber war between Israel and Iran. Wikipedia. <https://www.jstor.org/stable/resrep25542>. Accessed October 29, 2024.
- Shahbaz, A. (2018). The rise of digital authoritarianism. Freedom House. <https://freedomhouse.org/report/freedom-net/2018/rise-digital-authoritarianism>. Accessed October 5, 2024.
- Shahbaz, A., & Blunt, M. (2022). Freedom on the Net 2022: Countering an authoritarian overhaul of the internet. Freedom House. <https://freedomhouse.org/report/freedom-net/2022/countering-authoritarian-overhaul-internet>. Accessed October 6, 2024.
- Sprout, H. (1954, January). Geopolitical theories compared. *Naval War College Review*, 6(5), 19–36. <http://www.jstor.org/stable/45104944>. Accessed November 5, 2024.
- Topalidis, G. T., Kartalis, N. N., Velentzas, J. R., & Sidiropoulou, C. G. (2024, February 9). New developments in geopolitics: A reassessment of theories after 2023. *Social Sciences*, 13(2), 109. <https://doi.org/10.3390/socsci13020109>. Accessed November 5, 2024.
- Wang, M. (2021, April 8). China's techno-authoritarianism has gone global. Human Rights Watch. <https://www.hrw.org/news/2021/04/08/chinas-techno-authoritarianism-has-gone-global>. Accessed October 5, 2024.
- Whitton, J. B. (1951). Cold war propaganda. *American Journal of International Law*, 45(1), 151–153. <https://doi.org/10.2307/2194791>. Accessed October 27, 2024.

An Analysis of New Labour: Successes, Failures, Where the Tories Went Wrong, and What Can Be Learned By the Current Labour Party

Toby Tilley

IE School of Politics, Economics, and Global Affairs, IE University, Madrid, Spain
Bachelor in International Relations

E-mail: ttilley.ieu2022@student.ie.edu

Published 27th of January 2025

Abstract

The following article aims to provide an analysis of the United Kingdom's 'New Labour' period that took place from 1997 to 2010, its successes, failures, and legacy. It will also attempt to assess where the Conservative - and Liberal Democrat - party went wrong in their control from 2010 to 2024, how the Labour Party returned to the fore, and what they might be able to accomplish with their newly rediscovered power.

Keywords: Development, Growth, United Kingdom, Blair, Johnson, Starmer, Brexit

I. Analysing Development

Development is a highly complicated and hotly contested concept within the realm of international relations, with many different viewpoints, corresponding to the positions of various stakeholders, which tend to have conflicting interests on the matter. A more traditional, financially-centred view of the world would likely place economic growth at the forefront of development, using target metrics such as Gross Domestic Product (GDP) or Gross National Income (GNI) per capita and indicators like poverty and employment rates. As time has passed, however, the broad consensus surrounding the concept of development has shifted somewhat towards the idea of 'human development,' expanding to be more inclusive,

considering several other crucial factors. According to the United Nations Development Programme (UNDP), development is the process of "enhancing people's capabilities, enlarging their range of choices, expanding their freedom and promoting human rights for all citizens" and "is about the freedoms people can enjoy: what they are free to choose and to be."¹ The concept of human development has been heavily promoted by economists like Amartya Sen, most famous for his idea of the 'capabilities approach,' which stresses the importance of the 'ends,' namely a decent overall standard of living, rather than the

¹ United Nations Development Programme. "What Is Human Development?" UNDP, 9 Feb. 2023, www.undp.org/sites/g/files/zskgke326/files/2023-02/CK_Slides_FINAL_ENG.pdf.

‘means,’ such as GDP or income per capita. The capabilities approach is perhaps best embodied by the United Nations’ Human Development Index (HDI), introduced in 1990 “*to emphasise that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone.*”² The database is centred around what many scholars consider the three most important ‘ends’ of development - access to health, education, and goods. Within the health section of the HDI, the index measures life expectancy at birth; within the education section, “*mean of years of schooling for adults aged 25 years and more and expected years of schooling for children of school entering age*”³ is taken into account; and the standard of living section measures gross national income per capita, aiming to ensure a holistic balance between a number of crucial aspects of life. While the HDI is far from perfect, and could still use some tweaks before it cements its status as a thoroughly reliable tool for measuring development, it is undoubtedly a marked improvement on those that have been used in the past, as well as an excellent starting point for those looking to analyse development in various sectors and countries.

II. Development in the United Kingdom

Within the field of development, it is widely accepted that different aspects of development - economic, health,

and social, tend to move in a linear - or even exponential - fashion, except for the occasional economic anomaly. Due to the increased globalisation in the modern world, countries’ GDPs - even among those ravaged by conflict - have seen long-term increases, with the current trend of global economic growth showing no signs of stopping. As this trend continues, however, there can be variations in and among countries, one example being the United Kingdom which, in the latter stages of the 20th and early stages of the 21st century, experienced various different ways in which development was pursued. In 1979, following 5 years of 2 separate Labour governments, the Conservative Party reclaimed power, instating Margaret Thatcher as Prime Minister. Known as the ‘Iron Lady’, Thatcher was a prolific ideologue, famously remarking that “*socialist governments (...) always run out of other people’s money.*”⁴ Thatcher’s government pursued radical neoliberal policies, with the fight against inflation taking priority over the rise against joblessness, and “*unemployment shot up under the Conservatives to levels not seen since the Great Depression.*”⁵ While the United Kingdom suffered a “*deep recession in the early 1980s,*”⁶ in the following years, Thatcher led a significant turnaround -

² United Nations. “Human Development Index.” Human Development Reports - United Nations, 16 Feb. 2024, hdr.undp.org/data-center/human-development-index#/indicies/HDI.

³ United Nations. “Human Development Index.” Human Development Reports - United Nations, 16 Feb. 2024, hdr.undp.org/data-center/human-development-index#/indicies/HDI.

⁴ Margaret Thatcher Foundation. “TV Interview for Thames TV This Week.” Margaret Thatcher Foundation, www.margaretthatcher.org/document/102953.

⁵ Rogers, Simon. “15 Ways That Britain Changed Under Margaret Thatcher.” *The Guardian*, 8 Apr. 2013, www.theguardian.com/politics/datablog/2013/apr/08/britain-changed-margaret-thatcher-charts.

⁶ “The Thatcher Years in Statistics.” *BBC News*, BBC, 9 Apr. 2013, www.bbc.com/news/uk-politics-22070491.

despite a nearly year-long miner's strike⁷ - with GDP growing by at least 2% in every full year of her rule afterward. Thatcher's Premiership was followed by that of Sir John Major, who did not fare as well economically. Major similarly oversaw a recession in the early years of his mandate, followed by Black Wednesday, an infamous day on which "*the British pound was ignominiously ejected from the exchange rate mechanism (ERM) of the European monetary system.*"⁸

Following 7 years of Major's Premiership, marking a total of nearly 2 decades of the Conservative Party in power, the British public was ready and eager for a change. The Labour Party, led by Tony Blair, "*was voted in by a landslide majority,*"⁹ winning 419 total seats for a majority of 179, the largest for a single party¹⁰ in the post-war era. While the margin of their vote alone was enough to give great confidence to Labour, they still sought to blaze a trail ahead, ensuring that they would not just remain an alternative to the Conservative Party, while simultaneously standing out from the far left. This is perhaps best exemplified in the 1995 amendment of Clause IV of the

Labour Party's constitution - an initiative spearheaded by Blair - removing the phrase "*upon the basis of the common ownership of the means of production, distribution, and exchange,*"¹¹ in an attempt to curry favour with more moderate voters.

In his victory speech, newly-elected Prime Minister Blair remarked that his government's election "*is a mandate for New Labour and I say to the people of this country — we ran for office as New Labour, we will govern as New Labour.*"¹²

Blair's declaration set the scene for his Premiership, in which the New Labour period was well and truly underway: within 14 months, Labour successfully passed a bill establishing a National Minimum Wage, a flagship policy throughout their campaign, which entered into force in April 1999. The year before that, Blair's government introduced their 'New Deal', billed as "*the first of 12 pilots of a new approach to welfare.*"¹³ The rollout of the New Deal was marked in part by the 1999 Working Families Tax Credit (WFTC), a transitional system "*aimed at improving incentives to work.*"¹⁴ These schemes were accompanied by speeches from the then-Chancellor of the

⁷ Morris, Georgina. "Miners' Strike 1984: Why UK Miners Walked out and How It Ended." BBC News, BBC, 2 Mar. 2024, www.bbc.com/news/uk-england-68244762.

⁸ Eichengreen, Barry. "Black Wednesday Cast a Shadow That Culminated in Brexit." The Guardian, Guardian News and Media, 13 Sept. 2022, www.theguardian.com/business/2022/sep/13/black-wednesday-brexite-sterling-crisis.

⁹ "BBC Politics 97." BBC News, BBC, 1997, www.bbc.co.uk/news/special/politics97/news/05/0505/stats.shtml.

¹⁰ Cracknell, Richard, et al. "1918- 2023, a Long Century of Elections." *House of Commons Library*, 9 Aug. 2023, researchbriefings.files.parliament.uk/documents/CBP-7529/CBP-7529.pdf.

¹¹ Rodrigues, Jason. "Twenty Years Ago Today: Tony Blair Won Clause Four Debate." The Guardian, Guardian News and Media, 29 Apr. 2015, www.theguardian.com/politics/from-the-archive-blog/2015/apr/29/clause-four-labour-party-tony-blair-20-1995.

¹² "General Election Victory Speech, 1997." British Political Speech | Speech Archive, 1997, www.britishpoliticalspeech.org/speech-archive.htm?speech=222.

¹³ "Transforming Britain's Labour Market - Ten Years of the New Deal." Department for Work and Pensions, 2009, dera.ioe.ac.uk/id/eprint/7487/7/PMNewDeal2-01-08_Redacted.pdf.

¹⁴ Dilnot, Andrew, and Julian McCrae. "Family Credit and the Working Families' Tax Credit." Institute for Financial Studies, Oct. 1999, ifs.org.uk/sites/default/files/output_url_files/bn3.pdf.

Exchequer, Gordon Brown, who in March 1999 declared that “*the fairer Britain is, the more open Britain is to the talents of all, from whatever class or background, the more enterprising and prosperous all of Britain will be.*”¹⁵ Blair also oversaw the creation of the Department for International Development in 1997, an offshoot of the Foreign Office responsible for managing British Foreign Aid.

Another general election victory in 2001 only strengthened Labour & Blair’s mandate, and the government was able to pass various economic & education-related measures, including the Education Maintenance Fund -which provided subsidies to non-university students between the ages of 16 & 19 in Scotland, Wales, and Northern Ireland, the Tax Credits Act-, which “*establishe[d] the administrative framework for the new tax credits*”¹⁶- and an expansion of the Sure Start program -with the government promising “*2,500 children’s centres by 2008 and 3,500 by 2010.*”¹⁷ Blair’s second term as Prime Minister, however, was marred by a debacle over the invasion of Iraq in 2003, and despite managing to convincingly hold on in the 2005 General Election, he announced his imminent resignation as party

¹⁵ “Budget 1999: The Chancellor’s Speech.” The Independent, Independent Digital News and Media, 10 Mar. 1999, www.independent.co.uk/news/business/budget-1999-the-chancellor-s-speech-the-fairer-britain-is-then-the-more-prosperous-we-will-all-be-1079582.html.

¹⁶ “Explanatory Notes to Tax Credits Act 2002.” Legislation.Gov.Uk, King’s Printer of Acts of Parliament, 2022, www.legislation.gov.uk/ukpga/2002/21/notes/division/5.

¹⁷ Williams, Rachel. “The Evolution of Sure Start: The Challenges and the Successes.” The Guardian, Guardian News and Media, 19 Oct. 2011, www.theguardian.com/society/2011/oct/19/evolution-of-sure-start-success.

leader in 2006 and was succeeded by Gordon Brown in 2007. Brown’s Premiership was marred by the global financial crisis, and he lasted less than 3 years in office, replaced by a Conservative-Liberal Democrat coalition in 2010.

III. The Results of New Labour

Nearly 14 years on from the fall of the long-serving Labour Government in 2010, the ‘New Labour’ era has met mixed reactions from politicians, analysts, and the general public alike.

In terms of pure, hard statistics, it can reasonably be concluded that the period was a success: life expectancy, following small dips in the late 1980s and early 1990s, grew steadily under the 13 years of Labour,¹⁸ while yearly deaths decreased;¹⁹ GDP saw similar annual growth²⁰ in every year up until the global financial crisis in 2008; the United Kingdom’s HDI score rose from 0.770 in 1995 to 0.849 in 2010;²¹ health expenditure per capita nearly doubled, from

¹⁸ “Chapter 1: Population Change and Trends in Life Expectancy.” GOV.UK, 11 Sept. 2018, www.gov.uk/government/publications/health-profile-for-england-2018/chapter-1-population-change-and-trends-in-life-expectancy.

¹⁹ “Chapter 1: Population Change and Trends in Life Expectancy.” GOV.UK, 11 Sept. 2018, www.gov.uk/government/publications/health-profile-for-england-2018/chapter-1-population-change-and-trends-in-life-expectancy.

²⁰ Chu, Ben. “The Story of the UK’s Unprecedented GDP Collapse in Five Charts.” *The Independent*, Independent Digital News and Media, 12 June 2020, www.independent.co.uk/news/business/analysis-and-features/uk-gdp-collapse-charts-unprecedented-history-a9562326.html.

²¹ UNDP (United Nations Development Programme). 2010. Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development. New York.

\$1,532 in 1998²² to \$2,992 in 2008,²³ as did public education expenditure, increasing from 5.3% in 1997²⁴ to 9.3% from 2006-2009²⁵; both unemployment & long-term unemployment (as a % of total unemployment) dropped, from 6% in total, 34.8% for men and 21.6% for women in 1999²⁶ to 5.3%, 27.5% for men and 14.9% for women in 2006;²⁷ the country's Gini index decreased from 38.8 in 2000 to 33.7 in 2010;²⁸ and 'school life expectancy' - or expected years of schooling - increased from 15.4 in 1998 to 16.5 in 2010.²⁹ Upon his resignation in 2007, Blair remarked "*there is only one Government since 1945 that can say all of the following: more jobs; fewer unemployed; better health and education results; lower crime and economic growth in every quarter. This one.*"³⁰

²² Andrei Andries - Coordinator. 2001. Human Development Report 2001: Making New Technologies Work for Human Development. New York.

²³ UNDP (United Nations Development Programme). 2010. Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development. New York.

²⁴ Andrei Andries - Coordinator. 2001. Human Development Report 2001: Making New Technologies Work for Human Development. New York.

²⁵ UNDP (United Nations Development Programme). 2010. Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development. New York.

²⁶ Andrei Andries - Coordinator. 2001. Human Development Report 2001: Making New Technologies Work for Human Development. New York.

²⁷ UNDP (United Nations Development Programme). 2010. Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development. New York.

²⁸ "Gini Index - United Kingdom." *World Bank Open Data*, data.worldbank.org/indicator/SI.POV.GINI?locations=GB.

²⁹ "Expected Years of Schooling." World Bank Gender Data Portal, genderdata.worldbank.org/indicators/se-sch-life/?gender=total&year=2010.

³⁰ "Blair's Speech: Full Text." The Guardian, Guardian News and Media, 10 May 2007,

In Prime Minister Brown's speech to the Labour Conference the following year, he boasted the "*three million more people in work since 1997 (...) the one million small and medium-sized businesses set up in the last eleven years, (... the) one million people benefiting from New Labour's minimum wage (... and) the 240,000 lives that are saved by the progress Labour's NHS (National Health Service) has made in fighting cancer and heart disease.*"³¹ Indeed, the Labour Party's Shrewsbury chapter has kept on record a list - albeit unsourced - of New Labour's "*top 50 achievements*," including the reduction of "*overall crime by 32 per cent*," "*record levels of literacy and numeracy in schools*," as well as "*600,000 children lifted out of relative poverty.*"³² Throughout his Premiership, Blair was able to maintain a relatively strong approval rating, averaging out at 45% across his tenure, peaking at an annual average of 62.5% in 1997, but had dropped to only 26.7% in 2006,³³ the year he announced he would resign as party leader.

While this data is likely complicated by other matters - fuel shortages in 2000, 9/11 the following year, and the highly controversial invasion of Iraq less than 2 years after that - it can be seen that Blair held a strong public image throughout his time in office. These same caveats apply to

www.theguardian.com/politics/2007/may/10/labourleadership.labout2.

³¹ "Gordon Brown's Speech in Full." *The Guardian*, Guardian News and Media, 23 Sept. 2008, www.theguardian.com/politics/2008/sep/23/gordonbrown.labout1.

³² "Labour Governments' Achievements." Shrewsbury Labour, www.shrewsburylabour.org.uk/labours-top-50-achievements/.

³³ "Political Monitor: Satisfaction Ratings 1997-Present | Ipsos." Ipsos, www.ipsos.com/en-uk/political-monitor-satisfaction-ratings-1997-present.

the Premiership of Gordon Brown, who had to deal with the global financial crisis and the recession that followed, as well as the continuation of the wars in Iraq & Afghanistan. Despite these trials and tribulations, the fact still stands that the Labour Party was able to go undefeated in 4 consecutive general elections - 1997, 2001, 2005, and 2010, the latter of the four resulting in a 'hung parliament'³⁴ - following 18 years of Conservative governments. Through an analysis of the statistics, particularly the steps that Labour was able to make in terms of enhancing economic and social opportunities, it seems clear that the 'New Labour' period was, above all, a development success story, and one that does not get as much credit as it perhaps should have. However, statistics do not always line up with wider public opinion, and that seems to be the case with New Labour, as since they left office nearly 14 years ago there has seemed to be a period of political revisionism within the UK, during which the achievements of Labour from 1997-2010 have been pored over and heavily scrutinised for their long-term impact, or lack thereof.

IV. The Legacy of New Labour

In Blair's aforementioned 2007 resignation speech, he acknowledged that there were "*great expectations not fulfilled in every part, for sure*,"³⁵ a sentiment that seems to

be the consensus among many political commentators and analysts nowadays.

Jacobin, the famous American Socialist magazine proclaimed in 2021 that "*nobody should look to Tony Blair and New Labour as a model for anything*," given that the government "*left Thatcher's economic architecture in place and locked Britain into a free-market nightmare*."³⁶ This view is echoed by British Prospect magazine, which declared the following year that "*New Labour failed on its own terms of building a new Britain*," and that the government's "*method was to top skim the spoils of a financialised economy to invest in nominally social projects*," arguing that "*social security was turned effectively into workfare, as a strivers-versus-scroungers frame was actively embraced*."³⁷ Some critical analyses of the New Labour era are centred around the fact that they did not go far enough, with a report finding that "*the gap between rich and poor remained more or less the same during the Blair years*."³⁸ Another of the main criticisms of New Labour is that - while they had successes during their time in power - they were unable to establish a truly long-term vision of Britain, and that their effective removal from office in 2010 showed their weakness. This view was strongly voiced by

³⁴ "A Hung Parliament: Key Issues for the 2010 Parliament - UK Parliament." UK Parliament, 2010, www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/the-new-parliament/a-hung-parliament/.

³⁵ "Blair's Speech: Full Text." The Guardian, Guardian News and Media, 10 May 2007, www.theguardian.com/politics/2007/may/10/labourleadership.labout2.

³⁶ Tiratelli, Matteo. "Nobody Should Look to Tony Blair and New Labour as a Model for Anything." *Jacobin*, 11 Aug. 2021, jacobin.com/2021/11/new-labour-tony-blair-party-revolution-narrative.

³⁷ Lawson, Neal. "Twenty-Five Years on, It's Clearer than Ever That New Labour Failed." *Prospect Magazine - Britain's Leading Monthly Current Affairs Magazine*, 28 Apr. 2022, www.prospectmagazine.co.uk/politics/38588/twenty-five-years-on-its-clearer-than-ever-that-new-labour-failed.

³⁸ Wheeler, Brian. "Tony Blair's Legacy 20 Years On." BBC News, BBC, 30 Apr. 2017, www.bbc.com/news/uk-politics-39717751.

Prospect (2022), who lamented the fact that “*New Labour barely outlived Tony Blair, and proved unable to win an election even under his decade-long chancellor, Gordon Brown.*”³⁹ Even Tony Blair himself has supported this argument, declaring in 2011 that when the reins were handed over to Brown, “*we lost the driving rhythm that made us different and successful,*” and that “*it was not a government of continuity from 1997 to 2010 pursuing the same politics. It was 10 plus three.*”⁴⁰ Blair’s legacy as a whole has also been tarnished by post-facto investigations, such as the Chilcot Inquiry into the invasion of Iraq, which found that “*the UK chose to join the invasion before peaceful options had been exhausted*” and that “*Blair deliberately exaggerated the threat posed by Saddam Hussein.*”⁴¹

V. Conclusion on New Labour

Overall, while many of the criticisms of New Labour in the period that followed it are well-founded and logically reasonable, the revisionism that has taken place verges on a step too far. Politics and development are not - at least in many Western countries- about radical, revolutionary change, but rather about taking steps in the right direction,

³⁹ Adonis, Andrew. “What Did New Labour Achieve?” *Prospect Magazine - Britain’s Leading Monthly Current Affairs Magazine*, 4 May 2022, www.prospectmagazine.co.uk/politics/38600/what-did-new-labour-achieve.

⁴⁰ Curtis, Polly. “Tony Blair: New Labour Died When I Handed Over to Gordon Brown.” *The Guardian*, Guardian News and Media, 8 July 2011, www.theguardian.com/politics/2011/jul/08/tony-blair-new-labour-gordon-brown.

⁴¹ Guardian Staff. “Chilcot Report: Key Points from the Iraq Inquiry.” *The Guardian*, Guardian News and Media, 6 July 2016, www.theguardian.com/uk-news/2016/jul/06/iraq-inquiry-key-points-from-the-chilcot-report.

which is what New Labour was able to do in their years in office.

As mentioned earlier, during the years of Blair & Brown: life expectancy rose; GDP saw near-continuous growth; health and public education spending shot up; unemployment dropped, and expected years of schooling went up. In a country as politically volatile as the United Kingdom,⁴² these feats are all to be considered great achievements, as it can be hard to implement lasting, structural change due to the constant threat of replacement, either within one’s party or by the opposition. While it is an undoubted fact that Labour could - and perhaps should - have utilised their power more effectively, working to implement gradual change to the system itself, rather than purely working in their constraints, they were still able to accomplish a great deal in the years from 1997 to 2010, despite some significant roadblocks along the way.

5.1 Where the Tories - and Liberal Democrats - Went Wrong

On April 6th, 2010, Prime Minister Gordon Brown - facing the 5-year Parliamentary limit⁴³ - met with Queen Elizabeth II to request permission for the dissolution of Parliament, with a General Election to be held a month later. Two weeks later, the first of 3 debates was held

⁴² “British Electorate ‘Most Volatile in Modern Times’, New Study Finds.” *University of Manchester*, 8 Oct. 2019, www.manchester.ac.uk/discover/news/british-electorate-most-volatile/.

⁴³ “General Elections.” UK Parliament, UK Government, 2024, www.parliament.uk/about/how/elections-and-voting/general/. Accessed 3 Nov. 2024.

between Brown, David Cameron, then-leader of the Conservative Party, and Nick Clegg, then-leader of the Liberal Democrats. Post-debate polls put the Conservatives on top with 33%, the Liberal Democrats in a close second with 30%, and Labour just behind in third with 28%. These results, however, would likely have still left Labour with the most Parliamentary seats, due to the UK's first-past-the-post voting system,⁴⁴ which means that parties can win an outsized share of seats relative to their total vote percentage.⁴⁵ Just 8 days before the General Election, though, Brown's relatively strong campaign took a turn for the worse - following a mild confrontation regarding immigration with a constituent in Rochdale, Brown was caught on a hot mic calling her a "*bigoted woman*," adding "*that was a disaster - they should never have put me with that woman. Whose idea was that? Ridiculous.*"⁴⁶ These comments, made to a constituent who was a Labour supporter, and was already planning to vote for Brown the following week⁴⁷ plunged the campaign into turmoil, and made their electoral position largely untenable from there on out. In the end, the Conservative Party won 307 seats, a colossal gain of +97 but still 19 short

of the necessary majority, the Labour Party won 258, a catastrophic 91-seat decrease, and the Liberal Democrats won 57, a slight swing of -5. The Conservative Party's lack of an outright mandate resulted in a hung parliament,⁴⁸ meaning that they alone could not govern the country.

The Cameron-Clegg Coalition

Following Brown's official resignation on May 11th, the Conservative Party - hereinafter referred to as 'the Tories' - negotiated with the Liberal Democrats to form a coalition government,⁴⁹ which became known as the 'Cameron-Clegg coalition.' With a combined total of 364 seats, the coalition had more than enough required for a majority, and thus began the Tories' reign in power, which would go on to last for over 14 years. In this power-sharing agreement, David Cameron served as Prime Minister, with Nick Clegg working as his Deputy. At the start of the coalition, an overwhelming majority - 17 out of 20⁵⁰ - were members of the Conservative Party, with the Liberal Democrat exceptions being Vince Cable, Secretary of State for Business, Chris Huhne, Secretary of State for Energy and Climate Change, and Danny Alexander, who served as Secretary of State for Scotland. On the back of over 13 years of Labour government which was marked by a revival

⁴⁴ "First Past the Post." Electoral Reform Society, 2024, www.electoral-reform.org.uk/voting-systems/types-of-voting-system/first-past-the-post/. Accessed 3 Nov. 2024.

⁴⁵ In the most recent 2024 General Election, for example, the Labour Party won 63% of Parliamentary Seats with just 33% of the total votes.

⁴⁶ "Gordon Brown calls Labour supporter a 'bigoted woman.'" YouTube, 28 Apr. 2010, youtu.be/yEReCN9gO14?feature=shared. Accessed 3 Nov. 2024.

⁴⁷ Curtis, Polly. "Gordon Brown calls Labour supporter a 'bigoted woman.'" The Guardian, 28 Apr. 2010, www.theguardian.com/politics/2010/apr/28/gordon-brown-bigoted-woman. Accessed 3 Nov. 2024.

⁴⁸ "Hung Parliament." UK Parliament, UK Government, 2024, www.parliament.uk/about/how/elections-and-voting/general/hung-parliament/. Accessed 4 Nov. 2024.

⁴⁹ "Coalition Government." UK Parliament, UK Government, 2024, www.parliament.uk/site-information/glossary/coalition-government/. Accessed 4 Nov. 2024.

⁵⁰ "Ministers in the 2010-15 Coalition Government." UK Parliament - House of Commons Library, 15 Oct. 2015, commonslibrary.parliament.uk/research-briefings/sn06544/. Accessed 3 Nov. 2024.

of social programs and increased spending, both the Tories and the Liberal Democrats had campaigned on cuts to both the budget and taxes - some of the centrepieces of the 2010 Conservative 'manifesto' were an "(e)mergency budget within 50 days of election to include immediate £6bn cut in wasteful spending," a "scrapping of planned increase in national insurance for employers and workers earnings less than £35,000," and a "freeze (on) council tax for two years."⁵¹

On the Liberal Democrat side, they had run on promises of making "the first £10,000 people earn (...) tax-free," a pledge "to free 3.6 million low earners and pensioners from income tax," and "cut(ting) the deficit with £15bn of savings in government spending."⁵² On June 22nd, 2010 - 47 days after the electoral victory - George Osborne, Chancellor of the Exchequer delivered the June 2010 'emergency' budget, declaring it as one that would support a "strong enterprise-led recovery," and one that had "laid the foundations for a more prosperous future."⁵³ He gave a scathing criticism of the previous Labour government, arguing that "the coalition Government has inherited from its predecessor the largest budget deficit of any economy in Europe with the single exception of Ireland," and that "one

pound in every four we spend is being borrowed."⁵⁴ While Osborne stopped far short of labelling it an austerity budget, he did describe it as "unavoidable,"⁵⁵ conceding that it contained some undoubtedly less-than-popular measures, but ones that were necessary to get the country back on track.

Less than 3 years into the coalition, an announcement was made that would fundamentally alter the course of British politics for good - on January 23rd, 2013, David Cameron delivered the now-infamous 'Bloomberg Speech', in which he proclaimed his support⁵⁶ for an in-out referendum on the United Kingdom's status as an EU Member State, which he promised to deliver should the Conservative Party triumph in the next General Election, which at that point was tentatively scheduled for 2015. The Tories did indeed triumph in this election, picking up 24 seats for a total of 330, breaking them free from the shackles of coalition governance, meaning that they had an outright mandate. In the European Union - or 'Brexit' - referendum, which took place exactly 41 months after Cameron's 'Bloomberg Speech', the British populace narrowly voted to leave the bloc, with 51.9% voting in

⁵¹ "The Conservative manifesto at a glance." The Guardian, 13 Apr. 2010, www.theguardian.com/politics/2010/apr/13/conservative-manifesto-at-a-glance. Accessed 4 Nov. 2024.

⁵² "General Election 2010: Liberal Democrat manifesto at a glance." The Guardian, 13 Apr. 2010, www.theguardian.com/politics/2010/apr/14/liberal-democrat-manifesto-at-a-glance. Accessed 3 Nov. 2024.

⁵³ Onanuga, Tola. "Emergency budget: George Osborne's speech in full." The Guardian, 22 June 2010, www.theguardian.com/uk/2010/jun/22/emergency-budget-full-speech-text. Accessed 3 Nov. 2024.

⁵⁴ Onanuga, Tola. "Emergency budget: George Osborne's speech in full." The Guardian, 22 June 2010, www.theguardian.com/uk/2010/jun/22/emergency-budget-full-speech-text. Accessed 3 Nov. 2024.

⁵⁵ Elliott, Larry, and Patrick Wintour. "Budget 2010: Pain now, more pain later in austerity plan." The Guardian, 22 June 2010, www.theguardian.com/uk/2010/jun/22/budget-2010-vat-austerity-plan. Accessed 4 Nov. 2024.

⁵⁶ "EU speech at Bloomberg." GOV.UK, 23 Jan. 2013, www.gov.uk/government/speeches/eu-speech-at-bloomberg. Accessed 4 Nov. 2024.

favour, and 48.1% voting against.⁵⁷ The formal secession process that followed was incredibly long and drawn out, and it was not until January 31st, 2020 that the UK had officially withdrawn from the European Union. At that time, as Brexit was firmly in the country's rear-view mirror, another major problem came to the fore, namely the COVID-19 pandemic.

Late-Stage Tories

On March 23rd, 2020, then-Prime Minister Boris Johnson declared a state of emergency and the start of a national lockdown, which continued on-and-off until summer of the following year. The illness and death caused by the pandemic, as well as the lockdowns imposed to stop it unsurprisingly caused economic downturns not just in the United Kingdom, but across the globe. GDP fell by nearly 20% across the first 3 months of the pandemic when the country's economy slammed to a halt, and while it rebounded throughout the summer of 2020, the economic consequences were felt for years to come.

At the back end of the Covid pandemic, it was revealed that then-Prime Minister Boris Johnson had been holding parties⁵⁸ during the pandemic in violation of his own lockdown rules, two of which took place on the eve of the

funeral⁵⁹ of Prince Philip, Queen Elizabeth II's husband. Largely due to this scandal, Johnson announced his resignation as Prime Minister in July 2022, and was replaced by Liz Truss two months later.

Truss' short-lived time in power was marked by the death of Queen Elizabeth II on just the second day of her Premiership, with things arguably only getting worse from there. A few weeks later, Truss, along with her Chancellor Kwasi Kwarteng, unveiled their 'mini-budget', which included, among other measures, £45 billion in unfunded tax-cuts.⁶⁰ The proposal promptly tanked the British economy - within days, the British Pound had plummeted to a record low against the U.S Dollar,⁶¹ while also spiking the cost of long-term borrowing.⁶² On October 14th 2022, Kwarteng, facing significant backlash against a failed budget, was fired and replaced by Jeremy Hunt - less than a week later, Truss resigned, making her the shortest-serving Prime Minister in modern British history, her reign lasting only 50 days.

She was replaced by Rishi Sunak, who was able to steady the ship to a certain extent, but was all the while staring

⁵⁷ "EU Referendum Results." BBC News, 24 June 2016, www.bbc.co.uk/news/politics/eu_referendum/results. Accessed 4 Nov. 2024.

⁵⁸ "A timeline of the Partygate scandal." The Week, 15 June 2023, theweek.com/news/politics/955416/timeline-downing-street-lockdown-party-scandal. Accessed 4 Nov. 2024.

⁵⁹ Walker, Peter, and Harry Taylor. "Two Downing Street parties held evening before Prince Philip's funeral - reports." The Guardian, 14 Jan. 2022, www.theguardian.com/politics/2022/jan/13/two-downing-street-parties-held-evening-before-prince-philips-funeral-reports. Accessed 4 Nov. 2024.

⁶⁰ Islam, Faisal. "The inside story of the mini-budget disaster." BBC News, 25 Sept. 2023, www.bbc.com/news/business-66897881. Accessed 4 Nov. 2024.

⁶¹ Edgington, Tom. "The pound: Why is it falling?" BBC News, 26 Sept. 2022, www.bbc.com/news/business-49179234. Accessed 4 Nov. 2024.

⁶² "How much market chaos did the mini-budget cause?" BBC News, 17 Oct. 2022, www.bbc.com/news/63229204. Accessed 4 Nov. 2024.

down the barrel of the 5-year Parliamentary Limit, much like Gordon Brown in 2010. On May 22nd, 2024, in the driving rain outside 10 Downing Street, a sopping wet Rishi Sunak declared that the 2024 General Election would take place on July 4th, thus beginning the official campaign.

5.2 Labour's Reclamation of Power and Lessons to Take

In the pursuant General Election, the expectations of a Labour walkover indeed came to fruition, with the party picking up 211 parliamentary seats for a total of 411, while the Liberal Democrats also saw unprecedented gains, surging 64 seats for a total of 72. Prominent Conservative figures such as longtime MP Jacob Rees-Mogg, then-Defence Secretary Grant Shapps, and even the aforementioned Liz Truss lost their seats, marking a truly catastrophic night for the Tories.

While it would not be unreasonable to attribute Labour's landslide largely to the sweeping unpopularity of the Tories - Rishi Sunak's favourability stood at a meagre 21%⁶³ the month before the election - the sweeping success can also be attributed in part to a solid Labour platform and the support that they were able to garner through it. Their sprawling, 136-page manifesto published in the weeks leading up to the election covered almost all policy bases, with a platform sufficiently moderate to attract those who had become disaffected with the Tories in the

4-and-a-half years since the previous General Election, particularly throughout COVID and the ensuing mess that took place. Labour's manifesto was centred around "*five national missions to (...) end the chaos, turn the page and meet the long-term challenges the country faces,*" which included "*kickstart(ing) economic growth,*" "*mak(ing) Britain a clean energy superpower,*" and "*break(ing) down barriers to opportunity.*"⁶⁴ Among the specific policy proposals were £23.7 in Green measures, the assurance of 40,000 new NHS operations and appointments, as well as a new Border and Security Command force, aimed at tackling illegal migration, one of the biggest campaign issues.

While Sir Keir Starmer himself was not the most popular figure individually - his favorability stood at only 34%⁶⁵ the day after the election was called - many within the British electorate saw him as a suitable alternative to the Tories, and after nearly a decade and a half of rule by the Conservative Party, it would not be unfair to suggest that some were simply looking for an alternative in whatever form it came. This widespread dissatisfaction of the Tories is highly visible in the split from the traditional Labour-Conservative dichotomy, represented by surges in the Liberal Democrats, as well as Reform UK, led by the infamous Nigel Farage. While the Liberal Democrats were able to run on their traditional platform of sensible

⁶³ Smith, Matthew. "General election 2024: Rishi Sunak's 'unfavourable' rating at highest ever." YouGov, 13 June 2024, yougov.co.uk/politics/articles/49733-general-election-2024-rishi-sunaks-unfavourable-rating-at-highest-ever. Accessed 4 Nov. 2024.

⁶⁴ "My plan for change." The Labour Party, 13 June 2024, labour.org.uk/change/. Accessed 4 Nov. 2024.

⁶⁵ Smith, Matthew. "General election 2024: Rishi Sunak's 'unfavourable' rating at highest ever." YouGov, 13 June 2024, yougov.co.uk/politics/articles/49733-general-election-2024-rishi-sunaks-unfavourable-rating-at-highest-ever. Accessed 4 Nov. 2024.

governance and a break from the aforementioned two-party split, Reform UK took a far more radical, hardline approach, railing against multiculturalism and “divisive ‘woke’ ideology,” pledging to “freeze immigration and stop the boats,” and “restore law and order.”⁶⁶ The strategy, however controversial, was only a slight success in the end - while Reform UK picked up 14.3% of the aggregate votes, nearly 1 in 6 - they were only able to translate this into 5 parliamentary seats, far less than they would have been expecting or hoping for. Nevertheless, their newfound place in the British political paradigm will be closely watched in the years to come, particularly should the Tories continue on the downward spiral that has been occurring in recent years.

The Starmer Administration

Since taking power on July 5th, Sir Keir Starmer and the Labour Party have imposed a number of sensible and practical measures in the spirit of policies outlined in their manifesto, despite simultaneously grappling with in-fighting⁶⁷ and scandals.⁶⁸ These measures have included the announcement of a plan to build 1.5 million affordable

homes⁶⁹ over the next 5 years, the introduction of a rail nationalisation bill⁷⁰ that would bring control of the country’s rail networks back to the government, the oversight of the closure of the country’s last remaining coal power plant,⁷¹ and the presentation of a workers’ rights bill⁷² that would protect employees against unjust dismissals and exploitative contracts. While a relatively young Labour administration spearheaded by Sir Keir Starmer has been able to accomplish a good deal by modern standards in their time thus far, it remains clear that there is work yet to be done.

After over 4 months in power, many promises within Labour’s campaign manifesto remain neglected, and many of the party’s wins as of recent have been more symbolic than material. However, as referenced by Chancellor Rachel Reeves’ introduction of the Autumn Budget - which included tax hikes of £40 billion to fund the NHS and other public services⁷³ - Labour is committed to

⁶⁶ “Reform UK Manifesto.” Reform UK, June 2024, www.reformparty.uk/policies. Accessed 4 Nov. 2024.

⁶⁷ Walker, Peter. “Up to 50 Labour MPs could rebel over cut to winter fuel allowance.” *The Guardian*, 8 Sept. 2024, www.theguardian.com/politics/article/2024/sep/08/up-to-50-labour-mps-could-rebel-over-cut-to-winter-fuel-allowance. Accessed 4 Nov. 2024.

⁶⁸ Cornock, David, and Joshua Nevett. “Keir Starmer received more clothes worth £16,000.” *BBC News*, 27 Sept. 2024, www.bbc.com/news/articles/cdd4z9vzdnno. Accessed 4 Nov. 2024.

⁶⁹ Labiak, Mitchell. “Labour’s plan to build 1.5m homes – can it be delivered?” *BBC News*, 26 Sept. 2024, www.bbc.com/news/articles/cvgw7x4y5rzo. Accessed 4 Nov. 2024.

⁷⁰ Pickard, Jim, et al. “Labour to begin rail nationalisations within months.” *Financial Times*, 18 July 2024, www.ft.com/content/368283c4-37fb-46af-96f6-4d6b5ea711bf. Accessed 4 Nov. 2024.

⁷¹ Poynting, Mark, and Esme Stallard. “UK to finish with coal power after 142 years.” *BBC News*, 30 Sept. 2024, www.bbc.com/news/articles/c5y35qz73n8o. Accessed 4 Nov. 2024.

⁷² Elgot, Jessica. “New enforcement agency will protect workers’ rights as part of ‘watershed’ bill.” *The Guardian*, 10 Oct. 2024, www.theguardian.com/politics/2024/oct/10/new-enforcement-agency-will-protect-workers-rights-as-part-of-watershed-bill. Accessed 4 Nov. 2024.

⁷³ Seddon, Paul. “Budget 2024: Key points at a glance.” *BBC News*, 30 Oct. 2024, www.bbc.com/news/articles/cdxl1zd0711o. Accessed 4 Nov. 2024.

delivering on its goals, and will relish the upcoming 4-and-a-half years that they are near-guaranteed to be in power for.

5.3 Starmer's (Next) Steps

Starmer, to his credit, has already taken bold steps in an attempt to revitalize the British economy, and help the United Kingdom recover from the threat of a second 'lost decade,' fears of which⁷⁴ were prompted by Tory austerity and consistent declines in standards of living under Conservative rule. As highlighted by the aforementioned Autumn Budget, the Labour government is committed to their promises of increases in public spending - to the tune of "an average of £69.5bn, or 2.2% of GDP, a year from 2025/26"⁷⁵ - which are to be funded by hikes of capital gains tax and levies on businesses. The budget also included significant pledges towards transport - with the government promising to expand high-speed rail, particularly in the north of England - and housing, with a £500m boost to the current affordable housing budget.

The budget, however, did not come without criticism, particularly regarding Labour's plan to reduce the exemption on tax when inheriting farmland, which will result in inheritors of large farms having to pay more than they currently do, potentially increasing the burden on

struggling family-owned farms. This proposal drew harsh and intense fightback, with thousands of the nation's farmers gathering en masse in London to protest the measure.⁷⁶ Just recently, Starmer introduced his government's 'Plan for Change', aimed at guiding the UK towards a 'decade of national renewal.' The five tenets of this plan echoed back to Labour's election manifesto, with the pledges reading: "Kickstart Economic Growth;" "Build an NHS Fit for the Future;" "Safer Streets;" "Break Down the Barriers to Opportunity;" and "Make Britain a Clean Energy Superpower."⁷⁷ In a nearly hour-long speech announcing the plan, Starmer laid out his 6 key points that his government intends to have completed by the next general election, which will likely be in 2029. These proposals were: "putting more money in the pockets of working people," "building 1.5m homes and fast-tracking planning decisions on at least 150 major infrastructure projects," "treating 92 percent of NHS patients within 18 weeks," "recruiting 13,000 more police officers, special constables and PCSOs (Police Community Support Officers) in neighbourhood roles," "making sure three-quarters of five year olds are school-ready," and achieving "95% clean power by 2030."⁷⁸

⁷⁴ Partington, Richard, et al. "Budget plans risk 'second lost decade' of living standards, Jeremy Hunt told." *The Guardian*, 4 Mar. 2024, www.theguardian.com/uk-news/2024/mar/04/budget-plans-risk-second-lost-decade-of-living-standards-jeremy-hunt-told.

⁷⁵ Beck, Martin. "Autumn budget 2024: Key announcements and analysis." UK Parliament - House of Lords Library, 5 Nov. 2024, lordslibrary.parliament.uk/autumn-budget-2024-key-announcements-and-analysis.

⁷⁶ Kumah, Jenny, et al. "Thousands of farmers protest against inheritance tax changes." *BBC News*, 19 Nov. 2024, www.bbc.com/news/articles/czj71zyy934o.

⁷⁷ "PM speech on Plan for Change: 5 December 2024." *GOV.UK*, 5 Dec. 2024, www.gov.uk/government/speeches/pm-speech-on-plan-for-change-5-december-2024.

⁷⁸ Bentley, Oscar, and Chas Geiger. "Six takeaways from Keir Starmer's 'plan for change.'" *BBC News*, 5 Dec. 2024, www.bbc.com/news/articles/cn9gxvppxqpo.

Starmer himself has acknowledged that these proposals are “*ambitious,*” describing the plan to build 1.5 new homes as “*a little too ambitious, perhaps*”, but argued the case that bold ideas and actions are going to be what gets the UK back on track, paraphrasing former U.S President John F. Kennedy and saying that “*you choose change, not because it’s easy... but because it’s hard.*”⁷⁹ While these intrepid steps are highly encouraging, Starmer’s job is far from over.

There are no official ‘term limits’ on the British Premiership, meaning if all goes to plan, Starmer - currently 62 years old - will remain in office until Labour loses a general election which, given the ongoing fracture of the right between the Conservative Party and Reform UK, may not be for a while, and likely beyond 2029, when the next general election is expected to take place. Labour’s ‘mandate’ from the 2024 General Election was a large one, giving them confidence that should propel them through these next few years in power, taking steps even bolder than those that have already been taken, and revitalizing the United Kingdom into the powerhouse that it once was.

VI. Conclusion

Overall, it can be seen that while the United Kingdom was able to pursue a robust strategy of both growth and development during Tony Blair & Gordon Brown’s ‘New Labour’ era, the conjunction of both these principles went awry during the reign of the Conservative Party from 2010

until 2024, largely exacerbated by major events such as Brexit and the Covid-19 pandemic, which were hallmarked by Tory blunders and mismanagement.

Upon Labour’s return to power, this time under the leadership of Sir Keir Starmer, it is clear that the party has a road map, and that they will do their utmost to execute, in the process, potentially forming an age of “New New Labour.” While Starmer and his government - through the Autumn Budget and the ‘Plan for Change’ - have already come out strong and on the front foot, it remains clear that there is tremendous work to be done, which will require the full dedication of the Labour government, along with unflinching commitment to their newly re-embraced principles of strong public spending and a dedication to the improving of living standards for all.

⁷⁹ “PM speech on Plan for Change: 5 December 2024.” GOV.UK, 5 Dec. 2024, www.gov.uk/government/speeches/pm-speech-on-plan-for-change-5-decembe-2024.

VII. Bibliography

- Adonis, Andrew. "What Did New Labour Achieve?" Prospect Magazine - Britain's Leading Monthly Current Affairs Magazine, 4 May 2022, www.prospectmagazine.co.uk/politics/38600/what-did-new-labour-achieve.
- Andrei Andries - Coordinator. 2001. Human Development Report 2001: Making New Technologies Work for Human Development. New York. "BBC Politics 97."
- Beck, Martin. "Autumn budget 2024: Key announcements and analysis." UK Parliament - House of Lords Library, 5 Nov. 2024, lordslibrary.parliament.uk/autumn-budget-2024-key-announcements-and-analysis/#heading-9
- Bentley, Oscar, and Chas Geiger. "Six takeaways from Keir Starmer's 'plan for change.'" BBC News, 5 Dec. 2024, www.bbc.com/news/articles/cn9gxvppxqpo.
- BBC News, BBC, 1997, www.bbc.co.uk/news/special/politics97/news/05/0505/stats.shtml. "Blair's Speech: Full Text."
- The Guardian, Guardian News and Media, 10 May 2007, www.theguardian.com/politics/2007/may/10/labourleadership.labour2.
- "British Electorate 'Most Volatile in Modern Times', New Study Finds." University of Manchester, 8 Oct. 2019, www.manchester.ac.uk/discover/news/british-electorate-most-volatile/.
- "Budget 1999: The Chancellor's Speech." The Independent, Independent Digital News and Media, 10 Mar. 1999, www.independent.co.uk/news/business/budget-1999-the-chancellor-s-speech-the-fairer-britain-is-then-the-more-prosperous-we-will-all-be-1079582.html.
- "Chapter 1: Population Change and Trends in Life Expectancy." GOV.UK, 11 Sept. 2018, www.gov.uk/government/publications/health-profile-for-england-2018/chapter-1-population-change-and-trends-in-life-expectancy.
- Chu, Ben. "The Story of the UK's Unprecedented GDP Collapse in Five Charts." The Independent, Independent Digital News and Media, 12 June 2020, www.independent.co.uk/news/business/analysis-and-features/uk-gdp-collapse-charts-unprecedented-history-a9562326.html.
- "Coalition Government." UK Parliament, UK Government, 2024, www.parliament.uk/site-information/glossary/coalition-government/. Accessed 4 Nov. 2024.
- "The Conservative manifesto at a glance." The Guardian, 13 Apr. 2010, www.theguardian.com/politics/2010/apr/13/conservative-manifesto-at-a-glance. Accessed 4 Nov. 2024.
- Cornock, David, and Joshua Nevett. "Keir Starmer received more clothes worth £16,000." BBC News, 27 Sept. 2024, www.bbc.com/news/articles/cdd4z9vzdnno. Accessed 4 Nov. 2024.
- Cracknell, Richard, et al. "1918- 2023, a Long Century of Elections." House of Commons Library, 9 Aug. 2023, researchbriefings.files.parliament.uk/documents/CBP-7529/CBP-7529.pdf.
- Curtis, Polly. "Gordon Brown calls Labour supporter a 'bigoted woman.'" The Guardian, 28 Apr. 2010, www.theguardian.com/politics/2010/apr/28/gordon-brown-bigoted-woman. Accessed 3 Nov. 2024.
- Curtis, Polly. "Tony Blair: New Labour Died When I Handed Over to Gordon Brown." The Guardian, Guardian News and Media, 8 July 2011, www.theguardian.com/politics/2011/jul/08/tony-blair-new-labour-gordon-brown.
- Dilnot, Andrew, and Julian McCrae. "Family Credit and the Working Families' Tax Credit." Institute for Financial Studies, Oct. 1999, ifs.org.uk/sites/default/files/output_url_files/bn3.pdf.
- Edgington, Tom. "The pound: Why is it falling?" BBC News, 26 Sept. 2022,

- www.bbc.com/news/business-49179234. Accessed 4 Nov. 2024.
- Eichengreen, Barry. "Black Wednesday Cast a Shadow That Culminated in Brexit." *The Guardian*, Guardian News and Media, 13 Sept. 2022, www.theguardian.com/business/2022/sep/13/black-wednesday-brexit-sterling-crisis.
- Elgot, Jessica. "New enforcement agency will protect workers' rights as part of 'watershed' bill." *The Guardian*, 10 Oct. 2024, www.theguardian.com/politics/2024/oct/10/new-enforcement-agency-will-protect-workers-rights-as-part-of-watershed-bill. Accessed 4 Nov. 2024.
- Elliott, Larry, and Patrick Wintour. "Budget 2010: Pain now, more pain later in austerity plan." *The Guardian*, 22 June 2010, www.theguardian.com/uk/2010/jun/22/budget-2010-vat-austerity-plan. Accessed 4 Nov. 2024.
- "EU Referendum Results." *BBC News*, 24 June 2016, www.bbc.co.uk/news/politics/eu_referendum/results. Accessed 4 Nov. 2024.
- "EU speech at Bloomberg." *GOV.UK*, 23 Jan. 2013, www.gov.uk/government/speeches/eu-speech-at-bloomberg. Accessed 4 Nov. 2024.
- "Expected Years of Schooling." *World Bank Gender Data Portal*, genderdata.worldbank.org/indicators/se-sch-life/?gender=total&year=2010.
- "Explanatory Notes to Tax Credits Act 2002." *Legislation.Gov.Uk*, King's Printer of Acts of Parliament, 2022, www.legislation.gov.uk/ukpga/2002/21/notes/division/5. "First Past the Post." *Electoral Reform Society*, 2024, www.electoral-reform.org.uk/voting-systems/types-of-voting-system/first-past-the-post/. Accessed 3 Nov. 2024.
- "General Elections." *UK Parliament*, UK Government, 2024, www.parliament.uk/about/how/elections-and-voting/general/. Accessed 3 Nov. 2024.
- "General Election Victory Speech, 1997." *British Political Speech | Speech Archive*, 1997, www.britishpoliticalspeech.org/speech-archive.htm?speech=222.
- "Gini Index - United Kingdom." *World Bank Open Data*, data.worldbank.org/indicator/SI.POV.GINI?locations=GB.
- "Gordon Brown calls Labour supporter a 'bigoted woman.'" *YouTube*, 28 Apr. 2010, youtu.be/yEReCN9gO14?feature=shared. Accessed 3 Nov. 2024.
- "Gordon Brown's Speech in Full." *The Guardian*, Guardian News and Media, 23 Sept. 2008, www.theguardian.com/politics/2008/sep/23/gordonbrown.labour1.
- Guardian Staff. "Chilcot Report: Key Points from the Iraq Inquiry." *The Guardian*, Guardian News and Media, 6 July 2016, www.theguardian.com/uk-news/2016/jul/06/iraqi-inquiry-key-points-from-the-chilcot-report.
- "How much market chaos did the mini-budget cause?" *BBC News*, 17 Oct. 2022, www.bbc.com/news/63229204. Accessed 4 Nov. 2024.
- "A Hung Parliament: Key Issues for the 2010 Parliament - UK Parliament." *UK Parliament*, 2010, www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/the-new-parliament/a-hung-parliament/.
- "Hung Parliament." *UK Parliament*, UK Government, 2024, www.parliament.uk/about/how/elections-and-voting/general/hung-parliament/. Accessed 4 Nov. 2024.
- Islam, Faisal. "The inside story of the mini-budget disaster." *BBC News*, 25 Sept. 2023, www.bbc.com/news/business-66897881. Accessed 4 Nov. 2024.
- Kumah, Jenny, et al. "Thousands of farmers protest against inheritance tax changes." *BBC News*, 19 Nov. 2024, www.bbc.com/news/articles/czj71zzy934o.

- Labiak, Mitchell. "Labour's plan to build 1.5m homes – can it be delivered?" BBC News, 26 Sept. 2024, www.bbc.com/news/articles/cvgw7x4y5rzo. Accessed 4 Nov. 2024.
- "Labour Governments' Achievements." Shrewsbury Labour, www.shrewsburylabour.org.uk/labours-top-50-achievements/.
- Lawson, Neal. "Twenty-Five Years on, It's Clearer than Ever That New Labour Failed." Prospect Magazine - Britain's Leading Monthly Current Affairs Magazine, 28 Apr. 2022, www.prospectmagazine.co.uk/politics/38588/twenty-five-years-on-its-clearer-than-ever-that-new-labour-failed.
- Margaret Thatcher Foundation. "TV Interview for Thames TV This Week." Margaret Thatcher Foundation, www.margaretthatcher.org/document/102953.
- "Ministers in the 2010-15 Coalition Government." UK Parliament - House of Commons Library, 15 Oct. 2015, commonslibrary.parliament.uk/research-briefings/sn06544/. Accessed 3 Nov. 2024.
- Morris, Georgina. "Miners' Strike 1984: Why UK Miners Walked out and How It Ended." BBC News, BBC, 2 Mar. 2024, www.bbc.com/news/uk-england-68244762.
- "My plan for change." The Labour Party, 13 June 2024, labour.org.uk/change/. Accessed 4 Nov. 2024.
- Nations, United. "Human Development Index." Human Development Reports - United Nations, 16 Feb. 2024, hdr.undp.org/data-center/human-development-index#/indicies/HDI.
- Onanuga, Tola. "Emergency budget: George Osborne's speech in full." The Guardian, 22 June 2010, www.theguardian.com/uk/2010/jun/22/emergency-budget-full-speech-text. Accessed 3 Nov. 2024.
- Partington, Richard, et al. "Budget plans risk 'second lost decade' of living standards, Jeremy Hunt told." The Guardian, 4 Mar. 2024, www.theguardian.com/uk-news/2024/mar/04/budget-plans-risk-second-lost-decade-of-living-standards-jeremy-hunt-told.
- Pickard, Jim, et al. "Labour to begin rail nationalisations within months." Financial Times, 18 July 2024, www.ft.com/content/368283c4-37fb-46af-96f6-4d6b5ea711bf. Accessed 4 Nov. 2024.
- "PM speech on Plan for Change: 5 December 2024." GOV.UK, 5 Dec. 2024, www.gov.uk/government/speeches/pm-speech-on-plan-for-change-5-december-2024.
- "Political Monitor: Satisfaction Ratings 1997-Present | Ipsos." Ipsos, www.ipsos.com/en-uk/political-monitor-satisfaction-ratings-1997-present.
- Poynting, Mark, and Esme Stallard. "UK to finish with coal power after 142 years." BBC News, 30 Sept. 2024, www.bbc.com/news/articles/c5y35qz73n8o. Accessed 4 Nov. 2024.
- "Reform UK Manifesto." Reform UK, June 2024, www.reformparty.uk/policies. Accessed 4 Nov. 2024.
- Rodrigues, Jason. "Twenty Years Ago Today: Tony Blair Won Clause Four Debate." The Guardian, Guardian News and Media, 29 Apr. 2015, www.theguardian.com/politics/from-the-archive-blog/2015/apr/29/clause-four-labour-party-tony-blair-20-1995.
- Rogers, Simon. "15 Ways That Britain Changed Under Margaret Thatcher." The Guardian, 8 Apr. 2013, www.theguardian.com/politics/datablog/2013/apr/08/britain-changed-margaret-thatcher-charts.
- Seddon, Paul. "Budget 2024: Key points at a glance." BBC News, 30 Oct. 2024, www.bbc.com/news/articles/cdxl1zd0711o. Accessed 4 Nov. 2024.

- Smith, Matthew. "General election 2024: Rishi Sunak's 'unfavourable' rating at highest ever." YouGov, 13 June 2024, yougov.co.uk/politics/articles/49733-general-election-2024-rishi-sunaks-unfavourable-rating-at-highest-ever. Accessed 4 Nov. 2024.
- "The Thatcher Years in Statistics." BBC News, BBC, 9 Apr. 2013, www.bbc.com/news/uk-politics-22070491.
- "A timeline of the Partygate scandal." The Week, 15 June 2023, theweek.com/news/politics/955416/timeline-downing-street-lockdown-party-scandal. Accessed 4 Nov. 2024.
- Tiratelli, Matteo. "Nobody Should Look to Tony Blair and New Labour as a Model for Anything." Jacobin, 11 Aug. 2021, jacobin.com/2021/11/new-labour-tony-blair-party-revolution-narrative.
- "Transforming Britain's Labour Market - Ten Years of the New Deal." Department for Work and Pensions, 2009, dera.ioe.ac.uk/id/eprint/7487/7/PMNewDeal2-01-08_Redacted.pdf.
- UNDP (United Nations Development Programme). 2010. Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development. New York.
- United Nations Development Programme. "What Is Human Development?" UNDP, 9 Feb. 2023, www.undp.org/sites/g/files/zskgke326/files/2023-02/CK_Slides_FINAL_ENG.pdf.
- Walker, Peter. "Up to 50 Labour MPs could rebel over cut to winter fuel allowance." The Guardian, 8 Sept. 2024, www.theguardian.com/politics/article/2024/sep/08/up-to-50-labour-mps-could-rebel-over-cut-to-winter-fuel-allowance. Accessed 4 Nov. 2024.
- Walker, Peter, and Harry Taylor. "Two Downing Street parties held evening before Prince Philip's funeral – reports." The Guardian, 14 Jan. 2022, www.theguardian.com/politics/2022/jan/13/two-downing-street-parties-held-evening-before-prince-philips-funeral-reports. Accessed 4 Nov. 2024.
- Wheeler, Brian. "Tony Blair's Legacy 20 Years On." BBC News, BBC, 30 Apr. 2017, www.bbc.com/news/uk-politics-39717751.
- Williams, Rachel. "The Evolution of Sure Start: The Challenges and the Successes." The Guardian, Guardian News and Media, 19 Oct. 2011, www.theguardian.com/society/2011/oct/19/evolution-of-sure-start-success.

Reassessing the CAP: Farmers, Politics, and the Struggle for Equity in EU Agricultural Policy

Móric Tóth

Sciences Po Paris, Reims, France
Bachelor of Arts

E-mail: moric.toth@sciencespo.fr

Published 27th of January 2025

Abstract

In early 2024, European farmers organised international large-scale protests, demanding policy adjustments to address mounting costs, bureaucratic inefficiencies, and stringent environmental regulations. The European Commission quickly proposed a revision to the Common Agricultural Policy (CAP) aimed at easing the farmers' administrative and financial burdens. However, this hurried reform has sparked concerns, as it has appeared less to be a response to the farmers' needs, but more as a politically driven manoeuvre to appease agro-industrial interests before the EU parliamentary elections. This paper reviews the events, underlying motivations and impacts of the CAP reform, arguing that political agendas and large agricultural corporations had a more decisive influence on policy adjustments than small or mid-sized farms. Through an analysis of primary sources, stakeholder responses, and relevant literature, this paper highlights the adverse effects of the current reform on small-scale farmers, biodiversity goals, and public trust in EU institutions. This study will also highlight the precarious situation of small- and medium scale farmers, enduring due to the hasty and inconsiderate revision of agricultural policies. To ensure the CAP's effectiveness, this paper will put forward various policy proposals such as more inclusive decision-making processes; targeted financial assistance for small farms, or an enhanced social conditionality in regard to subsidies.

Keywords: Common Agricultural Policy, European Union, farmers

1. Introduction

Over the first months of 2024, farmers all across European countries mobilised themselves into important street protests, calling for significant changes in the current EU agricultural policy. Their primary demands were related to the ever more stringent environmental regulations imposed on them by the reformed Common Agricultural Policy (Henceforth referred to as CAP), coupled with rising costs, inflation, and over-complexified bureaucratic systems to obtain

assistance. To appease the turbulent movements – especially regarding the upcoming EU parliamentary elections – the European Commission quickly responded by a legislative proposal to renegotiate the CAP. The suggested amendments were aimed to alleviate the administrative burden on the farmers; however, they also included significant setbacks on existing environmental requirements.

Nevertheless, the revision of the CAP, implemented in the name of supporting agricultural

farmers at all scales, seems to have been primarily driven by other factors. The hasty decision resembles more of a political concession in the run-up to the parliamentary elections, attempting to improve on the polls of political groups. Moreover, it was not the small and middle-scale farmers needing assistance who were at the forefront of the reconsideration talks. It was rather the large agricultural corporations, who have been pressuring the EU institutions for years behind the scenes to press their own interests for short-term profits. In this light, the revision of the CAP can hardly be seen as a promising advance in favour of environmental regulation or fair support of the agricultural sector. Therefore, this article will answer the following question: *What are the shortcomings of the latest CAP reform, and how might they be circumvented for it to effectively achieve its intended purpose?* In this paper, I will argue that the decision of the European Parliament to renegotiate the CAP was an ill-considered and rushed decision mainly motivated by political interests. I will demonstrate that the primary sources of influence in the procedure were mainly self-interested political and corporate actors rather than the farmers themselves. Consequently, the implemented changes do not favour administrative transparency or environmental protection, as intended to, but in contrast give political parties and large agroalimentary firms all the more leeway to maximise their benefits by circumventing existing legislation.

This paper is intended to follow an explanatory-normative methodology, both revealing the behind-the-scenes events of recent months and making

proposals to achieve the initially intended goals of the policy reform. Research methods include an analysis of primary sources such as press releases or memoranda of EU institutions and agricultural organisations. This will allow us first to get a clear, factual overview of the revision procedure. Then, a review of existing literature and journal articles will be conducted to get a better understanding of the farmers' and other actors' subjective perception of the situation, assessing their genuine demands. Finally, existing policy proposals put forward by experts in the field will be considered in detail, evaluating their potential to address the shortcomings of the latest CAP reform.

II. Factual analysis of the revisional procedure

On March 15, 2024, the European Commission proposed to review certain provisions of the CAP in relation to its Strategic Plans.¹ In the released memo, the institution based this decision on its commitment “to reduce the burden related to controls for EU farmers and provide them with greater flexibility for complying with certain environmental conditionalities”². In practice, the proposal put forward changes to one of the basic elements of eligibility to obtain CAP benefits, namely the Good Agricultural and Environmental Conditions (GAECs).³ Existing mandatory requirements for the reception of EU income support were downgraded to simple voluntary

¹ “Memo on the Commission’s Package of Support to EU Farmers,” European Commission, March 15, 2024.

² Ibid.

³ “Conditionality,” European Commission, February 13, 2024.

measures, weakening six of the conditions that concerned practices related to permanent grassland (GAEC 1); soil erosion (GAEC 5); minimum soil cover (GAEC 6); crop rotation (GAEC 7); non-productive areas/landscape features (GAEC 8) and environmentally sensitive grasslands and Natura 2000 sites (GAEC 9).⁴ Requirements for the minimum share of agricultural area devoted to non-productive activities have been deleted. As such, the retention of landscape features, banning the cutting of hedges and trees during the bird breeding and rearing season are for instance no longer required. The modification also re-authorized the use of pesticides on the concerned areas, leading to a loss of approximately 9 million hectares of pesticide-free land.⁵

On April 11, 2024, the European Parliament voted largely in favour of the proposal through an unconventional ‘urgency procedure’ allowing it to skip the standard approval procedure.⁶ In the absence of any evaluation of the potential consequences of the decision – or of consultations with the stakeholders or debates within the Parliament – the proposal was directly put up to a complete-scale vote during the plenary session of April 22-2; the final of that mandate preceding the 2024 Parliamentary elections.⁷ The resolution has immediately been embroiled in a series of controversies

⁴ Natasha Foote, “Re-CAP: Breaking down the Breakdown of the EU’s Green Farming Measures,” *Agricultural and Rural Convention*, July 28, 2024.

⁵ “A Deathblow for the Legitimacy of the CAP,” *PAN Europe*, April 29, 2024.

⁶ European Parliament. “Vote on a Review of the EU’s Agriculture Policy to Enhance Support to Farmers .” *News*, April 18, 2024.

⁷ “Agenda - Thursday, 25 April 2024,” *Europa.eu*, 2024.

following its announcement, put forward without any actual impact assessment. This has been justified by the crisis triggered in the wake of the protests all across the continent, said to require urgent decision-making on behalf of the EU institutions. In this regard, the decision was preceded merely by an impromptu consultation procedure that lasted a single week, coupled with a request of the four largest farming organisations at the EU level for measure proposals. This hardly seems like a proposal made on behalf of the farmers’ interests; its urgency suggests that the political actors involved were motivated by other, self-interested or external incentives.

III. The political sphere

A significant factor that could have pushed the European institutions to take such an ill-considered decision was the looming approach of the 2024 EU Parliamentary elections. Indeed, as each political group tried to gather the support of the most extensive electoral base possible, satisfying the citizenry’s demands seemed more crucial than ever before. Voters seem to be increasingly aware of climate change, but at the same time, they also tend to favour lower costs of living over other concerns, making their satisfaction an ambiguous task.⁸ In this political setting, Parliamentary groups were having real difficulties in positioning themselves between calls for action to prevent biodiversity loss and the fear of not appeasing the agricultural and industrial lobbies. As a matter of fact, the latter were constantly calling for an abandonment of environmental

⁸ European Commission, “EU Post-Electoral Survey 2024,” *Eurobarometer*, 2024.

regulations by a complete withdrawal of the EU's green policy.⁹ Even on the national level, almost all countries' political debates preceding the elections were marked by a stark presence of agricultural issues. Particularly, the far-right parties of many Member States have made attempts at politicising the waves of national protests, to appropriate this issue area for their benefit. Parties like the Spanish Vox or Germany's Afd have continuously accused ruling powers of letting the farmers down, to play on the pre-existing hostility and wariness of agricultural workers towards the Government.¹⁰ For instance, Vox Senator Ángel Pelayo has fiercely denounced the support of mainstream Spanish parties PSOE and PP to the European Green Deal, describing it as a "ruin for the countryside" during discussions in the Spanish Senate.¹¹ Behind this displayed eagerness to become the bastion of support of the farmers' cause, these parties were evidently making an attempt to form the key themes of the June 2024 European elections around their advantages. Through the denunciation of the bureaucratic system of the Brussels elite and other alerting messages such as the disappearance of the agricultural sector in the EU, far-right parties were seeking to instil a state of fear amongst farmers, pushing the latter to vote for their political group during the elections. However, these messages devoid of evidence or

⁹ Susi Dennison, "Agricultural Tackles: Protesting Farmers and the EU's Climate Agenda," ECFR, February 20, 2024.

¹⁰ Hans Pfeifer, "Germany's Far Right Exploits Farmers' Protests," Deutsche Welle, August 1, 2024.

¹¹ Paula Hidalgo, "VOX Recuerda a PP Y PSOE Que El Pacto Verde Europeo, Que Promueven Y Sostienen Con Los Liberales En Bruselas, Es 'La Ruina Del Campo' - VOX," VOX, February 5, 2024.

rationality have only aggravated the already polarised climate around this subject, needlessly fuelling further chaos and hatred among the population.¹² The result was a general uprise in the importance of the agroalimentary sector preceding the EU elections, each party including agricultural and environmental issues in their manifestos to some extent.¹³

This divided political climate led to an overall polarisation around the Green Deal and the EU's ambitions, with each party trying to exploit the debate for their own electoral benefit. Far-right populist and eurosceptic parties at the EU level have built a solid platform of opposition to environmental targets, crying out for a plan that violates the sovereignty of Member States and would lead to the destruction of European agriculture by depriving farmers of their means of subsistence.¹⁴ This narrative has become particularly appealing to farmers who feel abandoned by Brussels through unfavourable free trade agreements, such as those with Ukraine or the Mercosur. Namely, producers were anxious that agricultural products which do not meet European requirements – and are thus cheaper – would conquer the EU's market while they themselves

¹² Jean Pierre Stoorbants, "European Far Right Opportunistically Supports Farmers," Le Monde.fr, February 20, 2024.

¹³ Luc Vernet, "European Elections: The Agricultural Priorities of the 20 Biggest National Delegations – FarmEurope," Farm-europe.eu, June 10, 2024.

¹⁴ CET Editor, "CEE Right-Wing Launches New Political Family 'Patriots for Europe,'" Central European Times, July 2024.

are forced to abide by stringent regulations which limit their rentability.¹⁵

In this context, centre and left parties found themselves in a difficult position, where polls were already forecasting a significant shift to the right in the Parliament. With the approach of the forthcoming elections, this panic-ridden stalemate has pushed the ruling coalition to take a rushed and risky decision in their efforts to resist the combined offensive of corporate interests and populist rhetoric.¹⁶ This turmoil conceived the Commission's proposal to reopen the revision procedure of the CAP, which thus resulted in a politicised solution that lacked real democratic legitimacy or professional expertise. Of the petty four farming organisations that were involved, only one supported these revisions. Other voices, alerting about the absence of any authentic impact assessment or the consultation of stakeholders involved – such as the farmers themselves – were wholly disregarded.¹⁷

IV. The target audience: position of the farmers

Even if the farmers' discontent seems to have been initially triggered by a coincidental series of issues specific to each country, their demands have aligned along a common call for a revision of Europe's

¹⁵ Maïthé Chini, "Sowing Despair and Misery: Farmer Protests Denounce EU's Free Trade Agreements," *The Brussels Times*, February 27, 2024,

¹⁶ "Cap Reform Catastrophe: A Step Backward for European Agriculture and Democracy," *Agroecology Europe*, May 14, 2024.

¹⁷ *Ibid.*

agricultural policy, in the light of the reform of the CAP that was formally adopted on December 2, 2021, and which entered into force on January 1, 2023, right as the initial discontent of the farming community began to form.¹⁸ The main aim of this legislation was to strive for a more performance-based CAP, with higher environmental ambitions and stronger mandatory conditionalities to become a beneficiary.¹⁹ Coupled with insufficient prices to provide a stable income and considerable importations from countries that do not comply with European standards and undermine the EU market²⁰, the PAC 2023-2027 reform was just additional fuel to the fire regarding the farmers' discontent and anger, leading to the formation of a Union-wide wave of protests amongst farmers, setting up blockades in and around major European cities.

A. Self-Interested Appropriation

However, not long after the farmers' activity gained widespread public attention across the EU, their reasonable claims have quickly been appropriated by large agro-industrial corporations lobbying for their benefits.²¹ The impressive mobilisation provided a solid

¹⁸ European Commission, "CAP 2023-27," agriculture.ec.europa.eu, 2021.

¹⁹ *Ibid.*

²⁰ Bernard Bourget, "The Various Causes of the Agricultural Crisis in Europe," www.robert-schuman.eu, February 26, 2024.

²¹ Fleur Vonk and Frédéric Lépine, "The Agriculture Lobby in the European Union," *Master in Advanced European and International Studies -European Policy and Governance - Trilingual Studies*, 2022.

ground for the companies to argue in favour of an unplanned revision of the CAP ; and a removal of the existing environmental regulations on beneficiary conditionalities, favouring the rentability of their cheap, pesticide-heavy supplies of goods through large-scale monoculture farming.²² Therefore, this decision seems to be very far off from what it is depicted as by the EU institutions following its implementation. Indeed, the revised CAP does not reduce the burden of EU farmers concerning administrative transparency or financial support, while providing them with greater flexibility for complying with certain environmental conditionalities. This decision, on the other hand, embodies another successful move of large-scale industrial producers to circumvent the ever-decreasing remainder of environmental safeguards in agriculture..Currently, the CAP primarily favors large agribusiness corporations, directing financial support and thereby consolidating the agricultural sector under their control. These corporations heavily depend on fertilizers and synthetic pesticides to maximize crop yields.²³

This has been repeatedly emphasised by organisations representing the interests of smallholders, such as the European Coordination Via Campesina (ECVC), firmly rejecting the latest reform by the European Commission. The European Farmers'

Association – representing millions of farmers from 70 countries opposing industrial agriculture and defending family farming²⁴ – has expressed its discontent regarding the agreed proposal in a position document, alerting for the umpteenth time that this CAP lacks the tools necessary to achieve the socio-economic and environmental sustainability that would allow it to address the current situation.²⁵ More specifically, the organisation has emphasised that, as of now, the CAP will continuously neglect the real demands and needs of young, agroecological farmers, by lacking the means to truly facilitate the entrance of other farmers on the market.²⁶ One of the main critiques of the organisation is targeted towards the allocation of financial support of the current CAP system, which they describe as “unacceptably unjust”. Being based on land ownership and capital, the mechanism favours large-scale investment projects by large agroindustries over medium or small scale farmers, ignoring the latter’s efforts to adopt more environmentally sound solutions to their activities.²⁷

B. Vain Hopes

In this manner, the modernised policies of the CAP 2023-27, introducing social conditionality into their system, could be seen as a long-awaited

²² Nina Holland and Zuzana Vlasatá, “Feeding People or the Agroindustry?,” *Green European Journal*, December 21, 2023.

²³ Natacha Cingotti, “Rushed CAP Changes Are Not About Farmers,,” *Foodwatch EN*, 2024.

²⁴ “Home,” *European Coordination Via Campesina*, December 18, 2019.

²⁵ “Youth Articulation Position Document on the Common Agricultural Policy (CAP) Reform,” *Eurovia.org*, July 13, 2021.

²⁶ “Position Document on the Common Agricultural Policy (CAP) Reform,,” *European Coordination via Campesina*.

²⁷ *Ibid*.

accomplishment to improve agrarian working conditions for many. This innovative tool binds EU countries to dedicate at least 10% of direct payments to the redistributive income support tool, to meet the financial needs of smaller and medium-sized farms.²⁸ However, despite its promising aspects, this measure must be complemented by other means to counter the dominance of big farms in the obtention of income aid. One of the main weaknesses of the current policy is that social conditionality will solely apply to those receiving area-based direct payments, yet again mainly being large-scale farmers who obtain subsidies based on the amount of land they own or cultivate.²⁹ Consequently, specific areas of production linked to sector-focused financial support schemes will be excluded from social conditionality.

As a result, this new mechanism has inconsequential to no effect at all on a significant portion of farm workers in specific sectors where seasonal and temporary work is most prevalent, such as fruit, wine, olive oil, and apiculture. As a result, labour standards in these sectors are not monitored or enforced under the CAP like they are for other subsidy recipients. This is highly problematic because these are the very sectors where precarities such as underpayment, poor working conditions, and lack of job security, are most

²⁸ European Commission, “CAP 2023-27,” Agriculture and rural development (European Commission, 2021).

²⁹ Federal Ministry of the Republic of Austria, “Direct Payments and Conditionality from 2023 Onward,” Agriculture, Forestry, Regions and Water Management, 2023.

prevalent, due to the lack of fluidity of production throughout the year.³⁰ By excluding these sectors, this limited scope of social conditionality creates a significant loophole that prevents the policy from protecting farm workers in some of the most labour-intensive and potentially exploitative sectors of European agriculture.³¹

Moreover, even when considering the sectors that fall within the scope of social conditionality, this additional provision does not imply any new legal requirements imposed on farmers, making it unlikely to lead to any significant behavioural change among CAP beneficiaries. The relatively modest, standard sanction of a 3% subsidy reduction in the case of non-compliance is implausible to lead to any considerable deterrent effect. Indeed, as farmers are in many cases already subjected to sanctions set out by domestic law for the same reasons, the CAP’s new mechanism carries limited additional effect of dissuasion.³²

V. Proposals

The preceding summary of the recent CAP reform should make it quite evident that the current

³⁰ “Harvesting Hope: The Realities of Seasonal and Migrant Workers in Agri-Food Value Chain,” European Economic and Social Committee, April 12, 2024.

³¹ Mathieu Willard, “CAP Social Conditionality: A Game Changer for Farm Workers? | Agricultural and Rural Convention,” Agricultural and Rural Convention, October 4, 2023.

³² Thomas Bangsgaard Lyngs, “Social Conditionality: An Adequate Legal Response to Challenges Faced by Agricultural Workers in the EU, or an Example of Redwashing within the Common Agricultural Policy?,” European Labour Law Journal, March 28, 2024.

approach to problem-solving needs to be much improved. Naturally this does not mean a relinquishment of the CAP altogether, but simply a thoughtful, thorough reworking; despite how sarcastic this may sound after its repeated modifications. The CAP is a valuable cohesive instrument that can be the real driving force for a green transition in agriculture and a fair assistance to farmers, if implemented rightly. In the future, it must undergo a historic reform, to enable a genuine shift to more sustainable production models that are resilient in the face of climate change.

A. Representation and Participation

Firstly, the representation and participation of farmers in EU decision-making processes must be improved. Young, small-scale farmers are especially vulnerable in this regard, due to the threat of an over-reliance of the Common Agricultural Policy on expensive technologies and an automatisisation of the agricultural sector, pushing it towards an even greater dependence on multinational corporations and polluting, energy-intensive activities. In this regard, it is crucial to improve and expand the involvement of young and small-scale farmers in decision-making discussions by ensuring means of communication with EU institutions. For this purpose, the creation of a new Civil Dialogue Group (CDG) could be a plausible solution, centred around the thematic of the representation of independent, modest farms relying on traditional methods of production. CDGs are expert groups created for the purpose of enabling the

European Commission to draft policy initiatives via the integration of non-governmental stakeholders, thereby allowing the policies to better incorporate the sectorial competencies of the said experts in decision-making.³³ However, as of now, none of the thematic dialogue groups address the unequal representation of small-scale farms compared to large agroindustries. This would make the establishment of a new group a reasonable decision to counter this issue, allowing smallholder farmers to share their experiences and knowledge in the field, for policy developments to better take into account their interests and demands too. This proposal has somewhat already been articulated by the European Coordination via Campesina too, asking specifically for a new group to be established for the benefit of young agricultural producers in order to enhance the representation of peculiar producer profiles.³⁴

B. Financial Aid Distribution

Secondly, the current system of financial aid distribution must be reworked too. As already mentioned above, the allocations unjustly favour large-scale producers who have the capacities to devote large areas of arable land to monocultural investments, leading to soil degradation and severe damages to soil

³³ “Agricultural Civil Dialogue Groups,” European Commission (Agriculture and rural development, March 13, 2024).

³⁴ “Position Document on the Common Agricultural Policy (CAP) Reform,” European Coordination via Campesina, July 2021.

microbiomes.³⁵ This issue could be countered by setting an upper limit on the extent of redistributive aid that can be allocated to large farms, in proportion to their levels of income and the size of cultivated land. Upon implementation, this rule could define a degressive scale for the amount of subsidies that can be obtained, thereby preventing the absorption of allocated financial support by a few dominant agroindustries.

C. Social Conditionality

Social conditionality also unfairly excludes some of the most precarious agricultural sectors from its scope, leading to no improvement in the support and protection of small producers in those areas. For social conditionality to achieve its full scope in strengthening the social security of small and medium-scale farmers, the CAP must ensure their decent means of livelihood. To this end, social conditionality must be extended to all sectors, including those relying on partial working schemes. Significantly in regard to seasonal workers, their vulnerability to exploitation and trafficking must be reduced through rigorous investigations, warranting that subsidies are devoted to the protection of all farm workers' rights. This could be done through the establishment of a public observatory system, similar to the recently launched EU agri-food chain observatory

(AFCO).³⁶ Currently, the aim of the AFCO is simply to enhance price transparency, cost composition and the distribution of margins and added value in the supply chain. This additional observatory would need to focus on the compliance of seasonal employment contracts with EU level regulation, ensuring fair remuneration and living standards during the working period. To enhance the support of smallholders in precarious sectors of production even more, a minimum wage could be considered, requiring agricultural contracts to be a source of stable income rather than uncertainty. This could encourage even more people to pursue their education and career in the agricultural field, making it a promising and appealing domain for young professionals. To the same end, compliance with the requirements of social conditionality could be better assured through a more rigorous sanctioning system in the case of breach. Indeed, additional sanctions going further than the preexisting national regulations and an EU-level harmonised inspection mechanism could both help address the observed laxity concerning current rules, improving livelihood security for many.³⁷

Nevertheless, none of these proposals could reach their full potential without the active guidance and accompaniment of the farmers in the procedure. Supporting farmers through the often overly complex

³⁵ Vaclavas Bogužas et al., "The Effect of Monoculture, Crop Rotation Combinations, and Continuous Bare Fallow on Soil CO₂ Emissions, Earthworms, and Productivity of Winter Rye after a 50-Year Period," *Plants* 11, no. 3 (February 4, 2022).

³⁶ "Commission Starts Setting up the Agriculture and Food Chain Observatory," European Commission (Agriculture and rural development , April 9, 2024).

³⁷ Mathieu Willard, "CAP Social Conditionality: A Game Changer for Farm Workers? | Agricultural and Rural Convention," Agricultural and Rural Convention, October 4, 2023.

bureaucratic procedures is essential for the functioning of the subsidy system. This includes removing legislative and administrative obstacles that prevent agri-food workers and employers from freely forming or joining organisations and actively participating in social dialogue processes at all levels. Integrating the role of social partners more effectively within the CAP is essential for farmers to stay informed and defend their rights through these united bodies. Such improvements could be done through the allocation of specific funding to support the efforts of organisations in the agricultural sector, aimed to guide farmholders in administrative processes and to guarantee that workers are fully aware of their rights. Achieving social conditionality depends on the solid alignment and active participation of both EU and Member State organisations and unions with these shared goals, as they can unite farmers at the local, regional or even national levels.³⁸

VI. Conclusion

In light of the above, this brief overview of the CAP demonstrates that this tool of the European Union could be a quintessential component of sustainable and equitable farming if reconsidered properly. Its provisions in place all aim to contribute to the common good and the wellbeing of all agricultural workers, even in spite of errors that unfortunately lead to the exploitation of this beneficiary system by a few.

These faults could simply be overcome by minor adjustments, as suggested in some points in the aforementioned policy proposals. More importantly, though, the CAP and its reforms need to be made more resilient and separated from external influence. Indeed, the management of this common policy needs to remain in the hands of the sovereign farmers and political experts of the agricultural field. The interference of self-interested lobbyists and political groups seeking to gather popular support must be eliminated from the policy streams, as their influence only hinders the effectiveness of this device. Widespread awareness must be raised about the CAP and its importance, for public media to provide a more efficient shield against unjust exploitations. To this end, further research should be conducted and published on the current reform processes, informing citizens and farmers transparently of the current situation and the possible paths forward. After that, the decision-making should equally consider the will and demands of the People in future revision procedures, making the entire procedure yet again fully accessible and participatory to include the voices of all.

VII. Bibliography

³⁸ Pesticide Action Network Europe, “COMMISSION NON-PAPER REDUCING the ADMINISTRATIVE BURDEN for FARMERS: NEXT STEPS,” PAN Europe, May 8, 2024.

- agriculture.ec.europa.eu. “Conditionality - European Commission.” European Commission, February 13, 2024.
https://agriculture.ec.europa.eu/common-agricultural-policy/income-support/conditionality_en
- Bogužas, Vaclovas, Lina Skinulienė, Lina Marija Butkevičienė, Vaida Steponavičienė, Ernestas Petrauskas, and Nijolė Maršalkienė. “The Effect of Monoculture, Crop Rotation Combinations, and Continuous Bare Fallow on Soil CO2 Emissions, Earthworms, and Productivity of Winter Rye after a 50-Year Period.” *Plants* 11, no. 3 (February 4, 2022): 431.
<https://doi.org/10.3390/plants11030431>.
- Bourget, Bernard. “The Various Causes of the Agricultural Crisis in Europe.” www.robert-schuman.eu, February 26, 2024.
<https://www.robert-schuman.eu/en/european-issues/738-the-various-causes-of-the-agricultural-crisis-in-europe>.
- Bradley, Harriet, and Kaley Hart. “Will CAP Simplification Proposals Address the Real Challenges Faced? - IEEP AISBL.” IEEP AISBL, March 25, 2024.
<https://ieep.eu/news/will-cap-simplification-proposals-address-the-real-challenges-faced/>.
- “Cap Reform Catastrophe : A Step Backward for European Agriculture and Democracy.” *Agroecology Europe*, May 14, 2024.
<https://www.agroecology-europe.org/wp-content/uploads/2024/05/Article-CAP-Reform-May-2024.pdf>.
- CET Editor. “CEE Right-Wing Launches New Political Family ‘Patriots for Europe.’” CET. Central European Times, July 2024.
<https://centraleuropeantimes.com/2024/07/cee-right-wing-launches-new-political-family-patriots-for-europe/>.
- Chini, Maïthé . “Sowing Despair and Misery: Farmer Protests Denounce EU’s Free Trade Agreements.” *The Brussels Times*, February 27, 2024.
<https://www.brusselstimes.com/941763/farmers-protest-denounces-eus-free-trade-agreements>.
- Cingotti, Natacha. “Rushed CAP Changes Are Not about Farmers.” Foodwatch EN, 2024.
<https://www.foodwatch.org/en/rushed-cap-changes-are-not-about-farmers-but-agro-industry-profits-at-the-expense-of-society>.
- Dennison, Susi. “Agricultural Tackles: Protesting Farmers and the EU’s Climate Agenda.” ECFR, February 20, 2024.
<https://ecfr.eu/article/agricultural-tackles-protesting-farmers-and-the-eus-climate-agenda/>.
- Europa.eu. “Agenda - Thursday, 25 April 2024,” 2024.
https://www.europarl.europa.eu/doceo/document/OJQ-9-2024-04-25_EN.html.
- European Commission. “Agricultural Civil Dialogue Groups.” Agriculture and rural development , March 13, 2024.
https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/committees-and-expert-groups/civil-dialogue-groups_en.
- European Commission. “CAP 2023-27.” Agriculture and rural development. European Commission, 2021.
https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-2023-27_en.
- European Commission. “Commission Starts Setting up the Agriculture and Food Chain Observatory.” Agriculture and rural development , April 9, 2024.
https://agriculture.ec.europa.eu/news/commission-starts-setting-agriculture-and-food-chain-observatory-2024-04-09_en.
- European Commission. “EU Post-Electoral Survey 2024.” Eurobarometer, 2024.

- <https://europa.eu/eurobarometer/surveys/detail/3292>.
- European Commission. “Memo on the Commission’s Package of Support to EU Farmers,” March 15, 2024.
https://ec.europa.eu/commission/presscorner/detail/en/qanda_24_1494.
- European Coordination Via Campesina. “European Coordination via Campesina.” European Coordination Via Campesina, December 18, 2019. <https://www.eurovia.org/>.
- European Economic and Social Committee. “Harvesting Hope: The Realities of Seasonal and Migrant Workers in Agri-Food Value Chain,” April 12, 2024.
<https://www.eesc.europa.eu/en/news-media/news/harvesting-hope-realities-seasonal-and-migrant-workers-agri-food-value-chain>.
- European Parliament. “Vote on a Review of the EU’s Agriculture Policy to Enhance Support to Farmers.” News, April 18, 2024.
<https://www.europarl.europa.eu/news/en/agenda/briefing/2024-04-22/11/vote-on-a-review-of-the-eu-s-agriculture-policy-to-enhance-support-to-farmers>.
- Eurovia.org. “Youth Articulation Position Document on the Common Agricultural Policy (CAP) Reform,” July 13, 2021.
<https://www.eurovia.org/publications/ecvc-youth-articulations-position-document-on-the-reform-of-the-common-agricultural-policy/>.
- Federal Ministry of the Republic of Austria. “Direct Payments and Conditionality from 2023 Onward.” Agriculture, Forestry, Regions and Water Management, 2023.
<https://info.bml.gv.at/en/topics/agriculture/common-agricultural-policy-and-subsidies/national-strategic-plan-2023-2027/direct-payments-and-conditionality-from-2023-onward.html>.
- Foote, Natasha. “Parliament Pushes Full Steam Ahead to Dismantle CAP’s Green Rules.” Agricultural and Rural Convention, April 12, 2024.
<https://www.arc2020.eu/parliament-pushes-full-steam-ahead-to-dismantle-caps-green-rules/>.
- Foote, Natasha. “Re-CAP: Breaking down the Breakdown of the EU’s Green Farming Measures | Agricultural and Rural Convention.” Agricultural and Rural Convention, July 28, 2024.
<https://www.arc2020.eu/re-cap-breaking-down-the-breakdown-of-the-eus-green-farming-measures/>.
- Hidalgo, Paula. “VOX Recuerda a PP Y PSOE Que El Pacto Verde Europeo, Que Promueven Y Sostienen Con Los Liberales En Bruselas, Es ‘La Ruina Del Campo’ - VOX.” VOX, February 5, 2024.
<https://www.voxespana.es/noticias/vox-recuerda-p-psoe-pacto-verde-europeo-promueven-sostienen-liberales-bruselas-es-ruina-campo-20240205>.
- Holland, Nina, and Zuzana Vlasatá. “Feeding People or the Agroindustry?” Green European Journal, December 21, 2023.
<https://www.greeneuropeanjournal.eu/feeding-people-or-the-agroindustry/>.
- Lyngs, Thomas Bangsgaard. “Social Conditionality: An Adequate Legal Response to Challenges Faced by Agricultural Workers in the EU, or an Example of Redwashing within the Common Agricultural Policy?” *European Labour Law Journal*, March 28, 2024.
<https://doi.org/10.1177/20319525241242794>.
- Matthews, Alan. “Farmer Protests and the 2024 European Parliament Elections.” *Www.intereconomics.eu* 2024, no. 2 (2024): 83–87.
<https://www.intereconomics.eu/contents/year/2024/number/2/article/farmer-protests-and-the-2024-european-parliament-elections.html>.

- PAN Europe. "A Deathblow for the Legitimacy of the CAP," April 29, 2024.
<https://www.pan-europe.info/blog/deathblow-legitimacy-cap>.
- Pesticide Action Network Europe. "COMMISSION NON-PAPER REDUCING the ADMINISTRATIVE BURDEN for FARMERS: NEXT STEPS." *PAN Europe*, May 8, 2024.
https://www.pan-europe.info/sites/pan-europe.info/files/public/resources/other/SI_2024_120_REDUCING%20THE%20ADMINISTRATIVE%20BURDEN%20FOR%20FARMERS-NEXT%20STEPS.pdf.
- "Position Document on the Common Agricultural Policy (CAP) Reform ." *European Coordination via Campesina*, July 2021.
https://www.eurovia.org/wp-content/uploads/2021/07/EN_position_document_CAP_ecvc_youth.pdf.
- Vernet, Luc. "European Elections: The Agricultural Priorities of the 20 Biggest National Delegations – FarmEurope." *Farm-europe.eu*, June 10, 2024.
<https://www.farm-europe.eu/news/european-elections-the-agricultural-priorities-of-the-20-biggest-national-delegations/>.
- Vonk, Fleur, and Frédéric Lépine. "THE AGRICULTURAL LOBBY in the EUROPEAN UNION Master in Advanced European and International Studies -European Policy and Governance - Trilingual Studies 2022," 2022.
https://www.ie-ei.eu/Ressources/FCK/image/Theses/2022/TRI_VONK_Thesis.pdf.
- Willard, Mathieu. "CAP Social Conditionality: A Game Changer for Farm Workers? | Agricultural and Rural Convention." *Agricultural and Rural Convention*, October 4, 2023.
<https://www.arc2020.eu/cap-social-conditionality/>.

Enforcing in what we cannot grasp: Suggestions and policy implications on the development of sustainability indicators in intangible cultural heritage

Pablo Picó Salort, Yu Jie Law

Double Degree in Business Administration and International Relations, IE University, Madrid
Bachelor in International Relations, IE University, Madrid

E-mail: ppico.ieu2021@student.ie.edu; yjlaw.ieu2021@student.ie.edu

Published 27th January 2025

Abstract

Intangible Cultural Heritage (ICH) Management is an emerging field within heritage preservation. Following the 2003 UNESCO Convention, the value of said patrimony has been brought to light. However, given its intangibility and abstractness, it presents significant challenges in its comprehension and management. Nonetheless, it reports very positive effects in different areas of governance and living, particularly in the sustainability of communities as a whole. We prove how the development of an appropriate framework is highly beneficial to helping the management efforts oriented towards sustainability and management, by proposing an approach that deals with both areas conjointly instead of separately. For it, we define sustainability as well as ICH and look at the overlap between them. We examine the current use of sustainability indicators in general heritage management, both at an organizational and academic level, to understand why they are insufficient and extract lessons to be applied to ICH. Then, we examine three different case studies to further examine what areas are left out of consideration by the current framework, as well as to indicate some potential indicators. Throughout it, we emphasize the need for concrete targets to be attained, as well as the similarities between cases. Finally, we further highlight the necessity for the indicators not only at a heritage level but also at a policy level. Some suggestions for policies are provided, as well as further research that can be done taking this paper as a basis.

Keywords: Heritage, Intangible Cultural Heritage, ICH, sustainability, sustainable heritage, UNESCO

I. Introduction

Not only do we attempt to understand, but also to measure what escapes our grasp. In order to conceive what is abstract, the human mind often tends to resort to measurable and concrete methods in order to simplify reality and provide some guidance. One of said areas that

often needs a tangible approach is sustainability, which has in recent decades acquired relevance in the sphere of public policy and management. As it is subsequently applied to more areas, the need for developing appropriate frameworks that fit them properly to properly evaluate approaches and formulate policies also increases. The field

of heritage management is no exception, and in the last two decades, we have seen some early developments.

In this paper, we contribute to these developments by assessing the usefulness of developing appropriate sustainable indicators in the management of Intangible Cultural Heritage (ICH). ICH management is a field that sometimes proves complicated to tackle at a policy level, given its abstractness and complexity.

The interest in this paper comes from a research gap that currently exists in the field. While some studies have already analyzed the lack of consensus in measuring sustainable heritage¹ or urban heritage management,² there is currently no research that tries to bring sustainability indicators and ICH together through an assessment strategy. We believe and prove that the currently proposed indicators for overall sustainable heritage management are not sufficient for its intangible derivative, given the different challenges it proposes in its documentation, quantification, register, and approach.

In order to accomplish our task, we will first determine a definition for sustainability that we can use as a baseline, which will be mainly based on the one the UN provides in its 2030 agenda. We will then delve into the literature regarding heritage management, ICH, and the sustainable dimension of both, before reviewing the indicators that

have been proposed as a method to quantify the impact on the sustainability of their management. We compile the existing and proposed indicators on heritage management and examine them based on two criteria: how well they can be applied to intangible cultural heritage, and how well they fit within our defined framework for sustainability. Having established this theoretical basis, we will also analyze several case studies of intangible heritage and the literature around them: the Mediterranean Diet, the ceramics of Talavera and Puebla (in Spain and Mexico), and the practices around the Argan tree (in Morocco). Each of these case studies closely correlates with one of the three dimensions of sustainability that will be explained later: society, economy, and environment, respectively. The aim is to demonstrate how the proposed frameworks are insufficient for ICH, and how the field requires a specialized approach in order to facilitate its study and management. Finally, we will also discuss the policy implications of implementing said indicators, and how they can help facilitate the development of policies to be efficient. This principle will also be emphasized as important not only for ICH but for heritage management as a whole.

We have decided to take an indicator-oriented approach since it facilitates a consensus on practices that can be used across different regions and cases. Despite the complex reality of heritage management, having a series of measurable elements can facilitate its approach, especially in terms of standardizing some basic processes and holding decision-makers accountable. Although no specific set of

¹ Hari Gopal Shrestha, et al. "Identification of Indicators for Sustainability of Cultural Heritage". *Tribhuvan University*, Nepal, December 2023.

² Georges Tanguay et al. "A Comprehensive Strategy to Identify Indicators of Sustainable Heritage Conservation." *C RTP Working Papers*, (September 2014).

indicators will be proposed, we will suggest general criteria to be met in order for them to be efficient. It is also worth mentioning that while indicators are a useful tool, this paper does not try to find an absolute method to quantify or approach ICH management. Instead, it seeks to provide some standardization in a field that often finds challenges because no common framework exists, while still acknowledging that each case of intangible cultural heritage is unique in its characteristics and circumstances.

II. Sustainability framework

Before analyzing the correlation between heritage management and sustainability, it is essential to understand the scope of both concepts. Previous studies into the matter have concluded that the conceptualization of sustainable development highly influences the establishment of indicators in order for them to fit the case studies analyzed.³

The Brundtland report, published in 1987, is widely considered to be the godfather of the term “sustainable development” as it is understood today. Published by the World Commission on Environment and Development (WCED), the report defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁴ This groundbreaking report challenged the commonly accepted notion of sustainable yield, allowing for the transition to a broader concept that linked

the three dimensions of sustainability: economic, social, and environmental. These dimensions were conceptualized in the foreword of the 1987 Brundtland Report: “What is needed now is a new era of economic growth – growth that is forceful and at the same time socially and environmentally sustainable.”⁵ This groundbreaking concept laid the foundation for the convening of the 1992 United Nations Conference on Environment and Development (UNCED), also known as the Earth Summit, five years later in Rio de Janeiro.

Some of the most significant outcomes of the Summit include the establishment of the UN Commission on Sustainable Development, the signing of the Convention of Biological Diversity, the Framework Convention on Climate Change, Agenda 21, and the Rio Declaration.⁶ Signed by over 175 countries, the Rio Declaration consists of 27 principles aimed at balancing environmental protection with economic growth and social development.⁷ Another key outcome of the Earth Summit was Agenda 21, which was designed to address global environmental and development challenges, preparing the world for the 21st century. It covers the multifaceted aspects of human life, and many of its principles have been incorporated into national and international legal frameworks. More importantly, it laid the groundwork for newer frameworks, such as the Sustainable Development Goals (SDGs) adopted in 2015. One of the key

⁵ WCED, *Our Common Future*, 7.

⁶ UNCSD. *Framing Sustainable Development. The Brundtland Report – 20 Years On*. 2007.

⁷ UN. *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*. 2024.

³ Tanguay et al., “A Comprehensive Strategy.”

⁴ WCED. *Report of the World Commission on Environment and Development: Our Common Future*. 1990. pp. 41.

advancements of these is the quantification of impact through the different indicators included in each one of the goals, as a way to provide concrete action for achieving the targeted objectives.⁸

The three pillars of sustainable development – social, economic, and environmental considerations – are often intertwined with each other. This is portrayed in the following Venn diagram (Figure 1).

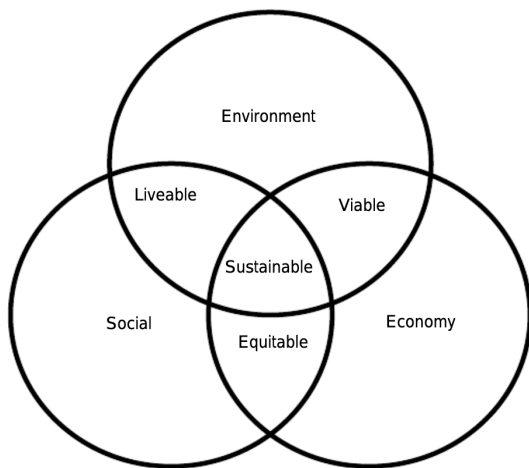


Fig. 1. Graphical Representation of Sustainable Development.

Source: Tanguay et al. (2014).

This will also be the basis of this paper's definition of sustainable development, not only because it reflects the interdisciplinarity of implementations, but also because it paints a more holistic picture of what sustainability is and represents. In addition, this paper will interpret sustainability as the responsible usage of resources while

safeguarding that future generations would have similar, if not more, access to such resources. The fact that the terms “sustainable development” and “sustainability” are often used indifferently points to the notion that economic development can help solve ecological and social problems.

III. Heritage Management and ICH

In what refers to heritage management, we will take the definition given by the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the main global institution dedicated to heritage classification and management. In its 1972 World Heritage Convention,⁹ it distinguished between the different types of heritage: cultural (man-made) and natural (present in nature created).¹⁰ The definitions and subcategories have been further developed over the years, the most important of modifications being the subdivision of cultural heritage into tangible and intangible.

When speaking of intangible cultural heritage, the category is fairly recent, its formal origins tracing back to 2003 with the publication of the Convention for the Safeguarding of the Intangible Cultural Heritage by UNESCO. This feat was motivated by a growing interest and realization that some cultural expressions escape the conventional, material

⁹ UNESCO. *Convention concerning the protection of the World Cultural and Natural Heritage*. 1972.

¹⁰ There is also a category destined to those assets that “satisfy a part or the whole of the definitions of both cultural and natural heritage”, known as “mixed assets”, but since the focus of this article is the intangibility, it would be considered in detail. See UNESCO. *World Heritage Convention Glossary*. “Mixed Assets”. 2024.

⁸ UNDESA. [The 17 Goals](#). 2024.

form that heritage management traditionally associated with them. The resulting text has remained fundamental not only to define what intangible cultural heritage is but also to determine what the appropriate approach to it is. It enables a deeper understanding of the scope of what Intangible Cultural Heritage (ICH) encompasses by providing the following definition:

*The practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts, and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. [It] is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity[...].*¹¹

Furthermore, the Convention specifies that ICH is manifested in the forms of: oral traditions and expressions (including language), performing arts, social practices, rituals, and festive events; knowledge and practices concerning nature and the universe, and traditional craftsmanship.¹² Thus, we can see the diversity of this concept, requiring a rather complex management. Having a set definition is rather useful, not only because of the limits it sets in the forms and characteristics of an otherwise abstract concept, but it also hints at the possible ways of managing it, which is intrinsically complex given the nature of this concept. As such, it is vital to keep in

mind this variety of forms present in ICH when we approach the use of indicators for measuring it since these will have to effectively be able to encompass all dimensions of sustainability while still being able to maintain the technical rigor required in heritage preservation.

Another concept that is also very relevant inside this framework is the strategic objectives adopted by the World Heritage Committee in 2002 and expanded in 2007. Also known as "The Five Cs" (credibility, conservation, capacity-building, communication, and community, which was added later), they set the direction that UNESCO follows not only in their work towards the preservation of heritage but also when describing the impact that it can have in our society.¹³

Right from the very definition of heritage, and also through the concepts explained below, a strong link with sustainability can be observed. Firstly, the division between cultural and natural heritage resembles two of the pillars of sustainable development, as natural heritage can be directly correlated with the environmental pillar, while cultural heritage focuses more on the social dimension. UNESCO, as part of the United Nations, also worked on the previously mentioned framework of sustainability, and the development of the SDGs. As will be discussed below, UNESCO itself has also become more aware of integrating the concept of sustainability inside ICH management. In 2020, they published a report highlighting the link and positive rapports that ICH has in some areas of

¹¹ UNESCO. *Convention for the Safeguarding of the Intangible Cultural Heritage*. 2003.

¹² UNESCO, *Convention for the Safeguarding*.

¹³ UNESCO. *World Heritage Convention*.

sustainability.¹⁴ While it is merely informative and does not provide any tools for the integration of one and the other, it is representative of which direction the official line points towards.

As there is no physical being to manage, any attempt at regulating the management of ICH will be more difficult to formulate. Its link to sustainability is also evident in a different way: the environmental impact is less linked to the physical space occupied by an asset and more about how the assets themselves can impact their natural environment. Thus, its social impact is much more significant, as human communities are precisely the creators of heritage, and the ones responsible for its evolution and preservation. The 2007 edition of the "fifth C" (community) to the Strategic Objectives mentioned above, sought to emphasize this fundamental social role while enabling a more clear connection between the social dimension of sustainability and the community objective of heritage management.

Having established how the link between heritage management and sustainability is something inherent to both concepts, we will now delve into how we can quantify said relationship through the use of indicators.

IV. Indicators for Sustainable Heritage Management

The starting point of this review will be the indicators that UNESCO itself proposes and uses in its approach to ICH.

As highlighted in their Sustainable Development

¹⁴UNESCO. *Intangible cultural heritage and sustainable development*. 2015.

Toolbox,¹⁵ the 17 sustainable development goals (SDGs) included in the UN's 2030 agenda, are their main guiding framework. The SDGs provide a common framework and standards for sustainable development, which are important to ensure that no one is left behind while enjoying a prosperous life on a healthy planet. By having a common standard, nations are better able to comprehend such indicators, putting forth policies that aim to work towards such goals. It also enables a simpler quantification of their achievements towards the goals, while allowing for benchmarking with other countries. Indicators cross the "world of research and science to be integrated with that of the policy," allowing for analytical effectiveness, as well as a common language.¹⁶

Nonetheless, the use of the SDGs for heritage management must be approached with caution. While on the one hand, they are a useful and concrete tool for being able to understand the impact of applied policies, on the other hand, they were not envisioned specifically for heritage management. Thus, heritage management and sustainability are conceived as two separate fields, whereas the reality is that to have better results, they should both be considered simultaneously, as will be analyzed later. They also fail to consider the technical necessities of heritage management, thus being limited to nothing more than a starting point in bridging sustainability and heritage management together. In addition, and as will be analyzed

¹⁵ UNESCO. *Sustainable Development Toolbox*. 2015.

¹⁶ Christophe Bouni, "Sustainable development indicators: Theory and methodology." *Nature Sciences Sociétés*, 6 no.3 (1998).

through the case studies, SDGs do not address the nuances of ICH management. While SDGs rely heavily on quantifiable frameworks such as poverty reduction, ICH often involves practices and skills that are difficult to quantify in terms of SDG metrics. For all of these reasons, the Sustainable Development Goals should be adopted as a complementary tool that allows measuring the impact of already existing approaches, but that is rather limited when it comes to the technical aspects of the implementation of new policies itself.

Having established that SDGs are insufficient for approaching sustainable heritage management, some proposed indicators are more specialized, and therefore more appropriate for the field. As mentioned before, given the lack of a commonly agreed set of indicators for heritage management, not much research has been carried out on ICH indicators. Therefore, the proposals analyzed below are purely academic and targeted at other forms of patrimony that could, nonetheless, have a potential application in ICH.

In an article published in the year 2023, several authors from Tribhuvan University in Nepal compiled some recent work in the field of indicators for Sustainable Heritage Management:

SN	References	No. of papers reviewed	No. of Indicators
1	Liusman, et al. (2013) [25]	NA	17
2	Sowińska-Swierkosz (2017) [26]	48	8
3	Tanguay, et al. (2014) [27]	25	20
4	Guzman (2020) [22]	NA	36

Fig. 2: Set of indicators analyzed for this study.

Source: Shrestha, Singh and Bajracharya (2023).

It can be observed, that the method used for determining the indicators follows two lines: the papers by Sowinska-Swierkosz (2017) and Tanguay et al. (2014) rely on the review and comparison of different papers proposing indicators (normally for a particular case) and extracting the best of them; whereas the others rely solely on one case study and try to extract from them a general rule that can be extrapolated to other examples. In many of the papers analyzed below, it is also highly emphasized how the cases of heritage management (and, by extension, ICH) require a very specific approach to them, which makes their individual indicators be unique and not really applicable to other cases.^{17 18} This is a factor to reckon with but should still not discourage the effort to find a common framework for all assets considered as intangible cultural heritage.

Starting chronologically, the study conducted by Liusman et al (2013), focuses on heritage buildings, highlighting their importance inside modern spaces.¹⁹ For it, the authors created a model named the Heritage Sustainability Index (HSI), for which they selected the following indicators:

¹⁷ Paloma Guzmán, "Assessing the sustainable development of the historic urban landscape through local indicators. Lessons from a Mexican World Heritage City." *Journal of Cultural Heritage*, 46 (December 2020);, pp. 320-327.

¹⁸ Shrestha et al. (2023)

¹⁹ Ervi Liusman, et al. "Indicators for Heritage Buildings and Sustainability." *Central Europe towards Sustainable Building*. (2013).

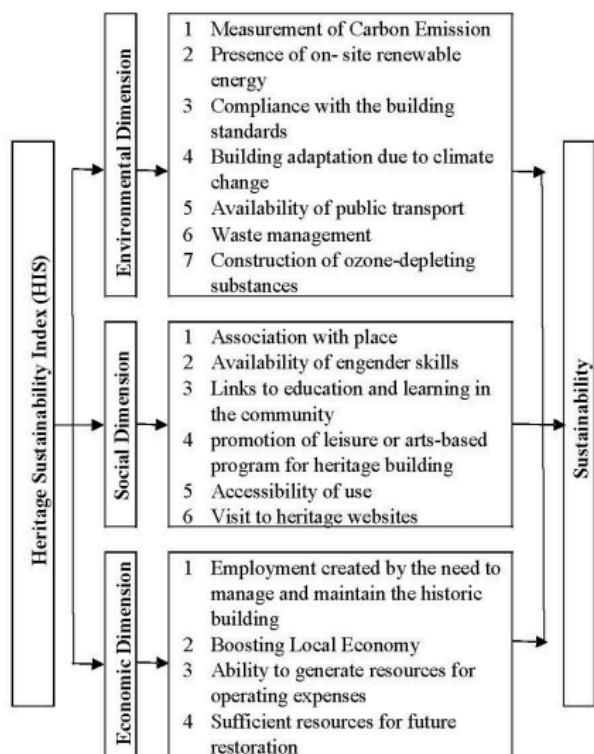


Fig. 3: Framework of Heritage Sustainability Index (HSI) for heritage buildings.

Source: *Sbrestha, Singh, and Bajracharya (2023) from Liusman et al. (2013).*

While the indicators have been tailored for heritage buildings and can therefore not be used for ICH, it is interesting to analyze them to understand the selection process and potential utility.

Their main strength is that they present a balance between the three dimensions of sustainability, suggesting sufficient indicators to address the economy, society, and environment. Furthermore, each one of the indicators has the right scope by not being overly specific, which allows it to encompass broad aspects. For example, measuring the "association with place" (Social Dimension indicator 1) covers an important aspect related to historical buildings

that guarantees their preservation (it seems plausible that a construction to which a community is linked more strongly will be more taken care of), yet it leaves room for some of the various issues that can be included within the category (for instance, visibility and prominence inside of a community, or a link to any particular social events, among others). This is the case for the other indicators as well, making them universal enough to be applied to any case study as long as they stay within the limits of heritage buildings.

On the other hand, even though it was never the authors' intention, some more concrete ways of tracking the progress of said indicators would have enhanced their credibility and potential for practical application. For example, within the Environmental Dimension, for indicator 6, how will waste management be measured? Or within the Economic Dimension, for indicator 2, how can the boost of the local economy be quantified? Given the scope proposed (with heritage buildings being part of UNESCO's tangible heritage category), it would have been possible to do so, still retaining the openness that has been highlighted before in each one of the indicators, yet providing a more specific way to evaluate performance. Related to ICH, the emphasis on the dimensions is particularly relevant to take into consideration when developing indicators, as it is the basis for accurate measuring.

Moving on to the second paper, Sowińska-Świerkosz (2017) puts the lens on the management of cultural

landscapes, proposing eight indicators based on an analysis of recent papers.²⁰ These are the following:²¹

1. *Architectonic quality (preservation of façades)*
2. *Ecological quality (improving urban greenery - the presence of historic fruit and habitat trees),*
3. *Economic significance (funding for community arts projects and the necessary investments for cultural property preservation),*
4. *Perception aspect (the area or percentage of places that are spiritual or religious),*
5. *Value of political activities (landscape management's effectiveness and a plan that preserves the historical and natural environments),*
6. *Social care (percentage of individuals engaging in customary or cultural activities),*
7. *Spatial superiority (historical buildings and monuments),*
8. *Visual quality (the quantity and clarity of unsettling objects and elements, aspects of the cultural landscape that are visible).*

Once again, we see that the three dimensions of sustainability are sufficiently covered, despite the division not being as emphasized as in Liusman et al. (2013). Furthermore, no specific targets for the indicators are proposed, as the more abstractness of the landscape when compared to buildings makes it more complicated to do so.

Nonetheless, we already encounter a situation that can be extrapolated to intangible heritage. What is particularly interesting from the study of the landscape is its relation with a concept that can also be a part of ICH: cultural landscape, which refers to the "diversity of manifestations of the interaction between humankind and its natural environment."²² When analyzing the landscapes in which an interaction between man and environment has occurred, not only do we coincide again in the social and environmental dimensions of sustainability, but it is also possible to study and understand the reach and impact of some cases of ICH. This relation will be explored in depth later with a specific case study to illustrate it.

The third research paper studied is that of Tanguay et al. (2014), which tackled a total of 25 papers referring to urban heritage management.²³ Something interesting about this study is that it provides a more quantitative approach to the selection of their indicators, carrying out statistics on issues such as the number of indicators used by each paper, how representative they are of both each one of the sustainability dimensions, and their overlaps, and how frequently similar indicators are proposed across studies. After that, they selected the most repeated ones and retained those that were more representative of dimension overlaps, resulting in a total of 20:²⁴

²⁰ Barbara Natalia Sowińska-Świerkosz, "Review of cultural heritage indicators related to landscape: Types, categorisation schemes and their usefulness in quality assessment," *Ecological Indicators* 81, pp. 526–542. (June 2017):. pp. 526–542.

²¹ Sowińska-Świerkosz (2017) as quoted by Shrestha et al. (2023).

²² UNESCO. *Cultural Landscape*. 2024.

²³ Tanguay et al., "A Comprehensive Strategy." Tanguay et al., 2014

²⁴ Tanguay et al., "A Comprehensive Strategy."

Indicators	Covered Dimension	Threshold
Characterisation		
Attachement to place	Social	5
Traditional value or perceived	Social-Econ.	5
Artistic, aesthetical and harmonious value or perceived	Social-Econ.	6
Building fabrics, insulation and ability to adapt	Soc-Econ-Env.	5
Protection		
Viability of recycling existing materials	Econ.-Env.	4
Authenticity	Social-Econ.	7
Integrity	Social-Econ.	6
Spatial compatibility	Social-Econ.-Env.	5
Enhancement		
Environmental and ecological awareness	Env.	5
Promotion of actions for further knowledge of historical-cultural heritage	Social-Econ.	2
Improvement of living conditions and quality of life	Soc-Econ.-Env.	5
Benefit of reuse versus redevelopment	Soc-Econ.-Env.	3
Use and Impacts		
Locals and visitors interests and involvement to conservation	Social	4
Business and functional use	Econ.	3
Investments and tourists drawing	Econ.	2
Increase urban density	Soc-Econ.-Env.	2
Policy and regulations		
Public perceived consideration of their opinion	Social	3
Adequate protection and management system	Social-Econ.	4
Compliance with regulations and building codes	Social-Econ.	4
Stakeholders inclusiveness and partnership	Soc-Econ.-Env.	2

Fig. 4: Key Indicators of Sustainable Urban Heritage Conservation.

Source: Tanguay et al. (2014).

This paper's approach seems much more balanced than the others, seeing how the selection of the indicators was carefully measured so that it encompasses the dimensions equally. However, it also presents a series of challenges.

Firstly, it neglects the concept of ICH, which may nonetheless still be present within the urban heritage, as it focuses exclusively on tangible goods. This makes this model harder to extrapolate for ICH management, but it remains interesting due to the approach it takes in its selection of indicators. Secondly, since the indicators come from a summary of past studies, the bias of these is still present. For instance, the authors themselves reckon that the intersection between society and the environment is not covered in the indicators, as it did not appear sufficiently in the papers reviewed.²⁵ And lastly, there is still

²⁵ Tanguay et al., "A Comprehensive Strategy."

a lack of quantifiable targets, despite once again being a non-exhaustive, non-conclusive list.

The fourth and final paper compiled by Shrestha, Singh, and Bajracharya (2023) is that of Guzmán (2020).²⁶ In this case, the author bridges two concepts that were already analyzed in other papers (urban heritage and landscape heritage), and selects a total of 36 indicators:²⁷

SN	Indicator	Dimension
1	Urban Size	Sustainable
2	Protected Areas	Environmental
3	% of Green Areas – Recreational Parks	Livable
4	No. of Public Libraries	Equitable
5	No. of Theatres and Music Halls	Equitable
6	Festivals and Religious Parties	Social
7	No. of Museums	Social
8	Road Network	Equitable
9	Population Density	Equitable
10	Literacy Rate	Equitable
11	Air Pollution	Livable
12	Accessibility (River Area)	Livable
13	Housing	Equitable
14	Deterioration phenomena (built environment)	Equitable
15	Marginalization Rate (Low)	Equitable
16	Community Involvement in Decision-Making Processes	Social
17	Population with Access to Healthcare	Equitable
18	Research and Development	Equitable
19	Financial Organization	Economic
20	No. of Police	Equitable
21	Natural Risk	Sustainable
22	No. of Automobiles – Road Traffic	Sustainable
23	Crime Level (Robbery)	Equitable
24	New Constructions/% of New Buildings (On Virgin Land)	Equitable
25	No. of Schools	Equitable
26	No. of Markets	Equitable
27	Productive Sectors (agricultural, industrial and services)	Equitable
28	Recreational-Sport Areas	Equitable
29	Electricity (Light Infrastructure)	Equitable
30	Water Supply	Sustainable
31	Telephone (Access, Visual Disruption)	Equitable
32	Investment for Intervention	Equitable
33	Modes of Transport	Equitable
34	Access to Sewage System	Equitable
35	Population with University Degree	Equitable
36	No. of Hotels	Equitable

Fig. 5: List of frequently used local indicators.

Source: Shrestha, et al. (2023) from Guzmán (2020).

²⁶ Guzmán, 2020.

²⁷ Guzmán (2020) as quoted by Shrestha et al. (2023).

The main strength of this proposal is that it does not stop at the theoretical level, applying her framework in the study of the city of Querétaro (Mexico).²⁸ Furthermore, the indicators are more strategic, and they address the intersection between sustainability dimensions once again. The downside, however, is that, once again, ICH is neglected despite being a part of urban heritage as a whole. The indicators proposed are too tangible, which makes it difficult to extract value from them in the application to the ICH indicators.

Despite the value of the compilation of analysis of the different papers that by themselves already summarise the literature concerning heritage indicators, and even mention ICH in their research, a critique we can formulate of the paper by Shrestha et al. (2023), is that it abandons its accomplishments of trying to extract a general model by comparing specific cases to go back to the local level by trying to develop indicators that are specific for Nepali heritage. Despite localized heritage exhibiting different characteristics, the purpose of indicators is to allow management practices to be shared and extrapolated, so this biased return to regional cases is greatly harmful. Especially with ICH, where the localization of the assets is often difficult, indicators should strive to be as universal as possible.

After having reviewed these papers, the following key learnings for the creation of ICH indicators were extracted:

1. Indicators should be broad yet include some targets to attain in order to increase their usefulness and facilitate their application in diverse cases.
2. Equal representativeness of the three sustainability dimensions, as well as of each one of their intersections, must be present.
3. Universality should be the main focus when approaching intangible assets since it helps to solve one of its most frequent problems: the difficulty of determining geographical and conceptual reach.
4. The most efficient approach in heritage management indicators is the one that compares and contrasts different case studies.

However, as we saw with Tanguay et al. (2014), the mere act of reviewing the literature is not enough to develop appropriate indicators, as the bias from these papers will be perpetuated.²⁹ In order to avoid this, we will now further analyze three specific ICH cases that present certain differences among themselves (the Mediterranean Diet, the ceramics of Puebla and Talavera, and the practises around the Argan tree), to further explore the intricacies of the development of indicators and apply the learnings extracted from the papers above.

V. Case studies

²⁸ Guzmán, 2020

²⁹ Tanguay et al., "A Comprehensive Strategy."

UNESCO currently³⁰ features 730 elements in their Intangible Cultural Heritage List, which encompasses 145 countries.³¹ While analyzing all of them would produce more accurate results, it is a task out of the scope of this article. We have therefore selected some examples to analyze, not only how sustainability comes into play in them, but also how the indicators examined before could be applied to them.

V.1 The Mediterranean Diet

The first case studied is the Mediterranean Diet, which was inscribed in the List in the year 2013, and defined as a “set of skills, knowledge, practices and traditions ranging from the landscape to the table.”³² The Mediterranean Diet is “not only a particular nutritional model, but also the social interaction brought by communal meals, the folklore originated from these, the respect for the territory and biodiversity, and the traditional crafts and activities linked to these communities that live in the Mediterranean area, among others.”³³ The myriad of aspects it encompasses transform it into part of the Intangible Cultural Heritage that connects these communities despite the geographical distance.

Studies have also shown that the techniques used to cultivate the products that form part of the Mediterranean diet traditionally have a positive impact on the local ecosystems through the care of the biodiversity and higher

reliance on plant products compared to other diets, which reduces the resources utilized and facilitates regeneration.³⁴ Literature on its sustainable impact is abundant, with some studies devoted entirely to just summarising it and extracting indicators that are unique to its characteristics.³⁵ However, few papers are devoted to examining this impact from its Intangible Heritage Side.

UNESCO, as previously mentioned, limits their measuring to the SDGs. In their report on the Mediterranean Diet, they highlight the different SDGs related to it:³⁶ for example, SGD 2 (zero hunger), which is related to the availability of the Mediterranean Diet to those communities, but also SDG 5 (gender equality), citing the role women play in “the transmission of expertise, as well as knowledge of rituals, traditional gestures and celebrations, and the safeguarding of techniques.”³⁷ However, it is an approach that only focuses on the benefits that this heritage reports, failing to consider the complex preservation mechanisms that might have to get behind the Mediterranean Diet at a policy level. If, for example, the Mediterranean Diet highlights the role of women in the preparation of meals, and transmission of traditions around as a unifying element of communities; how can we ensure that this is maintained over time? That

³⁰ As of November 2024.

³¹ UNESCO. *Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*. 2024.

³² UNESCO. *The Mediterranean Diet*. 2024.

³³ UNESCO. *The Mediterranean Diet*.

³⁴ Sandro Dernini and Elliot M. Berry, “Mediterranean Diet: From a Healthy Diet to a Sustainable Dietary Pattern.” *Frontiers of Nutrition*, . (2015).

³⁵Joana Margarida Bôto, et al., “Sustainability Dimensions of the Mediterranean Diet: A Systematic Review of the Indicators Used and Its Results.” *Advances in Nutrition*, 13, no. 5 (September 2022).

³⁶ UNESCO. *The Mediterranean Diet*.

³⁷ UNESCO. *The Mediterranean Diet*.

is a question that the SDGs cannot answer by themselves. While they might highlight the consequences, they are unable to provide clear working goals and performance indicators, that is, developing policies to ensure that the Mediterranean Diet endures as a way of empowering women in the area is something that falls short just with SDG five's indicators. The divide between sustainability and heritage is once again too accentuated to formulate reconciling policies.

The question we now have to ask ourselves is how we can see this case study reflected in the indicators covered before. As was analyzed in the previous sections, there is currently no set of proposed indicators for ICH. However, drawing from the conclusions we extracted from the other areas of heritage, the process of ICH indicators can be analyzed. The first point to raise is how. Based on how it was shown that the Mediterranean Diet has a significant impact on sustainability, it is essential that the indicators used can grasp all of the complexities it has, as well as all of the ways in which it can touch upon the sustainability dimensions of society, economy, and environment. For instance, one of the essential concepts it encompasses is that of cultural landscape (mentioned above): the existence of the Mediterranean Diet does not only transform the landscape of the coastal regions that cultivate products such as olive, cereals, and small livestock; but also through the communities that inhabit those spaces, their way of living, their particular architecture, their traditions...

Another aspect to also take into consideration is how the divide between the territories that adhere to this style of

Diet is sometimes blurred, building upon the need for indicators as universal as possible. An approach similar to the one that was taken for urban heritage in the papers cited previously would fall short of reach given its insistence on spatiality. Nonetheless, this wouldn't impede the hypothetical indicators from having concrete targets, not exclusive to the case (as could be the amount of olives consumed on average per person), but rather that could also be extrapolated to other cases. An example of an indicator could be the perception of the heritage among the communities that perpetuate it. In the case of the diet, this would be measured by researching how conscious they are of their unique way of living if there is some element of attachment to it, and other similar aspects. While allowing researchers and policymakers to more properly visualize the reach of the ICH asset and the impact it has on a community, as well as help target certain objectives that might aid in its preservation. As we will see later, this can also be applied to other cases, which makes the information flow simpler among authorities and allows to build bridges between different manifestations of intangible heritage.

V.II The Ceramics of Puebla and Talavera

Moving to another case study, the Ceramics of Puebla and Talavera were selected. This case is interesting for a variety of reasons. The first of them is the multilocality of this heritage across continents: Talavera de la Reina and El Puente del Arzobispo (Spain) and Puebla (México) share a

similar ceramics style given their shared colonial past³⁸. The techniques used to make the ceramics and their style remain similar despite the centuries and distance, which is not only an interesting phenomenon to study but also a challenge when it comes to measuring its impact. Furthermore, ceramic production in both locations has played and continues to play a fundamental role in the economy of the areas³⁹. If the Mediterranean Diet had a stronger emphasis on the social dimension, the case of Puebla and Talavera is intrinsically linked to the economic dimension (although it will also be demonstrated how it also impacts the other two). However, the communities in Spanish Guadalajara and Mexican Tlaxcala are different in their socioeconomic configuration, which is a challenge to reckon with when measuring its sustainability impact.

In its declaration for the inclusion of the list in 2019, UNESCO highlighted "their domestic, decorative and architectural uses," and how the processes such as "making techniques, enameling and decoration, retain the same pattern as in the sixteenth century."⁴⁰ It also mentions the knowledge related to the process, as well as how "every workshop has its own identity, as reflected in the detail of the shapes, decorations, colors and enamels of the pieces, and the production of ceramics remains a key identity symbol in both countries."⁴¹ Other highlighted aspects

³⁸ UNESCO. *Artisanal talavera of Puebla and Tlaxcala (Mexico) and ceramics of Talavera de la Reina and El Puente del Arzobispo (Spain) making process*. 2024.

³⁹ Instituto de Promoción Económica de Talavera. *Talavera de la Reina: Ready for a paradigm shift*. 2023.

⁴⁰ UNESCO. *Decision of the Intergovernmental Committee: 14.COM 10.B.23*. 2019.

⁴¹ UNESCO, *Decision*.

include common lexicon related to the process, how "the element helps foster a sense of unity and strengthens ties to the community," and how the decision mentions the interstate cooperation that should take place in order to guarantee its preservation, similar to the case of the Mediterranean Diet.

Despite being presented fundamentally as a social element, the truth is that traditional ceramics have a remarkable impact on their local economies. For instance, there are currently 15 workshops active in Talavera dedicated to its particular style of ceramics,⁴² which not only employ the artisans in them but also serve as a tourist appeal for the area. In the early 2000s, a factory in Puebla was still operative, employing over 250 workers and exporting to the US, Canada, South America, and even Europe.⁴³ We once again find a research gap regarding the full impact of ceramics in the local community, but just by gathering fragmentary information, we can indeed observe the impact it has in the economic dimension.

Nonetheless, how can we quantify its sustainability impact? Once again, the SDGs might help us in analyzing their impact a posteriori: SDG 8 (Decent Work and Economic Growth) is quoted as the most prominent, given the economic implications that have just been discussed, but others such as SDG 12 (Responsible Consumption and Production) also come into play.⁴⁴ But once again, they fall short by neglecting the complex reality behind it:

⁴² Instituto de Promoción Económica de Talavera, *Talavera*.

⁴³ José Luis Solana, "La Talavera poblana." *México Desconocido*, 2010.

⁴⁴ UNESCO, *Artisanal*.

the intergenerational knowledge transfer, the struggle to keep the industry alive against the competence of new technologies, and the overall community impact are aspects fundamental to observe inside of this ICH asset, but that can not be measured by the SGDs.

As for further indicators, based on the lessons extracted from the research papers analyzed above, we can try to create indicators based on a cross-case study. For instance, the suggestion proposed for the Mediterranean Diet of assessing the perception of local communities of their heritage could also be applied to this one, with special attention on the likelihood that these perceptions will be skewed towards the economic aspects. Facing once again an example of transnational ICH, it could be interesting to somehow quantify how it enhances inter-state cooperation on cultural matters, given how the Spanish government reported in 2022 a rapprochement with the Mexican government thanks to cultural matters and the combined work carried out to present the eventually successful candidacy for the inclusion in the ICH list.⁴⁵

V.III. The Argan Tree in Morocco

The final case study that has been selected is the practices around the Argan tree in Morocco. Inscribed in the list in the year 2014, refers to the practices concerning an endemic woodland species whose fruit can be processed

into oil.⁴⁶ This is done through a series of traditional, generationally transmitted techniques that seek to utilize the tree to its fullest extent and that have developed a series of tools, practices, and social customs and relations from it.⁴⁷ UNESCO also highlighted in its inclusion to the list how "the know-how concerning the argan tree contributes both to the local economy and ecological sustainability and is recognized by local communities as a part of their intangible cultural heritage,"⁴⁸ as well as some "measures proposed by the submitting State for safeguarding the argan tree and the related knowledge of the practitioners, including legal and institutional frameworks for the creation of cooperatives and associations and a museum."⁴⁹

In the practices around the Argan tree, we find that the environmental dimension takes a more prominent role than in the other two analyzed, given how the relation between communities and the trees is configured in a particular way and becomes vital for its persistence. Proper care for the environment and the trees becomes quintessential in the survival of these communities, which in turn pushes them to make a greater effort to preserve the environment. Some studies have also shown that Argan trees help stop desertification,⁵⁰ which makes this particular case of ICH environmentally impactful not only at a community level but also at a much broader regional one. Nonetheless, as climate change also affects them and

⁴⁵ La Moncloa. *Spain and Mexico strengthen cooperation in cultural matters*. December 2022.

⁴⁶ UNESCO. *Decision of the Intergovernmental Committee: 9.COM 10.30*. 2014.

⁴⁷ UNESCO, *Decision*.

⁴⁸ UNESCO, *Decision*.

⁴⁹ UNESCO, *Decision*.

⁵⁰ Stefan Ellerbeck, "This is everything you need to know about the Argan tree." *World Economic Forum*. June 2022.

the communities around them, their preservation is linked to a greater cause with the intervention of more actors.⁵¹

In comparison with the other two case studies, this one is much more localized in some areas of Morocco. Nonetheless, it also presents other challenges to be reckoned with. For starters, even though the culture and practices around the Argan tree are intangible, this element is linked to a tangible product that is not created by the human community itself, as are the trees. In other words, it is intrinsically linked to something that would still exist even if the cultural heritage and communities around it were not there (which was not the case in either of the two previous cases). Other than being included inside the hypothetical indicators, it presents a reality in which communities are forced to care much more about issues that go far beyond their local communities, such as climate change to guarantee the survival of the trees and, by association, of their way of living.

Taking a look at the indicators, we can see that UNESCO highlights SDG 12 (Responsible Consumption and Production) as one of the main ones for this asset.⁵² While the limitations of SDGs remain the same as in the other cases and will not be discussed here, the coincidence with the Puebla-Talavera case study in the SDGs it affects brings to light another benefit of including them in the approach to sustainability: it helps bridge the consequences of more

than two cases, which might be similar despite the great difference in practices and therefore facilitates the extraction of patterns that can be later used as indicators. This links to one of the conclusions from the review of the papers: while indicators should strive to be universal and applicable to various cases, targets for each ICH asset might be different.

In conclusion, the three different case studies analyzed provide a variety of learnings on how indicators can be applied to assessing their sustainable impact. Firstly, the three of them prove how the current framework of the SDGs is insufficient for dealing with ICH, as it leaves out of consideration many of the patrimonial aspects and even their impact in some of the sustainability dimensions. Secondly, by comparing case studies that are so different in nature, we have been able to extract some common characteristics (such as the perception of local communities or the need for cooperation between transnational actors, among others) that have a significant impact both in sustainability and in the preservation of the ICH, so they should be somehow formulated into indicators and performance to finally merge both concepts. The insights derived from the comparison of case studies highlight the need for universality that was extracted from the review of the currently proposed indicators. Finally, through this brief analysis, we have also been able to see how the intervention of different stakeholders, most pre-eminently government actors, is fundamental for the persistence of the heritage and its management. We will

⁵¹ Chaima Afi, et al. "Assessing the Impact of Aridity on Argan Trees in Morocco: Implications for Conservation in a Changing Climate." *Resources*, 15 no. 135 (September 2024).

⁵² UNESCO. *Argan, practices and know-how concerning the argan tree*. 2024.

therefore devote the next section to trying to extract the utilities of the set of indicators at a policy level.

VI. Policy implications and recommendations

The fundamental question that remains unanswered is the purpose of having a set of commonly agreed indicators for sustainable ICH management. We highlighted before how indicators not only serve as a way of materializing the abstract but also provide clear objectives and goals towards which to work at a policy level. As we saw in the case studies, governmental actors are a fundamental force to reckon with, as they can legislate in favor of protection measures (as described in the Argan tree case) or increase cooperation to maintain the heritage (such as the case of the Puebla-Talavera ceramics). Therefore, this section aims to explore the policy implications of having a measurable approach to sustainable ICH management.

As suggested throughout the paper, indicators should not be the sole tool with which sustainability and heritage management can be bridged together, but rather serve as a concrete way to somewhat standardize and share information in a challenging field. However, based on the literature review conducted for this research, it seems no developments have been made since 2015 at an institutional level to further integrate both areas.⁵³ Taking the SDGs as sufficient enough, it seems like both areas are perceived as separate and no efforts for complete integration have been formulated. Whereas academia has

sometimes tried to fill in this gap, its efforts have been scattered and not backed by any practical experience nor joint effort between different elements of Intangible Cultural Heritage. Furthermore, the indicators proposed are often too specific, which makes the knowledge transfer from some cases to others more difficult, thus increasing the difficulty of the challenges that ICH management poses.

Nonetheless, based on the research carried through the literature review and the case studies, it seems imperative that some coordinated and standardized indicators are oriented in order not only to facilitate the comprehension of ICH but also to facilitate preservation efforts both at an administrative and interstate level. As the leading organization in charge of International Heritage, as one that is respected and minded by the majority of the countries, and as the leading producer of academia and regulation concerning ICH, UNESCO has the role to step up and lead the efforts for this standardization efforts. Despite their claims that sustainability is a fundamental part of the heritage as a whole, the tools they currently utilize are insufficient and still present heritage management and sustainability as two separate issues, believing that through the case studies, we have proven to be a myth. Moreover, they should also increase the emphasis on sustainability issues when including a new asset in the Intangible Cultural Heritage List, thus guaranteeing the commitment of its Member States not only to the preservation of their assets but also to the assessment and policy of their impact. Despite being a

⁵³ Joana Dos Santos Gonçalves, et al. "Contributions to a Revised Definition of Sustainable Conservation." *LDE Heritage Conference on Heritage and the Sustainable Development Goals. September 2021*. September 2021.

global organization, it seems like UNESCO members are isolated in what refers to ICH management, which proves to the detriment of individual cases that might share common characteristics or similar management challenges.

Furthermore, it seems necessary that concrete targets are set for each one of the indicators. Despite its fundamental condition as intangible, ICH can also be approached in a quantifiable manner (taking into consideration that this is not a definitive solution, but rather a simplifying tool that provides guidance and help in the management process). While ICH can not be completely regulated and structured, we currently find the opposite situation, where ICH work focuses exclusively on the abstract realm, while neglecting its more quantifiable impact on the economy, environment, and society. Measuring indicators such as public perception or economic contribution, as we suggested in the case studies, would facilitate the orientation needed to formulate appropriate efforts. In this, the cooperation of local and national administrations, as well as civic organizations and other stakeholders devoted exclusively to ICH causes. Given their specific knowledge of the individual cases, and if provided with the appropriate framework and training to work with, they should be the ones in charge of documenting and reporting the targets in each case, which later must serve as a basis for formulating adequate policies. Having a framework of indicators also enables higher accountability for the decisions taken concerning ICH, with local and national governments having to respond to UNESCO, and potentially being punished with fines or removal from the

list if their actions result to be negligent and harmful either for patrimony or sustainability.

Nonetheless, we must always take into consideration that heritage has never been an organizational matter, but rather a communitarian one, as it is born and preserved within human societies. Therefore, the approach towards it should also be majoritarian led by civic actors, and merely monitored by UNESCO. While some steps in this direction have been taken, such as the inclusion of the fifth C for community in the World Heritage Declaration, there is still room for improvement. There currently seems to be an overreliance on an organization that might be relied upon for some things, but that should not be expected to handle all the load.

Overall, ICH is an area that is still emerging, and while some advancements have to be acknowledged, the action taken is insufficient. The lack of coordination for an appropriate framework is lacking in all areas of heritage, but given the greater challenges posed by ICH in terms of management, action must be taken in this regard. As we have seen, ICH can report a positive impact in societies, economies, and environments, which is beneficial both for public actors as well as citizens, but also touches upon some other important matters such as identity, belonging, intercultural issues, and our identity as humans.

VII. Conclusion

Throughout this analysis, we have been able to delve into the definitions of sustainability and intangible cultural heritage, seeing how they're often intertwined. As a new

field of study that is still in development, it is still finding out its path and developing the appropriate tools, but as was proved during the article there is still a long way to go. The lack of coordination in measuring heritage management and sustainability, which is common to all forms of heritage, takes a particularly high toll on ICH given the higher impact that it can have as well as the greater challenges it proposes. Sustainability and heritage need each other, yet the current efforts seem to be insufficient and too case-oriented.

We hope that this paper serves as a stone with which to build an appropriate set of tools for ICH and heritage management as a whole. Further research into this field would not only expand the case study list to identify more characteristics of the sustainability-ICH relation but also develop an appropriate set of sustainable intangible cultural heritage management indicators based on these case studies that have measurable targets and can be applied universally, facilitating cooperation and understanding of this fascinating field.

VIII. List of Figures

1.	Figure 1: Graphical Representation of Sustainable Development.	4
2.	Figure 2: Set of indicators analysed for this study.	7
3.	Figure 3: Framework of Heritage Sustainability Index (HSI) for heritage buildings.	8
4.	Figure 4: Key Indicators of Sustainable Urban Heritage Conservation.	10
5.	Figure 5: List of frequently used local indicators.	10

IX. Bibliography

- Afi, Chaima et al. "Assessing the Impact of Aridity on Argan Trees in Morocco: Implications for Conservation in a Changing Climate." *Resources*, 15 no. 135 (September 2024). Retrieved from https://www.researchgate.net/publication/384422363_Assessing_the_Impact_of_Aridity_on_Argan_Trees_in_Morocco_Implications_for_Conservation_in_a_Changing_Climate.
- Bôto, Joana Margarida et al. "Sustainability Dimensions of the Mediterranean Diet: A Systematic Review of the Indicators Used and Its Results." *Advances in Nutrition, Volume 13, Issue 5*, pp. 2015-2038. (September 2022). Retrieved from <https://www.sciencedirect.com/science/article/pii/S2161831323000546>.
- Bouni, Cristophe. "Sustainable development indicators: Theory and methodology." *Nature Sciences Sociétés*, 6, no. 3 (1998). Retrieved from <https://www.sciencedirect.com/science/article/abs/pii/S1240130798800794>.
- Dernini, Sandro and Berry, Elliot M. "Mediterranean Diet: From a Healthy Diet to a Sustainable Dietary Pattern." *Frontiers of Nutrition*, (2015). Retrieved from <https://pmc.ncbi.nlm.nih.gov/articles/PMC4518218/>
- Dos Santos Gonçalves, Joana et al. "Contributions to a Revised Definition of Sustainable Conservation." *LDE Heritage Conference on Heritage and the Sustainable Development Goals*. September 2021. Retrieved from https://www.researchgate.net/publication/348431106_Contributions_to_a_Revised_Definition_of_Sustainable_Conservation.
- Ellerbeck, Stefan. "This is everything you need to know about the Argan tree." *World Economic Forum*. June 2022. Retrieved from <https://www.weforum.org/stories/2022/06/argan-forests-sustainable-deforestation/>.
- Instituto de Promoción Económica de Talavera (IPET). *Talavera de la Reina: Ready for a paradigm shift*. 2023. Retrieved from <https://ipetalavera.es/wp-content/uploads/2023/06/Talavera-City-Book-2023.V1.pdf>.
- Guzmán, Paloma. "Assessing the sustainable development of the historic urban landscape through local indicators. Lessons from a Mexican World Heritage City." *Journal of Cultural Heritage*, 46 (December 2020);, pp. 320-327. Retrieved from <https://www.sciencedirect.com/science/article/pii/S1296207420304052>.
- La Moncloa. *Spain and Mexico strengthen cooperation in cultural matters* (December 2022). Retrieved from https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2022/20221216_sp-mex-cultural-cooperation.aspx.

- Liusman, Ervi et al. *Indicators for Heritage Buildings and Sustainability. Central Europe towards Sustainable Building: Decision-support tools and assessment methods*, (2013). Retrieved from https://cesb.cz/cesb13/proceedings/5_tools/CESB13_1515.pdf.
- Shrestha, Hari Gopal, Singh, Sangeeta and Bajracharya, Asim Ratna. "Identification of Indicators for Sustainability of Cultural Heritage." *Proceedings of 14th IOE Graduate Conference. Volume 14* (December 2023). Retrieved from <http://conference.ioe.edu.np/publications/ioegc14/IOEGC-14-096-F2-1-723.pdf>.
- Solana, José Luis. "La Talavera poblana." *México Desconocido*. 2010. Retrieved from <https://web.archive.org/web/20100718041441/http://www.mexicodesconocido.com.mx/notas/3909-La-talavera-poblana>.
- Sowińska-Świerkosz, Barbara Natalia. "Review of cultural heritage indicators related to landscape: Types, categorisation schemes and their usefulness in quality assessment." *Ecological Indicators* 81, (June 2017): pp. 526–542. Retrieved from https://www.researchgate.net/publication/317822976_Review_of_cultural_heritage_indicators_related_to_landscape_Types_categorisation_schemes_and_their_usefulness_in_quality_assessment.
- Tanguay, Georges, Berthold, Etienne and Rajaonson, Juste. *A Comprehensive Strategy to Identify Indicators of Sustainable Heritage Conservation*. 2014. Retrieved from https://www.researchgate.net/publication/266343477_A_Comprehensive_Strategy_to_Identify_Indicators_of_Sustainable_Heritage_Conervation.
- United Nations (UN). *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*. 2024. Retrieved from <https://www.un.org/en/conferences/environment/rio1992>.
- United Nations Commission on Sustainable Development (UNCSD). *Framing Sustainable Development: The Brundtland Report – 20 Years On*. 2007. Retrieved from https://www.un.org/esa/sustdev/csd/csd15/media/backgrounder_brundtland.pdf.
- United Nations Department of Economic and Social Affairs (UNDESA). *The 17 Goals*. 2024. Retrieved from <https://sdgs.un.org/goals>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Argan, practices and know-how concerning the argan tree*. 2024. Retrieved from <https://ich.unesco.org/en/RL/argan-practices-and-know-how-concerning-the-argan-tree-00955>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Artisanal talavera of Puebla and Tlaxcala (Mexico) and ceramics of Talavera de la Reina and El Puente del Arzobispo*

- (Spain) *making process*. 2024. Retrieved from <https://ich.unesco.org/en/RL/artisanal-talavera-of-puebla-and-tlaxcala-mexico-and-ceramics-of-talavera-de-la-reina-and-el-puente-del-arzobispo-spain-making-process-01462>. <https://ich.unesco.org/en/decisions/14.COM/10.B.23>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Convention concerning the protection of the World Cultural and Natural Heritage*. 1972. Retrieved from <https://whc.unesco.org/archive/convention-en.pdf>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Convention for the Safeguarding of the Intangible Cultural Heritage*. 2003. Retrieved from <https://ich.unesco.org/en/convention>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Cultural Landscape*. 2024. Retrieved from <https://whc.unesco.org/en/culturallandscape>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Decision of the Intergovernmental Committee: 9.COM 10.30*. 2014. Retrieved from <https://ich.unesco.org/en/decisions/9.COM/10.30>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Decision of the Intergovernmental Committee: 14.COM 10.B.23*. 2019. Retrieved from <https://www.unesco.org/archives/multimedia/document-1680-Eng-2>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Intangible cultural heritage and sustainable development*. 2015. Retrieved from <https://ich.unesco.org/doc/src/34299-EN.pdf>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Lists of Intangible Cultural Heritage and the Register of good safeguarding practices*. 2024. Retrieved from <https://ich.unesco.org/en/lists>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Mediterranean Diet*. 2024. Retrieved from <https://ich.unesco.org/en/RL/mediterranean-diet-00884>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *Sustainable Development Toolbox*. 2015. Retrieved from <https://ich.unesco.org/en/sustainable-development-toolbox-00987>.
- United Nations Scientific, Cultural and Social Organisation (UNESCO). *The Mediterranean Diet*. 2024. Retrieved from <https://www.unesco.org/archives/multimedia/document-1680-Eng-2>.

United Nations Scientific, Cultural and Social Organisation (UNESCO). *The World Heritage Convention*. 2024. Retrieved from <https://whc.unesco.org/en/convention/>.

United Nations Scientific, Cultural and Social Organisation (UNESCO), World Heritage Convention Glossary. *Mixed Assets*. 2024. Retrieved from <https://whc.unesco.org/en/glossary/307>.

World Commission on Environment and Development (WCED). *Report of the World Commission on Environment and Development: Our Common Future: Our Common Future*. 1990. Retrieved from <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

LAW CHAPTER

Protecting Indigenous Water Rights in the United States and Canada

Aaliya Mithwani

LLB, IE University, Madrid, Spain

E-mail: amithwani.ieu2022@student.ie.edu

Published: 27th of January, 2025

Abstract

Access to clean water is a fundamental human right, yet Indigenous tribes in both the United States and Canada continue to face significant barriers in securing this basic necessity. This paper analyzes the current domestic and international legal frameworks applicable to the United States and Canada concerning Indigenous rights to clean water. In the United States Supreme Court ruling on *Arizona v. Navajo Nation*, it was established that the federal government has no obligation under the Treaty of Bosque Redondo to ensure access to clean water for Indigenous peoples through affirmative steps. The case raises concerns over the treaty interpretations, and how Indigenous rights are protected in judicial decisions. Similarly, a class action case brought by the Shamattawa First Nation in Canada challenged the government's failure to provide clean water to Indigenous communities. This paper explores the domestic legal instruments shaping Indigenous water rights across both jurisdictions. It also examines the international frameworks which create a human right to water and a state responsibility to protect Indigenous peoples' human rights. In light of these legal instruments, the paper makes a policy recommendation through international declaration amendments and renewed commitment to international obligations to support the right to access clean water owed to Indigenous peoples in the United States and Canada.

Keywords: Indigenous rights, clean water, environmental justice

I. Introduction

From the arrival of Juan Ponce de Leon in North America in the early 16th century to the 20th century, the Indigenous population of the continent was

reduced by up to 99 percent.¹ This was the result of violent conquest and colonization, leading into

¹ Ward Churchill. *A Little Matter of Genocide: Holocaust and Denial in the Americas 1492 to the Present* (San Francisco CA: City Lights Books, 1998), 129

genocidal policies such as the Indian Removal Act of 1830, The Dawes Act of 1887 in the United States and the Indian Act of 1876, the residential school system, and the Missing and Murdered Indigenous Women and Girls crisis in Canada. Both jurisdictions have enacted policies allowing for what amounted to Indigenous child abduction by government authorities for the purpose of assimilation,² land dispossession in the form of pipelines through Indigenous lands and other such intrusions,³ and voter disenfranchisement affecting Indigenous populations.⁴

Both the United States and Canada have attempted to make amends for these transgressions through forms of Indigenous rights protections. However, a recent battle is brewing in the legal sphere concerning the Indigenous right to water. This paper will elaborate on the current legal challenges concerning Indigenous access to clean water in Canada and the United States.

² Christie Renick, "The Nation's First Family Separation Policy: The Indian Child Welfare Act," *Imprint News*, October 9, 2018, <https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431>;

Niigaanwewidam James Sinclair and Sharon Dainard, "Sixties Scoop," *The Canadian Encyclopedia*, last modified 2024, <https://www.thecanadianencyclopedia.ca/en/article/sixties-scoop>.

³ Hannah Perls, "The Dakota Access Pipeline (DAPL)," *Harvard Environmental & Energy Law Program*, last modified October 14, 2024, <https://eelp.law.harvard.edu/tracker/dakota-access-pipeline/>; "Canada: Construction of pipeline on Indigenous territory endangers land defenders," Amnesty International, October 3, 2022, <https://www.amnesty.org/en/latest/news/2022/10/canada-pipeline-indigenous-territory-endangers-land-defenders/>.

⁴ "Facilitating First Nations Voter Participation For The 43rd Federal General Election," Assembly of First Nations, 2020, <https://www.afn.ca/wp-content/uploads/2020/08/20-07-27-Final-Report-Draft-Facilitating-First-Nations-Voter.pdf>; Coryn Grange and Chelsea N. Jones, "Voting on Tribal Lands: Barriers to Native American Turnout," Brennan Center for Justice, November 19, 2024.

I. The Current State of Affairs

In the 2023 case *Arizona v. Navajo Nation*, the Supreme Court of the United States established that the federal government had no obligation under the Treaty of Bosque Redondo (hereafter, "the Treaty") to take "affirmative steps" to ensure clean water access for Indigenous peoples.⁵ This opinion was given on the basis that the Treaty solely afforded the "right to use needed water from various sources [which] arise on, border, cross, underlie, or are encompassed within" tribal lands⁶, and therefore by simply not interfering with the tribe's access to clean water, the federal government has fulfilled its obligations. However, this interpretation does not properly take into account established best practices or canon constructions utilized in former Court interpretation of such treaties with Indigenous tribes. In previous cases⁷, the Supreme Court has followed the following rules for the interpretation of tribal treaties: "(1) treaty language must be construed as the Indians would have understood it at the time of treaty negotiation; (2) doubtful or ambiguous expressions in a treaty should generally be resolved in favor of the Tribes; and (3) treaty provisions should be interpreted in light of the surrounding circumstances and history"⁸. The Court acknowledges that the federal US government holds Native water rights "in trust"⁹, but does not elaborate upon what obligations this entails for the government.

⁵ *Arizona et al. v. Navajo Nation et al.*, 599 U.S. ___ (2023)

⁶ *Ibid.*

⁷ *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999); *Oneida County, N.Y. v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 247 (1985); *Choctaw Nation of Indians v. United States*, 318 U.S. 423, 432 (1943).

⁸ "Best practices for the protection and preservation of cultural resources on tribal lands," U.S. Department of the Interior, Bureau of Indian Affairs, 2017 https://www.bia.gov/sites/default/files/media_document/best_practices_guide.pdf

⁹ *Arizona v. Navajo Nation*, 599 U.S. ___ (2023)

This is, however, addressed in Justice Gorsuch’s dissent, as he explains:

*What is known is that the United States holds some of the Tribe’s water rights in trust. And it exercises control over many possible sources of water in which the Tribe may have rights, including the mainstream of the Colorado River. Accordingly, the government owes the Tribe a duty to manage the water it holds for the Tribe in a legally responsible manner.*¹⁰

If the Court were to consider the canon constructions, the broader concept of “property” as considered by Indigenous peoples at the time of the contract should have been considered. As mentioned by Gorsuch, the land afforded to the Navajo people is meant to serve as a “permanent home”, which creates broader obligations for the United States government to provide what is needed for the Navajo people to live on such land. This is (1) how the Indigenous people would have understood the idea of a permanent home to mean in such context; (2) the resolution which favors the tribe in light of the confusion; (3) a decision adopted in light of the surrounding circumstances of the Arizona droughts and the environmental changes to the tribal lands. This case was a devastating development for Indigenous people in the United States.

Simultaneously, a class action lawsuit was raised in 2022 by the Shamattawa First Nation in Canada, seeking, in addition to other things, “a declaration that Canada is liable to the Plaintiff and the Class members for damages caused by creating and failing to remedy conditions of inadequate access to potable water”¹¹.

¹⁰ Arizona v. Navajo Nation, 599 U.S. ___ (2023)

¹¹ Shamattawa First Nation v. Attorney General Of Canada, 2022, Canada Federal Court (Statement of Claim) <https://www.mccarthy.ca/sites/default/files/2022-12/T-1937-22%20Statement%20of%20Claim%20%28certified%20copy%29%20-%20Sep.%2022%2C%202022%2845817839.1%29.pdf>

Prior to this suit, the Shamattawa community was one of many Indigenous groups under a boil water advisory since 2018, and the redress from the Canadian government was not deemed adequate by the affected peoples¹².

In its statement of defense, Canada made the claim that “providing safe drinking water to First Nations members on reserve” was simply “a matter of good governance rather than as a result of a legal duty”¹³. Rather than strengthening the guarantee to clean water access, Canada attempts to create a precedent freeing it of legal obligations to actively provide clean water access to Indigenous communities.

These instances show a clear struggle against protecting Indigenous water rights through legal mechanisms in both the United States and Canada in recent years.

II. National Frameworks

1.1 Canada

The Canadian Constitution explicitly recognizes the rights of Indigenous peoples¹⁴. These rights are further extrapolated in treaties with tribes, which include rights to health as negotiated verbally in the process of creating the Numbered Treaties, and such oral versions of Treaties have been accepted as legally binding by

¹² Brett Forester, “Canada has no legal obligation to provide First Nations with clean water, lawyers say,” *CBC*, October 7, 2024, <https://www.cbc.ca/news/indigenous/shamattawa-class-action-drinking-water-1.7345254>

¹³ Shamattawa First Nation v. Attorney General Of Canada, 2023, Canada Federal Court (Statement of Defense) <https://www.mccarthy.ca/sites/default/files/2024-09/AGC%20SOD%20-%20filed%20July%2031%2C%202023.pdf>

¹⁴ Constitution Act, 1982, Part 2 § 35 (1982).

Canadian courts¹⁵. This right to health includes a positive obligation for “the provision of medical services by the Crown to the First Nations citizens”¹⁶. The protection of health cannot be carried out effectively without taking into account a person’s access to clean water for drinking, cooking, and sanitation.

1.2 United States

In the United States, Indigenous water rights are established in case law. *Winters v United States* (1908) “provides water for the needs of Native Americans who reside on federally reserved lands” and provides that water rights reserved by the federal government for Indigenous peoples prevail over State law¹⁷. Both jurisdictions provide legal instruments with both explicit and implicit protections for Indigenous access to clean water.

III. International Frameworks

1.1 International Covenant on Economic, Social and Cultural Rights

Both the United States and Canada have signed the International Covenant on Economic, Social and Cultural Rights (“the Covenant”), although the United States has not ratified it. Article 11 of the Covenant establishes the “right of everyone to an adequate standard of living for himself and his family”, and Article 12 “the right of everyone to the enjoyment of the highest attainable standard of physical and mental

health”¹⁸. Both of these rights imply an active role of the government in supporting its people, and therefore a positive obligation to protect these rights. Furthermore, the UN Committee on Economic, Social and Cultural Rights has clarified in no uncertain terms that these two rights given in Articles 11 and 12 of the Covenant include the “full realization of the right to water”, and that “the obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national water strategy and plan of action to realize this right; ensuring that water is affordable for everyone; and facilitating improved and sustainable access to water”¹⁹. Having ratified the Covenant, the right to water should be implemented in Canada in order to fulfill its international legal obligations. Additionally, regardless of ratification status, it is advisable that the United States creates this right to water as a party to the Covenant and a key member of the United Nations.

1.2 UN Resolution A/Res/64/292

Additionally, the UN Resolution A/Res/64/292 regards “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”, and “Calls upon States and international organizations to provide financial resources, capacity-building and technology transfer, through international assistance and cooperation, in particular to developing countries, in

¹⁵ Aimée Craft and Alice Lebihan, “The Treaty Right to Health: A sacred obligation.” *National Collaborating Centre for Indigenous Health*, (2021), 14

https://www.nccih.ca/Publications/Lists/Publications/Attachments/10361/Treaty-Right-to-Health_EN_Web_2021-02-02.pdf

¹⁶ Ibid.

¹⁷ Peter J. Longo, “Winters Doctrine,” *University of Nebraska–Lincoln Encyclopedia of the Great Plains*, 2011, <http://plainshumanities.unl.edu/encyclopedia/doc/egp.wat.041>

¹⁸ “International Covenant on Civil and Political Rights,” Opened for signature December 16, 1966, *Treaty Series* 999 : 171, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>

¹⁹ ICESCR, *General Comment No. 15: The right to water (arts. 11 and 12)*, 29th Sess, Adopted 20 January 2003, E/C.12/2002/11, <https://humanrights.asn.au/ICESCR/GeneralComment15>

order to scale up efforts to provide safe, clean, accessible and affordable drinking water and sanitation for all²⁰.

1.3 UN Declaration on the Rights of Indigenous Peoples

The UN Declaration on the Rights of Indigenous Peoples (“the Declaration”) serves to establish the “minimum standards for the survival, dignity, and well-being of the Indigenous peoples of the world”²¹. Initially, both the United States and Canada were two of four states objecting to this Declaration, due to contentions over the concept of “free, prior and informed consent” for Indigenous tribes, and the meaning of “self-determination” for these peoples²². However, in 2010, both the United States and Canada endorsed the Declaration²³.

The Declaration is not a legally binding instrument. However, as the established *minimum standards* for Indigenous protections, states are encouraged to implement this framework into their own legal system with consultation from Indigenous peoples within their jurisdictions, giving the chance to expand upon these rights and create solutions which are the most appropriate and effective for the people it serves to protect.

The Declaration expressly grants Indigenous peoples “the right to the full enjoyment, as a collective or as

individuals, of all human rights and fundamental freedoms as recognized in [...] international human rights law”²⁴. This necessarily includes the rights to an adequate standard of living and health as described above, to include a positive obligation upon the state to provide water rights.

However, the Declaration does not explicitly mention water rights for Indigenous peoples. It establishes land rights and rights to resources, largely focusing on the State’s obligation to refrain from interfering with these rights.

IV. Policy Recommendation

In light of these new legal issues concerning affirmative water rights, water rights held in trust, and the role of the federal government in providing water to Indigenous peoples, a two-fold solution is needed. First, the UN Declaration on the Rights of Indigenous Peoples must be amended. Second, the United States and Canada must reaffirm their commitment to implementing the declaration into their legal systems with tangible legal consequences.

The UN Declaration on the Rights of Indigenous Peoples must be amended to specifically include the Indigenous right to clean water. As such, an established right to water in the declaration is noticeably missing, and is only implicitly protected through articles on related subjects. This is not enough. In order to ensure the survival of Indigenous peoples in the face of climate change concerns, it is necessary to confirm the States’ positive obligation to protect Indigenous water rights in an active manner.

In addition to amendments to the Declaration, the United States and Canada must also play a role in these efforts. More than simply accepting the Declaration, the States must take active steps towards their commitment

²⁰ Resolution A/Res/64/292: The human right to water and sanitation, United Nations General Assembly (2010), <https://undocs.org/A/RES/64/292>.

²¹ “United Nations Declaration on the Rights of Indigenous Peoples,” 13 September 2007, *Resolution adopted by the General Assembly* 61/295, <https://www.refworld.org/legal/resolution/unqa/2007/en/49353>, Article 43

²² Madison Kavanaugh, “UNDRIP Drop: How Canada and the United States are Failing to Meet their International Obligations to Tribes,” *Michigan Journal of International Law*, November, 2018, <https://www.mjionline.org/undrip-drop-how-canada-and-the-united-states-are-failing-to-meet-their-international-obligations-to-tribes/>

²³ Ibid.

²⁴ “United Nations Declaration on the Rights of Indigenous Peoples”, Article 1

to supporting the Declaration. It is recommended that the United States and Canada enshrine the rights given in the Declaration into their national legal systems, to include Indigenous water rights and give for effective legal mechanisms to protect these rights. This codification should also include mechanisms for monitoring water quality and access in Indigenous communities, with regular reporting for transparency and accountability to the Canadian and American people, as well as the international community. Finally, if the rights provided for in the Declaration oppose previous acts or policies which served to oppress and subjugate Indigenous peoples, such acts or policies should be revised and amended to ensure that Indigenous rights are protected in a material way.

This policy will create the necessary framework to protect Indigenous access to clean water in Canada and the United States, promote environmental justice, and help both jurisdictions aspire towards their legal and moral obligations to Indigenous peoples.

VI. Bibliography

- “Best practices for the protection and preservation of cultural resources on tribal lands.” U.S. Department of the Interior, Bureau of Indian Affairs. 2017.
https://www.bia.gov/sites/default/files/media_document/best_practices_guide.pdf
- “Canada: Construction of pipeline on Indigenous territory endangers land defenders.” Amnesty International. October 3, 2022.
<https://www.amnesty.org/en/latest/news/2022/10/canada-pipeline-indigenous-territory-endangers-land-defenders/>.
- Churchill, Ward. *A Little Matter of Genocide: Holocaust and Denial in the Americas 1492 to the Present*. San Francisco CA: City Lights Books, 1998.
- Craft, Aimée and Lebihan, Alice. “The Treaty Right to Health: A sacred obligation.” National Collaborating Centre for Indigenous Health. (2021). 14
https://www.nccih.ca/Publications/Lists/Publications/Attachments/10361/Treaty-Right-to-Health_EN_Web_2021-02-02.pdf
- “Facilitating First Nations Voter Participation For The 43rd Federal General Election.” Assembly of First Nations, 2020,
<https://www.afn.ca/wp-content/uploads/2020/08/20-07-27-Final-Report-Draft-Facilitating-First-Nations-Voter.pdf>
- Forester, Brett. “Canada has no legal obligation to provide First Nations with clean water, lawyers say.” CBC. October 7, 2024.
<https://www.cbc.ca/news/indigenous/shamatta-wa-class-action-drinking-water-1.7345254>
- Grange, Coryn, and Jones, Chelsea N. “Voting on Tribal Lands: Barriers to Native American Turnout.” *Brennan Center for Justice*, November 19, 2024.
- ICESCR. *General Comment No. 15: The right to water (arts. 11 and 12)*. 29th Sess. Adopted 20 January 2003. E/C.12/2002/11.
<https://humanrights.asn.au/ICESCR/GeneralComment15>
- “International Covenant on Civil and Political Rights.” Opened for signature December 16, 1966. *Treaty Series* 999 : 171.
<https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>
- Kavanaugh, Madison. “UNDRIP Drop: How Canada and the United States are Failing to Meet their International Obligations to Tribes.” *Michigan Journal of International Law*. November, 2018.
<https://www.mjilonline.org/undrip-drop-how-canada-and-the-united-states-are-failing-to-meet-their-international-obligations-to-tribes/>
- Longo, Peter J. “Winters Doctrine.” *University of Nebraska–Lincoln Encyclopedia of the Great Plains*. 2011.
<http://plainshumanities.unl.edu/encyclopedia/doc/egp.wat.041>
- Perls, Hannah. “The Dakota Access Pipeline (DAPL).” *Harvard Environmental & Energy Law Program*. Last modified October 14, 2024.
<https://eelp.law.harvard.edu/tracker/dakota-access-pipeline/>.
- Renick, Christie. “The Nation's First Family Separation Policy: The Indian Child Welfare Act.” *Imprint News*, October 9, 2018.
<https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431>.

Resolution A/Res/64/292: The human right to water and sanitation, United Nations General Assembly (2010),
<https://undocs.org/A/RES/64/292>.

Shamattawa First Nation v. Attorney General Of Canada, 2022, Canada Federal Court (Statement of Claim)
<https://www.mccarthy.ca/sites/default/files/2022-12/T-1937-22%20Statement%20of%20Claim%20%28certified%20copy%29%20-%20Sep.%2022%2C%202022%2845817839.1%29.pdf>

Shamattawa First Nation v. Attorney General Of Canada, 2023, Canada Federal Court (Statement of Defense)
<https://www.mccarthy.ca/sites/default/files/2024-09/AGC%20SOD%20-%20filed%20July%202023%2C%202023.pdf>

Sinclair, Niigaanwewidam James and Dainard, Sharon. "Sixties Scoop." In *The Canadian Encyclopedia*. Last modified 2024.

"United Nations Declaration on the Rights of Indigenous Peoples." 13 September 2007. Resolution adopted by the General Assembly 61/295.
<https://www.refworld.org/legal/resolution/unga/2007/en/49353>

How does Georgia's new foreign agent law impact its integration into the EU, and how does this compare to similar laws in Russia?

Ana Miqueladze

IE University, Madrid, Spain

E-mail: amiqueladze.ieu2022@student.ie.edu

Published: 27th of January, 2025

Abstract

The paper assesses the implications of Georgia's new transparency, which is often dubbed as "Russian foreign agent law," on its integration within the EU. It aims to show the relationship between the laws in Russia and Georgia and why it is so problematic for the country's prospects after their candidate status. The analysis examines how the law differs from European standards and undermines democratic norms.

Keywords: Georgia, Russia, rule of law, EU

I. Introduction

Georgia's new law on transparency has caused huge outrage both domestically and internationally. Georgia, which has recently started its process of becoming part of the European Union, has seen a major setback after passing the infamous "foreign agent law," which has raised questions regarding the country's alignment with the EU values.¹ The law requires NGOs and media outlets to register as "foreign agents" or, in other words, "agents of foreign influence," which very evidently mimics a similar law that was passed in Russia over 10 years ago.

The Russian foreign law was deeply criticized due to its use as a political tool to control the opposition and its arbitrary

enforcement due to the law's vague language and interpretation.² It has been argued that due to the similarity in nature and Russia's influence on Georgia's political party, the Georgian Dream, the country might go down the same path and jeopardize Georgia's European future.³ Massive protests in Georgia regarding this law have given this problem international attention, and questions regarding future human rights violations have started to emerge. The paper will discuss how this law will affect Georgia's future integration into the EU, and how similar it is to infamous and publicly condemned Russian foreign agent law.

¹ "Rule of Law." n.d. European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/policy-highlights/rule-law_en.

² RFE/RL's Russian Service. 2024. "European Court Says Russia's 'Foreign Agent' Law Violates Human Rights." RadioFreeEurope. <https://www.rferl.org/a/33167947.html>

³ Sauer, Pjotr. 2024. "Georgia's ruling pro-Russia party retains power in blow to EU aspirations." The Guardian. <https://www.theguardian.com/world/2024/oct/27/georgia-election-calls-for-protests-as-ruling-pro-russia-party-declared-winner>

II. What is the “Foreign Agent” Law in Georgia?

Georgia’s “transparency on foreign influence bill” also known as “foreign agents’ law” was passed on May 17, 2024. The law requires NGOs and media outlets that receive more than 20% funding from abroad to register as “organizations “pursuing the interest of a foreign power.”⁴ They are required to disclose any activity, organizational details, and financial sources to the government. In the case of non-compliance with the law, the government will impose penalties such as fines, potential suspension, operational restrictions, or closure of the organization.⁵

According to the ruling party in the government, The Georgian Dream, this law is the key to ensuring transparency from foreign influences to protect national sovereignty. They believe that this will protect Georgia from any external interference in Georgia’s domestic politics.

However, the true nature of the law has been questioned by many politicians and the public itself. Critics argue that the law is inherently restrictive and could harm civil society and media freedom. By forcing NGOs and media organizations to register as “foreign agents,” critics argue that it stigmatizes these groups and creates an environment of suspicion. It is argued that this labeling could lead to public distrust and delegitimize the work of civil society groups that are critical of the government, particularly those advocating for EU integration or human rights.⁶

⁴ Congressional Research Service. 2024. “Georgia’s Parliament Passes “Transparency of Foreign Influence” Law.” CRS Reports. <https://crsreports.congress.gov/product/pdf/IN/IN12368>

⁵ (Congressional Research Service 2024)

⁶ Fernandez-Powell, Maya. 2024. “Georgia’s new foreign agent law poses a new threat to human right defenders.” Human

The law could also discourage foreign funding for NGOs, as many international organizations may be hesitant to operate under the presumption of being labeled as foreign agents. This could reduce the ability of NGOs to operate freely, thereby hindering their influence on public policy and limiting their ability to advocate for democratic reforms, the rule of law, and human rights.⁷ The groups that will suffer from this bill are extensive. Civil Society Groups such as Transparency International Georgia and many more, have various international aid due to the international purpose of their organizations.⁸ This is also applicable to independent media outlets, especially if they collaborate with international entities and get funding from abroad. This is why many observers have mentioned that this bill “threatens to equip the government with tools to suppress civil society and independent media.”⁹

More importantly, the vague wording of some provisions in the bill could be broadly interpreted and used to target organizations for opposition views. The law offers

Rights First.

<https://humanrightsfirst.org/library/georgias-foreign-agents-law-poses-new-threat-to-human-rights-defenders>.

⁷ (Fernandez-Powell 2024)

⁸ Krupskiy, Maxim. 2024. “How Georgia’s “Foreign Agent” Law—and Others Like It—Can Damage Democracy.” Foreign Affairs.

<https://www.foreignaffairs.com/georgia/power-stigma?>

⁹ “Georgia: Last Chance to stop Russian-style crackdown on civil society.” 2024. European Platform for Democratic Elections(EPDE).

<https://epde.org/?news=georgia-last-chance-to-stop-russian-style-crackdown-on-civil-society>

a lot of space to be used to silence dissent and limit civil society from operating freely.¹⁰

The biggest outrage towards this law came after comparisons were drawn between Russian and Georgian foreign agent laws, hence dubbing this law as “Russian Foreign Agent Law”. Despite Georgian Dream’s pleadings regarding the fact that many other European countries have a similar law, people are still convinced that this law will be used in a politically motivated manner, as it is used in Russia.¹¹

1.2 “Foreign Agent” rule in Russia

In July 2012, Vladimir Putin signed the law on “foreign agents”, which came into force in November of that year.¹² This law similarly requires non-governmental organizations receiving funds from abroad and engaging in “political activities” to register with the Ministry of Justice as “foreign agents”. This caused several pro-democracy aid agencies to pull out of Russia, including the US Agency for

International Development, the International Republican Institute and the National Democratic Institute.¹³

According to the law, “foreign agents” are subject to a strict control regime, including extensive annual audits, quarterly financial reporting, and voluminous reporting on all activities every half year. They must mark all publications, letters, and other material, whether in paper or electronic form, as belonging to a foreign agent.¹⁴ This law has been criticized as vague and open to arbitrary enforcement, allowing the government to selectively target organizations that seem to be oppositional to the regime. The Venice Commission’s opinion on this law stated that the term “foreign agent” is in close association with “espionage” and “treason”. The law’s sanction regime is extensive. Non-governmental organizations that fail to register as “foreign agents” risk suspension for up to six months, by a simple decision of the authorities without a court order. Leaders who fail to comply with the law face up to four years in prison and fines up to 300,000 RUR (Euro 7,500). Organizations face fines up to 1 million RUR (Euro 25,000).¹⁵

¹⁰ (Krupskiy 2024)

¹¹ de Varax, Alexis. 2024. “Georgia’s “Foreign Agent” Law: Why is it not European?” gfsis.org. <https://gfsis.org/en/georgias-foreign-agent-law>

¹² Shakhazova, Elena. 2022. “European Court decision on Foreign Agents: a day late and a dollar short.” *Citizens Watch*. June 16. <https://citwatch.org/european-court-decision-on-foreign-agents-a-day-late-and-a-dollar-short>

¹³ Lindsaedt, Natasha. 2024. “Georgia is sliding towards autocracy after government moves to force through bill on ‘foreign agents’.” *The Conversation*. April 22. <https://theconversation.com/georgia-is-sliding-towards-autocracy-after-government-moves-to-force-through-bill-on-foreign-agents-228219>.

¹⁴ Machalek., Katherin. 2022. “Factsheet: Russia’s NGO Laws.” *Freedom House*. https://freedomhouse.org/sites/default/files/Fact%20Sheet_0.pdf.

¹⁵ (Machalek 2022)

This law has resulted in further democratic backsliding for the society. Golos, a prominent election-monitoring organization, refused to register as a foreign agent. They were targeted due to their international funding and their active role in exposing electoral fraud in Russia. The government fined the NGO for various instances such as publishing “research results” during the silent period, for which Golos appealed to ECtHR. The Court concluded that this was a violation of Article 10 of freedom of expression. Golos was ultimately dissolved in 2020.¹⁶ Despite the fact that Russian authorities’ main argument regarding the law, similar to the Georgian government, was to ensure transparency, their main prerogative of sanctioning Golos was to ensure there was no transparency in elections available to the Russian people.¹⁷ However, this is not a singular case. Meduza and Dozhd TV, major independent media outlets, have faced legal repercussions under this law, where they closed down entirely.¹⁸ These new organizations were known to advocate for human rights throughout the country. These cases showed that “foreign agent law” still may amount to violations of human rights such as freedom of expression, despite not restricting it directly. Many international organizations, including the EU and US,

have condemned this foreign agent law, seeing it as a tool for silencing dissent.¹⁹

This is why similarity to Georgian law is very detrimental to Georgia’s future. The wording of “political activities” in both laws can be interpreted in a partisan way, giving the government the right to depose the opposition in a “legitimate” way. Due to Russia’s occupation of 20 % of Georgia’s territory, adopting a similar law is not only bringing Georgia closer to Russia but also hindering Georgia’s integration into the EU. Russia has tried to seize control of Georgia numerous times through occupation or its frequent interference in its politics, hence Georgia’s EU candidate status is significantly going to affect Russia’s influence over Georgia. Even though Georgia’s foreign agent law does not have as much severity in its enforcement as Russia’s, it is due to the novelty of the law. The progression of the law in Russia started in 2006 and even to this day is gradually becoming more and more restricting. The Georgian government’s broad discretion in labeling NGOs and media outlets as foreign agents will eventually also lead to arbitrary enforcement, which directly undermines the principle of equality, a cornerstone of the rule of law.

¹⁶ Case of Assotsiatsiya NGO Golos and Others v. Russia.” 2021. HUDOC - European Court of Human Rights. [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-213231%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-213231%22]%7D)

¹⁷ (“(Application no. 41055/12)” 2021)

¹⁸ “Telekanal Dozhd v. Russia.” 2017. HUDOC - European Court of Human Rights. [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-175721%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-175721%22]%7D)

1.3 EU INTEGRATION

1.3.1 international response and comparison

Georgia’s aim in recent years has been to be a part of the European Union. This is further highlighted in the Georgian Constitution under Article 78, which directly

¹⁹ (Sauer 2024)

states that: “The constitutional bodies shall take all measures within the scope of their competences to ensure the full integration of Georgia into the European Union and the North Atlantic Treaty Organization.”²⁰ The country first applied for EU membership in 2022 and was granted the candidate status in the following year. Despite this being a milestone for the nation, Georgia had many things to improve concerning democracy and law. After the passing of the “Foreign Agent Law,” The EU condemned the “transparency of foreign influence” bill, expressing concerns that it could potentially hinder Georgia’s EU membership aspirations.²¹ The EU stated that the law “is not in line with EU core norms and values” and could potentially restrict the operations of civil society and media organizations²²

²⁰ “CONSTITUTION OF GEORGIA | სსიპ ”საქართველოს საკანონმდებლო მაცნე.” n.d. საკანონმდებლო მაცნე. Accessed January 24, 2025.

<https://matsne.gov.ge/en/document/view/30346?publication=36>

²¹ European Parliament. 2024. “European Parliament resolution of 25 April 2024 on attempts to reintroduce a foreign agent law in Georgia and its restrictions on civil society.” European Parliament.

https://www.europarl.europa.eu/doceo/document/TA-9-2024-0381_EN.html

²² TEAM, EEAS PRESS. 2024. “Georgia: Statement by the High Representative and the Commissioner for Neighbourhood and Enlargement on the adoption of the “transparency of foreign influence” law.” *European Union External Action*. April 17.

https://www.eeas.europa.eu/eeas/georgia-statement-high-representative-and-commissioner-neighbourhood-and-enlargement-adoption_en

Many government and organization leaders share the similar sentiment regarding the law. Marie Struthers, Director for Eastern Europe and Central Asia at Amnesty International, referred to the law as a contravention of “Georgia’s international obligations on the rights to freedom of expression and association and strikes at the heart of civil society’s ability to operate freely and effectively.”²³

Despite such pleadings from the EU, the Georgian government claims that transparency laws are not new, especially in the EU. In Hungary, Transparency law was passed within the same scope as Russian law. However, this is not a compelling argument, as this law was soon repealed when CJEU found that Hungary was unjustifiably targeting NGOs and was restricting freedom of association based on foreign funding which posed an unevicenced risk. Hungary was ordered to annul or amend the law in accordance with the EU standards. Hungary changed its legislation by introducing a review by the State Audit Office and directed its scope towards NGOs of “significant public interest” instead of any foreign-funded organizations. Most importantly, CJEU was concerned with the freedom of association which was going to be limited due to the public disclosure of donors.²⁴ Hungary amended this point by making donors only accessible to the government.

²³ (TEAM, EEAS PRESS 2024)

²⁴ “European Commission V Hungary.” 2020. <https://curia.europa.eu/juris/document/document.jsf?text&docid=227569&pageIndex=0&doclang=EN&mode=req&dir&occ=first&part=1&cid=5983968>

Regarding the similarities between the EU legislative initiatives on transparency and the “foreign agent law” the OSCE Office for Democratic Institutions and Human Rights (ODIHR) concluded that whilst transparency may be utilized to achieve other legitimate objectives, such as public order or combating crime, including corruption, appropriation, money laundering or financing terrorism, increasing the degree of transparency does not serve as an inherently legitimate aim by itself. It is impossible to claim that transparency is a legitimate goal to justify the violation of human rights without a solid basis.²⁵

Georgia has to understand that the aim of the law itself is not the problem but the framework. The Council of Europe’s guidelines stress that transparency requirements must be necessary and proportionate and should have specific aims, such as targeting national security. Any laws passed should refrain from labeling any organization just based on its funding. Unlike other transparency laws such as FARA in the US, the Georgian “foreign agent law” just has a mere focus on the funding source rather than providing requirements to prove whether these NGOs are truly working under foreign interests. None of these laws impose blanket rules with no exceptions and do not target civil societies directly. Transparency laws are mostly underscored regarding the EU’s political lobbying and financial laws. This is to control organizations that are

involved in impacting the policies. Furthermore, EU directives on transparency provide specific definitions on terms such as “representation of interest”, which contrasts “the foreign agent law” which uses the term “foreign power” based on a single criterion which is the threshold at which they receive funding.²⁶ As mentioned previously, this sort of broad interpretation has been used in Russia as a tool to silence and control civic entities. The EU has affirmed that there is no place for arbitrary enforcement of law.

1.3. 2 Rule of Law and Democratic Backsliding

For Georgia to ensure their smooth transition to the EU, they should abide by the European principles. It is directly stated that countries that wish to join the EU should make sure that the process by which laws are prepared, approved, and enforced is transparent, efficient, and fair. Laws must be clear, publicized, stable, fair, and protect fundamental rights.²⁷ Even disregarding the scope and material of the law, the process of implementation of the law itself also went directly against EU principles. The Venice Commission stressed that “complex and controversial bills would normally require particularly long advance notice, and should be preceded by pre-drafts, on which some kind of consultation takes place. The public should have a

²⁵ ODIHR, Note on legislative initiatives on transparency and regulation on associations funded from abroad or so called “foreign agents laws” and similar legislation and their compliances with international human rights standards 2023 <https://www.osce.org/odihr/556074> pg. 22

²⁶ (European 2023) https://commission.europa.eu/system/files/2023-12/COM_2023_637_2_EN_ACT_part1_v4.pdf – pg. 5

²⁷ “Rule of Law.” n.d. European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/policy-highlights/rule-law_en.

meaningful opportunity to provide input [...].”²⁸

However, the Georgian government adopted the law in the third and final reading within five weeks of its submission, despite massive protests that were against the passing of the bill. Mary Lawlor, the Special Rapporteur on the situation of human rights defenders stated: “We are seriously concerned at the speed of deliberations in Parliament, which appear to have taken place without inclusive, transparent and genuine consultations with civil society, society at large and opposition parties”²⁹

The legislation’s adoption in such a “rushed way with no meaningful consultation process”³⁰ raises concerns that the law is indeed “not in accordance with an inclusive democratic process”³¹ and further affirms the trend towards democratic backsliding.

As mentioned previously, more severe problems lie within the material of the law due to its broad scope. The definition of “foreign power” is much too extensive and directly contrasts the clarity requirement of the legislation.

²⁸ European Commission for Democracy through law (Venice Commission). 2024. “Urgent Opinion on the law on transparency of foreign influence.” Venice Commission. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2024\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2024)013-e).

²⁹ OHCHR. 2024. “Georgia: UN experts condemn adoption of Law on Transparency of Foreign Influence.” Office of the United Nations High Commissioner for Human Rights. <https://www.ohchr.org/en/press-releases/2024/05/georgia-un-experts-condemn-adoption-law-transparency-foreign-influence>

³⁰ (European Commission for Democracy through law (Venice Commission) 2024)

³¹ (European Commission for Democracy through law (Venice Commission) 2024)

Due to a lack of exceptions and specifications in the law, according to the Venice Commission, “³²the automatic presumption that any foreign funding, however, limited and dispersed, equals foreign influence seems hard to sustain “and quite frankly justifies restrictive measures. Applying laws proportionately and necessarily is another fundamental of the European Union.

Such derogation from European Standards, especially as a candidate, will affect Georgia’s future chances to integrate into the EU. The fact that this law already has received such backlash, even without having any effect, shows that due to what it has done to democracy in other countries such as Russia, It should be avoided. If Georgia still wants to achieve its aim of protecting national sovereignty, it should reevaluate the legislation. This can be done by offering less restrictive measures or offering specific definitions of what constitutes what to avoid arbitrary enforcement and stigmatization of NGOs and media outlets.

1.4 Conclusion

The “foreign agent law” clearly depicts that Georgia still has a long way to go before joining the EU. Due to constant interference from Russia in its internal affairs, Georgia must take a stance for either its European future or Russian influence. This law again shows that Russia’s impact on Georgia’s politics is theoretical and quite

³² (European Commission for Democracy through law (Venice Commission) 2024)

invasive. Regardless of the legitimate aim of the legislation, this law needs to be changed to fit the standards of Europe. This can be done by avoiding arbitrary language and making the law much more specific. The specificity will also help the law target areas that the EU tries to control with transparency laws. The problem is not that Georgia wants to protect its national sovereignty but how the law will be applied and adapted. Rushed adopted process, broad interpretation, and the infamous history of civil society are enough to raise alarms for the European Union and indefinitely put a pause on Georgia's integration into the EU.

Bibliography

- “Case of Assotsiatsiya NGO Golos and Others v. Russia.” 2021. HUDOC - European Court of Human Rights. [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-213231%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-213231%22]%7D)
- Congressional Research Service. 2024. “Georgia's Parliament Passes “Transparency of Foreign Influence” Law.” CRS Reports. <https://crsreports.congress.gov/product/pdf/IN/IN12368>
- “CONSTITUTION OF GEORGIA | სსიპ ”საქართველოს საკანონმდებლო მაცნე.” n.d. საკანონმდებლო მაცნე. <https://matsne.gov.ge/en/document/view/30346?publication=36>
- de Varax, Alexis. 2024. “Georgia's “Foreign Agent” Law: Why is it not European?” gfsis.org. <https://gfsis.org/en/georgias-foreign-agent-law/>.
- European Commission for Democracy through law(Venice Commission). 2024. “Urgent Opinion on the law on transparency of foreign influence.” Venice Commission. [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2024\)013-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2024)013-e)
- “European Commission V Hungary.” 2020. <https://curia.europa.eu/juris/document/document.jsf?text&docid=227569&pageIndex=0&doclang=EN&mode=req&dir&occ=first&part=1&cid=5983968>
- European Parliament. 2024. “European Parliament resolution of 25 April 2024 on attempts to reintroduce a foreign agent law in Georgia and its restrictions on civil society.” European Parliament. https://www.europarl.europa.eu/doceo/document/TA-9-2024-0381_EN.html
- Fernandez-Powell, Maya. 2024. “Georgia's new foreign agent law poses a new threat to human right defenders.” Human Rights First. <https://humanrightsfirst.org/library/georgias-foreign-agents-law-poses-new-threat-to-human-rights-defenders>
- “Georgia: Last Chance to stop Russian-style crackdown on civil society.” 2024. European Platform for Democratic

- Elections(EPDE). <https://www.ohchr.org/en/press-releases/2024/05/georgia-un-experts-condemn-adoption-law-transparency-foreign-influence>
- <https://epde.org/?news=georgia-last-chance-to-stop-russian-style-crackdown-on-civil-society>
- Krupskiy, Maxim. 2024. “How Georgia’s “Foreign Agent” Law—and Others Like It—Can Damage Democracy.” Foreign Affairs. <https://www.foreignaffairs.com/georgia/power-stigma?>
- RFE/RL’s Russian Service. 2024. “European Court Says Russia’s ‘Foreign Agent’ Law Violates Human Rights.” RadioFreeEurope. <https://www.rferl.org/a/33167947.html>
- Lindsaedt, Natasha. 2024. “Georgia is sliding towards autocracy after government moves to force through bill on ‘foreign agents.’” The Conversation. <https://theconversation.com/georgia-is-sliding-towards-autocracy-after-government-moves-to-force-through-bill-on-foreign-agents-228219>
- “Rule of Law.” n.d. European Neighbourhood Policy and Enlargement Negotiations (DG NEAR). https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/policy-highlights/rule-law_en
- Sauer, Pjotr. 2024. “Georgia’s ruling pro-Russia party retains power in blow to EU aspirations.” The Guardian. <https://www.theguardian.com/world/2024/oct/27/georgia-election-calls-for-protests-as-ruling-pro-russia-party-declared-winner>
- Machalek, Katherin. 2022. “Factsheet: Russia’s NGO Laws.” Freedom House. https://freedomhouse.org/sites/default/files/Fact%20Sheet_0.pdf
- Shakhazova, Elena. 2022. “European Court decision on Foreign Agents: a day late and a dollar short.” Citizens Watch. <https://citwatch.org/european-court-decision-on-foreign-agents-a-day-late-and-a-dollar-short>
- ODIHR. 2023. “Note on legislative initiatives on transparency and regulation on associations funded from abroad or so called “foreign agents laws” and similar legislation and their compliances with international human rights standards 2023.” p22.
- TEAM, EEAS PRESS. 2024. “Georgia: Statement by the High Representative and the Commissioner for Neighbourhood and Enlargement on the adoption of the “transparency of foreign influence” law.” European Union External Action. <https://www.eeas.europa.eu/eeas/georgia-statement-high>
- OHCHR. 2024. “Georgia: UN experts condemn adoption of Law on Transparency of Foreign Influence.” Office of the United Nations High Commissioner for Human Rights.

[h-representative-and-commissioner-neighbourhood-an
d-enlargement-adoption_en](#)

“Telekanal Dozhd v. Russia.” 2017. HUDOC - European Court
of Human Rights.

[https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%
22001-175721%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-175721%22]%7D)

To what extent are legal constraints placed upon the eligibility for presidency of convicted felons in the US and Italy, an indication of different perceptions of core democratic values?

Andrea Pascaru

IE University, Segovia, Spain
Bachelor in Politics, Philosophy, Law and Economics

E-mail: apascaru.ieu2024@student.ie.edu

Published: 27th of January, 2025

Abstract

The conviction of Donald Trump in the middle of the 2024 presidential campaign in the United States raised questions about the legitimacy of a felon occupying arguably the most important public office among Western democracies. This paper aims to analyse legal constraints on the presidential eligibility of felons in the U.S. and Italy to establish whether a stricter approach barring criminals from the executive office strengthens democracy. This issue shall be approached from the perspective of two principles of Western democracy: accountability of elected officials and the rule of law.

Keywords: democracy, presidential eligibility, accountability, rule of law

I. Introduction

In May 2024 Donald Trump became the first former United States President to be convicted on 34 counts for falsifying business records. There was also a pending federal case against him regarding his involvement in the January 6 attack on the US Capitol, which was dismissed following his victory in the 2024 Presidential Election¹. For the purpose of this paper, only cases ending in convictions

shall be relevant. While several had questioned his eligibility to run for a second term in this context², it appears the US Constitution does not explicitly preclude felons from running for public office. This has prompted discussion on whether stricter eligibility requirements should be considered to prevent ethically-questionable individuals from being elected. However, others contend that such restrictions would undermine essential principles

¹Madeline Halpert, "Jack Smith Drops Federal Criminal Cases against Trump," *BBC News*, November 25, 2024, <https://www.bbc.com/news/articles/c4gvd7kxxj5o>.

²Tom Geoghegan, "Can Donald Trump Still Run for President after Maine and Colorado Rulings?" *BBC News*, January 6, 2024, <https://www.bbc.com/news/world-us-canada-67770912>.

of democracy including voters' right to choose their representative.

In several European countries, such as Italy, a stricter approach on this matter has already been implemented. The Severino Law (Law no. 190 of 6 November 2012)³ is a collection of anti-corruption measures named after the Minister for Justice of the Monti Government, Paola Severino. This law famously expelled former Prime Minister (PM) Silvio Berlusconi from the upper house of parliament⁴ and prevented him from running for office for a period of 6 years after being convicted of tax fraud⁵. Law no. 190 was passed in the context of growing corruption within the Italian government. In 2011, Italy was listed as the third most corrupt OECD country⁶. This leads into one of the questions addressed in later sections of this paper - whether stricter regulations on presidential candidates can contribute to lower corruption.

³Disposizioni in materia di incandidabilità e di divieto di ricoprire cariche elettive e di Governo conseguenti a sentenze definitive di condanna per delitti non colposi, 3 Gazzetta Ufficiale Serie Generale (2013): 39, <https://www.gazzettaufficiale.it/eli/gu/2013/01/04/3/sg/pdf>.

⁴Lizzy Davies, "Silvio Berlusconi Ousted from Italian Parliament after Tax Fraud Conviction," The Guardian, November 27, 2013, <https://www.theguardian.com/world/2013/nov/27/silvio-berlusconi-ousted-italian-parliament-tax-fraud-conviction>.

⁵"Silvio Berlusconi Wins Senate Seat after 6-Year Ban on Holding Public Office," Le Monde, September 28, 2022, https://www.lemonde.fr/en/europe/article/2022/09/27/silvio-berlusconi-wins-senate-seat-after-six-year-ban-from-holding-public-office_5998337_143.html.

⁶Paolo Bernocco, "La Corruzione in Italia," La Stampa, March 24, 2012, <https://www.lastampa.it/blogs/2012/03/24/news/la-corruzione-in-italia-1.37170978/>.

On the other hand, Article II, Section 1, Clause 5 of the United States Constitution sets out three main requirements for a presidential candidate⁷. They must be a natural-born citizen, at least thirty-five years old and a resident of the U.S. for at least fourteen years. In addition, individuals may be disqualified if they have already served two terms in office as set out by the 22nd Amendment. One may also be disqualified if they were successfully impeached or convicted under Article I, Section 3, Clause 7⁸ or if they committed an act of insurrection against the U.S. Government according to Section 3 of the Fourteenth Amendment⁹. However, there has been much debate about the interpretation of the term "insurrection", which is what makes Trump's case uncertain. Supreme Court Chief Justice Roberts has admitted it is a "broad term" and its meaning should be considered by the court¹⁰.

Article 84 of the Italian Constitution states that any citizen over the age of fifty can run for president so long as they enjoy full civil and political rights¹¹. They must also

⁷U.S. Constitution, art. II, sec. 1, cl. 5, <https://constitution.congress.gov/constitution/article-2/#article-2-section-1-clause-5>.

⁸U.S. Constitution, art. I, sec. 3, cl. 7, <https://constitution.congress.gov/constitution/article-1/#article-1-section-3-clause-7>.

⁹U.S. Constitution, amend. XIV, sec. 3, <https://constitution.congress.gov/browse/amendment-14/section-3/#:~:text=No%20person%20shall%20be%20a.a%20member%20of%20any%20State>.

¹⁰Philip Elliott, "If Supreme Court Can't Agree on Jan. 6, U.S. Never Will," TIME, February 8, 2024, <https://time.com/6692956/trump-supreme-court-insurrection-jan-6/>.

¹¹Italian Constitution, art. 84, https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

resign any other office before being sworn in. Decree 235/2012, adopted pursuant to Law no. 190, set out the criteria for eligibility of public officials, barring those convicted of serious crimes. Although the office of the President is not explicitly mentioned, it is arguably covered by the clause on national government positions, as the goal of the law is to ensure integrity in public administration¹². No constitutional court ruling has been made so far regarding the interpretation of this matter. The law disqualifies individuals convicted of crimes including but not limited to corruption and abuse of office, for a period ranging from six months to six years, or longer in some cases¹³.

In the context of the aforementioned legal constraints on the eligibility of a presidential candidate, this paper will discuss the implications of felons being able to run for office in a democracy with the aim to determine whether stricter requirements would strengthen a democratic system. The analysis will be conducted from the perspective of two principles: accountability of elected officials and the rule of law. This will be done by comparing the legislation in Italy and the US. Despite being two different jurisdictions characterized by their own legal traditions, both recognize these three principles as fundamental to the organization of their state, as will be

shown later. However, the comparison is instrumental in highlighting the different interpretations of the same principles. The U.S.' more relaxed approach regarding eligibility requirements reflects a more direct version of democracy where voter autonomy is prioritised. In contrast, Italy's stricter laws sacrifice voter autonomy to some extent by taking away the element of unrestricted choice, in order to prevent corruption from public officials. This paper will attempt to determine the extent to which legal constraints placed upon the eligibility for presidency of convicted felons in the US and Italy are an indication of different perceptions of core democratic values. It will argue that different approaches reflect the specific political contexts of the two countries and illustrate varying priorities in terms of democratic principles. Nevertheless, the analysis is partial to the argument that American democracy is weakened by the ability of convicted felons to run for office because the absence of restrictions allows flawed decision-makers to take power and threatens the integrity of the legal system by allowing some felons to benefit from unequal treatment.

2. Accountability of elected officials

2.1. Accountability as an element of Western democracy

¹²Disposizioni in materia di incandidabilità ... (2013).

¹³Daniel Banks, "The Weaponization of Anticorruption Law: Why Italy's Legge Severino Must Be Reformed," The Global Anticorruption Blog, December 3, 2021, <https://globalanticorruptionblog.com/2021/12/03/the-weaponization-of-anticorruption-law-why-italys-legge-severino-must-be-reformed/>.

“The accountability chain between the electorate and elected officials is a vital, indispensable element of democratic government.”¹⁴

- Elmer B Staats, Former Comptroller General of the United States

To be accountable, according to former European Ombudsman P. Nikiforos Diamandouros, means to have a duty to explain and justify one’s actions in terms of appropriate criteria and in sufficient detail. Although the “appropriate criteria” is never defined, the author seems to suggest there need to exist agreed upon standards to which public officials are held accountable. These can depend on the context of the country. In addition, officials must be liable in some way if the performance revealed by the account is considered unsatisfactory¹⁵.

The Government Accountability Office (GAO) is the supreme audit institution in the U.S. meant to uphold the principle of accountability. It understands accountability as including the mechanism through which economic efficiency is enhanced and the credibility of the government is protected¹⁶. This is accomplished through financial audits, program reviews, investigations, legal support, and policy analyses. Although not explicitly

defined, various aspects of accountability are woven into the U.S.’ legal framework through the Constitution’s emphasis on the separation of powers¹⁷, or other federal laws such as the Ethics in Government Act, which mandates the disclosure of financial and employment history of all public officials¹⁸.

Similarly, although the Treaty on the Functioning of the European Union (TFEU) does not explicitly mention accountability as a principle of democratic governance, this is reflected through its emphasis on transparent decision-making and control mechanisms implemented by the European Court of Auditors. The Charter of Fundamental Rights of the European Union also guarantees citizens’ ability to lodge complaints regarding maladministration¹⁹ or bring issues to the the attention of the EU Parliament through petitions²⁰.

Thus, even though accountability is not explicitly present as a written principle in either jurisdiction’s legal framework, it is nonetheless a foundational element of both democratic models. Therefore, it can be considered a relevant indicator of how strong a democracy is and shall

¹⁴Elmer B. Staats, “Who Is Accountable? To Whom? For What? How?,” Government Accountability Office, December 6, 1979, <https://www.gao.gov/products/111071>.

¹⁵P. Nikiforos Diamandouros, “Transparency, Accountability, and Democracy in the EU” (School of Advanced International Studies of the Johns Hopkins University, October 17, 2006), <https://www.ombudsman.europa.eu/en/speech/en/349>.

¹⁶“Our Core Values,” U.S. Government Accountability Office, accessed November 18, 2024, <https://www.gao.gov/about/what-gao-does/our-core-values>.

¹⁷Samuel Strom, “Separation of Powers,” Findlaw, accessed November 18, 2024, <https://constitution.findlaw.com/article1/annotation01.html>.

¹⁸Ethics in Government Act of 1978, 5 U.S.C. (2010), <https://www.congress.gov/bill/95th-congress/senate-bill/555>.

¹⁹Charter of the Fundamental Rights of the European Union, OJ C 326, Art 43 (2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>.

²⁰Ibid., Art 44.

be used in this paper for the purpose of analysing how presidential eligibility criteria influences democracy.

Both the U.S. and Italian Constitutions establish mechanisms to promote accountability in the executive branch of government. In the U.S. the most well-known form of accountability is impeachment, which is a prerogative of Congress according to Article 1, Clause 2, Section 5 of the Constitution²¹. In addition, the ethics of a president are overseen by special congressional committees, the Department of Justice, the Office of Government Ethics, the GAO and other authority figures²². The Italian Constitution also grants the legislative branch the power to impeach the president through Article 90²³. Other mechanisms of accountability include judicial review by the Corte Costituzionale (Constitutional Court), as per Article 136 of the Constitution²⁴, and the limits of presidential power in a parliamentary system. Although these mechanisms contribute to the maintenance of checks and balances, they may not be enough to ensure the accountability of the executive in a democratic system. This is because they only apply to a president once they have taken office and not from the beginning of their campaign. Once they have won the elections, the president

²¹U.S. Constitution, art. II, sec. 1, cl. 5,

<https://constitution.congress.gov/constitution/article-2/#article-2-section-1-clause-5>.

²²Alina Selyukh and Lucia Maffei, "Who Oversees the President's Ethics? Here's Our List," NPR, March 27, 2017, <https://www.npr.org/2017/03/27/520983699/who-oversees-the-president-s-ethics-a-reference-sheet>.

²³Italian Constitution, art. 90, https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

²⁴Ibid., art. 136.

is arguably more powerful and able to sidestep these mechanisms. One of the most famous examples of this was American President Andrew Jackson who significantly expanded the scope of presidential authority defying the Supreme Court through the Indian Removal Act and going against Congress in the Bank War²⁵. In Italy this can be observed in the case of Berlusconi's media empire undermining independence of the press and its ability to check on his governmental power²⁶. This is why it is relevant to consider the standards to which a presidential candidate should be held before they take office to avoid any abuse of power or other lapse in moral judgement.

Grant and Keohane identify three components of accountability in world politics: a common set of standards, information about whether politicians have fulfilled that set and sanctions if they have not²⁷. This presupposes, they argue, the legitimacy of the standards themselves, i.e. both parties should recognise them. At the same time, the authority of one party (the public official) to exercise particular powers and of the other (the citizens) to hold them accountable should be legitimate. Although they only briefly discuss the standards of conduct to which

²⁵Daniel Feller, "Andrew Jackson: Impact and Legacy | Miller Center," Miller Center, June 20, 2017,

<https://millercenter.org/president/jackson/impact-and-legacy>.

²⁶David Hine, "Silvio Berlusconi, the Media and the Conflict of Interest Issue," *Italian Politics* 17 (2001): 261–75, <https://www.jstor.org/stable/43041922>.

²⁷Ruth Grant and Robert Keohane, "Accountability and Abuses of Power in World Politics," *American Political Science Review* 99, no. 1 (February 2005): 29–43, <https://www.cambridge.org/core/journals/american-political-science-review/article/accountability-and-abuses-of-power-in-world-politics/BCC400328E33AF99037FEA3FBAC89A54>.

power-wielders should be held accountable as such, the idea of an ethical dimension to this could certainly be derived. Should just any person be allowed to hold the office of president? Or should there be a set of morals that a person has to demonstrate? And does being a criminal violate that set of standards? These questions shall be answered in the following section.

2.2. Accountability in the cases of Trump and Berlusconi

One implication that has to be considered when answering these questions is the nature of the crime. The UNODC associates crime, in general, with a “moral failure in making decisions”²⁸. Thus, it could be argued that any convicted criminal, regardless of their crime, should not be allowed to be president as their decision-making abilities are seriously flawed and thus, cannot be trusted to always make decisions in favour of the electorate. However, in modern democracies, the nature of a crime generally matters both legally and socially. A murderer will get a longer sentence than a thief. Child molesters are less likely to find an apartment to rent than other criminals²⁹. In

some jurisdictions, felony offences can lead to temporary or permanent disenfranchisement³⁰.

There is no universally agreed-upon clear line to draw as to which crimes are serious enough to warrant disqualification from the office of president. One solution to this dilemma is the electoral process. Some would argue that the people should be able to evaluate the suitability of a candidate for themselves, even if that candidate was convicted. Steven B. Snyder argues preventing a felon from running for office violates the rights of both the voter to make their own choice and the candidate to run for office³¹ and thus, stronger restrictions on presidential eligibility would weaken democracy. In addition, he adds that “political participation is a fundamental right”, suggesting that it should not be limited under any circumstances.

A limitation to this argument is that leaving the decision up to the people can be subject to some of the failures of the democratic process. One poll showed that in the United States only 10% of Republicans would let Trump’s convictions dissuade them from voting for him, while 56%

²⁸“Ethical Perspective - Moral Failure in Decision-Making,” UNODC, May 2018,

<https://www.unodc.org/e4j/en/organized-crime/module-6/key-issues/ethical-perspective.html>.

²⁹Douglas N. Evans and Jeremy R. Porter, “Criminal History and Landlord Rental Decisions: A New York Quasi-Experimental Study,” *Journal of Experimental Criminology* 11, no. 1 (September 20, 2014): 21–42, https://www.researchgate.net/publication/276838489_Criminal_history_and_landlord_rental_decisions_a_New_York_quasi-experimental_study.

³⁰“Disenfranchisement Laws,” Brennan Center for Justice, accessed November 25, 2024,

<https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-rights-restoration/disenfranchisement-laws>.

³¹Steven B. Snyder, “Let My People Run: The Rights of Voters and Candidates under State Laws barring Felons from Holding Elective Office,” *Journal of Law and Politics* 4, no. 3 (1988): 545, <https://heinonline-org.ie.idm.oclc.org/HOL/Page?handle=hein.journals/jlp4&id=553&collection=journals&index=>.

said the case had absolutely no effect on them³². This could arguably be a result of Trump's "cult of personality", which has been most famously described by Steven Hassan³³. In "The Cult of Trump" he draws comparisons between the current president-elect and people such as Jim Jones and Sun Myung Moon. He details how Trump's use of coercive tactics, such as loaded language, has led to him having blindly-devoted followers. Assuming the accusations of building a cult of personality are true, it could be argued that the absence of stricter requirements for the presidential eligibility of felons could allow an unfit candidate to run the country through using undemocratic tactics of propaganda and cult-building³⁴ because there are no ethical standards which one must fulfil. This argument does rely on the fact that being a felon makes one more likely to act in an undemocratic manner, which is arguably supported by the previously cited opinion of the UNODC which claims that criminals have flawed decision-making skills and, thus, cannot be trusted to make democratic choices. In contrast, Silvio Berlusconi, who could also be

argued to have built a soft cult of personality,³⁵ through his populist characteristics³⁶ and monopoly on Italian media, was barred from office after being convicted. This shows how a stricter approach to eligibility criteria for public office can overcome the use of undemocratic tactics, by not allowing individuals to run for office using unethical methods, such as propaganda.

This debate reflects a deeper tension within democracy. On one side, a stricter institutional approach guarantees a higher level of public trust. In this case, banning criminals from the presidential office has the benefit of upholding the principle of accountability through ensuring more ethical decision-making that can better represent the electorate. This approach is clearly favoured by Italy. On the other hand, less institutional restrictions allow for a more direct manifestation of democracy and accountability as the people have the ultimate power of decision. This system highlighting voter responsibility is favoured by the United States.

3. Presidential integrity and the rule of law

3.1. The rule of law as an element of Western democracy

³²Jason Lange, "Exclusive: One in 10 Republicans Less Likely to Vote for Trump after Guilty Verdict, Reuters/Ipsos Poll Finds," Reuters, May 31, 2024,

<https://www.reuters.com/world/us/one-10-republicans-less-likely-vote-trump-after-guilty-verdict-reutersipsos-poll-2024-05-31/>.

³³Steven Hassan, *Cult of Trump: A Leading Cult Expert Explains How the President Uses Mind Control*. (Free Press, 2020),

<https://www.simonandschuster.com/books/The-Cult-of-Trump/p/Steven-Hassan/9781982127343>.

³⁴Ben Goldsmith and Lars J. K. Moen, "Trump's Personality Cult Plays a Part in His Political Appeal," *Scientific American*, 2024,

<https://www.scientificamerican.com/article/trumps-personality-cult-plays-a-part-in-his-political-appeal/>.

³⁵Jason Horowitz and Rachel Donadio, "Silvio Berlusconi, Polarizing Former Prime Minister of Italy, Dies at 86," *The New York Times*, June 12, 2023,

<https://www.nytimes.com/2023/06/12/world/europe/silvio-berlusconi-dead.html?register=google&auth=register-google#>.

³⁶Kersten Knipp, "Silvio Berlusconi: Flashy Media Mogul and Political Populist" (*Deutsche Welle*, June 12, 2023),

<https://www.dw.com/en/silvio-berlusconi-flashy-media-mogul-and-political-populist/a-65888215>.

“Rule of law means that no individual, president or private citizen, stands above law.”³⁷

The rule of law is closely linked to the concept of Western democracy. According to the United Nations they are not only connected, but “mutually reinforcing”³⁸. Article 5 of the U.S. Constitution also emphasises its importance through the principle of “due process”³⁹. If this element is not respected, the rule of law can be undermined. The European Union also recognises the importance of the rule of law in guaranteeing that democracy is upheld according to Article 2 of the TFEU⁴⁰. One element of maintaining the rule of law is citizens’ trust in the government. This is because, without it, people would be less compelled to follow the law⁴¹ and that would weaken its authority. Therefore, if the principle of due process is not respected or not equally applied to all individuals including presidential candidates, this can lead to a fall in confidence in regards to the strength of the legal

system. As a result, the rule of law and democracy itself may be undermined.

3.2. The rule of law in the United States

The U.S. is currently experiencing what some would call “a crisis of trust” in public officials⁴². According to some, this is associated with negative perceptions of the economy, instability in Congress, as well as public concern about crime⁴³. Although, as previously discussed, Trump’s convictions did not seem to affect public opinion too drastically for a number of reasons associated with the loyalty of his supporters, history shows Americans do not tolerate public officials that get involved in crime. In fact, Massachusetts citizens experienced a reported “incalculable” fall in public confidence in the government after, in 2012, at least nineteen public servants were dismissed due to charges brought against them all within the span of four months⁴⁴. In Italy, the correlation between the rule of law and presidential eligibility is clear as the Severino Law was passed in the context of growing

³⁷“The Rule of Law,” Principles of Democracy, accessed November 25, 2024,

<https://www.principlesofdemocracy.org/law>.

³⁸Massimo Tommasoli, “Rule of Law and Democracy: Addressing the Gap between Policies and Practices | United Nations,” UN Chronicle, December 2019,

<https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices>.

³⁹U.S. Constitution, art. V,

https://constitution.congress.gov/browse/essay/artV-1/ALDE_0000507/.

⁴⁰“What Is the Rule of Law?,” European Commission, 2023.

⁴¹Chris Dann, “Does Public Trust in Government Matter for Effective Policy-Making?,” Economics Observatory, July 26, 2022,

<https://www.economicsobservatory.com/does-public-trust-in-government-matter-for-effective-policy-making>.

⁴²William Eggers et al., “Rebuilding Trust in Government,”

Deloitte Insights, March 9, 2021,

<https://www2.deloitte.com/us/en/insights/industry/public-sector/building-trust-in-government.html>.

⁴³Virginia A. Chanley, Thomas J. Rudolph, and Wendy M.

Rahn, “The Origins and Consequences of Public Trust in Government,” *Public Opinion Quarterly* 64, no. 3 (2000): 239–56,

<https://academic.oup.com/poq/article/64/3/239/1858429>.

⁴⁴Maggie Mulvihill and Julia Waterhouse, “Violating the Public Trust?,” Center for Public Integrity, April 30, 2012,

<https://publicintegrity.org/politics/state-politics/violating-the-public-trust/>.

concerns over high-level corruption⁴⁵, as previously mentioned.

In addition, it could be argued that the rule of law may be strengthened by a stricter approach to presidential candidacy, especially in the case of Trump, because of the principle of equality before the law⁴⁶. In the U.S. lower level public officials have been prosecuted for crimes including embezzlement of public funds and corruption. 7,762 federal officials, 1,971 state officials, and 4,672 local officials were prosecuted between 1999 and 2018⁴⁷. Even though not all local officials are elected, this still reflects how representatives of the government have to adhere to certain ethical standards. If they are to be held accountable under the law, the presidential candidate should too, as should any other elected or non-elected official. However, Trump's campaign creates the impression that he is avoiding consequences, especially since once he is in office, he might be able to use his presidential immunity or his influence to steer clear of punishment altogether⁴⁸. Before

⁴⁵Paolo Bernoco, "La corruzione in Italia", *La Stampa*, 2012, <https://www.lastampa.it/blogs/2012/03/24/news/la-corruzione-in-italia-1.37170978/>.

⁴⁶"Overview - Rule of Law," United States Courts, accessed November 27, 2024, <https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>.

⁴⁷Will Ragland and Ryan Koronowski, "Public Officials Who Betray the Public Trust Pay the Price—So Should the President," Center for American Progress, January 22, 2020, <https://www.americanprogress.org/article/public-officials-betray-public-trust-pay-price-president/>.

⁴⁸Alex Woodward, "Trump Escaped the Consequences of His Alleged Crimes. Now His Allies Are after the Prosecutors Who Brought the Charges," *The Independent*, November 27, 2024, <https://www.independent.co.uk/news/world/americas/us-politics/jack-smith-trump-case-without-prejudice-b2654264.html>.

November 5, 2024, a former top official at the district attorney's office in Manhattan claimed that in the event of Trump's election, his sentencing, scheduled for late November, might not proceed. "A victory on Election Day is his get out of jail free card"⁴⁹. Sure enough, New York Judge Juan Merchan, presiding over the "hush money" case, has indefinitely adjourned Trump's sentencing following his victory⁵⁰. At the same time, Trump's election interference case regarding his involvement in the events of January 6th has been dismissed⁵¹. This political tactic threatens the supremacy of the rule of law as understood in the American tradition because it fails to ensure equal treatment under the law for all individuals.

On the other hand, it could be argued that the strength of the rule of law in this case depends on the ability of the legal system to prevent such inequalities and not on whether the candidate is a felon. By inequalities, it shall be understood the difference in a presidential candidate's opportunity to avoid consequences for their crimes compared to a regular citizen's ability to do the same. *Clinton v Jones* established that a sitting U.S. President has no immunity from civil law litigation or for acts

⁴⁹Kara Scannell, Jeremy Herb, and Lauren del Valle, "What Happens to Trump's November Sentencing?," *CNN*, November 2024, <https://edition.cnn.com/2024/11/01/politics/what-happens-to-trumps-november-sentencing/index.html>.

⁵⁰Zach Schonfeld and Ella Lee, "Trump's Hush Money Case in Limbo after Judge Adjourns Sentencing," *The Hill*, November 26, 2024, <https://thehill.com/regulation/court-battles/5008714-trumps-hush-money-sentencing-limbo/>.

⁵¹Halpert, "Jack Smith...," 2024.

committed before taking office, or unrelated to office⁵², which would include Trump's "hush money" cases. So, in theory, a convict should not be able to escape consequences as per the principle of equality before the law. However, there is no precedent on how this matter is to be addressed under the current circumstances, whereby Trump is about to take office, probably delaying his sentence. This is a gap in the law that could be fixed by stricter presidential eligibility criteria. It shall also be noted that the weaknesses of the rule of law that resulted in a reported fall in the level of confidence from the American public can be explained by other relevant factors, and not only public officials being convicted. For example, judicial independence in the Supreme Court has been questioned, due to alleged connections between justices and billionaires⁵³. Therefore, although the strength of the rule of law in the United States is affected by a multitude of other factors, and cannot be limited to the constraints of presidential eligibility, the ability of the legal system to treat individuals equally regardless of their political activities is nonetheless a crucial element.

3.3. The rule of law in Italy

On the other hand, the stricter approach of Italy as represented by the Severino Law arguably poses a challenge to the rule of law too. As previously mentioned, the law does not explicitly mention the Office of the President⁵⁴, which may reserve a place for ambiguity and uncertainty in

the law which can weaken it within the framework of Lon Fuller's interpretation of the rule of law⁵⁵. However, this argument does not pertain to restrictions on presidential eligibility in general, but rather to this particular law. As such, it may be inferred that the legislative approach to place restrictions on candidates can benefit Italy and its rule of law, if it more clearly and explicitly included the office of the President. One argument that could serve proof of this has to do with the law's ability to fight corruption. Between 2011 and 2013 corruption in Italy grew by 4 points on the Corruption Perception Index⁵⁶. In this context, the Severino Laws targeted corruption in many ways, one of which was to prevent criminals from serving in public office. Instances of corruption would include embezzlement of public funds and abuse of office⁵⁷, which undermine the rule of law because legislators, who are supposed to make the law, break it themselves. However, this argument is only valid for this paper if it is true that convicted felons are more likely to commit a crime while in office, because that would mean a rule like the Severino Law can prevent cases of corruption. A set of statistics in Italy measured that 52.3% of the convicted population between 2006 and 2017 were

⁵²Clinton v Jones 520 U.S. 681 (1997),

<https://supreme.justia.com/cases/federal/us/520/681/>.

⁵³"Friends of the Court," ProPublica, accessed November 27, 2024, <https://www.propublica.org/series/supreme-court-scotus>.

⁵⁴Disposizione in materia...(2013).

⁵⁵Kristen Rundle, "The Morality of the Rule of Law: Lon L. Fuller," Cambridge University Press (Cambridge, 2021), <https://www.cambridge.org/core/books/abs/cambridge-companion-to-the-rule-of-law/morality-of-the-rule-of-law-lon-l-fuller/557E9C432830BE10B1E0258125245899>.

⁵⁶"Italy Corruption Index," Trading Economics, accessed November 30, 2024, <https://tradingeconomics.com/italy/corruption-index>.

⁵⁷"Country Review Report of Italy" (UNODC), accessed November 30, 2024, https://www.unodc.org/documents/treaties/UNCAC/Country_VisitFinalReports/Italy_Report_Final.pdf.

reimprisoned, but that specific recidivism stood at around 16.1%⁵⁸. This is a relatively high number which could suggest that felons are likely to recommit a crime while in office, however, in comparison to other developed countries this is not the highest. The World Population Review measured that between 2005 and 2010 the average recidivism rate in the United States was 55%⁵⁹. Based on this data, it could be argued that if Italy's rule of law benefits from not having felons in public office, the U.S. would too, because it would eliminate the possibility that they would recommit a crime while in office. As such, it could be argued that stronger requirements for presidential candidates would strengthen American democracy through upholding its rule of law.

Thus, although the apparent image of a felon taking office seems to paint a negative picture on the supremacy of the law in a democratic system, the effect this has on the rule of law depends on whether the convict actually avoids or delays consequences for their actions while in office. In the case that Trump, for example, would still be sentenced and his trials would proceed as planned, him being a felon should not shatter the idea of equality in the eyes of the law as he would be receiving the same treatment as any other American. Nevertheless, it is probable based on the arguments and evidence presented that there could exist a

⁵⁸Raffaella Sette, "Fight against Recidivism in Italy: A Case-Study Analysis," accessed November 30, 2024, https://amsacta.unibo.it/id/eprint/6590/1/paper_recidiva_EN_G.pdf.

⁵⁹"Recidivism Rates by Country 2024," World Population Review, accessed December 1, 2024, <https://worldpopulationreview.com/country-rankings/recidivism-rates-by-country>.

positive correlation between a felon in office and a weakened rule of law. However, for this to be a causal relationship, more research should be done into people's response to convicted felons being elected as well as into whether convicted felons are likely to recommit a crime while in office. Moreover, there can be confounding variables such as the level of existing corruption in the legal system that could affect both variables.

4. Conclusion and recommendations

This comparative analysis of the legal constraints placed on the presidential eligibility of convicted felons in the United States and Italy has highlighted a clear tension between democratic principles such as voter autonomy and institutional integrity. The U.S. approach, which clearly favours the former, is about to inaugurate its first convicted felon as President in January 2025. Trump's new term is likely to offer more insight into the practical implications of a felon in office. Most relevantly, the decision of the New York Court regarding his sentencing will determine whether the legal system will be duly applied or whether he will be able to somehow avoid consequences for his actions which will have a direct impact on the nature of American democracy. This is because it would prove an inherent inequality within the law since the President is able to benefit in a way a regular citizen may not. However, it is worth noting that, although Trump may be used as a case study to investigate the nature of a convicted felon's behaviour, generalisations cannot be made. In the case that Trump does end up being treated differently by the law while in office, it may be implied that allowing a convicted

felon to run for President can weaken democracy, but it cannot be argued that all felons may behave the same way. Equally, in the case that Trump does end up being sentenced, which is unlikely since he cannot fulfil his presidential duties from a cell, that does not guarantee that other future convicted presidents will not be able to escape punishment.

This paper explored the research question from the perspective of two principles of democracy: accountability of elected officials and the rule of law. The first analysis revealed a difference in approaching democracy through varying priorities. Italy's restrictive laws protect the "demos" by preventing flawed decision-makers from being in power, while the American approach leaves the decision up to the people in a more direct way. Thus, it is unclear which approach provides for a stronger democracy. More research into the topic may clarify the analysis by looking at whether the restrictive laws in Italy have succeeded in achieving their aim since they have been in place. When it comes to the second principle, the rule of law, it is likely that stronger restrictions can strengthen democracy because it can attack the high-level corruption that exists in many developed democracies such as Italy and the United States and which can weaken the legal system because of the fact that legislators or executives who are making or enforcing the laws are breaking them themselves. Thus, there is less congruence between the laws created and those applied. However, according to Transparency International's Index, Italy is more in need of such an approach with a lower score of 56 on the Corruption

Perceptions Index than the U.S., which scored 69⁶⁰. However, this argument rests on the assumption that convicted individuals would increase the rate of corruption in a democracy, which can be plausibly argued based on the UNODC's portrayal of criminals as flawed decision-makers. However, more research should be done into the behaviour of convicted felons in office to prove causation.

This topic of research may benefit from a broader analysis taking into account other principles of democracy such as representation of felons in office, especially considering the large incarceration rates in the United States. Future research may also want to focus on the actual potential laws that could be implemented to restrict presidential candidates and their impact on public opinion and trust in the government.

In terms of more specific policy recommendations, the democratic framework of both Italy and the United States would benefit from some legal clarification. In the case of the latter, slightly more concrete definitions of terminology such as "insurrection" could provide for a more certain legal system which can minimise potential failures. Without a proper understanding of the word, the law prohibiting insurrectionists from running for public office cannot be properly applied and, therefore, cannot prevent individuals who have engaged in such behaviour from being elected. On the other hand, Italy's Severino Law

⁶⁰"2023 Corruption Perceptions Index," Transparency International, accessed December 1, 2024, <https://transparency.org/en/cpi/2023>.

would benefit from some clarity in terms of the categories of officials that are covered by the law, more specifically, the President. This is because the language of the law does not explicitly mention this position, but only names senators, and other high-ranking government positions.

In addition, a more cautious policy option for countries such as the United States, which prioritise voter autonomy in their election systems, would perhaps be a more comprehensive pre-election mechanism with a larger focus on ethical reviews of candidates. A more in-depth assessment of the potential risks posed by candidates with criminal records can minimize the costs to the democratic integrity of the country, while also providing for a more transparent stream of information about a felon's past conviction(s) to the voters, to contribute to accurate decision-making. This sort of transparency would not only respect the individualised approach to American democracy, but also attempt to control for the potential ethical implications of electing a convicted felon, as explained throughout this paper.

Thus, a blanket policy approach with regards to presidential eligibility criteria is unlikely to work due to the distinct legal and democratic cultures of the states. However, due to the fact that both countries value foundational principles including the rule of law and accountability of elected officials, a more constrained legal framework protecting citizens from flawed decision-making may be advisable.

Bibliography

- Banks, Daniel. "The Weaponization of Anticorruption Law: Why Italy's Legge Severino Must Be Reformed." The Global Anticorruption Blog, December 3, 2021. <https://globalanticorruptionblog.com/2021/12/03/the-weaponization-of-anticorruption-law-why-italys-legge-severino-must-be-reformed/>.
- Brennan Center for Justice. "Disenfranchisement Laws." Accessed November 25, 2024. <https://www.brennancenter.org/issues/ensure-every-american-can-vote/voting-rights-restoration/disenfranchisement-laws>.
- Chanley, Virginia A., Thomas J. Rudolph, and Wendy M. Rahn. "The Origins and Consequences of Public Trust in Government." *Public Opinion Quarterly* 64, no. 3 (2000): 239–56. <https://academic.oup.com/poq/article/64/3/239/1858429>.
- Clinton v Jones 520 U.S. 681 (1997). <https://supreme.justia.com/cases/federal/us/520/681/>.
- "Country Review Report of Italy." UNODC. Accessed November 30, 2024. https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/Italy_Report_Final.pdf.
- Dann, Chris. "Does Public Trust in Government Matter for Effective Policy-Making?" Economics Observatory, July 26, 2022. <https://www.economicsobservatory.com/does-public-trust-in-government-matter-for-effective-policy-making>.
- Davies, Lizzy. "Silvio Berlusconi Ousted from Italian Parliament after Tax Fraud Conviction." The Guardian, November 27, 2013. <https://www.theguardian.com/world/2013/nov/27/silvio-berlusconi-ousted-italian-parliament-tax-fraud-conviction>.
- Diamandouros, P. Nikiforos. "Transparency, Accountability, and Democracy in the EU." Presented at the School of Advanced International Studies of the Johns Hopkins University, October 17, 2006. <https://www.ombudsman.europa.eu/en/speech/en/349>.
- "Disposizioni in Materia Di Incandidabilità E Di Divieto Di Ricoprire Cariche Elettive E Di Governo Conseguenti a Sentenze Definitive Di Condanna per Delitti Non Colposi." *Gazzetta Ufficiale* 154, no. 3 (2013). <https://www.gazzettaufficiale.it/eli/gu/2013/01/04/3/sg/pdf>.
- Eggers, William, Bruce Chew, Joshua Knight, and RJ Krawiec. "Rebuilding Trust in Government." Deloitte Insights, March 9, 2021. <https://www2.deloitte.com/us/en/insights/industry/public-sector/building-trust-in-government.html>.
- Elliott, Philip. "If Supreme Court Can't Agree on Jan. 6, U.S. Never Will." TIME, February 8, 2024. <https://time.com/6692956/trump-supreme-court-insurrection-jan-6/>.
- European Commission. "What Is the Rule of Law?," 2023. https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/what-rule-law_en.
- Evans, Douglas N., and Jeremy R. Porter. "Criminal History and Landlord Rental Decisions: A New York Quasi-Experimental Study." *Journal of Experimental*

Criminology 11, no. 1 (September 20, 2014): 21–42.

https://www.researchgate.net/publication/276838489_Criminal_history_and_landlord_rental_decisions_a_New_York_quasi-experimental_study.

Feller, Daniel. “Andrew Jackson: Impact and Legacy | Miller Center.” Miller Center, June 20, 2017.

<https://millercenter.org/president/jackson/impact-and-legacy>.

Geoghegan, Tom. “Can Donald Trump Still Run for President after Colorado Ruling?” BBC News, December 20, 2023.

<https://www.bbc.com/news/world-us-canada-67770912>.

Goldsmith, Ben, and Lars J. K. Moen. “Trump’s Personality Cult Plays a Part in His Political Appeal.” Scientific American, 2024.

<https://www.scientificamerican.com/article/trumps-personality-cult-plays-a-part-in-his-political-appeal/>.

Grant, Ruth, and Robert Keohane. “Accountability and Abuses of Power in World Politics.” American Political Science Review 99, no. 1 (February 2005): 29–43.

<https://www.cambridge.org/core/journals/american-political-science-review/article/accountability-and-abuses-of-power-in-world-politics/BCC400328E33AF99037FEA3FBA C89A54>.

Halpert, Madeline. “Jack Smith Drops Federal Criminal Cases against Trump.” BBC News, November 25, 2024.

<https://www.bbc.com/news/articles/c4gvd7kxxj5o>.

Hassan, Steven. Cult of Trump: A Leading Cult Expert Explains How the President Uses Mind Control. Free Press, 2020.

<https://www.simonandschuster.com/books/The-Cult-of-Trump/Steven-Hassan/9781982127343>.

Hine, David. “Silvio Berlusconi, the Media and the Conflict of Interest Issue.” Italian Politics 17 (2001): 261–75. <https://www.jstor.org/stable/43041922>.

Horowitz, Jason, and Rachel Donadio. “Silvio Berlusconi, Polarizing Former Prime Minister of Italy, Dies at 86.” The New York Times, June 12, 2023.

<https://www.nytimes.com/2023/06/12/world/europe/silvio-berlusconi-dead.html?register=google&auth=register-google#>.

Italian Constitution.

https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf.

Knipp, Kersten. “Silvio Berlusconi: Flashy Media Mogul and Political Populist.” Deutsche Welle, June 12, 2023.

<https://www.dw.com/en/silvio-berlusconi-flashy-media-mogul-and-political-populist/a-65888215>.

Lange, Jason. “Exclusive: One in 10 Republicans Less Likely to Vote for Trump after Guilty Verdict,

Reuters/Ipsos Poll Finds.” Reuters, May 31, 2024.

<https://www.reuters.com/world/us/one-10-republicans-less-likely-vote-trump-after-guilty-verdict-reutersipsos-poll-2024-05-31/>.

Le Monde. “Silvio Berlusconi Wins Senate Seat after 6-Year Ban on Holding Public Office.” September 28, 2022.

https://www.lemonde.fr/en/europe/article/2022/09/27/silvio-berlusconi-wins-senate-seat-after-six-year-ban-from-holding-public-office_5998337_143.html.

Mulvihill, Maggie, and Julia Waterhous. "Violating the Public Trust?" Center for Public Integrity, April 30, 2012. <https://publicintegrity.org/politics/state-politics/violating-the-public-trust/>.

Official Journal of the European Union. Charter of Fundamental Rights of the European Union, 326 § (2012). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cellex%3A12012P%2FTXT>.

Paolo Bernocco. "La Corruzione in Italia." *La Stampa*, March 24, 2012. <https://www.lastampa.it/blogs/2012/03/24/news/la-corruzione-in-italia-1.37170978/>.

Principles of Democracy. "The Rule of Law." Accessed November 25, 2024. <https://www.principlesofdemocracy.org/law.ProPublica>.

"Friends of the Court." Accessed November 27, 2024. <https://www.propublica.org/series/supreme-court-scotus>.

Ragland, Will, and Ryan Koronowski. "Public Officials Who Betray the Public Trust Pay the Price—so Should the President." Center for American Progress, January 22, 2020. <https://www.americanprogress.org/article/public-officials-betray-public-trust-pay-price-president/>.

Rundle, Kristen. "The Morality of the Rule of Law: Lon L. Fuller." Cambridge University Press. Cambridge, 2021. <https://www.cambridge.org/core/books/abs/cambridge-companion-to-the-rule-of-law/morality-of-the-rule-of-law-lon-l-fuller/557E9C432830BE10B1E0258125245899>.

Scannell, Kara, Jeremy Herb, and Lauren del Valle. "What Happens to Trump's November Sentencing?"

CNN, November 2024.

<https://edition.cnn.com/2024/11/01/politics/what-happens-to-trumps-november-sentencing/index.html>.

Schonfeld, Zach, and Ella Lee. "Trump's Hush Money Case in Limbo after Judge Adjourns Sentencing." *The Hill*, November 26, 2024.

<https://thehill.com/regulation/court-battles/5008714-trumps-hush-money-sentencing-limbo/>.

Selyukh, Alina, and Lucia Maffei. "Who Oversees the President's Ethics? Here's Our List." NPR, March 27, 2017.

<https://www.npr.org/2017/03/27/520983699/who-oversees-the-president-s-ethics-a-reference-sheet>.

Sette, Raffaella. "Fight against Recidivism in Italy: A Case-Study Analysis." Accessed November 30, 2024. https://amsacta.unibo.it/id/eprint/6590/1/paper_recidiva_ENG.pdf.

Snyder, Steven B. "Let My People Run: The Rights of Voters and Candidates under State Laws barring Felons from Holding Elective Office." *Journal of Law and Politics* 4, no. 3 (1988): 543–78.

<https://heinonline-org.ie.idm.oclc.org/HOL/Page?handle=hein:journals/jlp4&id=553&collection=journals&index=>

Staats, Elmer B. "Who Is Accountable? To Whom? For What? How?" Government Accountability Office, December 6, 1979.

<https://www.gao.gov/products/111071>.

Strom, Samuel. "Separation of Powers." Findlaw. Accessed November 18, 2024.

<https://constitution.findlaw.com/article1/annotation01.html>.

Tommasoli, Massimo. "Rule of Law and Democracy: Addressing the Gap between Policies and Practices | United Nations." UN Chronicle, December 2019.

<https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices>.

Trading Economics. "Italy Corruption Index ." Accessed November 30, 2024.

<https://tradingeconomics.com/italy/corruption-index>.

Transparency International. "2023 Corruption Perceptions Index." Accessed December 1, 2024.

<https://transparency.org/en/cpi/2023>.

U.S. Government Accountability Office. "Our Core Values." Accessed November 18, 2024.

<https://www.gao.gov/about/what-gao-does/our-core-values>.

U.S.C. Ethics in Government Act of 1978, 5 § (2010).

<https://www.congress.gov/bill/95th-congress/senate-bill/555>.

United States Constitution.

<https://constitution.congress.gov/>.

United States Courts. "Overview - Rule of Law." Accessed November 27, 2024.

<https://www.uscourts.gov/educational-resources/educational-activities/overview-rule-law>.

UNODC. "Ethical Perspective - Moral Failure in Decision-Making," May 2018.

<https://www.unodc.org/e4j/en/organized-crime/module-6/key-issues/ethical-perspective.html>.

Woodward, Alex. "Trump Escaped the Consequences of His Alleged Crimes. Now His Allies Are after the Prosecutors Who Brought the Charges." The Independent, November 27, 2024.

<https://www.independent.co.uk/news/world/americas/us-politics/jack-smith-trump-case-without-prejudice-b2654264.html>.

World Population Review. "Recidivism Rates by Country 2024." Accessed December 1, 2024.

<https://worldpopulationreview.com/country-rankings/recidivism-rates-by-country>.

The rise of NFTs: a comparative analysis of the intersection of intellectual property law and technological innovation in the US and the UK.

Federica Iannò

Alma Mater Studiorum - University of Bologna, Bologna, Italy

Master's in International Relations

Email: federicasimona.ianno@studio.unibo.it

Published: 27th of January, 2025

Abstract

This paper has a threefold aim: it seeks to showcase the potential shortcomings of existing legislation on the integration of tech in the legal field, specifically in the area of intellectual property law, while stressing the need for a more specific regulation on the topic and analyzing two legal systems, from the same legal family, which have taken different routes in their regulation of intellectual property. The discussion of the *Hermès International v Rothschild* (2021) court case will support the analysis of the legal framework in the USA, whereas, in the absence of a similar precedent in the UK, we shall simply compare the strengths and weaknesses of the USA and the UK in managing the new threats in the field of fair use (or fair dealing, in the UK) at the intersection of art, the law and technology. The legal tradition of these two common law countries has naturally much overlap, but there are also many differences in their individual approach to the issue at hand.

The first part of the paper provides an overview of what NFTs are, how they are created, sold and regulated under the current legal regime, specifically in the United States of America, venue and forum of this case.

The latter half examines the American lawsuit in order to better outline the two doctrines of reference.

While the NFT market has been soaring in recent times, there is still relatively scarce literature on their legal implications.

The “MetaBirkins” case has the potential to become a landmark decision for future regulation of NFTs in intellectual property in the United States and, perhaps, across many other jurisdictions.

Keywords: NFTs, trademark dilution, fair use, fair dealings, intellectual property law

I. Introduction

With the emergence of new technologies, the law is called to respond to new threats. The field of intellectual property is one of the most vulnerable to the substitution of men with machines. Art, as many other endeavors, was previously thought of as an exclusive domain of humans, with no room to share with non-human “authors”, but that seems to be changing with the rise of artificial intelligence.

On February 8, 2023, the U.S. District Court for the Southern District of New York delivered its pronouncement on the lawsuit that the French fashion powerhouse Hermès filed against digital artist Mason Rothschild.

The facts detailed in the lawsuit date back to late 2021, when Rothschild released a collection of one hundred NFTs, dubbed “MetaBirkins”, which he displayed on his website and sold on multiple NFT platforms.

The case addressed the threats posed by NFTs to the foundational pillars of intellectual property as a sub-field of the law, and the jury ultimately sided with Hermès.

The high-profile nature of the dispute sparked heated debate across platforms and audiences. This paper seeks to showcase the ways in which the rise of new technologies - such as NFTs - may challenge

the current intellectual property law framework. Specifically, concerning the United States, in the context of U.S. Code §106A and §107, and, for the United Kingdom, the relevant provisions in the Copyright, Designs and Patents Act (CDPA).

II. NFTs: an overview

Before delving into the facts of the case and the discussion of the relevant legal doctrines, it is important to properly introduce NFTs, as well as the reasons why they are such disruptive innovations for the law.

The acronym NFT stands for “non-fungible token”, i.e. a digital token that, by virtue of being non-fungible, is unique, unchangeable and cannot be modified, divided or replaced.¹

NFTs are minted through a process known as “tokenization”, which entails the registration and certification of a digital representation of the selected work with the aid of blockchain technology.

The non-fungible nature of NFTs is not where the novelty lies: the regulation of non-fungible goods in

¹KM, Gautam, Sonia Thomas, Saurav Gurjer, and Ananya Chakraborty. 2022. “NFTs and Copyrights.” Legal 500. July 14, 2022. <https://www.legal500.com/developments/thought-leadership/nfts-and-copyrights/>.

law can be traced back to (at least) Roman law and custom; rather, it is our understanding of these non-fungible tokens as digital artistic goods that conceals most of the legal intricacies related to this phenomenon.

Let us briefly outline the difference between fungible and non-fungible goods:

“Fungible things are items that can be easily replaced with another item that is practically the same, such as wood or paper currency. Often, whether or not an item is fungible will impact how damages will be calculated for breaches of contract or the destruction of an item.”²

Contrariwise, non-fungible goods cannot be easily replaced or otherwise substituted.

In light of the foregoing, one would be inclined to infer that digital art is, most arguably, fungible in nature, as it is relatively easy to produce and distribute exact copies. The introduction of non-fungible art on blockchain platforms further complicates the discussion.

² “Fungible Things Definition & Meaning - Black’s Law Dictionary.” 2011. *The Law Dictionary. The Law Dictionary*. November 9, 2011. <https://thelawdictionary.org/fungible-things/>.

Since the notion of blockchain is rather new as well, an explanation is in order.

One of the most common renditions portrays blockchain technologies as digital ledgers of data:

“The name blockchain is hardly accidental. The digital ledger is often described as a ‘chain’ that’s made up of individual ‘blocks’ of data. As fresh data is periodically added to the network, a new ‘block’ is created and attached to the ‘chain.’”³

There is virtually no limit to what can be turned into an NFT: anything ranging from art and videos to music and fashion items can potentially undergo the process of tokenization.

Each token is linked to a unique identification code, which doubles as proof of ownership and is stored on the blockchain.⁴

Transactions involving NFTs take place on digital marketplace platforms, often by auction, and they are frequently settled through cryptocurrencies: the Ethereum cryptocurrency is among the most used, since most NFTs are produced and stored on the

³ Rodeck, David. 2023. “Understanding Blockchain Technology.” *Forbes*. *Forbes Magazine*. (2023, May 23). <https://www.forbes.com/advisor/investing/cryptocurrency/what-is-blockchain/>.

⁴ KM, Gautam, Sonia Thomas, Saurav Gurjer, and Ananya Chakraborty, *NFTS and Copyrights*

Ethereum blockchain⁵, with OpenSea and Superrare being other well-known platforms.

Because the sale of NFTs is usually carried out through a smart contract, an equally cutting-edge instrument, another predicament arises.

Smart contracts differ from traditional contracts in several aspects: they are written in code on the blockchain and are programmed to deliver certain outcomes as soon as certain foreordained conditions are satisfied.

In layman's terms, smart contracts operate on a 'if condition A happens, then outcome B is triggered' logic: they are self-executing and self-enforcing, meaning that the parties to a smart contract no longer enjoy the agency to choose whether to comply with the terms of the agreement.⁶

Despite the several advantages of smart contracts, there are definitely some drawbacks, too: it is not easy to customize the text of the agreement, which can be challenging when the circumstances require

the terms be specifically tailored to particular situations.

Additionally, the contract cannot be altered in any way after it is added to the blockchain.

It must be noted, however, that such immutability is not necessarily an unpropitious trait: smart contracts retain the upper hand in ensuring that the agreement stays true to its original content.

For the sake of clarity, some artists have taken to providing a separate file for terms and conditions in a more accessible format in order to allow prospective buyers to better grasp the details of the agreement.

Furthermore, it is significantly more burdensome to establish whether or not the parties expressed their consent to be bound by the terms of a smart contract or whether the latter effectively abides by the law in all its elements.⁷

Some scholars have misgivings about whether smart contracts can even be labeled contracts at all.⁸

Notwithstanding the questionable aspects that smart contracts feature, some jurisdictions around

⁵ *Ibidem*

⁶ Kaur, R, A Ali, and MD Faisal. (2022, 28 September). "Smart Contracts: The Self-Executing Contracts." In *Blockchain: Principles and Applications in IoT*, 1st ed. <https://www.taylorfrancis.com/books/edit/10.1201/9781003203957/blockchain-rajdeep-chakraborty-anupam-ghosh-valentina-emilia-balas-ahmed-elngar?refId=e4fddbd3-4a84-46af-b7ec-ca46a7475b9f&context=ubx>.

⁷ *Ibidem*

⁸ Kólvart, Merit, Margus Poola, and Addi Rull. "Smart Contracts." (2016) In *The Future of Law and eTechnologies*, 1st ed. Springer Cham. https://link.springer.com/chapter/10.1007/978-3-319-26896-5_7.

the world have readily accepted them into their national legislation.

Both Italy and England have clarified their position on the matter: under Italian law, smart contracts are indeed recognized as such, and are enshrined into statute law (in law n12/2019) as ‘computer programs [...] whose execution automatically binds two or more parties’.⁹

In England, the government seems to be warming up to the use of smart contracts, as evidenced by the 2021 briefing titled ‘Smart Legal Contracts: Advice to Government’¹⁰, in addition to the remarks of Justice of the Supreme Court Lord Hodge, who stated that:

“So long as the operation of the computer program can be explained to judges [...] it should be relatively straightforward to conclude that people who agree to use a program with smart contracts in their transactions have objectively agreed to the

⁹ Italy. *Disposizioni urgenti in materia di sostegno e semplificazione per le imprese e per la pubblica amministrazione*, Art. 8-ter. Gazzetta Ufficiale no. 36, February 12, 2019. https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario.

¹⁰ Green, Sarah. (2021). *Smart Legal Contracts: Advice to Government*. Law Commission. <https://lawcom.gov.uk/project/smart-contracts/>

*consequences of the operation of the “if-then” logic of the program.”*¹¹

III. Legal challenges posed by NFTs

One might therefore wonder what, exactly, the ownership of an NFT entails for the buyer, in terms of both rights and constraints.

Owning the NFT of, say, Van Gogh’s *Almond Blossom* does not equate to also owning the physical painting.

The buyer simply owns the metadata associated with the NFT of that painting, which has been minted to portray the original artwork on the blockchain.

Usually there is no transfer of any IP rights that may be associated with the original work, but it is possible to arrange for some of those protections to be included in the transaction, if the author so wishes.

Since buyers generally do not acquire copyright over the work, they are normally not allowed to feature the NFT on any third-product that could generate revenue: the owner of an NFT may only

¹¹ Hodge, P. (2019). *The Potential and Perils of Financial Technology: Can the Law Adapt to Cope?* In “The First Edinburgh FinTech Law Lecture.” Edinburgh.

exhibit the tokens in their e-wallet, to the exclusion of any other use, whether commercial or not.¹²

The legitimate holder of IP rights over an original work (i.e. the author(s) or their foundation, licensed museums, etc.) bears the exclusive right to mint the related NFT; alternatively, the right to mint an NFT may be granted to a third party (an ‘assignee’) through a license or similar instrument, provided that the legitimate owner of the original work has expressed their unambiguous consent, since the assignee does neither hold nor subsequently obtain, in their capacity of assignee, IP rights over the original work they were called to tokenize.

In the absence of a formal authorization, minting the NFT of someone else’s work amounts to copyright infringement.¹³

At the time of writing, NFTs are still largely unregulated and the law is struggling to keep up with the pace at which these technologies are emerging and proliferating.

Historically, it has always taken some time for the law to catch up with great innovations; in the meantime, the gaps are filled by the legal provisions

¹² KM, Gautam, Sonia Thomas, Saurav Gurjer, and Ananya Chakraborty, *NFTS and Copyrights*

¹³ *Ibidem*

that are already in place: in the context at hand, the intersection of NFTs, law and the arts is governed by the hallmarks of intellectual property law in the United States, namely the Copyright Act 1976, the Visual Artists Right Act 1990 (hereinafter referred to as VARA), and the Lanham Act 1946, along with the relevant case law.

The UK counterpart of the 1976 Copyright Act is the 1988 Copyright, Designs and Patents Act (CDPA), which repealed the 1956 Copyright Act, to include new categories of works-such as computer programs, databases and works of architecture-that, under previous legislation, were not eligible for copyright protection. It must also be recalled that the first legislative measure aimed at protecting copyright, in the global history of intellectual property law, was the Statute of Anne, signed into law in 1710 in England. Thus, the legal attention devoted to intellectual property-though initially consisting of mainly scientific and technical works rather than purely artistic, creative expressions-has far-reaching roots in the United Kingdom.

We may already note an important difference between these two jurisdictions: economic rights and moral rights are both regulated by CDPA in the UK, whereas in the United States the former are governed by the Copyright Act and the latter are

mainly by the Visual Rights Act and supplemented by relevant State laws and case law for works that do not qualify as “visual art.”¹⁴

A second observation is that VARA is significantly more recent than the US Copyright Act, which has a similarly lengthy history to its British Counterpart. The 1790 Copyright Act enshrined copyright protections into the Constitution in 1790¹⁵, and it was later amended in 1831, 1909 and 1976, due to the evolving of standards and the emergence of important judicial precedents and international treaties. Thus, the fact that, for close to two centuries, the US lacked federal protections for moral rights seems to substantiate the claim, espoused by many scholars, that the protection of intellectual property in the United States is mainly economic-centric.¹⁶

¹⁴ “For purposes of registration, the U.S. Copyright Office defines visual art works as (i) pictorial, graphic, and sculptural works, and (ii) architectural works.” See: U.S. Copyright Office. (2021, January 28). *Chapter 900: Works of visual art*. In *Compendium of U.S. copyright office practices, third edition*.

¹⁵ “The First Congress implemented the copyright provision of the US Constitution in 1790. The Copyright Act of 1790, An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies, was modeled on the Statute of Anne (1710).” See: ARL staff. (2020, December 18). “Copyright Timeline: A History of Copyright in the United States — Association of Research Libraries.” Association of Research Libraries. <https://www.arl.org/copyright-timeline/>.

¹⁶ “[T]he United States provides more limited protection for moral rights, focusing primarily on economic rights.”

Indeed, Economic rights over a work are governed by the Copyright Act¹⁷, which, in resuming the discussion of the instant case, stands operational as the legal reference also in copyright litigation cases involving NFTs, as was for *Hermès vs Rothschild*.

Until further notice, the chances of NFTs being eligible for copyright protection are slim, at best, since they are neither original nor derivative works.¹⁸ However, the works portrayed may-and usually do-enjoy certain protections under intellectual property law, which are awarded to the author(s) of the original work or other relevant entities (e.g. foundations, as mentioned above).

This is relevant not only in the specific instant case, but also for the future of NFTs as legally regulated elements, as well as objects of litigation.

On the other hand, the Visual Artists Rights Act seeks to acknowledge and protect a certain array of rights that the Copyright Act alone fell short of safeguarding: moral rights.¹⁹

see: Miller. (2024). “Moral Rights vs. Economic Rights under Copyright Law.” MM Laws. October 12, 2024. <https://mmlaws.com/moral-rights-vs-economic-rights-under-copyright-law/>.

¹⁷ Amineddoleh & Associates LLC. (2021, April 9). “Tempestuous Tokens and Tantrums: Vara Rights in the World of Nfts.” <https://www.artandiplawfirm.com/tempestuous-tokens-and-tantrums-vara-rights-in-the-world-of-nfts/>.

¹⁸ KM, Gautam, Sonia Thomas, Saurav Gurjer, and Ananya Chakraborty, NFTS and Copyrights

¹⁹ Amineddoleh & Associates LLC, Tempestuous Tokens

Moral rights are conferred to the author of a work of art and they are retained even in the event of a transfer of ownership.

The immediate consequence is that even the legitimate owner of an artwork cannot do whatever they please with it because they are still bound by certain obligations owed to the author.

This particular feature of art law introduces a limitation to a legal concept which is, more often than not, understood to be a universal right.

Moral rights are intended to preserve, through time and space, the honor, integrity and artistic endeavor of the artist.

Under VARA §106A, ‘Right of Attribution and Integrity’²⁰, artists may claim paternity of their works and prohibit them from being distorted, mutilated or otherwise modified in a way that would undermine their integrity or reputation. Should these events occur, they may choose to waive their right to be identified as the owner of the damaged work.

²⁰U.S. Congress. (1990, June 11). House. Visual Artists Rights Act of 1990, H.R. 2690, 101st Congress (1989–1990). Congress.gov. <https://www.congress.gov/bill/101st-congress/house-bill/2690/all-info>.

Authors are also allowed to prevent use of their name for works they did not actually create.

In view of the arguments presented above, one may posit that MetaBirkins arguably constitute a violation of Hermès’ moral rights, as they distorted the original essence of the trademarked products.

Over the course of the next paragraphs we shall discuss the condition of moral rights in the UK, in order to highlight the significant differences between the US and the UK in their treatment of this aspect of intellectual property law.

Despite its extensive history, copyright law in the UK only came to recognize and fully protect moral rights with the enactment of the CDPA in 1988:

“The four rights included in the CDPA under the heading of “moral rights” are the right of attribution, the right of integrity, the right against false attribution of authorship, and the right of privacy relating to certain photographs and motion pictures.”²¹

²¹ “Despite being a party to the Berne Convention since 1886, the United Kingdom did not have any statutory moral rights legislation until the 1988 enactment of the Copyright, Designs and Patents Act (“CDPA”)” See: Gerald Dworkin, “The Moral Right of the Author: Moral Rights and the Common Law Countries,” *Columbia-VLA Journal of Law & the Arts* 19, no. Issues 3 + 4 (1994-1995).

On the other hand, the VARA mainly covers the right of attribution and the right of integrity.²²

In terms of scope, there is a considerable dissimilarity between the two jurisdictions:

“The crucial difference between the VARA and Continental European moral rights legislation is the exceedingly narrow scope of the moral rights regime established by the VARA. In fact, most copyrightable works are excluded from protection because the rights of attribution and integrity apply only to works of visual art, which are essentially defined as paintings, drawings, prints, photographs produced for exhibition purposes, or sculptures.”²³

The moral rights provisions in the CDPA, though more comprehensive in scope, also faces several constraints that, while not to the same extent as the VARA, *de facto* reduces their scope of application and diminish their effectiveness, by precluding the conferral of moral rights for some categories of works.²⁴

²² *Id.*, 405.

²³ *Id.*, 406

²⁴ *Id.*, 402 “[T]he rights of attribution and integrity do not apply to computer programs, to works made for

These exceptions, in both jurisdictions, seem to corroborate the view that protection of economic rights remains the primary objective for lawmakers.²⁵

IV. Analysis of available case law

As mentioned at the outset, there is a dearth of cases concerning similar issues in the UK; nevertheless, a recent pronouncement of the High Court in *Osbourne v Persons Unknown & Ors* (2023) may guide the debate surrounding the legal status of NFTs.

In this case, the High Court was called to determine whether the theft of NFTs is actionable and, thus, whether NFTs are property capable of being stolen in the first place.

On January 17, 2022, Lavinia Osbourne, the claimant, noticed that two NFTs that she owned had been removed from her MetaMask wallet.²⁶ Osbourne later found out that her NFTs had been illicitly transferred to two users' wallets, which she had neither authorized nor been informed of. The then-Queen's Court prevented the defendants from

hire, to works published in periodicals, or to collective works of reference, 285 and authors of musical works need not be named when the work is publicly performed.”

²⁵ *Ibidem*

²⁶ Like the previously-mentioned OpenSea, MetaMask is a crypto asset management platform where users can have digital wallets connected to their account.

“dealing with or disposing of the two NFTs”²⁷ through an interim injunction, which was extended twice more while the case was pending.

The questions that the Courts faced all relate to and stem from the ambiguous, uncharted status of NFTs-and similar technologies-from a legal standpoint; the most relevant to the discussion at hand, perhaps, regards whether NFTs are to be considered as property or not.

The High Court has answered in the affirmative to this query, thereby setting a precedent that will arguably open up new gateways to the future of law in the age of technology, although scholars disagree on the real significance of this judgment.

“NFTs are already property in the U.S., digital asset attorney Max Dilendorf told Artnet News. “The IRS treats all digital assets, including NFTs as property for tax purposes,” he said. “I believe that the U.K. is just following the same path, which makes complete sense.”²⁸

²⁷ *Osbourne v. Persons Unknown & Others* [2023] EWHC 340 (KB), [7]

²⁸ Castor, Amy. 2022. (2022, May 4) “U.K.’s High Court Ruling on Nfts as ‘property’ Has Been Called a Landmark-but It May Not Actually Change Much.” Artnet News. <https://news.artnet.com/market/uk-high-recognizes-nfts-as-property-2108605>.

The interpretation given by Professor Juliet Moringiello is, perhaps, the one that best interprets the relevance of the judgment:

“The significance of this opinion is that the court held that the token is the kind of asset that can be frozen.”²⁹

We may detect caution also in the verbiage used in headlines chronicling the case: formulas such as “potentially influencing ruling”³⁰ seem to suggest that the implications of this judgment are either lost on lay communities or genuinely negligible. It would be improper to mindlessly dismiss this case altogether, as some of its more practical consequences are undeniable:

“Hacks and theft are increasingly a common problem for NFT holders. Now that the courts have recognised that NFTs are property, holders can rest assured that they will be supported and have recourse in this jurisdiction should their wallet be compromised and their NFTs

²⁹ *Ibidem*

³⁰ Artnet News. (2022, May 2). “Art Industry News: A Brazen Thief Made off with Three Statues of Ai Weiwei Giving the Middle Finger in Broad Daylight + Other Stories.” Artnet News. <https://news.artnet.com/art-world/digest-ai-weiwei-may-2-2107039>.

stolen. Others in jurisdictions, such as the US, do not have this security.”³¹

We shall now turn to the US.

The Birkin bag is one of the most recognizable and sought-after staples of high-fashion, and its timeless design has earned Hermès a seat at the table of evergreen fashion items, akin to Chanel’s handbags or Christian Louboutin’s red-soled heels.

Such notoriety is bound to attract wandering eyes looking to “borrow” the quintessential traits of these bestsellers.

Of course, the Birkin line is protected by IP law in order to prevent this type of illicit mimicking from damaging the legitimate owners of the registered works; to be specific, the Birkin bag enjoys trademark protection both over its dress³² and over the word “Birkin”³³.

A trade dress protects a product’s ‘configuration, the design and shape of the product itself’ or its

packaging. Famous dresses protected under trademark law include Tiffany’s blue box³⁴ or the shade of red used in Coca Cola’s packaging³⁵, as they are integral parts of the respective brand identities.

It is important to note that both of these elements have been granted trademarks because they serve a specific purpose which is strictly connected to the identity of the respective brands.

This also happens to be the reason why the trademark request, submitted by the estate of the late singer Prince, for the shade of purple associated with the pop star’s persona was denied: with not enough evidence to substantiate their claims, the request was deemed to be an attempt at claiming general ownership of a color, which is not permitted under intellectual property law.

The issue at hand arose at the end of 2021, when artist Mason Rothschild released a collection of

³¹ Pryor, Riah. (2022, April 29). “NFTs Recognised as ‘legal Property’ in Landmark Case.” The Art Newspaper - International Art News and Events. <https://www.theartnewspaper.com/2022/04/29/nfts-recognized-as-legal-property-in-landmark-case>.

³² Birkin Handbag Design (Trade Dress), Registration No. 3936105, issued by the U.S. Patent and Trademark Office on March 29, 2011.

³³ Birkin, Registration No. 78369087, issued by the U.S. Patent and Trademark Office on December 9, 2004.

³⁴ Tiffany & Co. registered several marks: the shade of blue of their packaging and the word mark tiffany blue are but only two examples. As a result, no jewelry company may use tiffany blue for their jewelry boxes. See: Tiffany, Registration No. 86571740, issued by the U.S. Patent and Trademark Office on May 19, 2015.

³⁵ Coca cola’s iconic red is also trademarked, which means that no companies selling drinks may use that particular shade of red for their packaging. See: Coca-Cola Red (Trade Dress), Registration No. 1200137, issued by the U.S. Patent and Trademark Office on February 5, 1983.

what appeared to be fur-covered, digital renderings of Hermès' Birkins, which he dubbed 'MetaBirkins', to be sold as NFTs.

Rothschild advertised his pieces on his website, which has since been taken down³⁶.

Hermès served Rothschild with a cease and desist letter to compel him to terminate the project, which he refused to do, and the matter was soon submitted to the attention of a court of law in the Southern district of New York.

In its complaint, dated 14th January 2022, Hermès alleged that Rothschild's MetaBirkins amount to:

“(i) trademark infringement, (ii) false designation of origin, (iii) trademark dilution, (iv) cybersquatting, (v) injury to business reputation and dilution; (vi) common law trademark infringement, and (vii) misappropriation and unfair competition.”³⁷

³⁶ Despite Rothschild's resistance, the NFT platform OpenSea removed MetaBirkins from their blockchain; considering that OpenSea is one of the most reputable and popular platforms, it is particularly telling that they immediately sided with Hermès. At the very least, it would suggest that the platform's managers were inclined to believe that Rothschild's works were not entirely legitimate, or else they would not have removed the items so promptly.

³⁷ Bernstein, David S, and Michael A Key. (2023, February 17). “Buchanan Ranked in Top Largest Law

The main grievance entertained by Hermès was that the narrative weaved by Rothschild to promote the project was intentionally casuistical.

In the amended complaint filed by Hermès, on March 2nd 2022, such claim was further substantiated, and Hermès produced multiple documented instances in which the lines between Rothschild's works and original Hermès products were blurry at best. The most flagrant one was perhaps the post³⁸ on Rothschild's Instagram page in which he offered a 'preview of his upcoming NFT collection' and thereby stated that whoever came up with the best name suggestion would 'get a gifted Birkin'.

He referred to one of his NFTs, not an actual Birkin bag, but such a vague wording leaves room for different interpretations, which some argue was a wholly calculated choice.

Firms List by Modern Healthcare.” Buchanan Ingersoll & Rooney PC. <https://www.ratnerprestia.com/2023/02/17/no-shirkin-ip-rights-in-birkin-hermes-wins-trademark-infringement-lawsuit-against-rothschild-over-metabirkins-nfts/>.

³⁸ Rothschild, Mason [@masonrothschild]. (29 October, 2021) “A preview of my upcoming NFT collection ahead of its release next week for #NFTNYC.” Instagram. <https://www.instagram.com/p/CVn0q4srYD/?igshid=YmMyMTA2M2Y=>

V. Trademark dilution

These instances could be regarded as supporting evidence for Hermès' claim of injury to business reputation and, especially, trademark dilution.

Claims stemming from trademark law are governed by the Lanham Act, which, to be applicable, requires that the mark is in commerce and distinctive.³⁹

An individual is guilty of trademark dilution when they use a registered mark, of which they are not the rightful owners, in such a way that is prone to lessening its 'uniqueness', thereby possibly creating confusion as to the origin of the advertised goods.

The protection against trademark dilution is especially aimed at protecting the identity of brands that have come to be considered 'household names' and which unauthorized users are likely to try to profit off of precisely because of their well-established reputation and market value.

In this framework, brands that are especially renowned among the general public and boast distinctive, recognizable elements (or products) are eligible to be labeled household names.

Hermès is adamant that the MetaBirkins project impaired their ability to launch their own line of digital assets, which, their counsel claimed, was already in the works when Rothschild unveiled his NFT collection.

They also alleged that MetaBirkins compromised the value of future NFTs minted by Hermès, seeing as the element that gives value to these tokens, other than the work they represent, is the fact that they are unique.

However, this last claim may only be of marginal legal relevance, seeing as copyright law cannot protect ideas, let alone ideas that have not even been made public or otherwise expressed.

This has been the default position for copyright law ever since the Berne Convention 1886, which maintains that 'works shall not be protected unless they have been fixed in some material form.'⁴⁰

VI. Mason Rothschild's line of defense

Throughout the trial, Rothschild's legal team shifted their line of defense more than once: first, the artist claimed the project was a tribute to Hermès. Then, it was a:

“[S]ocial experiment to see if [he]
could create that same kind of

³⁹ McCarthy, J. Thomas. (2024). *McCarthy on Trademarks and Unfair Competition*. 5th ed. Vol. 1. § 3:1. Eagan, MN: Thomson Reuters.

⁴⁰ Berne Convention for the Protection of Literary and Artistic Works, art. 2(2), September 28, 1979.

illusion that it has in real life as a digital commodity.”⁴¹

Ultimately, the defense alleged that Rothschild’s work was covered by the First Amendment to the US Constitution, and their entire motion to dismiss hinged on the claim that Rothschild’s MetaBirkins project was ‘artistic commentary’, protected under the Freedom of Speech clause.

This change of strategy ought to be analyzed in detail.

Designating MetaBirkins as a tribute collection was conceivably a strategic choice, to nudge the narrative towards fair use. We may introduce at this stage the comparison between the doctrines of fair use and fair dealing.

As was the case for moral rights, the fair dealing regime in the UK is much stricter than the fair use defense in the US:

“The UK’s „fair dealing” is conventionally regarded as giving much more narrowly defined defences, rather than giving a

general defence in an action for infringement.”⁴²

The following list⁴³ is exhaustive, and it lists the main exceptions within the realm of fair dealing:

- (i) Non-commercial research and private study;
- (ii) Criticism and review;
- (iii) News reporting of current events.

There may also be other exceptions⁴⁴ to copyright, such as:

- (i) Teaching;
- (ii) Helping disabled people;
- (iii) Time-shifting;
- (iv) Parody, caricature and pastiche;
- (v) Sufficient acknowledgement;
- (vi) Fair dealing.

These requirements present much overlap with the American counterpart. Under Section 107 of the 1976 Copyright Act, a four-step test is performed to establish whether an instance amounts to fair use, thereby considering:

“(1) ‘the purpose and character of the use, including whether the use is for commercial or nonprofit

⁴¹Hermès International v. Rothschild, No. 22-CV-00384 (S.D.N.Y. Jan. 13, 2023), p. 17. <https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv00384/573363/140/>.

⁴² Dnes, Antony. (2011, June 6). "A Law and Economics Analysis of Fair Use Differences Comparing the US and UK." Hargreaves Review of Intellectual Property and Growth, HMSO: Intellectual Property Office, London.

⁴³ *Id.*, p. 8

⁴⁴ Intellectual Property Office. (2014, June 12) "Exceptions to Copyright." GOV.UK. <https://www.gov.uk/guidance/exceptions-to-copyright>.

educational purposes’; (2) ‘nature of the copyrighted work’; (3) the extent to which the copyrighted work is used; (4) ‘Effect of the use upon the potential market for (or value) of the copyrighted work’.”⁴⁵

With this framework in mind, one might argue that, in the case at hand, (1) Rothschild’s project was conceived for neither non-profit nor educational purposes. Courts are usually less lenient when the use of the copyrighted work generates a revenue; (3) Rothschild’s MetaBirkins are almost exact copies of Hermès’ Birkin bag, except they are covered in patterned fur. Such an addition hardly makes for a meaningful enough alteration; (4) Rothschild’s collection may adversely affect the value of future Hermès NFTs.

The queries posed to the court were answered as follows.

On the classification of NFTs as art, presiding Judge Rakoff held that ‘digital artworks created to be tokenized and sold as NFTs are, or at least can be, “expressive works” conveying speech worthy of

First Amendment protection.”⁴⁶ Thus, not only are NFTs property in the US, they also qualify-in this case-as proper artistic works.

The jury found the defendant liable for both trademark dilution and cybersquatting, and that neither the First Amendment protections nor the fair use defense precluded liability.

VII. Conclusion

Although both the United Kingdom and the United States have made notable progress in the field of IP law in terms of reception of innovation, this paper highlighted how, across two different jurisdictions, the legal landscape is still fragmented.

The existing literature falls short of providing a comprehensive overview of the implications of unregulated new technologies and the available case law is meager. The field of intellectual property, however, is among the first to have endeavored to adapt itself to the new and ever evolving circumstances.

⁴⁵ U.S. Copyright Office. Fair Use Index. (last updated in November 2023). <https://www.copyright.gov/fair-use/index.html>.

⁴⁶Dechert LLP. (20223, April 7). “Trademark Protection and Protected Speech in and out of the Metaverse.” 2023. Casetext. Thomson Reuters. <https://casetext.com/analysis/trademark-protection-and-protected-speech-in-and-out-of-the-metaverse?sort=relevance&resultsNav=false&q=>.

Bibliography

ARL staff. (2020, December 18). "Copyright Timeline: A History of Copyright in the United States — Association of Research Libraries." Association of Research Libraries. <https://www.arl.org/copyright-timeline/>.

Artnet News. (2022, May 2). "Art Industry News: A Brazen Thief Made off with Three Statues of Ai Weiwei Giving the Middle Finger in Broad Daylight + Other Stories." Artnet News.

<https://news.artnet.com/art-world/digest-a-i-weiwei-may-2-2107039>.

Berne Convention for the Protection of Literary and Artistic Works, art. 2(2), September 28, 1979.

<https://www.wipo.int/wipolex/en/text/283693>

Bernstein, David S, and Michael A Key. (2023, February 17). "Buchanan Ranked in Top Largest Law Firms List by Modern Healthcare." Buchanan Ingersoll & Rooney PC.

<https://www.ratnerprestia.com/2023/02/17/no-shirkin-ip-rights-in-birkin-hermes-wins-trademark-infringement-lawsuit-against-rothschild-over-metabirkins-nfts/>.

Castor, Amy. 2022. (2022, May 4) "U.K.'s High Court Ruling on Nfts as 'property' Has Been Called a Landmark-but It May Not Actually Change Much." Artnet News.

<https://news.artnet.com/market/uk-high-recognize-nfts-as-property-2108605>.

Dechert LLP. (2023, April 7). "Trademark Protection and Protected Speech in and out of the Metaverse." 2023. Casetext. Thomson Reuters.

<https://casetext.com/analysis/trademark-protection-and-protected-speech-in-and-out-of-the-metaverse?sort=relevance&resultsNav=false&q=>

Dnes, Antony. (2011, June 6). "A Law and Economics Analysis of Fair Use Differences Comparing the US and UK." Hargreaves Review of Intellectual Property and Growth, HMSO: Intellectual Property Office, London.

Dworkin, Gerald. "The Moral Right of the Author: Moral Rights and the Common Law Countries," Columbia-VLA Journal of Law & the Arts 19, no. Issues 3 + 4 (1994-1995).

H.R.2690 - 101st Congress (1989-1990): Visual Artists Rights Act of 1990. Pub. L. 101-650 title VI, 17 U.S.C. § 106A (1990, June 11).

<https://www.congress.gov/bill/101st-congress/house-bill/2690/all-info>

Hermès International v. Rothschild, No. 22-CV-00384 (S.D.N.Y. Jan. 13, 2023).

<https://law.justia.com/cases/federal/district-courts/new-york/nysdce/1:2022cv00384/573363/140/>.

Hodge, P. (2019). The Potential and Perils of Financial Technology: Can the Law Adapt to

Cope? In “The First Edinburgh FinTech Law Lecture.” Edinburgh.

<https://www.supremecourt.uk/docs/speech-190314.pdf>

Italy. Disposizioni urgenti in materia di sostegno e semplificazione per le imprese e per la pubblica amministrazione, Art. 8-ter. Gazzetta Ufficiale no. 36, February 12, 2019.

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario.

Intellectual Property Office. (2014, June 12) “Exceptions to Copyright.” GOV.UK. <https://www.gov.uk/guidance/exceptions-to-copyright>.

KM, Gautam, Sonia Thomas, Saurav Gurjer, and Ananya Chakraborty. 2022. “NFTS and Copyrights.” Legal 500. July 14, 2022.

<https://www.legal500.com/developments/thought-leadership/nfts-and-copyrights/>.

Kölvart, Merit, Margus Poola, and Addi Rull. “Smart Contracts.” (2016) In *The Future of Law and eTechnologies*, 1st ed. Springer Cham.

https://link.springer.com/chapter/10.1007/978-3-319-26896-5_7.

McCarthy, J. Thomas. (2024). *McCarthy on Trademarks and Unfair Competition*. 5th ed. Vol. 1. § 3:1. Eagan, MN: Thomson Reuters.

McGlynn, J. W., & Rasay, S. D. (n.d.). No Shirkin’ IP Rights in Birkin: Hermès Wins Trademark Infringement Lawsuit Against

Rothschild over “METABIRKINS NFTs”. [ratnerprestia.com](https://www.ratnerprestia.com).

<https://www.ratnerprestia.com/2023/02/17/no-shirkin-ip-rights-in-birkin-hermes-wins-trademark-infringement-lawsuit-against-rothschild-over-metabirkins-nfts/>

Miller. “Moral Rights vs. Economic Rights under Copyright Law - MM Laws.” *MM Laws* (blog), October 12, 2024.

<https://mmlaws.com/moral-rights-vs-economic-rights-under-copyright-law/>

Osbourne v. Persons Unknown & Others [2023] EWHC 340 (KB), [7]

Pryor, Riah. (2022, April 29). “NFTs Recognised as ‘legal Property’ in Landmark Case.” *The Art Newspaper - International Art News and Events*.

<https://www.theartnewspaper.com/2022/04/29/nfts-recognised-as-legal-property-in-landmark-case>.

Rodeck, D. (2022, April 28). *What Is Blockchain?*

<https://www.forbes.com/advisor/investing/cryptocurrency/what-is-blockchain/>

Rogers v. Grimaldi - 875 F.2d 994 (2d Cir. 1989). (n.d.). [lexisnexis.com](https://www.lexisnexis.com).

<https://www.lexisnexis.com/community/casebrief/p/casebrief-rogers-v-grimaldi>

Rothschild, Mason [@masonrothschild]. (29 October, 2021) “A preview of my upcoming

NFT collection ahead of its release next week for #NFTNYC.” Instagram.

<https://www.instagram.com/p/CVn0q4srJYD/?igshid=YmMyMTA2M2Y=>

Smart contracts - Law Commission. (2021, November 25). Law Commission.

<https://lawcom.gov.uk/project/smart-contracts/>

Tempestuous Tokens and Tantrums: VARA Rights in the World of NFTs. (2021, April 9). artandiplawfirm.com.

<https://www.artandiplawfirm.com/tempestuous-tokens-and-tantrums-vara-rights-in-the-world-of-nfts/>

Trade dress of the Birkin handbag design (U.S. Reg. No. 3936105)

https://tsdr.uspto.gov/#caseNumber=+3936105&caseSearchType=US_APPLICATION

U.S. Copyright Office. Fair Use Index. (last updated in November 2023).

<https://www.copyright.gov/fair-use/index.html>.

U.S. Copyright Office. (2021, January 28). Compendium of U.S. copyright office practices, third edition.

U.S. Copyright Office. (2021, January 28). Chapter 900: Works of visual art. In Compendium of U.S. copyright office practices, third edition.

Unprotected and Forgotten: The Legal Void Surrounding Climate Refugees in International Frameworks.

Gabriela Georgieva

IE University, Madrid, Spain

Bachelor in Law

E-mail: ggeorgieva.ieu2022@student.ie.edu

Published: 27th of January, 2025

Abstract

At the intersection of climate change and human rights, the new concept of ‘climate refugees’ has been widely discussed, but little has been done by the Global North to address the issue. Both migration and climate justice are highly polarised issues that, when fused, force a legal stalemate in wait of political consensus. The rise of nationalist movements in the Global North as well as its disinclination to take responsibility for its actions further stall progress. The Global North is in need of stronger legal frameworks that acknowledge the reality of migration due to short- and long-onset ecological disasters. Simultaneously, Global North countries need to set aside their political differences to either restructure currently narrow migration policies which don’t make room for ecologically displaced migrants or create new legislation tailored to the issue. Although new soft law has emerged in response to migration in general, such as the Global Compact for Safe, Orderly, and Regular Migration (GCM), climate refugees remain unprotected. This paper discusses the reasons current migration legislation and international human rights frameworks – particularly, within the Council of Europe and United Nations – are inadequate to address ecological displacement. It highlights the barriers that hinder legal innovation in this area, and solutions that could be implemented in the near future.

Keywords: Climate Refugees, Migration Law, Human Rights, International Law

I. Introduction

Migration is not unfamiliar to legislators. Its international regulation began in the 1950s with the creation of foundational legal frameworks such as the Refugee Convention, the Convention Relating to the Status of Stateless Persons, and the Convention on the Reduction of Statelessness. Although the rights of migrants and refugees have been further expounded in new declarations, “climate

refugees” – migrants forced to leave their homes and country of origin due to the danger of sudden- and slow-onset climate disasters – are still inadequately protected.¹ Although this term was first coined in 1985 by

¹ Bellizzi S, et al.” Global health, climate change and migration: The need for recognition of “climate refugees,” J Glob Health (2023). Online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10037158/>.

the United Nations Environment Programme (UNEP), climate refugees are also known as “forgotten victims.”²

At the international level, the United Nations (UN) is central to promoting collaboration on the common problems experienced by all countries. In its 2016 *New York Declaration for Refugees and Migrants* (NYDRM), it recognized the increased role of climate change and climate-induced natural disasters in migration. The preamble of this declaration notes that, in 2015, migrants exceeded 244 million people, of which 65 million have been forcibly displaced: 21 million as refugees, 3 million as asylum seekers, and 40 million as internally displaced persons.³ In 2018, the World Bank similarly found that 142 million climate migrants will be generated only from Latin America, sub-Saharan Africa, and Southeast Asia by 2050.⁴ Looking at these statistics, one can recognize the emergency of the migrant situation. Although climate change is now considered one of the factors of migration, there are few instances in which it is the only cause. However, as climate change becomes more prominent in the developed regions of the world which attract more attention from global leaders, it will likely be recognized as a main driver of migration. Already it is evident that climate change alone can create dangerous and uninhabitable environments that cannot sustain dignified human life.

The best example lies in the atolls dotting the Pacific and Indian Oceans. Whole islands are being submerged under rising sea levels. Ocean water has contaminated underground reserves of drinking water, spreading disease

throughout many of the island nations, such as Tuvalu and Kiribati. Frequent floods and heat waves eradicate crops, making it near impossible for the population to sustain their livelihoods and feed themselves. As the territory of these developing nation states disappears, their governments are forming agreements with neighbouring countries – often also developing nations – to take in their citizens in an attempt to combat statelessness.⁵ Although their governments have taken mitigation and adaptation measures to maintain livable conditions for their people as long as possible, their valiant efforts are not enough.

Although the UN has recognised the need to facilitate orderly, safe, regular and responsible migration as part of its 2030 Agenda for Sustainable Development, the international community is reluctant to accept this responsibility, as it may burden their sovereignty.⁶ This reluctance is evidenced by the lack of any legally-binding international agreement on climate refugees.

As international human rights law currently stands, climate refugees do not fit in as a subgroup within the term “refugees.” However, they should not simply be classified as “migrants.” Although they conform within the broad category, labelling climate refugees as migrants does not allow for their specific protection under international law. Nation states also have more discretion with regard to the treatment of migrants. This paper explores the inadequacies of the current international framework and argues that climate refugees should be given distinct international rights.

² Ibid.

³ United Nations General Assembly. 2016. Resolution 71/1. *New York Declaration for Refugees and Migrants*. Vol. Seventy-first session. Agenda items 13 and 117. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf.

⁴ Podesta, John. 2019. “The Climate Crisis, Migration, and Refugees.” Brookings. July 25, 2019. <https://www.brookings.edu/articles/the-climate-crisis-migration-and-refugees/>.

⁵ Georgieva, Gabriela. 2022. “Encroaching Waves and Retreating People: The Reality of Rising Sea Levels for Pacific Islanders - the Stork.” *The Stork*. November 24, 2022.

<https://www.iestork.org/encroaching-waves-and-retreating-people-the-reality-of-rising-sea-levels-for-pacific-islanders/>.

⁶ United Nations General Assembly. 2015. Resolution 70/1. *Transforming Our World: The 2030 Agenda for Sustainable Development*. Vol. Seventieth Session. Agenda items 15 and 116. <https://documents.un.org/doc/undoc/gen/n15/291/89/pdf/n1529189.pdf>.

II. The Current Framework: Why “Climate Refugees” Are Not “Refugees”

The Refugee Convention of 1951 (RC), created in response to the wave of refugees following the Second World War, is the basis of today’s international migration law. Although the Convention’s protection originally applied only to refugees emigrating from their countries of origin due to events prior to 1 January 1951, this dateline was removed by an additional protocol in 1967. The RC is the first international agreement to give specific protection to those with refugee status until they can voluntarily return to their countries of origin or achieve naturalisation in their destination country.⁷ Article 1 sets the scope of such protection and is also the reason why climate refugees cannot access these Convention rights. Refugee status is only afforded to those who lack the protection of their State of origin due to persecution on the basis of race, religion, nationality, and membership of a particular social or political group.⁸

“Persecution” as a term is not defined within the RC, but case law of its signatories has established that the term is the legal standard for persons claiming refugee status. It entails an injurious or oppressive action committed by the government of the country of origin against the alien. At the time of application, the alien need not have experienced persecution, but they must communicate a well-founded fear that prosecution is imminent if they return to their country of origin. This fear cannot be subjective, but must be based on an objectively dangerous situation. Several cases adjudicated by the signatories of the RC contemplate how far the persecution requirement may be extended.

In the 1987 *Immigration and Naturalisation Services (INS) v. Cardoza-Fonseca* case, the United States Supreme

⁷ United Nations General Assembly, 1951, *Convention Relating to the Status of Refugees*.

https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.23_convention%20refugees.pdf.

⁸ Ibid.

Court noted that refugees protected under the RC needed only to show that persecution was “more likely than not” rather than “clearly probable” if they were refouled to their country of origin.⁹ Basing its reasoning off this definition, the Supreme Court agreed that the Nicaraguan citizen at hand should be granted refugee status, as she would likely be imprisoned and questioned as a political enemy if she returned to Nicaragua. However, it also noted that, pursuant to its previous decision in *INS v. Stevic*, the Attorney General has the discretion to allow the refugee into the country, except where the alien’s life is at risk.¹⁰ This refusal is not the same as refoulement; rather, the refugee can be sent to a third country that, according to *Matter of Salim*, must not objectively pose a possible threat to the refugee’s life.¹¹ For instance, when the *Cardoza-Fonseca* judgment was made, the Supreme Court noted that the Nicaraguan citizen could not be refouled to her home country, but surely she could be deported back to any hospitable transit country.

Similarly, in *R v. Secretary of State for the Home Department, ex parte Sivakumaran*, the Canadian Federal Court held that “well-founded fear” of persecution under the RC is discovered through the application of the “reasonable chance” test.¹² In this case, six Tamil nationals claimed refugee status in the UK, citing civil disorder in Sri Lanka that particularly affected areas with a high Tamil population. However, they were denied by the Secretary of State. The Court of Appeal overturned this decision, noting that the assessment of “well-founded fear” has two prongs: first, that the applicant experiences “actual fear” from a subjective point of view and second, that the fear is understandable from the objective perspective of a reasonably courageous person. However, when the case

⁹ *INS v. Cardoza-Fonseca*, 480 US 421 (1987).

¹⁰ *INS v. Stevic*, 467 U.S. 407 (1984).

¹¹ U.S. Department of Justice. 1985. *Matter of Salim*, 19 I&N Dec. 211 (BIA). Accessed October 29, 2024.

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2922.pdf>.

¹² Convention Relating to the Status of Refugees.

was appealed a second time, it was finally adjudicated that well-founded fear in the sense of the Convention cannot be assimilated to the fear of instant personal danger arising out of an immediately present predicament. Essentially, “well-founded fear” should not be subjectively assessed; rather, the question is whether, based on the facts and circumstances in their country of origin, the Secretary of State can find a real and substantial risk to the applicants.¹³

Two key aspects presented in these cases are important to consider how a potential application of the RC would affect climate refugees. Firstly, both judgments confirm that national migration authorities have a degree of discretion when deciding on the objective danger of a situation in an applicant’s country of origin. Considered together, the cases show that an applicant must face (a) specific, imminent danger; and (b) the government of the country of origin must not be taking active steps toward deescalating the dangerous situation, or conversely, must be actively promoting the dangerous situation. Secondly, the UK Court noted that an applicant faces a real or substantial risk in their country of origin based on the circumstances there that create an immediate threat. This is a difficult criterion to meet for climate refugees as the danger posed by climate change escalates with time. People outside of the country are unlikely to identify a concrete danger to the livelihoods of nationals, as there is technically time to adapt to the situation.

Because it is difficult for climate refugees to be subsumed under the RC, some scholars have considered that they may instead qualify for protection under the concept of “complementary protection,” a framework created by Articles 6 and 7 of the International Covenant on Civil and Political Rights (ICCPR).¹⁴ These Articles respectively recognize the right to life and the right against cruel,

¹³ House of Lords, *R v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals* (UN High Commissioner for Refugees Intervening), 1987.

¹⁴ United Nations General Assembly, 1966, Res. 22001 (XXI): *International Covenant on Civil and Political Rights*.

inhumane, or degrading treatment and legally-bind States to a duty of non-refoulement where there are substantial grounds for believing that there is a real risk of irreparable harm. However, under this framework, climate refugees would need to establish an actual or imminent risk of a specific and sufficiently severe harm that affects them individually, a requirement which in practice aligns with individuals displaced by sudden-onset climate-induced natural disasters only. One of the only cases that deals with climate refugees under the RC – *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* – illustrates this point, and provides a comparator for the usefulness of the ICCPR versus the RC. However, one can see that the Applicant’s case is treated similarly under both frameworks, begging the question whether the IPRCC actually provides an alternative.¹⁵

In the *Ioane Teitiota* case, the Applicant had initially submitted an appeal against New Zealand’s immigration authorities’ deportation decision after they found that the Kiribati national and his family were overstaying their visas in the country. In front of domestic courts, he argued that the implementation of the decision would violate his right to life under the ICCPR as well as his right to asylum and non-refoulement under the RC, citing primarily the effects of climate change on the island nation.¹⁶ Kiribati, as a low-lying atoll, experiences the negative impacts of sea level rise – the overpopulated territory is liable to soil erosion, consistent flooding, and water contamination. The Applicant assimilated these factors into the definition of persecution under the RC as they created an “untenable and violent environment” for him and his family.

Firstly, because of high unemployment on the island due to overcrowding, his family subsisted primarily on his ability

¹⁵UN Human Rights Committee (HRC), 2020, *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, <https://www.refworld.org/jurisprudence/caselaw/hrc/2020/en/123128/>.

¹⁶ International Covenant on Civil and Political Rights.

to farm and fish, both activities strained by the effects of climate change. Secondly, he noted that he feared that his children would die from either being caught in the many floods on the island or from water-borne illness, as he had heard many stories of this ill-fate back home. However, all domestic courts rejected his application, noting that while environmental degradation might create a pathway to the RC in some cases, the Applicant had failed to pave such a pathway.¹⁷ The domestic courts noted that no real risk to the individual lives of the Applicant and his family existed as the effects of climate change were a common problem faced by all citizens of Kiribati and, regardless of overcrowding, his family still had the option of moving internally to a small plot of family land on another of the atolls belonging to the country. Although well-founded fear could be considered under the definition of persecution, the Applicant had not provided specific evidence that he could not provide food or potable water for his family. Additionally, the Applicant could not point to a specific action or omission by the Kiribati government that placed his life in imminent risk. Rather, Kiribati is actively taking steps to mitigate and adapt its citizens to climate change. Therefore, the risk “remained firmly in the realm of conjecture or surmise.”¹⁸

The Applicant appealed to the United Nations Human Rights Committee, but it upheld New Zealand’s decision. It recognised that environmental degradation was among the most pressing threats to the ability of present and future generations to enjoy the right to life, which includes the right of all individuals to enjoy a life of dignity free from any acts or omissions of the government that would cause their unnatural or premature death. However, a general situation of violence is only of sufficient intensity where there is a real risk of irreparable harm that would immediately affect the Applicant upon refoulement.¹⁹ Immediacy could not be identified in this case, as a

timeframe of 10 to 15 years could be identified in which the Kiribati government could take affirmative measures to protect its population.²⁰ Refouling the Applicant and his family was not against their rights. However, as the dissenting opinion of Judge Duncan Laki Muhamuza rightly criticised, the Committee’s decision was counterintuitive to the protection of life, as its decision allows destination countries to wait until climate change-related deaths are very frequent for the threshold of risk to be met under the persecution definition. He assimilates the decision of the majority to the metaphor of forcing a drowning person back into a sinking vessel, with the justification that other voyagers are on board.²¹

Unlike slow-onset climate change, the dangers posed by sudden-onset climate-induced natural disasters are more easily identifiable to external persons. However, they may evade accountability by maintaining that (a) the country of origin is responsible for safeguarding its citizens’ interests by moving them internally; and that (b) the effects of natural disasters, while devastating, are reversible and temporary. Such arguments fail to recognise that a productive and dignified life can not be led when natural disasters are so frequent that these individuals are subject to a constant cycle of rebuilding and uncertainty for the future. Although this may not be the case yet, scientists have shown that such weather events will increase in the future. It is the law’s duty to be proactive and provide adequate protection when it is most needed. As law is difficult to adapt quickly, early drafting processes are critical for addressing inevitable future scenarios and promoting global adoption of these new legal frameworks.

¹⁷ *Ibid.*, § 4.5.

¹⁸ *Ibid.* §4.6.

¹⁹ *Ibid.* §9.7.

²⁰ *Ibid.* §9.12.

²¹ UN Human Rights Committee (HRC), 2020, *Ioane Teitiota v. New Zealand*, Annex 2: Individual opinion of Committee member Duncan Laki Muhumuza (dissenting), §6, CCPR/C/127/D/2728/2016, <https://www.refworld.org/jurisprudence/caselaw/hrc/2020/en/123128/>.

III. The Power of Labels: How ‘Migrant’ Erases Responsibility for Climate Refugees

The Convention Relating to the Status of Stateless Persons (CRSSP) and the Convention on the Reduction of Statelessness (CRS) were signed by UN member states in 1954 and 1961, respectively. They were created as supporting treaties for voluntary and involuntary migration. The CRSSP is the first international agreement to define a “stateless person” – anyone “who is not considered as a national by any State under operation of its law.”²² Though this agreement establishes that its signatories will not treat stateless persons any less favourably than nationals, allowing them to access basic state services, such as housing and education, stateless persons are nevertheless at a disadvantage. Basic state services, while helpful, represent a small part of what they need. They will have trouble accessing private services – such as insurance and phone plans – which many now view as a right and not a privilege.

To minimise the necessity of applying the CRSSP, the CRS provides practical solutions for preventing statelessness upon birth or withdrawal of nationality later in life due to the loss, renunciation, or deprivation of nationality.^{23, 24} The scopes of the CRSSP and CRS cover climate refugees as well, but their effectiveness is questionable. The former only has 99 parties, and the latter only 81. Countries like the US, with resources to best address statelessness, and low-lying atolls, who are immediately in danger of losing

their territory and statehood, are notably missing.^{25, 26, 27} For this reason, similar protection as that afforded by the RC is crucial for climate refugees, as it requires States to facilitate their naturalisation and assimilation in the country of destination, even where they have illegally entered the territory, allowing them to access all modern necessities.²⁸

Since climate refugees cannot obtain refugee status under the RC, they would be considered simply as voluntary migrants. Although two frameworks of rights acknowledge the international personality of migrants – the NYDRM and the Global Compact for Safe, Orderly and Regular Migration (GCM) – neither of these documents are legally-binding. The GCM, adopted in 2018, has a unique perspective on migrant rights. It asserts that they are entitled to the same universal human rights and fundamental freedoms as refugees. However, only the latter can enjoy specific international protection.²⁹ At the same time as it guarantees that basic rights will be protected, it centres State sovereignty, and the nation’s right to determine its own national migratory guidelines.³⁰ An obvious conflict between the rights of the individual and the State is present. Arguably, a similar balancing act is performed in the RC, but the RC sets aside sovereign rights when it prohibits the refoulement of refugees and mandates the State to aid the refugee in the naturalisation and assimilation process. The GCM has no similar

²² United Nations High Commissioner for Refugees, 1954, Convention relating to the Status of Stateless Refugees, https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf.

²³ United Nations High Commissioner for Refugees, 1961, Convention on the Reduction of Statelessness. https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

²⁴ Ibid.

²⁵ United Nations High Commissioner for Refugees. 2009. “Depositary: Status of Refugees. Chapter 4. Convention on the Reduction of Statelessness. .” United Nations Treaty Collection. 2009.

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en

²⁶ Ibid.

²⁷ Georgieva, “Encroaching Waves and Retreating People.”

²⁸ Convention on the Status of Refugees.

²⁹ United Nations General Assembly, 2018. Global Compact for Safe, Orderly and Regular Migration. Online at: <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf>.

³⁰ Ibid.

provisions. Instead, it opens by requiring States to address the root cause of migration by strengthening government reactions in the migrants' country of origin through data collection, rapid information sharing, and training.³¹ Although these mitigation efforts do largely prevent many from becoming climate refugees, opening a declaration on the treatment of migrants with these objectives shows a general international reluctance against the admission of migrants onto their territories.

Secondly, the GCM has a large focus on labour and the integration of migrants into the economy of the destination country in five of its twenty-three objectives. Centring on sovereignty and State interest, the GCM allows nations to approach obligations towards migrants in an individualised manner, meaning that migrants will be subject to different treatment depending on their employability. The presence of economic interest in the GCM forces migrants to become instrumental to State interests before they can gain full human rights protection.³² Allowing each State to individually determine the criteria for migrant entry gives them leeway to reinforce racist and classist systems that sustain discriminatory migratory practices within the administration of the State.³³

The GCM demonstrates the relatively recent phenomenon of climate nationalism and climate securitization, which respectively refer to many conservative politicians' attempts to frame climate change as a threat to national interests and security that demands an urgent national response. The response these politicians hope to trigger does not aim to mobilise their electorates to create a more sustainable and greener economy with lower greenhouse gas emissions. Rather, they hope to maintain business-as-usual practices

while forcing the population's attention to the national borders. For instance, before the UN climate talks in Scotland, the then Prime Minister of the UK, Boris Johnson, explained that his wish to overcome the climate crisis was tied to his fear of uncontrolled climate migration that would presumably result in the downfall of the UK. Populist right wing parties have also championed the idea that climate change and environmental degradation in developing countries is primarily a problem of the Global South. Marie Le Pen's comments on climate migrants exclaim that only those rooted in their home are ecologists, while those who migrate do not care about the environment and have no homeland.³⁴ Such narratives distance the Global North from any responsibility for the climate crisis and place the burden of adaptation and mitigation on developing countries of the Global South whose people and resources have been historically exploited for Western benefit.

IV. Acknowledging Shared Responsibility for Climate Change

The GCM and NYDRM, while acknowledging the "shared responsibility" of States with regard to the climate crisis and the duty of developed nations to support mitigation and adaptation measures in the Global South, cannot create real change. They are based on the idea of discursive responsibility, which does not attribute responsibility to any one actor and therefore shies away from designing an enforceable regulatory framework.³⁵ Discursive responsibility arises from the problem of many hands or the idea that many events and actors have contributed in some way to one large problem. However, this dilemma can be solved with the connectedness

³¹ Ibid. Objectives 1-3.

³² Murphy, Susan P. 2022. "Hard Borders and Soft Agreements: Evaluating Governance within the Global Compact for Migration." *Third World Quarterly* 44 (3): 1–18. <https://doi.org/10.1080/01436597.2022.2153662>.

³³ Ibid.

³⁴ Kashwan, Prakash, John Chung-En Liu, and Jahnabi Das. 2022. "Climate Nationalisms: Beyond the Binaries of Good and Bad Nationalism." *WIREs: Climate Change* 14 (2). <https://doi.org/10.1002/wcc.815>.

³⁵ Sienknecht, Mitja, and Antje Vetterlein. 2023. "Conceptualizing Responsibility in World Politics." *International Theory* 16 (1): 1–24. <https://doi.org/10.1017/s1752971923000039>.

principle, which assigns responsibility to actors with any link to the problem, either historical, geographically, or simply because they are part of the community in which the injustice occurred.³⁶ Using this principle, one can then rank the responsibility of the actors based on the strength of the link between their actions or omissions with the problem. For example, climate analysis has confirmed that developed nations are the greatest per capita emitters of greenhouse gas emissions, even though the production of most goods consumed in those countries takes place in the Global South, where the negative externalities are felt in the form of polluted air and water, labour exploitation, and climate-induced natural disaster. One may also create a link between the prevalent unemployment and the lack of infrastructure in developing nations with their inability to handle flooding, as the former may exacerbate the latter. Yet, the fact remains that the actions of the Global North have created the initial problems that now have a domino effect in the Global South. Therefore, although the national governments of these developing countries have the strongest responsibility of maintaining the wellbeing of their citizens, the Global North has the most direct link, not only to climate change, but to the disadvantages the former face in performing their duties towards their citizens.

Though this connection has yet to be realised internationally in legally-binding treaties, progress has been made at the national and regional levels. In 2021, the German Federal Court decided the *Göppel et. al* case, a joinder of four individual complaints arguing that Germany must improve national climate protection efforts through the adoption of more ambitious targets than those set in the German Climate Protection Act, which obliges the country to reduce its greenhouse gas emissions by 55% of the 1990 levels of these gases by 2030. The applicants maintained that current reductions in the country resulted from shifting carbon-intensive industries out of the country to developing nations. Therefore, Germany was

³⁶ Ibid.

not actually contributing to the net reduction of greenhouse gas emissions promised in the Paris Agreement.

Although the Court did not find that weak climate policies went against human rights *per se*, it confirmed that Germany's constitutional obligation to protect its citizens from climate change based on the rights to life, health, and minimum subsistence not only applied territorially, but also globally. The verdict embraced the precautionary principle, whereby not only present human rights violations, but also cumulative, uncertain, and long-term violations are relevant in deciding whether a State's obligations with respect to fundamental rights are adequately met. The Federal Court further elaborated that human rights violations can occur even when multiple people are affected, contrary to the Committee's decision in *Ioane*.³⁷ This reasoning reinforces the conception of climate change as a global issue. Individualised national policies are not enough to address the climate crisis, because non-collaborative frameworks result in problem-shifting. This problem-shifting exacerbates human rights violations even where they are neither imminent nor individual.

If the German Federal Court's reasoning were extended to climate refugees, then it unravels two assumptions expounded by the frameworks discussed above: First, that the sovereignty of states should be prioritised in migration issues, even where they are induced by climate change, as held by the GCM, and second, that one can only classify as a refugee if they will likely face imminent and individualised harm if refouled to their country of origin, as maintained by the RC. Although this decision does not directly affect the legitimacy of these two frameworks, it does indirectly push the European Union (EU) to take a stronger position on climate change and its externalities

³⁷Ekardt, Felix, and Marie Bärenwaldt. 2023. "The German Climate Verdict, Human Rights, Paris Target, and EU Climate Law." *Sustainability* 15 (17): 12993. <https://doi.org/10.3390/su151712993>.

due to its extensive legal competences with respect to the protection of human rights and the environment in its Member States.³⁸

The ruling also seemed to have affected the reasoning of the European Court of Human Rights, an organ of the Council of Europe, an organisation larger than the EU. In the 2024 *Klima Seniorinnen* decision, the Court took a revolutionary step forward when it declared that Switzerland had violated its positive obligations under Article 8 of the Convention by failing to adopt a satisfactory regulatory framework that addresses the effects of climate change on its population, with specific reference to the older female population of the country.³⁹ The application of the case was submitted to the Court by the association, *Klima Seniorinnen Schweiz*, along with four of its members over the age of 70 who claimed that the heatwaves they suffered during the Swiss summers due to climate change had impaired their ability to engage in regular daily activities without worrying that the extreme temperatures would exacerbate their pre-existing medical conditions or create new health issues.⁴⁰

The Court's first point concerns the victim status of these individuals under Article 34 of the Convention, which is split into a bifold consideration. The association, whose main purpose is to advocate for the reduction of greenhouse gas emissions in Switzerland on behalf of its members, the general public, and future generations, could be considered a victim.⁴¹ However, natural persons may not complain to the Court about a provision of national law simply because they consider it to contravene the Convention, if they are not also directly affected by it.⁴² Therefore, for individuals to claim victim status in environmental cases in the context of harm or risk of harm

resulting from the alleged failures of the State to combat climate change, the applicant must show that they are subject to high-intensity exposure to the adverse effects of climate change and that there is a pressing social need to ensure the applicant's individual protection.⁴³ Although the Court recognised that the applicants, beside the association, belonged to a group of people that were particularly susceptible to climate change, victim status requires for a certain severity to be met in each individual case.⁴⁴ As the evidence in this regard was not convincing, the four individual applicants were not awarded victim status.

The Court seems to have taken a step back from the progressive views of the German Federal Court regarding who can complain about human rights violations related to climate change. However, it upheld the Federal Court's reasoning that climate change is a global issue. As a result, it rejected the Swiss government's argument that its actions or inaction are merely a "drop in the ocean." The Court also dismissed Switzerland's claim that it cannot be held liable for its weak climate policies given the relative inaction internationally. The Court asserted that violations under Article 8 did not require it to be shown that "but for" the failing or omission of the authorities, the harm would not have occurred, but rather that the national authorities failed to take reasonable measures which could have had a real prospect of altering the outcome or mitigating the harm.⁴⁵ In this regard, the Court noted that Switzerland had missed its statutory commitment to reduce greenhouse gas emissions by 20% compared to 1990, as asserted in the national CO₂ Act.⁴⁶ Additional intermediate targets were set by the national Climate Act, but many years were still left unregulated.⁴⁷ This legislative lacunae point could not be justified with Switzerland's commitment to adopt measures "in good time," given the

³⁸ Ibid.

³⁹ *Klima Seniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, §567 and §574.

⁴⁰ Ibid. §§ 10-21.

⁴¹ Ibid. §10, §523, §§524-526.

⁴² Ibid. § 460.

⁴³ Ibid. §§487-488, §527.

⁴⁴ Ibid. §531.

⁴⁵ Ibid. §444.

⁴⁶ Ibid. §558.

⁴⁷ Ibid. §§564-568

pressing urgency of climate change.⁴⁸ Therefore, the Court determined Switzerland was in violation of its positive obligations under Article 8.

These two cases portray the Western judicial system's budding willingness to recognize States' shared responsibility towards the international effects of climate change. Although they disagree on their definition of a victim, the fact that the ECHR admitted an applicant association on the grounds that it aimed to fulfill its responsibility as advocate for its members shows that there is hope that the definition will soon be extended further.

However, hope is no longer enough to protect the interests of climate refugees. It is past time that this disadvantaged group of migrants receive the international protection they deserve. Though some scholars have envisioned an expansion of the definition of refugee under the RC, the other frameworks discussed as well as both national and international litigation has shown that there is little political will for climate refugees to be included in the RC.⁴⁹ Using the momentum of the last two cases discussed, it may be possible for a new legally binding international convention to be negotiated, but this solution will undoubtedly take years to implement. Fortunately, regional frameworks that aim to tackle climate change — such as the Cartagena Declaration, free movement agreements within the Caribbean Community, and the Organisation's of African Unity's Regional Climate Strategy – may act as a strong starting point. Bilateral and regional agreements are generally quicker and more efficient and create change as they are tailored to regional needs.⁵⁰ However, the issue remains that existing

regional agreements oblige only developing nations to take responsibility for climate-induced displacement. With a limited amount of resources, relying on regional agreements is not sustainable as developing States who have contributed the least to climate change bear the sole burden of addressing its effects.

A legally-binding international agreement must strengthen these regional frameworks by providing additional protection for climate refugees by acknowledging the responsibility the Global North has towards climate refugees arriving from the Global South. Such an agreement should have the similar protections for climate refugees, while setting measurable targets for adaptation and mitigation at the root of the climate migration crisis. Declarations like the GCM are crucial stepping stones for new protection, and do not define the end of the Global North's liability. A new, legally-binding framework would not only ensure justice for those displaced by climate change but also establish a precedent for global solidarity in addressing one of today's most urgent problems.

⁴⁸ Ibid. §562 and §567

⁴⁹ Divyanshu, Sharma, "Protecting Climate Migrants through Regional Policies: Time To Move beyond International Treaty Law," *Cambridge Law Review* 9, no. 1 (Spring 2024): 28-51.

Online at:

<https://heinonline.org/HOL/P?h=hein.journals/cambrilv9&i=34>.

⁵⁰ Ibid.

Bibliography

- Bellizzi S, et al." Global health, climate change and migration: The need for recognition of "climate refugees," J Glob Health (2023).Online at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10037158/>.
- Divyanshu, Sharma, "Protecting Climate Migrants through Regional Policies: Time To Move beyond International Treaty Law," Cambridge Law Review 9, no. 1 (Spring 2024): 28-51. Online at: <https://heinonline.org/HOL/P?h=hein.journals/cambrilv9&i=34>.
- Ekardt, Felix, and Marie Bärenwaldt. 2023a. "The German Climate Verdict, Human Rights, Paris Target, and EU Climate Law." *Sustainability* 15 (17): 12993. <https://doi.org/10.3390/su151712993>.
- Georgieva, Gabriela. 2022a. "Encroaching Waves and Retreating People: The Reality of Rising Sea Levels for Pacific Islanders - the Stork." The Stork. November 24, 2022. <https://www.iestork.org/encroaching-waves-and-retreating-people-the-reality-of-rising-sea-levels-for-pacific-islanders/>.
- House of Lords, *R v. Secretary of State for the Home Department, Ex parte Sivakumaran and Conjoined Appeals* (UN High Commissioner for Refugees Intervening), 1987.
- INS v. Cardoza-Fonseca*, 480 US 421 (1987).
- INS v. Stevic*, 467 U.S. 407 (1984).
- Kashwan, Prakash, John Chung-En Liu, and Jahnnabi Das. 2022a. "Climate Nationalisms: Beyond the Binaries of Good and Bad Nationalism." *WIRES Climate Change* 14 (2). <https://doi.org/10.1002/wcc.815>.
- Klima Seniorinnen Schweiz and Others v. Switzerland*, no. 53600/20,
- Murphy, Susan P. 2022a. "Hard Borders and Soft Agreements: Evaluating Governance within the Global Compact for Migration." *Third World Quarterly* 44 (3): 1–18. <https://doi.org/10.1080/01436597.2022.2153662>
- Podesta, John. 2019a. "The Climate Crisis, Migration, and Refugees." Brookings. July 25, 2019. <https://www.brookings.edu/articles/the-climate-crisis-migration-and-refugees/>.
- Sienknecht, Mitja, and Antje Vetterlein. 2023a. "Conceptualizing Responsibility in World Politics." *International Theory* 16 (1): 1–24. <https://doi.org/10.1017/s1752971923000039>.
- United Nations General Assembly, 2018. Global Compact for Safe, Orderly and Regular Migration. Online at: <https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf>.
- United Nations General Assembly. 2015a. *Resolution 70/1. Transforming Our World: The 2030 Agenda for Sustainable Development*. Vol. Seventieth Session. Agenda items 15 and 116. <https://documents.un.org/doc/undoc/gen/n15/291/89/pdf/n1529189.pdf>.
- The United Nations General Assembly. 2016. Resolution 71/1. New York Declaration for Refugees and Migrants. Vol. Seventy--first session. Agenda items 13 and 117. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf.
- United Nations General Assembly, 1951, *Convention Relating to the Status of Refugees*. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.23_convention%20refugees.pdf.
- United Nations General Assembly, 1966, Res. 22001 (XXI): *International Covenant on Civil and Political Rights*.
- United Nations High Commissioner for Refugees. 2009a. "Depositary: Status of Refugees. Chapter 4. Convention on the Reduction of Statelessness. ." United Nations Treaty Collection. 2009.

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en.

United Nations High Commissioner for Refugees, 1954,
Convention relating to the Status of Stateless
Refugees,

https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf.

United Nations High Commissioner for Refugees, 1961,
Convention on the Reduction of Statelessness.

https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

UN Human Rights Committee (HRC), 2020, *Ioane Teitiota v. New Zealand*,

CCPR/C/127/D/2728/2016,

<https://www.refworld.org/jurisprudence/caselaw/hrc/2020/en/123128/>.

UN Human Rights Committee (HRC), 2020, *Ioane*

Teitiota v. New Zealand, Annex 2: Individual
opinion of Committee member Duncan Laki
Muhumuza (dissenting), §6,

CCPR/C/127/D/2728/2016,

<https://www.refworld.org/jurisprudence/caselaw/hrc/2020/en/123128/>.

U.S. Department of Justice. 1985. *Matter of Salim*, 19

I&N Dec. 211 (BIA). Accessed October 29, 2024.

<https://www.justice.gov/sites/default/files/eoir/legacy/2012/08/14/2922.pdf>.

**IE IPR
X
BOCCONI
ADVOCACY & LITIGATION**

An Ever-Evolving Global Challenge

Alessandro Tarducci

Law, Bocconi University, Milano, Italy

E-mail: alessandro.tarducci@studbocconi.it

Published 27th of January, 2025

Abstract

In recent years, the use of biometric and genetic data has become increasingly widespread, particularly in the field of scientific research and the digitized landscape. This data, also used for public security purposes, has raised numerous legal issues related to the protection of privacy, especially in the context where the processing of such information crosses the field of the right to the protection of personal data. In particular, the collection and use of biometric and genetic data, such as fingerprints, facial recognition, and DNA analysis, pose technological and regulatory challenges, as they deal with unique and highly sensitive information about individuals.

The rapid development of this sector has made it necessary to regulate the processing of such data, so that it is used exclusively for legitimate purposes, and with the utmost respect for the fundamental rights and freedoms of individuals. This paper aims to explore the legal framework in force in the European Union for the protection of biometric and genetic data, with particular reference to Regulation No. 2016/679 (GDPR) and the LED Directive, comparing these rules with the US regulatory context and the implications of the increasing use of artificial intelligence technologies in the processing of this data.

Keywords: Integrity, Innovation, Responsibility

1. GDPR and processing of biometric and genetic data

The processing of biometric and genetic data is a central issue in the legislation on the protection of personal data, in particular with the entry into force of the General Data Protection Regulation (GDPR) in 2016. This category of data has historically faced definitional uncertainties: until the

introduction of the GDPR, the legal qualification of biometric and genetic data was subject to various interpretations, often leaving uncertainties for both data subjects and those operating in the technology and security sector.

Regulation no. 2016/679 has finally clarified the issue, providing a clear definition of “biometric data” in Art. 4: “personal data resulting from specific technical processing relating to the physical, physiological or

behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data”. Therefore, it is personal information obtained through “specific technical processing”, which refers to the physical, physiological or behavioral characteristics of an individual, allowing unique identification.

Examples of biometric data include fingerprints, facial recognition, iris scanning, hand configuration, as well as graphometric signatures and voice characteristics. “Genetic data” are defined - again in Art. 4 of the aforementioned Regulation - as: “personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question”.

The use of biometric data has increased significantly thanks to the evolution of recognition technologies, finding application in various contexts, such as the security of electronic devices (e.g., authentication via fingerprint or facial recognition) and access to confidential workplaces. However, the collection and processing of such data pose important ethical and legal questions, related to privacy and the protection of individual rights. The potential for massive collection of personal information, coupled with the uniqueness of data such as DNA, implies the need for strict oversight and privacy protection mechanisms to ensure that individuals’ rights are respected.

The GDPR, in Article 9 (Processing of special categories of personal data), establishes a general prohibition on the processing of biometric data intended to uniquely identify a natural person. However, this prohibition is mitigated by a list of exceptions that allow the processing of such data in certain circumstances: the explicit consent of the data subject, processing in the context of employment relationships, the protection of the vital interests of the data subject, employment in legal proceedings or for reasons of particular public interest and scientific research. These exceptions highlight an openness on the part of the European legislator towards the use and circulation of personal data, albeit at the expense of the provision of rigorous protection systems.

In this context, the GDPR is proposed as a fundamental tool to ensure the responsible and secure use of biometric and genetic data. The regulation provides for appropriate security measures to protect the fundamental rights and interests of individuals, aiming to build a solid foundation of precautions in the processing of such data. Furthermore, the Regulation recognises that biometric and genetic data are not only among the first indicators of the risks associated with the use of new technologies, but also highlight various ambiguities and uncertainties, which can affect the protection of individual rights, especially when their processing is required by the authorities, for the purposes of crime prevention and repression.

These considerations lead to an in-depth reflection on the opportunity to adopt an adequate discipline and outline a clear coordination between European regulations and those of individual states. It is essential to

It has been stressed that the collection of biometric and genetic data should only take place in exceptional circumstances, with a rigorous assessment of need. This requirement is essential to ensure the protection of personal data, especially in view of the interference that such practices entail with the right to privacy. The requirement of strict justification is particularly pronounced in these cases, as the data is sensitive in nature.

In addition, the CJEU stated that national courts must interpret domestic law in such a way as to comply with European regulations, thus ensuring that national provisions do not conflict with the requirements set out in the LED Directive.

2.4 Conclusion:

The Court concluded that referring national law to the GDPR, rather than to the LED Directive, does not preclude the possibility of authorising the processing of biometric and genetic data, provided that there is a clear and precise application of European rules. The CJEU has stated that the collection and processing of such data is lawful, provided that national law provides a clear legal basis and that the processing is deemed "strictly necessary", for the pursuit of objectives related to public security and the fight against crime.

Finally, the Court highlighted the need to ensure that disproportionate interference with fundamental rights does not occur, clearly distinguishing between categories of data and data subjects, in order to protect both victims and alleged perpetrators from unjustified processing.

In summary, the CJEU's ruling in Case C-205/21 highlights the importance of a

careful balance between the use of technologies for public security and the protection of fundamental rights, reiterating the need for clear legislation and adequate safeguards for those involved in the processing of biometric and genetic data.

3. Biometric and genetic data between GDPR and LED Directive: a comparison of disciplines

The issue of the processing of biometric and genetic data raises crucial questions in relation to the European Union's regulatory framework, which includes both the General Data Protection Regulation (GDPR)² and Directive 2016/680 (LED Directive).³ These regulations share the objective of ensuring the protection of sensitive personal data, but differ in terms of scope and purpose.

The GDPR applies to the processing of personal data of individuals by private and public entities in general, regulating the use of data in a way that ensures adequate protection of individual rights. The LED Directive, on the other hand, focuses on the processing of data by competent authorities for the purposes of the prevention, investigation and prosecution of crimes, and aims to balance the protection of personal data with the effectiveness of cooperation between police and judicial authorities within the EU.

The main distinction between the two regulations therefore concerns the purpose of the processing: while the GDPR places a

² Regulation (EU) 2016/679 of the European Parliament and of the Council. Available at: <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

³ Directive 2016/680 of the European Parliament and of the Council. Available at <https://lc.cx/98WeY->

general prohibition on the processing of biometric data (art. 9), unless specific exceptions occur, the LED Directive allows the processing of such data in the criminal or public security fields, subject to strict conditions (art. 10). The Directive allows authorities to process biometric and genetic data for unique identification purposes, provided that such processing is strictly necessary and supported by appropriate legal safeguards.

A further difference concerns the practical application: the GDPR applies uniformly to all contexts of personal data processing, the LED Directive - on the other hand - leaves more discretion to the Member States on the specific regulation of the processing of biometric and genetic data, in the field of security. However, this freedom has created legal uncertainties, as two pieces of legislation coexist and both of which could be applied. An example of this is the case in Bulgarian law, where national rules do not seem to clearly distinguish between situations covered by the GDPR and those covered by the LED Directive.

The reference to Art. 9 of the GDPR in a context that should instead be regulated by Art. 10 of the LED Directive raises interpretative doubts: the Court of Justice of the European Union has clarified that the mere regulatory reference to the GDPR does not preclude the lawfulness of the processing of biometric data if it is clear, from national provisions, that such processing is regulated by the LED Directive and therefore falls within its scope. The Court emphasised that it is for the Member States to ensure that national legislation is sufficiently clear, precise and consistent to enable data subjects and courts to

understand precisely the conditions of processing and the objectives pursued.

Ultimately, the harmonization between the GDPR and the LED Directive is a crucial point to ensure the protection of personal data and the efficiency of crime prevention and repression activities. Finally, the Court, through its case-law, recalls the importance of avoiding regulatory ambiguities and ensuring that the processing of biometric and genetic data is always carried out in compliance with the guarantees provided for by EU law.

4. The principle of proportionality and the risk of prejudice to the rights of individuals

The preamble to this may help to put the question of respect for the essential content of the rights and freedoms of the person concerned in a better context. It is therefore appropriate to ask whether the processing of biometric and genetic data satisfies the requirement to offer adequate safeguards for those rights and freedoms.

The principle of proportionality is central to the assessment of the impact of the processing of biometric and genetic data on the rights and freedoms of individuals. This principle serves as a balancing tool between the need to ensure public security and the protection of fundamental rights, as enshrined in Articles 8 and 16 of the Charter⁴ of Fundamental Rights of the European Union and the Treaty on the Functioning of the European Union (TFEU). The protection of personal data, including biometric and genetic data, is guaranteed as a

⁴ Charter of Fundamental Rights of the European Union. Available at [EUR-Lex](#)

fundamental right, and their processing must take place in compliance with this principle.

The use of biometric and genetic data by police authorities requires a delicate balance between security and individual rights. According to the principle of proportionality, any restriction on fundamental rights must be necessary, appropriate and targeted at a legitimate objective, such as public security or the fight against organised crime. Without such proportionality, there is a risk of seriously undermining fundamental rights, especially in a context where personal data represent an extension of the individual's personality, as evidenced by Article 8 of the Charter.

The proportionality analysis requires that the police authority should use biometric and genetic data only when strictly necessary, avoiding less invasive alternatives, and ensuring that the processing is justified by an important public interest. The GDPR, through the principles of necessity, proportionality and data minimization, emphasizes that processing must be reduced to the minimum necessary to achieve the set objectives, thus protecting the privacy of the individual. To this end, authorities must apply appropriate technical and organisational measures in order to minimise the risks of misuse or unauthorised access to data.

European jurisprudence, as highlighted by the rulings of the Court of Justice, reiterates that restrictions on fundamental rights must be supported by clear and precise legislation, with adequate guarantees that prevent abuses. The absence of a proportionate and transparent justification for data processing leads to a violation of fundamental rights, creating a

significant risk to privacy and personal freedom. Only in cases where organised crime is involved or there are serious threats to public security is interference with the rights of the individual justified. However, such interference must always be subject to strict judicial review in order to prevent abuse and ensure respect for fundamental rights.

5. The processing of biometric and genetic data in the USA: the IV Amendment

In the long debate that has long animated the legal reflection on the protection of personal, biometric and genetic data, the analysis of the legal issues related to the processing of this particular category of data cannot be disregarded, analyzing transversally, from a comparative perspective, the regulation on biometric and genetic data of the European legal system with that of the US legal system.

In particular, with reference to the examination of the regulation of biometric systems within the American system, it should be noted, as a preliminary point, that in the United States a single and complete federal legislation has not yet been implemented (despite the ambitious goal of adopting a federal text on *privacy* would seem — almost — to have materialized with the presentation of the first regulatory draft of the *The American Data Privacy and Protection Act*⁵ — ADPPA — formally introduced in the *House of Representatives* on June 21, 2022, still awaiting approval and which would seem to be inspired by the GDPR model) aimed at also regulating the collection and processing of biometric and genetic data, finding, rather, a

⁵ American Data Privacy and Protection Act . *Draft legislation presented to the U.S. House of Representatives on June 21, 2022.* Available at [Congress.gov](https://www.congress.gov/bills/117/1616)

fragmented state legal discipline adopted by the states of Texas, of Illinois and Washington.

In fact, the State of Washington in 2017, after that of Illinois and Texas, passed a biometric privacy law and, more recently, the State of California improved its regulation on *privacy* protection at the end of 2018 with the *California Consumer Privacy Act* (CCPA)⁶, whose discipline to date has been amended by the *California Privacy Rights Act* (CPRA) passed in 2020, the latter law often presented as a potential model for a US Privacy and Personal Data Processing Act.

These provisions, however, highlight how the use of these systems is more popular in the public sector than in the private sector, where there is an orientation based mainly on strong deregulation.

This gives rise to a substantial paradox, such that the use of these systems, generally prohibited in public contexts, is instead increasingly normalized within private ones, with a privacy discipline that is decidedly less articulated than the discipline of the European GDPR.

On closer inspection, the US model focuses mainly on the processing of biometric and genetic data carried out for commercial purposes by private companies, and is, for this reason, decidedly more attentive to market practices.

As already mentioned, the incisive innovations that the biometric and genetic technology sector has undergone over the years have led to the progressive dissemination of such data in the various sectors of public and private action. Biometric systems have wide and varied fields

of development and application. Currently, as already noted, one of the most widespread uses of this particular category of data, used above all in everyday life, concerns access to specific places or services as well as consent to the use of electronic devices in the most disparate sectors: banking, health, commerce, education and telecommunications. However, what is of particular interest here concerns the use of biometric data for the pursuit of purposes related to the fight against crime (the primary objectives of which are the prevention, investigation, detection and prosecution of criminal offences, including the safeguarding and prevention of threats to public security and the free movement of such data).

And it is precisely in this sector that these technologies play an increasingly incisive role. However, the constant development of these systems (especially biometric determination), within the various sectors, can prove to be highly problematic and involve numerous risks due to their use, especially with reference to respect for the fundamental rights and freedoms of its “users”.

Moreover, these data, an expression of the relationship between body and identity, have raised (and still raise) a series of fundamental questions both from an ethical and legal point of view. It follows that a disproportionate request for the use of such data, which goes beyond situations of strict necessity, would lead to an increase in threats to the protection of the privacy of individuals.

In order to trace the evolution of the discipline on biometrics, within the European and US legal systems, it is necessary to dwell on the strong relationship of the sector in question with the protection of privacy. In fact, if, on the one hand, the use of biometrics technologies aims to pursue positive results, on

⁶ California Civil Code Sections 1798.100–1798.199.
Available at: [Civil Code - CIV](#)

the other hand, this can cause negative effects that would impact people's lives.

In this sense, it explains the reason why the growing and, by now, increasingly constant use of biometrics in the daily life of individuals has led to the belief that the framework of an effective regulation governing the security of these systems is essential. In this regard, it is believed that the development of a specific US regulation on biometrics would introduce and recognize greater protections for the rights and freedoms of individuals.

Therefore, if we want to make a comparison between the European and US legal systems, it should be pointed out that in the preparation of a regulation on biometrics, these systems adopt two different approaches. In the first, the adoption of the GDPR sets a solid and advanced discipline on *privacy*, in the second, however, there are still strong contradictions, as there is no single regulation placed to protect *privacy* and, above all, in the field of biometrics.

However, the draft text of the federal law instills hope by inserting a definition of both "*biometric information*" and "*genetic information*".

In fact, the ADPPA presented to the US Congress, aimed at increasing privacy protection, would highlight some aspects and some provisions aimed at replicating the European privacy regulations, including the subject of biometric and genetic data in some articles.

The draft law defines "biometric information" as "any covered data generated from the technological processing of an individual's unique biological, physical, or physiological characteristics that is linked or reasonably

linkable to an individual, including i) fingerprints; ii) voice prints; iii) iris or retina scans; iv) facial or hand mapping, geometry, or templates; or v) gait or personally identifying physical movements". It also defines "genetic information" as "any covered data, regardless of its format, that concerns an individual's genetic characteristics, including (A) raw sequence data that results from the sequencing of the complete, or a portion of, the extracted deoxyribonucleic acid (DNA) of an individual; or (B) genotypic and phenotypic information that results from analyzing raw sequence data described in subparagraph".

On the other hand, in the European legal system, biometric data — in the past the subject of doctrinal reflections, but never expressly defined — with the introduction of the GDPR has finally obtained conceptual autonomy through a series of specific provisions (think of Art. 4, par. 14, GDPR, introducing an *ad hoc* definition as well as in Arts. 6 and 9 GDPR, relating, respectively, to the conditions of lawfulness for the processing and the processing of particular categories of personal data).

Despite this, regulatory gaps still exist with regard to the collection, storage and preservation of such information in databases (e.g. European agencies such as Eurodac and Europol that provide for the daily collection of biometric data of European citizens, and others, within security policies on illegal immigration or for the creation of a common biometric database at European level between the various police forces leaving Member States autonomy to adopt additional, stricter and more specific national rules used to address market regulation of these technologies.

These are data whose collection and storage, although not used to carry out control functions once acquired, could constitute a disproportionate interference with the right to privacy of individuals, especially if they are subjected to automated forms of processing and are stored in police databases.

However, in the European context, no member country has yet developed and introduced a primary-level legal framework for biometric and genetic systems. Therefore, the lack of specific national legislation on biometrics and genetics that complements the European model reflects the difficulties that these systems pose to national legislators (as happened in Bulgaria). From this it can be deduced, as a direct consequence of this aspect, the need to find a balance between the systematic processing of biometric and genetic data and the protection of individuals, which is not always so easy to pursue.

On the other hand, in the US legal system we are witnessing an approach that differs greatly from the presence of a single, rigid and targeted discipline on privacy and on the processing of biometric and genetic data, recognizing a wide space of autonomy to individual states.

For this reason, it seemed desirable to introduce some *privacy institutions* provided for by the European legislation into the US regulations.

Moving on, however, to the regulation of the processing of biometric data by public security authorities, while in the United States we are witnessing a very strong deregulation of these systems (attributing an extremely broad arbitrary power to federal and national agencies and bodies), in the European context, the use of biometric systems by public authorities is also regulated.

Yet there is an increasing number of public entities actively involved in the processing of

biometric data for the purposes of crime prevention, security and counter-terrorism, which they can dispose of without any justification of their purposes and without having to incur any kind of limitation.

Specifically, although the federal government has long been promoting initiatives to collect biometric data, the absence of a set of precise rules in the adoption of biometric recognition systems reveals its fallacy. In fact, these technologies can significantly interfere in the protection of the privacy of the people involved, implementing real control and profiling actions and coming up against the possible (and probable) risk of interference of the primary purposes of security and public interest.

Furthermore, in the US system, the matter in which the rights and freedoms of individuals are most affected is that inherent in the processing of genetic data. The most common example is the one related to the collection of DNA samples. What in this context, is of particular concern concerns precisely the information on the body thus collected and all the consequences that this information entails on the individual. In addition, the archiving and, therefore, the storage in special databases, of this information allows large-scale searches to be carried out on suspects for indefinite periods of time.

This generates a violation of the individual's right according to the provisions of the Fourth Amendment of the American Constitution, highlighting the seriousness of the violation of physical integrity and *privacy* resulting from the taking of DNA samples from suspects.

In fact, DNA, considered one of the most powerful crime-solving tools for law enforcement, has undergone an evolution driven by the storage of a large amount of

genetic data in *governmental, public and private databases, and the emergence of new techniques used to exploit these resources.*

A particularly widespread phenomenon in the US system is that it allows law enforcement authorities to increasingly use genetic databases, either by requesting the DNA profile of a suspect identified from a database or, more commonly, by comparing DNA taken from the crime scene with that stored in a database in an attempt to identify the suspect or a family member of the suspect.

Therefore, in such a context, the analysis of the discipline of the Fourth Amendment appears to be of fundamental importance, from the literal wording of which it follows that the attempt to assess society's expectations in terms of *privacy* suggests that access to genetic information by law enforcement agencies is equal to or considered more invasive than searches that are carried out in homes, by checking SMS or email and, more incisively, when a person's DNA is taken by law enforcement using databases for public safety purposes.

On the basis of this assumption, it can be inferred that both police access to non-governmental genetic databases and the use of covert methods to collect DNA require appropriate judicial authorization.

However, neither the collection of genetic samples nor their analysis and use by law enforcement agencies has been subject to specific regulation.

Significant, in this regard, is the well-known case of *Maryland v. King*.⁷ With this ruling,

⁷ *Maryland v. King*, 569 U.S. 435. *Supreme Court ruling on DNA collection and the Fourth Amendment*. Available at: [Maryland v. King | 569 U.S. 435 \(2013\) | Justia U.S. Supreme Court Center](#)

the Supreme Court ruled on the conditions of legitimacy of measures restricting personal freedom, subject to the guarantee provided for in the Fourth Amendment, and on the requests for the protection of privacy that they call into question. This case concerns Alonzo King arrested (charged and indicted) for assault in 2009 and subjected to the taking of a saliva sample, on the basis of the *Maryland DNA Collection Act*⁸, which provides for the aforementioned operation against all subjects arrested, but not yet convicted, for a series of violent crimes. The genetic profile of the arrested coincided with a sample collected in 2003 and stored in the CODIS database (*Combined DNA Index System, software* that allows the organization of DNA data) for a sexual assault. This correspondence was used as the only evidence for the life sentence.

The defendant objected to the unconstitutionality of the Maryland law, which, by providing for an unreasonable limitation of personal liberty and not justified by a specific and circumstantial suspicion, would have violated the Fourth Amendment (which precisely protects the individual only from "unreasonable searches").

King's defense and the alleged unconstitutionality of the practice of DNA sampling by saliva swab were based entirely on the difference between this practice and the taking of fingerprints: while the purpose of the second intervention would be to identify the suspect, the DNA collection would have the sole purpose of finding a culprit for unsolved cases.

⁸ *Maryland DNA Collection Act. A legislative framework for collecting DNA samples from certain criminal suspects*. Available at: <https://mgaleg.maryland.gov/mgaweb/site/>

In this case, the need for the Court to balance the plurality of public interests worthy of protection that face the personal freedom and the right to privacy of the subject subjected to DNA collection is highlighted in detail.

The new investigative technologies have imposed on the Supreme American body “an *actio finium regundorum*, aimed at reconsidering the balance between security and freedom: on the one hand, they represent an instrument of unparalleled effectiveness through which the State carries out the tasks of social defense; on the other hand, their potential harmfulness cannot be ignored in the face of the individual’s claim to have an intimate sphere that cannot be reached by authority”.

The Court concludes, therefore, that the collection of DNA is a “*reasonable search*”, comparable to the taking of fingerprints and mugshots and, therefore, compatible with the Fourth Amendment. It goes on to highlight how police forces can legitimately collect DNA samples from individuals accused of serious crimes (including “*violence, attempted crimes of violence, burglaries, or attempted burglaries*”).

From the examination, therefore, the US system, as regards the collection of personal data — biometric, but above all genetic — would seem much less restrictive, preferring the aim of fighting prevention and crime, and protecting individuals only in stringent and limited cases.

6. Conclusion

Whether it is the regulation of biometric or genetic data, the fact that Europe and the US exist in an altogether different world of interests when it comes to privacy, public security, and individual rights is undisputed. The European Union has introduced the

GDPR and LED Directive, which offer a very robust, centralized framework that tends to hold towards stringent protections, transparency, and minimization of data processing, especially in the criminal justice area. Indeed, this type of regulation would pay attention to proportionality and would deploy safeguards against misuse for a type of absolutely sensitive data. In contrast, the United States lacks a unified federal standard; thus, the landscape appears fragmented with state laws, most guided by free market interests concerning data protection and the lack of regulatory oversight of the commercial and public sectors. Case after case, *Maryland v. King* demonstrates that the United States generally avails itself to placing public safety above personal privacy in law enforcement applications at the expense of rigid individual protections.

Emerging out of the American Data Privacy and Protection Act (ADPPA), this trend may soon usher in federal standards that might come close to matching GDPR principles. Such a development is hence witnessing the shifting horizon of the world beyond which standardization towards unique dimensions of data privacy norms has inscribed an urgent need for remedial strategies and progressive frameworks that afford harnessing individual rights vis-a-vis technological advancements. However, the use and acceptance of biometric and genetic data will increasingly be manifestations of a common daily life, so that both the EU and the US will ultimately have to come to grips with continuing refinement of their respective legal architectures to further ensure that the laws in place do indeed protect privacy without sacrificing responsible

innovation that is essential in a rapidly evolving digital world.

Bibliography:

1. Charter of Fundamental Rights of the European Union. (2012). Official Journal of the European Union, 2012/C 326/02. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>
2. Court of Justice of the European Union. *Judgment in Case C-205/21 - Bulgarian Law on Biometric and Genetic Data in Criminal Proceedings*. https://eur-lex.europa.eu/legal-content/EN/SUM/?uri=CELEX:62021CJ0205_RE_S
3. European Data Protection Board. *Guidelines on Biometric Data in the Context of the GDPR*. (2021) https://www.edpb.europa.eu/edpb_en
4. *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation - GDPR)*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>
5. *Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection, or prosecution of criminal offences (LED Directive)*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0680>
6. American Data Privacy and Protection Act (ADPPA). *Draft legislation presented to the U.S. House of Representatives on June 21, 2022*. <https://www.congress.gov/>
7. California Consumer Privacy Act (CCPA). (2018). *California Civil Code Sections 1798.100–1798.199*. https://leginfo.legislature.ca.gov/faces/code_sTOCSelected.xhtml?tocCode=CIV
8. Maryland DNA Collection Act. *A legislative framework for collecting DNA samples from certain criminal suspects*.

(2008).

<https://mgaleg.maryland.gov/mgaweb/site/>

9. Maryland v. King, 569 U.S. 435. *Supreme Court ruling on DNA collection and the Fourth Amendment.* (2013)

<https://supreme.justia.com/cases/federal/us/569/435/>

To what extent can the legal basis, implementation, and enforcement of the Azerbaijani Data Protection Law be shaped by the model of the European Union's General Data Protection Regulation (GDPR)?

Alya Rezk

Department One, Institution One, City One, Country One
Department Two, Institution Two, City Two, Country Two

E-mail: amohamedabde.ieu2022@student.ie.edu

Published: 27th of January, 2025

Abstract

Data protection rules are vital in the contemporary digital era, as the collection, processing, and storage of personal data create substantial data privacy issues. The European Union's General Data Protection Regulation (GDPR), which enforces stringent data protection rules in all EU Member States, sets a global standard for data privacy. While not a Member State, Azerbaijan created the Law on Personal Data in 2010 to govern the use and security of personal data inside its borders. This article analyzes the two legal frameworks, emphasizing their legal foundation, enforcement methods, and operational effectiveness. By studying the contrasts and similarities between Azerbaijan's data protection standards and the GDPR, the study identifies gaps in implementation and areas where harmonization is possible, particularly in cross-border data exchanges affecting EU individuals, entities, and Member States. As more countries across the world enact data privacy laws and entities increasingly conduct business across borders with disparate legal requirements, it is imperative to comprehend these differences. This study aims to determine to what extent can the legal basis, implementation, and enforcement of the Azerbaijani Data Protection Law be shaped by the model of the European Union's General Data Protection Regulation. By answering this query, the study investigates whether Azerbaijan's framework may gain by conforming to the widely accepted methodology of the GDPR.

Keywords: term, term, term

I. Introduction

The Law of the Republic of Azerbaijan on Personal Data¹ passed on May 11, 2010, marked the first comprehensive regulation of data protection in the country. Before this law, Azerbaijan lacked specific legislation governing data privacy, though the Law on Biometric Data (2008)² did address the collection and use of biometric data, setting the stage for more formal data protection laws. The political climate leading to the passing of the law was influenced by growing awareness of privacy concerns amid digital advancements and international pressure to align with global standards in data protection.

The new law sought to address gaps in the protection of personal data by regulating its collection, use, storage, and transfer. Before the law, Azerbaijan relied on various regulations and decrees, such as the Law on Biometric Data, and sector-specific rules. However, these were fragmented and insufficient for a unified data protection framework. The 2010 law introduced a more holistic approach, recognizing individuals' rights to privacy and the need for organizations to safeguard personal data. Importantly, the law laid down clear requirements for consent and accountability for data processors, ensuring transparency and control for data subjects.

Some regulations that preceded the 2010 law, like those on biometric data, were retained and incorporated into the new law. However, the new legislation expanded the scope, integrating more detailed provisions on the processing of data across different sectors, including employment. Certain earlier decrees were scrapped in favor of a more modernized and comprehensive approach to data privacy, targeting a higher level of compliance with international standards.

As for the EU legal landscape, the GDPR³ came into force on the 25th of May, 2018, but was not the first of its kind in the EU. In light of the global digital economy and the speed at which technology is developing, the GDPR was passed to address growing concerns about privacy and the security of personal data. Its main goals were to improve data processing openness, uphold individuals' right to privacy, and standardize data protection regulations throughout EU member states. The GDPR aimed to guarantee that companies treated personal data properly and that people had more control over their data in light of the expanding digitization and cross-border data flows. Additionally, by offering a uniform framework throughout the EU, it sought to make the regulatory environment easier for companies. The Directive 95/46/EC of the European Parliament and of the Council of the 24th

¹ Azerbaijan Data Protection Law. Law of the Republic of Azerbaijan on Personal Data. Accessed December 3, 2024.

<https://family.gov.az/store/media/NewFolder/Law%20of%20the%20Republic%20of%20Azerbaijan%20On%20personal%20data.doc>

² "Azerbaijan Republic, Law No. 651-IIIIG, 'On Biometric Information,' June 13, 2008, as amended by Law No. 584-VIQD, July 8, 2022, CIS Legislation, <https://cis-legislation.com/document.fwx?rgn=24349>."

³ European Union. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation, GDPR). Official Journal of the European Union, L 119, May 4, 2016.

<https://eur-lex.europa.eu/eli/reg/2016/679/oj>

October 1995⁴ was the first Directive the EU saw about the protection of individuals concerning the processing of personal data and the free movement of such data. The main difference between Directive 95/46/EC and the GDPR which came and superseded it in 2018, is the GDPR's wider scope which allowed it to tackle the shortcomings of the previous Directive, enhanced adaptability to be more future-proof and up-to-date with the digital sphere, and the implementation further and explicit obligations such as the Data Protection Officer (DPO)⁵ and Data Protection Impact Assessments (DPIA)⁶, amongst several further commitments.⁷ EU Member States are all bound by the GDPR, as the GDPR operates in every Member State on a national level, ensuring the harmonization and uniformity of data protection law across the Union, additionally with Member States having their own data protection agencies domestically, such as the Agencia Española de Protección de Datos⁸ (AEPD) in Spain, who provide resolutions on matters and cases concerning data protection, guides on fulfillment/adherence to GDPR, recommendations and

local translation of EU Directives or Regulations when necessary.

While both the GDPR and the Azerbaijani Law on Personal Data govern data protection, their rules and scope are very different. While Azerbaijan's law is national, the GDPR is applied consistently throughout the EU. Additionally, the GDPR adds extra requirements that aren't specifically mentioned in Azerbaijani law, like the appointment of DPOs and the completion of DPIAs. Although the GDPR has more stringent standards for cross-border data transfers and offers greater individual rights, like the right to be forgotten, both laws seek to protect personal data and privacy despite these distinctions.

II. Legal Bases of GDPR and Law on Personal Data in Azerbaijan

With some similarities and some significant differences, both the GDPR and Azerbaijan's Law on Personal Data provide explicit legal justifications for data collection and processing. According to the GDPR, personal information may be gathered with the consent of the individual, to carry out a contractual obligation, to comply with legal requirements under EU or national law, for tasks that are performed in the public interest under EU or national law, to safeguard an individual's vital interests or for legitimate organizational purposes, so long as these do not conflict with the rights and freedoms of individuals.

⁴ European Union. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data. Official Journal of the European Union, L 281, November 23, 1995. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31995L0046>

⁵ European Data Protection Supervisor. "Data Protection Officer (DPO)." Accessed December 3, 2024.

https://www.edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en

⁶ GDPR.eu. "Data Protection Impact Assessment Template." Accessed December 3, 2024. <https://gdpr.eu/data-protection-impact-assessment-template/>

⁷ Advisera. "EU GDPR vs European Data Protection Directive." Last modified November 17, 2023. <https://advisera.com/articles/eu-gdpr-vs-european-data-protection-directive/#:~:text=While%20co%2Dopting%20most%20but,effects%20for%20noncompliance%20and%20negligence>

⁸ Agencia Española de Protección de Datos (AEPD). "Home." Accessed December 3, 2024. <https://www.aepd.es>

The same is true in Azerbaijan, where data collecting is allowed with consent, to fulfill legal requirements under national laws, to safeguard the subject's life and health, or for scientific and statistical reasons as long as the data is depersonalized. While both frameworks place a strong emphasis on consent and legal obligations, the GDPR covers a slightly wider range of topics, including legitimate organizational purposes and the public interest. On the other hand, Azerbaijan's law focuses on depersonalization for research purposes and makes no grants for organizational needs or the public interest.

III. Differences in Application

Given that there are differences in the legal basis of which personal data is collected, stored, processed, and transferred in Azerbaijan and the EU, under their respective personal data legislation, there is inevitably a difference in the application of each of the legislations.

However, it must be noted that Azerbaijan, despite not being in the EU, is familiar with the GDPR, as there are Azerbaijani entities that operate in the EU and EU residents and citizens who work with Azerbaijani entities. According to the application scope of the GDPR, all EU residents and citizens are subject to the GDPR regardless of what territory they're in, and the GDPR will apply to a company that is controlling or processing the personal data of a resident or citizen of the EU.

Furthermore, the EU and Azerbaijan have made a partnership, 'European Union 4 Azerbaijan', in which on

their website 'EU 4 Azerbaijan', we can find that the data controller for the matters concerning this partnership is the 'Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) / Directorate A / Unit NEAR.A1 Inter-institutional Relations and Communication', operating under the EU. This furthers that there is an understanding and application of the GDPR by the Azerbaijani authorities and entities.

The Ministry of Digital Development and Transport of Azerbaijan¹⁰ is in charge of monitoring adherence to data privacy laws and has imposed sanctions for infractions. For example, companies have faced financial penalties and damage to their reputations as a result of breaches with insufficient protections for personal data. Under the Law on Personal Data, owners and operators of personal data must register their information systems with the Ministry. Failure to do so can result in administrative penalties ranging from AZN 300 to AZN 500 (approximately \$180 to \$300).¹¹ Additionally, the formation of information systems of personal data without obtaining the necessary license may lead to criminal liability under Article 192 of the Criminal Code, including fines up to four times the revenue generated from such non-licensed activity and/or up to seven years of imprisonment. While specific cases of enforcement are not extensively documented publicly, the legal framework provides for penalties, including fines, for non-compliance. For instance, repeated violations in the

⁹ "EU for Azerbaijan," EU4Azerbaijan, accessed December 20, 2024, <https://eu4azerbaijan.eu/>.

¹⁰ Ministry of Digital Development and Transport of the Republic of Azerbaijan. "Home." Accessed December 3, 2024. <https://mincom.gov.az/en>

¹¹ "Azerbaijan - Data Protection Overview," OneTrust DataGuidance, accessed December 20, 2024, <https://www.dataguidance.com/notes/azerbaijan-data-protection-overview>

sphere of personal data protection can lead to severe penalties under the Code of Administrative Offenses.

Pseudonymization of Data

With regard to the differences in the application of Azerbaijan's and the EU's data protection legislation;

Firstly we can see that in Azerbaijan, the requirement for pseudonymization (what's referred to in Azerbaijani law as "depersonalization") of data is only required with regards to collecting, processing, and transferring data for scientific and/or statistical purposes, however in the EU pseudonymization of personal data, which is incentivized in the GDPR in whichever situation it may be possible, due to the principle of 'data minimization', as indicated in "To create incentives to apply pseudonymization when processing personal data..."¹². However, it must be highlighted that the pseudonymization of data under most circumstances, is left to the discretion of the data controller and data processor, unless it's a matter of "...processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes is to be carried out when the controller has assessed the feasibility to fulfill those purposes by processing data which do not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymization of the data). In the Law on Data

Protection, it's explicitly stated that "Surname, given name and patronymic of a person shall be regarded as permanently available public personal data"¹³ whereas this compulsory nature of this specific set of personal data does not exist in the GDPR.

Governing Entities

According to the EU Charter of Fundamental Rights, every EU Member State has the right to protect its data. Therefore, Member States have set up national bodies, following Article 8 (3) of the EU Charter of Fundamental Rights¹⁴, responsible for the protection of personal data in their corresponding Member States. On an EU level, there is the EU Data Protection Board (EDPB), which is composed of representatives of the national data protection authorities of the EU/EEA countries and the European Data Protection Supervisor and has the responsibility of ensuring the consistent application of data protection rules throughout the EU. The EDPB is not a governor over the national bodies established in each country, rather it is tasked with providing general guidance on key concepts of the GDPR and advising the European Commission on issues related to the protection of personal data and new proposed legislation in the EU, and adopting binding decisions in disputes between national supervisory authorities. This means every Member States national body responsible for the protection of personal data is the

¹² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation), Official Journal of the European Union L 119/1, May 4, 2016, accessed December 20, 2024, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

¹³ Law of the Republic of Azerbaijan on Personal Data, accessed December 20, 2024, <https://family.gov.az/store/media/NewFolder/Law%20of%20the%20Republic%20of%20Azerbaijan%20On%20personal%20data.doc>

¹⁴ "Article 8: Protection of Personal Data," European Union Agency for Fundamental Rights, accessed December 20, 2024, <https://fra.europa.eu/en/eu-charter/article/8-protection-personal-data>

decision-maker when it comes to dispute resolution, all the EDPB contributes to this process would be guidance in the interpretation of the GDPR, however, the EDPB does have the right to refer a matter to the Court of Justice (CJEU) and the EDPB may intervene in cases where it is relevant to their tasks, and this right, in practical application, is not limited to cases where personal data is being processed by EU institutions or bodies, but also extends to protection of personal data on a Member State level.

In Azerbaijan, the existence of a national body responsible for the protection of personal data does not exist. The institution responsible for the protection of personal data, and for executing the Law on Personal Data is the Ministry of Digital Development and Transport, however, several other ministries have vested powers to enforce applicable data protection/privacy laws, within the scope of their competencies. Subsequently, this concept will be further elaborated on in the “Policy Suggestion” section.

Constitution in the legal sphere of data protection

In the Law on Personal Data it's stated “Legislation of the Republic of Azerbaijan in the sphere of personal data shall be composed of the Constitution of the Republic of Azerbaijan, ...”¹⁵, whereas in the GDPR, it is not stated that the Constitution of any of the States subject to the GDPR, will be within the legislation regarding personal data in that respective country. Both approaches make

sense, especially given that the EU cannot implement the Constitution into the sphere of legislation for data protection when every country in the EU has a different Constitution. For example, the CJEU invalidated the Data Retention Directive in the case of *Digital Rights Ireland Ltd v Minister for Communications* (Joined Cases C-293/12¹⁶), emphasizing that any interference with fundamental rights must be proportionate and respect the essence of those rights, as enshrined in both the EU Charter of Fundamental Rights and national constitutions.¹⁷ This jurisprudence demonstrates that the GDPR does not supersede national constitutional safeguards, despite the fact that it establishes a uniform standard for data protection throughout the EU. Rather, it collaborates with them to guarantee that data protection measures adhere to the constitutional traditions of member states and EU law.

What should be noted is the legal order to be considered in case of a dispute; given that under Azerbaijani law, the Constitution is part of the legal sphere for data protection, alongside the Law on Personal Data, and other normative acts that are given rise from the Law on Personal Data, it must be noted that if a case related to data protection is to be examined, it shall first be examined through constitutional compliance, then normative legislative acts, pursuant to the principle of following the legal order. The

¹⁵ Law of the Republic of Azerbaijan on Personal Data, accessed December 20, 2024, <https://family.gov.az/store/media/NewFolder/Law%20of%20the%20Republic%20of%20Azerbaijan%20On%20personal%20data.doc>

¹⁶ Radu, Case C-293/12, ECLI:EU:C:2013:39, EUR-Lex, accessed December 20, 2024,

<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62012CJ0293>

¹⁷ “Data Retention Directive Out: Are National Laws Next?” European Policy Review, accessed December 20, 2024,

<https://policyreview.info/articles/news/data-retention-directive-out-are-national-laws-next/264>

question arises as to whether the application of *lex specialis* would be more appropriate, on a case-by-case basis, given the niche and sensitive nature of personal data protection, despite the obvious disequilibrium in the legal order of the Constitution, and a normative legislative act.

IV. GDPR Application in Spain

Among the countries that have adopted the GDPR is Spain, with a readily accessible system to gain access to all the information needed by entities and individuals concerning data privacy.

In Spain, the application of the GDPR is as per the mandates set out in the GDPR, and by the EU, and has been implemented with the Organic Law 3/2018, 5th December, on the Protection of Personal Data and Guarantee of Digital Rights ('LOPDGDD')¹⁸. The regulatory/supervisory authority is the 'Agencia Española de Protección de Datos' ('AEPD')¹⁹ which is tasked with ensuring the implementation and compliance with LOPDGDD by all data processors and controllers in the territory of Spain. The AEPD provides resolutions, guidance, recommendations, and publications regarding all topics and concerns about the protection of personal data. Furthermore, in case of a sanction procedure, triggered by an infringement of the data protection legislation or claims filed by data subjects, the AEPD examines these procedures and imposes fines on data controllers and/or processors in

case of non-compliance. The AEPD requires data controllers to appoint a Data Protection Officer ('DPO')²⁰ even in specific examples where the GDPR does not mandate it. A DPO cannot be punished in any way unless they commit fraud or gross negligence in their work. DPOs can intervene when a complaint is lodged against a data controller or processor, to a supervisory authority. Before complaining, the DPO may also intervene and communicate to the complainer, the organization's response within two (2) months upon receipt of the complaint. The AEPD reserves the right to forward the complaint straight to the DPO before attending to it, in which case the DPO has one (1) month to submit a response.

It can be argued that one of the biggest challenges being faced by the AEPD is adequately responding to all the complaints lodged, and this is a problem but due to no fault of their own. This can be inferred from Spain's amount of fines imposed in comparison to the amount of complaints received; The amount of fines imposed in 2022 was sky-high compared to the rest of the EU, reaching 378, a 47% increase in the amount of fines from the prior year. To put things into perspective, 378 fines amount to 40% of the total amount of imposed fines in the EEA in 2022. These numbers don't see a significant improvement in 2023, with 367 fines imposed, a minuscule decrease from 2022, however, these fines amounted to a total of €30

¹⁸ Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales, Boletín Oficial del Estado (BOE-A-2018-16673), December 6, 2018, accessed December 20, 2024, <https://www.boe.es/buscar/act.php?id=BOE-A-2018-16673>

¹⁹ Agencia Española de Protección de Datos (AEPD), accessed December 20, 2024, <https://www.aepd.es>

²⁰ "Data Protection Officer (DPO)," European Data Protection Supervisor, accessed December 20, 2024, https://www.edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en

million, 44% higher than in 2022, despite fewer sanctions imposed. However, despite imposing significantly higher fines than other countries subject to the GDPR, the AEPD also receives more complaints than any other national body responsible for protecting personal data in the EU. While in 2023 they imposed 367 sanctions, which was less than the previous year, they received more complaints (21,590) in 2023 by 43% from 2022 and 55% from 2021. Yet, the AEPD, despite imposing less fines than in 2022, has earned 44% more in fines than in 2022. This may suggest that the AEPD is focusing its efforts on cases of greater economic compensation and therefore, not adequately responding to all complaints lodged.²¹

V. Application of the Law on Data Protection in Azerbaijan

According to the Law, the processing of personal data must adhere to principles of legality, confidentiality, and data minimization, as defined in Article 4. Article 9 specifies that the purpose for collecting and processing data must be explicitly defined and that the data collected must be limited to what is strictly necessary to achieve this purpose. Additionally, data should be complete, accurate, and updated as required. Article 11 further reinforces this by requiring data controllers to collect only the data necessary for the stated purpose and to inform data subjects of the reason, scope, and legal basis for processing their data. This emphasis on data minimization and transparency mirrors

similar principles in the GDPR, though Azerbaijan's law is unique in its prescriptive approach to processing limitations.

Azerbaijani law places a strong emphasis on obtaining the data subject's explicit consent for processing, which is mandated under Article 8, except in cases where legal exceptions apply. Consent is generally required in written form, with data subjects granted rights to access, request corrections, prohibit further collection, and object to the processing of their data as per Article 7. Exceptions to consent requirements are strictly defined, and unlike the GDPR's broader grounds for data processing, the Azerbaijani Law provides narrower exemptions for instances where processing is necessary. This includes cases of protecting an individual's life or health, or for the public interest, where such grounds are explicitly stated.

The Law categorizes personal data into confidential and public classifications, with each category subject to different levels of protection. Article 5 defines confidential data, which includes biometric data and sensitive information related to health, religious beliefs, or political affiliations, and places strict restrictions on its transfer and use, requiring the subject's consent unless otherwise mandated by law. Public data, which includes data voluntarily made public by the subject (e.g., names), is accessible to a broader extent. Azerbaijani law's dual treatment of data based on these classifications contrasts with the GDPR's more uniform data protection approach,

²¹ "Spain: AEPD Highlights Current Key Challenges in Data Protection," OneTrust DataGuidance, accessed December 20, 2024, <https://www.dataguidance.com/news/spain-aepd-highlights-current-key-challenges-data>

where all personal data enjoys a consistent level of protection regardless of its public or private nature.

Azerbaijan's Law also imposes specific obligations on data owners and operators in Articles 10 and 11. Data "owners" (controllers) and "operators" (processors) are responsible for ensuring data protection and must maintain the integrity, accuracy, and security of the data they process. Article 10.1 specifies that data owners are liable for damages caused by unauthorized data processing or security breaches. Operators are further obligated to ensure confidentiality and to adopt the necessary technical and organizational measures to prevent unauthorized access, alteration, or loss of data. These obligations align with data protection best practices, although Azerbaijani law does not require a Data Protection Officer (DPO) under the GDPR, nor does it impose data impact assessment obligations.

The Law's provisions on cross-border data transfer, outlined in Article 14, require that personal data only be transferred abroad if the receiving country provides protection levels equivalent to Azerbaijani standards, or if it does not threaten Azerbaijan's national security. The transfer is otherwise permitted if the data subject consents or if it is necessary to protect the subject's life or health. This restriction reflects a cautious approach to international data exchange and differs from the GDPR's cross-border framework, which operates under an adequacy mechanism determined by the European Commission.

Azerbaijan's approach to data protection oversight is decentralized, as no singular data protection authority exists. Instead, regulatory enforcement falls under the Ministry of Digital Development and Transport and other relevant sectoral ministries. Article 17 grants these authorities the power to monitor compliance, issue directives to correct violations, and enforce penalties for breaches of data protection obligations. This multi-agency oversight model differs significantly from the GDPR's requirement for independent supervisory authorities in each EU Member State, resulting in an enforcement structure in Azerbaijan that may be more complex and less unified.

VI. Policy Suggestion

Similar to Spain's Agencia Española de Protección de Datos (AEPD), Azerbaijan should think about creating an independent regulatory body to supervise the protection of personal data as part of its continuous efforts to fortify its data protection system. This recommendation is a result of the difficulties that Azerbaijan is currently facing, as the Ministry of Digital Development and Transport enforces the Law on Personal Data. The effectiveness and consistency of data protection initiatives are jeopardized by the fragmented enforcement caused by the allocation of responsibilities among several ministries, even though the ministry is crucial to the law's implementation. Therefore, it is imperative to create a centralized, independent organization to guarantee that protecting personal data is a top priority and is carried out correctly.

An autonomous authority in Azerbaijan might be built on the AEPD model, which offers a tried-and-true method of data protection. The EU's General Data Protection Regulation (GDPR), which has emerged as the standard for data protection procedures worldwide, and Spain's domestic data protection rules have both been enforced in large part by the AEPD. As an independent agency, the AEPD has the power to look into data protection infractions, impose fines, and advise people and organizations on their rights and responsibilities with regard to processing personal data. With well-defined legislative frameworks and consistent enforcement procedures, this structure guarantees that data protection is handled with a high degree of consistency.

For the Law on Personal Data to be implemented successfully, Azerbaijan would need an independent organization akin to the AEPD. A strong data protection authority is crucial given the speed at which technology is developing and the growing dependence on digital platforms for both personal and professional purposes. The AEPD model would give Azerbaijan the legal foundation it needs to protect the privacy of its people by providing unambiguous control over the processing, storing, and transfer of personal data. In order to hold people accountable for breaking the law, such a regulatory agency would be able to investigate data breaches, keep an eye on whether data protection regulations are being followed, and take enforcement action against non-compliant firms.

Azerbaijan's compliance with international norms would also be guaranteed by the creation of a specialized national data protection authority. To monitor the implementation of data protection regulations, member states are required by the General Data Protection Regulation (GDPR), which went into force in the European Union in 2018. Despite not being a member of the EU, Azerbaijan has a stake in adhering to these international norms, particularly as cross-border data flows become more prevalent in the digital economy. Azerbaijan would strengthen its domestic data protection regulations and improve its reputation in the international community by establishing an independent organization akin to the AEPD. This would build confidence with foreign organizations and individuals who are worried about the security of their personal data.

In Azerbaijan, a specialized data protection authority might serve a number of vital functions. The new authority might be charged with informing the public and organizations about their rights and responsibilities regarding the processing of personal data, in addition to making sure that the Law on Personal Data is properly enforced. Campaigns to raise public awareness are crucial for enabling people to make knowledgeable decisions about the handling of their data and for making sure that businesses are aware of their legal obligations. To keep legislation current and responsive to new technological problems, such as the application of artificial intelligence

and big data analytics, the new body might also actively advise lawmakers on changes to data protection laws.

A specialized regulatory body could provide useful solutions for companies looking to adhere to the Law on Personal Data in addition to directing legislative revisions. For instance, the AEPD offers extensive resources, such as thorough guidelines and templates, to assist enterprises in navigating the intricacies of data protection. This strategy guarantees that the law is applied consistently and equitably while also assisting businesses in meeting legal obligations. Establishing a comparable framework in Azerbaijan would encourage companies to embrace best practices in data management and assist promote a culture of compliance where privacy issues are proactively addressed.

Furthermore, a separate body would boost public confidence in the nation's data security initiatives. People's confidence would be bolstered by the institution's transparency and capacity to hold the public and private sectors responsible for their data practices. This would encourage people to feel more secure while using digital services. Since people are more inclined to reveal their personal information when they are certain that their privacy is being actively protected, public trust is crucial to the success of any data protection scheme.

This proposal is not merely a regulatory modification; it is a dedication to the protection of individual privacy and security in a world that is becoming more digital. An

independent data protection organization would increase openness, foster public confidence, and strengthen Azerbaijan's standing as a reliable player in the global digital economy. Adopting this policy will enhance Azerbaijan's internal data protection landscape while also aligning it with international best practices, guaranteeing long-term resilience in the face of growing technological threats.

Bibliography

1. Advisera. "EU GDPR vs European Data Protection Directive." Last modified November 17, 2023. <https://advisera.com/articles/eu-gdpr-vs-european-data-protection-directive/#:~:text=While%20co%2Dopting%20most%20but,effects%20for%20nonc%20ompliance%20and%20negligence>
2. Agencia Española de Protección de Datos (AEPD). "Home." Accessed December 3, 2024. <https://www.aepd.es>
3. Article 8: Protection of Personal Data. European Union Agency for Fundamental Rights. Accessed December 20, 2024. <https://fra.europa.eu/en/eu-charter/article/8-protection-personal-data>
4. Azerbaijan Republic. Law No. 651-IIIIG, "On Biometric Information," June 13, 2008, as amended by Law No. 584-VIQD, July 8, 2022. CIS Legislation. <https://cis-legislation.com/document.fwx?rgn=24349>
5. Azerbaijan - Data Protection Overview. OneTrust DataGuidance. Accessed December 20, 2024. <https://legacy.dataguidance.com/notes/azerbaijan-data-protection-overview>
6. Caspian Legal Center. "Personal Data in Azerbaijan." Last modified February 12, 2021. <https://www.caspianlegalcenter.az/insights/more/personal-data-azerbaijan>
7. Data Retention Directive Out: Are National Laws Next? European Policy Review. Accessed December 20, 2024. <https://policyreview.info/articles/news/data-retention-directive-out-are-national-laws-next/264>
8. European Commission. "Data Protection in the EU." Last modified December 1, 2024. https://commission.europa.eu/law/law-topic/data-protection/data-protection-eu_en
9. European Commission. "EU Steps up Renewable Energy Cooperation with Azerbaijan." Last modified March 4, 2024. https://energy.ec.europa.eu/news/eu-steps-renewable-energy-cooperation-azerbaijan-2024-03-04_en
10. European Data Protection Board. "Processing Personal Data Lawfully." Last modified March 2021. https://www.edpb.europa.eu/sme-data-protection-guide/process-personal-data-lawfully_en
11. European Data Protection Supervisor. "Case Law and Guidance." https://www.edps.europa.eu/data-protection/data-protection/case-law-and-guidance_en
12. European Data Protection Supervisor. "Data Protection Officer (DPO)." Accessed December 3, 2024. https://www.edps.europa.eu/data-protection/data-protection/reference-library/data-protection-officer-dpo_en
13. European Data Protection Supervisor. "History of the General Data Protection Regulation." Last

- modified March 15, 2023. https://www.edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en
14. European Union. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data. Official Journal of the European Union, L 281, November 23, 1995. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31995L0046>
15. European Union. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation, GDPR). Official Journal of the European Union, L 119, May 4, 2016. <https://eur-lex.europa.eu/eli/reg/2016/679/oj>
16. "EU for Azerbaijan." EU4Azerbaijan. <https://eu4azerbaijan.eu/>
17. Free Group. "The European Union and State Secrets: A Fully Evolving Institutional Framework." Last modified July 30, 2010. <https://free-group.eu/2010/07/30/the-european-union-and-state-secrets-a-fully-evolving-institutional-framework/>
18. GDPR.eu. "Data Protection Impact Assessment Template." Accessed December 3, 2024. <https://gdpr.eu/data-protection-impact-assessment-template/>
19. Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales. Boletín Oficial del Estado (BOE-A-2018-16673), December 6, 2018. Accessed December 20, 2024. <https://www.boe.es/buscar/act.php?id=BOE-A-2018-16673>
20. Ministry of Digital Development and Transport of the Republic of Azerbaijan. "Home." Accessed December 3, 2024. <https://mincom.gov.az/en>.
21. "Spain: AEPD Highlights Current Key Challenges in Data Protection." OneTrust DataGuidance. Accessed December 20, 2024. <https://www.dataguidance.com/news/spain-aepd-highlights-current-key-challenges-data>
22. The Republic of Azerbaijan. Law of the Republic of Azerbaijan on Personal Data. Accessed December 3, 2024. <https://family.gov.az/store/media/NewFolder/Law%20of%20the%20Republic%20of%20Azerbaijan%20On%20personal%20data.doc>

Space Law: History, Problems and Opportunities

Carlo Matarazzo

Department One, Institution One, City One, Country One
Department Two, Institution Two, City Two, Country Two

E-mail: carlo.matarazzo@studboconi.it

Published: 27th of January, 2025

Abstract

In the 21st century, while humanity is slowly expanding into space, thanks to both national and private investments and initiatives, the inadequacies and gaps of current space law frameworks are becoming increasingly evident.

The second half of the 20th century and the early 21st century have been forever marked by groundbreaking innovations that have reshaped and changed the meaning and scope of space exploration. This evolution is shown in the preamble of the 1999 “*Space Millennium: Vienna Declaration on Space and Human Development*”, which acknowledges “that significant changes have occurred in the structure and content of world space activity, as reflected in the increasing number of participants in space activities at all levels and the growing contribution of the private sector to the promotion and implementation of space activities”¹

This paper examines the evolving challenges, mainly based upon outdated treaties, and opportunities of space law, emphasizing the need for a comprehensive, enforceable, and inclusive legal system that can balance sovereignty, ethical resource use, and the rights of future space inhabitants. Through a detailed analysis of historical treaties, technological advancements, and comparative jurisdictional approaches between the US and the EU, the paper proposes guiding principles for future space governance. It also advocates for a legal framework adaptable to rapid technological progress and capable of ensuring equitable access and sustainable use of outer space resources.

Keywords: term, term, term

¹ ‘Space Millennium: Vienna Declaration on Space and Human Development’: Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space, Vienna, 30 July 1999

I. Introduction

The 21st century has witnessed an unprecedented development in space exploration projects, not only by traditional national actors but also by different private corporations. The commercialization of space, mainly approached by companies like SpaceX, Blue Origin, and Virgin Galactic, has transformed space from a domain of governmental prestige to a frontier for economic opportunity. This shift underscores an urgent need to reassess and modernize the existing legal frameworks governing outer space, originally conceived in a period that could not possibly fathom the advancements that the following century would have brought.

In fact, the current state of space law is primarily rooted in treaties established during the Cold War era, such as the 1967 Outer Space Treaty and the 1979 Moon Agreement. While these treaties laid the foundational principles for peaceful exploration and the non-appropriation of celestial bodies, they lack specificity and enforceability in the context of modern technological capabilities and private sector involvement. Because technological advancements have changed state boundaries and their competencies, international agreement has become essential. The limitations of these treaties are increasingly apparent as nations and companies plan missions involving resource extraction and potential human settlements on the Moon and Mars, which brings us to this paper's question: How can international law evolve to provide enforceable, inclusive regulations that balance sovereignty and equitable access and use of outer space resources?

1.1 Background and Context

Space law is a specialized branch of international law that governs the activities of nations, private companies, and individuals in outer space. Rather than being a singular legal domain, like contract law, space law is multifaceted and, similar to environmental law, encompasses various legal frameworks based on the scope and nature of the issues it addresses. Since its conception, space law has significantly influenced both public and private stakeholders by setting out the principles that are applicable to all the activities that fall into space laws. In order to properly understand space law, we must observe its evolution, and, in particular, we must understand how

the various treaties have evolved the concept of space law itself².

1.2 History of Space Law

The concept of space law is deeply rooted in the evolution of aviation law, which emerged as aviation technology drastically improved during the 20th century. During this period, the advancements of aviation caused an increase in air traffic and, in order to solve this problem, jurists decided to make an analogy with the law of the sea, which was used to establish territorial zones which had freedom of flight. This change was further expanded with the affirmation of Article 1 of the Paris Convention of 1919, which introduced the "complete and exclusive sovereignty"³ of a state over its superjacent air-space⁴. The first proper separation between "air" and "space" law came in 1926, when a senior official of the Soviet Aviation Ministry, V.A. Zarzar, introduced a paper regarding the limitations of countries' sovereignty over space. In his paper he stated that there was an upper level of state sovereignty over air space, and, in order to deal with this "upper zone", a separate legal regime would be required; in this area, international travel and interplanetary communication would be free from control by subjacent states⁵.

1.3 The Role of the United Nations

A pivotal point for space law is deeply intertwined with the advent of the space race in the mid-20th century, in particular with U.S. President Dwight D. Eisenhower, who introduced the topic at the United Nations in 1957. After the successful launch of the Soviet satellite Sputnik 1 in 1957 and the U.S. satellite Explorer 1 in 1958, both the United States and the U.S.S.R. took an active interest in the development of international space policy. This interest culminated in the UN General Assembly Resolution 1348

² Francis Lyall, Paul B. Larsen, *Space Law: A Treatise*, 3rd edition, 2024, <https://www.routledge.com/Space-Law-A-Treatise/Lyall-Larsen/p/book/9781032803395>

³ (Lyall & Larsen, 2024)

⁴ Convention on the Regulation of Aerial Navigation, Paris, 1919, https://applications.icao.int/postalhistory/1919_the_paris_convention.htm

⁵ (Lyall & Larsen, 2024)

(1958), which established the Ad hoc Committee on the Peaceful Uses of Outer Space (COPUOS).⁶ The committee was established as a permanent body in 1959, initially comprising 24 members⁷. Its primary purpose was to oversee and organize the peaceful utilization of outer space resources in order to facilitate international cooperation in this emerging field. Since its creation, COPUOS has served as a focal point for collaborative efforts in the peaceful exploration and use of outer space.

COPUOS increased to 83 in 2016, in order to equitably represent the interest of the developed and the developing countries. This number of participants, however, encumbered the decisions, slowing the rate of work. COPUOS functions through its primary Committee and two sub-committees: the Scientific and Technical Sub-committee and the Legal Sub-committee. The latter is fundamental for the development of legal frameworks⁸. Each sub-committee reports to the main Committee, which then annually reports to the UN General Assembly, which every year adopts a corresponding resolution, with a proceeding that normally works by consensus⁹.

Within COPUOS, proposed texts are meticulously negotiated and revised until all members are willing to accept them, allowing it to go forward. This method is used to facilitate compromise, which also means that the parties are more likely to ratify provisions they have helped shape.

⁶ Ad Hoc COPUOS had eighteen members: Argentina, Australia, Belgium, Brazil, Canada, Czechoslovakia, France, India, Iran, Italy, Japan, Mexico, Poland, Sweden, the United Arab Republic (Egypt and Syria 1958-61), the UK, the USA and the USSR. Czechoslovakia, Poland and the USSR declined to participate. These states did become members of the permanent COPUOS when it was established.

⁷ The twenty-four members were: Albania, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Czechoslovakia, France, Hungary, India, Iran, Italy, Japan, Lebanon, Mexico, Poland, Romania, Sweden, the United Arab Republic, the UK, the USA and the USSR.

⁸ P.G. Dembling and D.M. Arons, 'Space Law and the United Nations: The Work of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space' (1966), <https://scholar.smu.edu/jalc/vol32/iss3/2/>

⁹ (Lyll & Larsen, 2024)

While throughout its history, COPUOS has been fundamental in establishing the principles and treaties that have shaped space law, the rapid advancements in space technology, which have been exponentially increasing in the last decades, indicate that a shift may be needed. Another fundamental moment in the development of space law was the adoption of the United Nations General Assembly Resolution 1721¹⁰, which emphasized, for the first time, that "the exploration and use of outer space should be only for the betterment of mankind and to the benefit of States irrespective of the stage of their economic or scientific development...". Among the 18 points that were outlined in the resolution, the two most important are the ones in which we can find these principles, which would later become cornerstones of space law, setting the stage for the treaties that would come in the following years. In particular it a) *Commends* to States for their guidance in the exploration and use of outer space the following principles: International law, including the Chapter of the United Nations, applies to outer space and celestial bodies; Outer space and celestial bodies are free for exploration and use by all States in conformity with international law and are not subject to national appropriation; And b) *Invites* the Committee on the Peaceful Uses of Outer Space to study and report on the legal problems which may arise from the exploration and use of outer space.

1.4 European Space Agency

Space law has also been significantly influenced by the contributions of various national space agencies, particularly in Europe, where these efforts are coordinated by the European Space Agency (ESA). The agency plays a fundamental role in the exploration of space, but most importantly it participates in the formation of space law through international agreements, with the most important one being the Space Station Agreements¹¹.

¹⁰United Nations General Assembly Resolution 1721 https://www.unoosa.org/oosa/en/ourwork/spacelaw/treaties/resolutions/res_16_1721.html

¹¹ To see further information, see "International Space Station legal framework", https://www.esa.int/Science_Exploration/Human_and_Robotic_Exploration/International_Space_Station/International_Space_Station_legal_framework

A legislative push came in the early 1960s when Europe realized that it was being left behind by the two main countries that were competing in the space race: the United States and the USSR. In response, the Council of Europe recommended the creation of a European agency, with the objective of promoting the peaceful use of outer space, while also developing a space vehicle¹². This objective was set with the creation of the European Preparatory Commission on Space Research (COPERS), which was set up in 1960.

In 1962, a Convention for the Establishing of a European Organization for the Development and Construction of Space Vehicle Launchers (ELDO) was adopted¹³, followed by a Convention for the Establishment of a European Space Research Organization (ESRO)¹⁴.

However, the existence of two separate space organizations was inefficient, so in 1975 ESRO and ELDO were fused to form the European Space Agency by the Convention for the Establishment of a European Space Agency (ESA)¹⁵, with the purpose of promoting European space research, technology and application (Art. II), which required the cooperation of national space programs.

According to Article X, ESA's structure consists of the Council and a Directorate under the direction of a Director-General. The Council is composed of all member states, meeting as needed at delegate or ministerial levels (Art. XI, 1-2) to adopt policies and approve activities and budgets. Today, ESA is seen as the main European intergovernmental organization engaged with space.

II. Sources of Space Law

¹² Council of Europe Recommendation 251, 24 September 1960

¹³ Convention for the Establishing of a European Organisation for the Development and Construction of Space Vehicle Launchers, 29 March 1962, in force 29 February 1964, 507 UNTS 177

¹⁴ Convention for the Establishment of a European Space Research Organisation, 14 June 1962, in force 20 March 1964, 528 UNTS 33

¹⁵ Convention for the Establishment of a European Space Agency, 1297 UNTS 161, 187;

2.1 Treaties

In the realm of international law, treaties are fundamental agreements that establish legally binding rules and principles among states, which create frameworks within which nations can coordinate their activities and work towards a common goal. In particular, space law is primarily shaped by a series of international treaties developed under the United Nations. These treaties address various aspects of space activities and are fundamental in creating a coherent legal basis. Starting with the first one, the Outer Space Treaty, which was created in 1967, the different treaties that have been created in the last century continue to play a critical role in guiding space activities even in the modern day. However, with the rapid evolution of space technology, along with the increasing participation of private companies, many gaps were highlighted, which prompted calls for updates or new treaties altogether. However, it's only by examining these treaties that we can understand how the current space law framework can be improved.

2.2 Antarctic Treaty

The Antarctic Treaty was established in 1959 and was a pivotal piece of international law since its implementation can be studied in order to properly understand how the space law framework was conceived. The treaty was created with the purpose of governing human activities in Antarctica, with the objective of promoting peace, scientific cooperation, and environmental protection, and has been doing so for over six decades. We can now focus on how this treaty has impacted the various law-making decisions that created the various treaties we know today. The key principles were based on Peaceful use: According to the first article of the treaty, "Antarctica shall be used for peaceful ones only", showing a clear stance on opposing military activity¹⁶; Freedom of scientific investigation and Scientific cooperation: Article 2 and 3 show how the treaty promotes freedom of scientific investigation and encourages international collaboration in research efforts; last but not least, Non-Recognition of territorial claims: In article 4, section 1. a, a "status quo" of territorial claims is introduced, which prohibits the assertion of new claims or the extension of existing claims during its duration,

¹⁶ The Antarctic Treaty, <https://www.ats.aq/e/antarctictreaty.html>

freezing the position and claims that were made by states before the treaty.

By observing these principles we can see how many treaties, the majority of which we have previously seen, have enacted similar guidelines or objectives, which is a peculiar fact since we can imagine the space just like Antarctica was when this treaty was created; space is just a more dangerous and unexplored Antarctica, which, with time, will become a place not only easy to reach and navigate, but, hopefully, also to live in.

2.3 Outer Space Treaty

The Treaty on Principles Governing the Activities of States in the Exploration Use of Outer Space, including the Moon and Other Celestial Bodies, commonly known as the Outer Space Treaty, was adopted by the General Assembly of the United Nations on 19 December 1966 and entered into full force on 10 October 1967. This treaty established the key principles that aimed at ensuring peaceful exploration of space and shared benefits across the globe. It reached this objective by laying down a comprehensive framework that addressed several critical issues, with the most important one being sovereignty. The OST's foundational principles are forged around the peaceful use of outer space, one of the most important aspects of the treaty, which shaped the following years of lawmaking decisions; The non-appropriation of celestial bodies, which caused the most controversy for some states, which in recent years started adopting an opposing mindset to this limitation; The protection of astronauts as "envoys of mankind", in order to address the importance of space exploration as a mission that involves the whole human race.

The most important principle can be found in Article II, which declares that outer space, including the Moon and other celestial bodies, cannot be claimed by any nation. This principle, referred to as the "non-appropriation principle", is essential for maintaining outer space as a global resource, accessible to all humanity.¹⁷ This prevents monopolization and exploitation of resources and echoes

¹⁷ Kate Howells, The Planetary Society, *What is the Outer Space Treaty?*
<https://www.planetary.org/articles/what-is-the-outer-space-treaty>

the concept of "province of all mankind"¹⁸, suggesting that exploration should benefit humanity as a whole. This concept, however, fails to take into account the enormous costs of space expeditions, which, without an economic incentive, wouldn't be possible. Nowadays, especially with private companies, it's easy to see how the main focus of private entities is the economic aspect of space, so, although it shouldn't be the only thing to focus on, it should be taken into account in order to find a balance between humanity and private entities' interests. Article IV further restricts the militarization of space by prohibiting the placement of nuclear weapons or any other weapons of mass destruction in orbit or on celestial bodies. It also specifies how the Moon and other celestial bodies can only be used for peaceful purposes, explicitly forbidding the establishment of military bases. This focus shows how the treaty doesn't only address specific threats and exploitation, but also sets the tone for international cooperation.

Because of its importance in establishing the fundamental rights and obligations for space activities, the OST is usually referred to as the "Magna Carta" of space law. Its creation laid the foundation for the following treaties, which expanded the principles and purpose of the original framework.

The focal point of the OST that creates uncertainty in the modern day is the non-appropriation principle. With the advent of space mining and the commercial use of extraterrestrial resources, questions about property rights and resource management are being asked every single day. A major shift happened with the United States and Luxemburg, which went against the Treaty and enacted national laws that allowed companies to claim ownership of resources extracted from asteroids. This wouldn't create many issues on its own, however, the main problem is a critical lack of clear international regulation, which creates conflicts over resource exploitation; developing a framework for space resource management that balances national interests with the common good is essential to prevent monopolization and ensure sustainable space activities.

So why is this problematic? The main problem is that without clear guidelines, private entities wouldn't want to

¹⁸ Outer Space Treaty 1966

invest in this field, which could lead to a major loss considering the potential of space resources.

Another important aspect of today's technology is space traffic management and space debris. The number of satellites is increasing every single day, creating much more risk of collisions and debris generation, which could threaten space operations. In order to mitigate these possible risks, the OST encourages transparency and cooperation. In particular, the "Registration Convention" requires states to register space objects, which significantly reduces the likelihood of collision.¹⁹

Furthermore, the OST implicitly addresses environmental protection in space, by prohibiting harmful contamination of celestial bodies and requiring states to avoid adverse changes to the space environment (Art. IX). This principle could be tricky once we're able to colonize other planets, which could lead to irreversible damage to its ecosystem. The treaty's provision suggests that sustainable practices in space are essential for preserving these environments for future generations.

From this overview we can see how, although it provided a solid foundation for space governance, the OST fails to address modern challenges and, especially with today's technology, its limitations and gaps are clearer than ever before.

However, thanks to new and evolved treaties, such as the Artemis Accords, which we will be discussing later, we can see how a proper framework can be created, capable of facing modern issues and incentivizing private investments.

2.4 Rescue Agreement

The Rescue Agreement (ARRA), formally known as the *Agreement of the Rescue of Astronauts, the Return of Astronauts, and the Return of Objects Launched into Outer Space*, was adopted by the UN General Assembly in 1967 and entered into force on December 3, 1968. Its primary aim is to promote international cooperation in safeguarding human life and facilitating the return of astronauts and space objects on Earth.

The Rescue Agreement includes many key principles with the objective of fostering international cooperation and mutual assistance. First, under Article 2, states are required to take all possible and necessary steps in order to assist astronauts in distress and, if possible and necessary, rescue them from dangerous situations. This shared human interest is highlighted in the way astronauts are seen as "envoys of mankind", which emphasizes their status as international representatives in space exploration. Second, Article 4 establishes the duty of states, when possible, for the return of astronauts to the launching state. Following the same criteria, if an object lands on a foreign territory or international waters, the state is obliged to notify the launching state and return the object, as stated under Article 5. Lastly, the agreement emphasizes transparency and international cooperation by requiring states to immediately notify the launching state and the UN if they become aware of astronauts in distress or space objects that have returned to Earth.

The rescue agreement enhances the OST by enacting practical obligation, which binds states to enforce emergency responses in space, promoting a cooperative approach to the different challenges of human space exploration.

However, like the OST, the Rescue Agreement also faces challenges in the modern era, in particular, these problems arise when facing private companies. The framework, originally conceived during an era of state-led space exploration, is now tested, as private companies and new technologies have reshaped the landscape of space activities. The main criticalities of the Rescue Agreement can be found in many aspects of today's world, but it's important to mention one in particular:

Space tourism is a new area of business that poses significant challenges. Under the Rescue Agreement, astronauts are considered "envoys of mankind", which creates a special protection, and imposes a burden on other states to act in dangerous situations. However, space tourists, while traveling into space, do not have the same legal status as astronauts, since in its original context, an "astronaut" referred to individuals with extensive state-sponsored training and engaged in government-led missions. This creates several ambiguities in legal status,

¹⁹ Roger Quinland, *Galactic Governance: From the Outer Space Treaty to modern regulation*, <https://www.thespacereview.com/article/4843/1>

which creates two main complications²⁰. Firstly, regarding rescue and return obligation, under the OST and the Rescue Agreement, states are obliged to rescue astronauts in distress. However, with space tourism, it remains unclear whether these obligations extend to tourists. The traditional framework assumes state involvement, but in private spaceflight, the duty to rescue may fall on the launching company or the tourist's country of origin. Secondly, regarding financial responsibility for rescue operations, another significant challenge lies in cost allocation. Both the OST and the ARRA are silent on the cost associated with rescuing astronauts, which creates complications when facing private actors and space tourists. ARRA Article 5.5 obliges the launching state to cover the cost of recovering space objects, but no clear provision exists for the financial burden of rescuing space tourists. This raises critical questions about who pays for these potentially costly rescue operations in an era of commercial spaceflight.

In sum, while the Rescue Agreement provides fundamental frameworks for space exploration and astronauts' safety, it was not designed to accommodate private space travel and the idea of non-professional astronauts. As space tourism grows these problems become more relevant every day, and a revisited framework should be applied to ensure that it can reflect the realities of modern space travel and provide adequate protection for all participants while clarifying responsibilities in rescue operations and crisis management.

2.5 Liability Convention

The Liability Convention, formerly known as the Convention On International Liability For Damage Caused By Space Objects, was adopted in 1972, in order to address the various issues regarding liability and compensation for damages caused by activities conducted in space.

This convention defines the mechanism for compensation and responsibility in case of damages caused by space objects, both in space and on Earth; to do so, the

convention includes principles that show two different types of liability: Absolute liability, which is used for damages caused on Earth, and Fault-based liability which, instead, is used for damages in space.

Originally the convention was designed to address the state's responsibility for damages caused by space objects, however, with the rapid evolution of space technology, which also includes cyber threats and private space actors, many gaps have been exposed and it is fundamental to address them.

As shown in the paper "Closing the Liability Loophole: The Liability Convention and the Future of Conflict in Space", by Trevor Kehner²¹, the key challenges are many. Firstly, in regards to cybersecurity and space objects: Because of the evolution of technology, a major loophole in the Liability convention is the potential for space objects to be taken over or manipulated through cyberwarfare. In fact, if a satellite is hacked by a third party and causes damage to another country's space assets, the launching state of the hacked satellite could still be held liable under the current legal framework. As stated in the paper "*harm is an irrelevant consideration for the Liability Convention. The only relevant inquiry is the ownership of the satellite that caused harm on Earth*"; this situation causes a misattribution of responsibility, where the launching state is liable for damage it did not directly cause. Secondly, another problem lies in the outdated definition of control: As we have seen previously with other treaties, the convention was also framed during a period in which space activities were solely controlled by states. Today, however, with the growing involvement of private companies, the model based solely on state ownership no longer works. This problem is further enhanced and may become extremely problematic in situations in which commercial spacecraft are co-owned by multiple entities, which could lead to an unclear attribution of responsibility in case of damage. Last but not least, we must consider the lack of proximate cause consideration: The convention does not demand an inquiry into the underlying causes of an incident which, as we have seen before, even if a state is not at fault it could still be held liable, without considering proximate causation. Situations like these contradict established norms in other areas of international law, such

²⁰ F. Lyall, Who is an astronaut? The inadequacy of current international law, <https://www.sciencedirect.com/science/article/abs/pii/S0094576509005670>

²¹<https://cjil.uchicago.edu/print-archive/closing-liability-loop-hole-liability-convention-and-future-conflict-space>

as, for example, maritime law, where liability is often based on the direct cause of the incident.

The paper however offers some strong recommendation for a reform that could fix the majority of these problems: Firstly it states how we need a clarification of liability in case of third-party interference: the liability convention needs to be updated to account for modern threats, such as the previously mentioned cyber-attacks; furthermore, the reform should also take into consideration the proximate cause when considering liability, in order to ensure that the actual actor and not a state is responsible for the damage is held accountable. Secondly, it advocates for an adaption for commercial and private entities: as space becomes increasingly commercialized, the liability regime should be expanded to include clear guidelines for private space operators and multi-state missions, ensuring shared responsibility and a clearer allocation of liabilities. Thirdly, we would need a strengthening of cybersecurity control: the convention should also focus on integrating modern cybersecurity standards and protocols in order to safeguard space assets from malicious parties.

However, it would be possible to further improve the approach thanks to a double liability principle, which would differentiate between actors. A first, primary liability, should be allocated to the actor directly responsible for causing the damage, while a second liability should be imposed on the launching state when the primary actor cannot be held accountable or cannot compensate for the damages. This method takes into consideration the role of private parties in new missions, and it further improves and safeguards the interests of the parties involved in the accident.

Thanks to this overview we can see that, although the Liability Convention was ground-breaking in its time, and introduced many of the principles that are still used to this day in order to face liability problems, the modern realities of space activities demand significant reforms and changes. With the rise of new types of threats and private space actors, an updated approach to liability in space law is needed, especially to ensure equitable responsibility and international cooperation, which, with today's guidelines, still causes uncertainty.

2.6 Registration Convention

The Registration Convention, formally known as the Convention on Registration of Objects Launched into Outer Space, was adopted in 1976 as a critical instrument in space law. The convention introduced a fundamental principle, requiring states to register space objects launched from their territory with the United Nations; this introduction and requirement ensured transparency and traceability of space objects, a crucial mechanism for maintaining order in increasingly crowded orbits.

However, with the rise of space traffic management (STM), the sufficiency of the convention faces many challenges. As noted by recent discussions on the subject²², the registration process faces several shortcomings, in particular with data quality and scope. Modern space operations, especially involving large constellations of satellites (ex. SpaceX), generate vast amounts of traffic, and the data provided to the UN registry is often insufficient to support a robust STM regime, as it typically lacks detail on the ongoing status and operational parameters of space objects.

As outlined in the Secure World Foundation paper²³, modern space operations expose several problems of the convention, in particular, we have Data Incompleteness for Space Traffic Management, so in order to solve this problem the Registration Convention requires states to provide basic orbital data when registering space objects. However, in today's space environment, real-time tracking and more detailed operational data are needed for effective space traffic management; furthermore, the orbital parameters currently registered are not updated frequently enough to reflect the object's real-time status, which creates gaps in the ability to monitor and manage these assets effectively. Another important aspect is based on the

²² Secure World Foundation, Dr. Peter Martinez, Tanja Masson-Zwaan, Francesca Letizia, Catrina Melograna, Martin Reynders, Robert Rovetto, Mark A. Skinner, Marius Stanciu-Manolescu, Maruska Strah, Olga Volynskaya, Guoyu Wang, *The need to improve registration practices in the context of space traffic management*, August 2024

²³ Secure World Foundation, Dr. Peter Martinez, Tanja Masson-Zwaan, Francesca Letizia, Catrina Melograna, Martin Reynders, Robert Rovetto, Mark A. Skinner, Marius Stanciu-Manolescu, Maruska Strah, Olga Volynskaya, Guoyu Wang, *The need to improve registration practices in the context of space traffic management*, August 2024

challenges with private and commercial actors: As s previously mentioned , the convention was designed when most space activities were conducted by nation-states. Compared to today’s world, space activities are dominated by private companies, which are bound to face problems regarding outdated guidelines with the current guidelines private companies’ objects need to be registered by the state in which the object was launched, however, enforcement of registration rules when dealing with private actors is inconsistent. This inconsistency creates a regulatory gap which, with the growing number of private companies that revolve around satellites, is only going to increase in the following years.

In order to resolve these problems, a much-needed reform is required and, according to the Secure World Foundation, three recommendations are suggested. Firstly, Improving data quality: States should be required to provide additional information on space objects; the gathered data should at least show their operational status and deorbit plans. This solution would not only enhance global space traffic management but would also align with the long-term sustainability guidelines recommended by UNCOPUOS²⁴. Secondly, Uniformity and standardization: A key recommendation is the implementation of the UNCOPUOS working group’s 2023 guidelines, which calls for greater uniformity in registration practices, especially for large satellite constellations. It’s clear that requiring more information without proper standardization would only lead to more confusion and dangerous situations. Thirdly, private sector accountability: The last suggestion is to incentivize compliance with registration requirements by making market access contingent on proper registration.

From what we have analyzed we can see that, although the Register Convention remains a foundational element of space governance, it must evolve in order to address the realities of modern space operations, especially when

²⁴ UNCOPUOS, “GUIDELINES FOR THE LONG-TERM SUSTAINABILITY OF OUTER SPACE ACTIVITIES OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE” ,Guideline B.1, “Provide updated contact information and share information on space objects and orbital events” https://www.unoosa.org/documents/pdf/PromotingSpaceSustainability/Publication_Final_English_June2021.pdf

considering private companies. Improved registration practices and increased transparency are critical to ensure that space remains a sustainable and safe environment for future generations.

2.7 Moon Agreement

The Moon Agreement, formally the Agreement Governing the Activities of States on the Moon and other Celestial Bodies, was adopted by the United Nations General Assembly in 1979 in resolution 34/68, as the last of the five major treaties that comprise the foundation of international space law; however it was only in June 1984, with the ratification of Austria, that the treaty was able to enter into full force. Its central aim was to prevent the Moon from becoming an area of national rivalry or exploitation between states and to ensure that any benefit derived from lunar activities would be shared.

Before the Moon Agreement, many gaps were filled with the introduction of the Outer Space Treaty, however many aspects were still without a legal framework, in particular regarding specific provisions for resource exploitation. In response to this need, the Moon Agreement introduced three main principles: the non-appropriation of celestial bodies, the equitable sharing of lunar resource,s and the responsibility of statesto ensure that the Moon was used for peaceful purposes only.

One of the most important aspects of the treaty is article 11, which introduced the concept of an international regime to govern the exploitation of lunar resources. This provision was introduced in order to prevent the commercial monopolization of the Moon’s resources by technologically advanced states or private companies.

Despite the efforts, however, the principle stated in Article 11 creates legal uncertainties about how space resources should be utilized and regulated. It is only with today’s technology that we can see the many gaps and challenges that the treaty faces. In order to explain the different problems, we can use Dr. Frans G. von der Dunk’s paper²⁵, in which he shows the different aspects of today’s

²⁵ Back in Business? The Moon Agreement, Private Actors and Possible Commercial Exploitation of the Moon and Its Natural Resources, Dr. Frans G. von der Dunk, https://www.mcgill.ca/iasl/files/iasl/Moon-Proceedings-Part_5_2006.pdf

problems. The first problem regards the limited adoption and non-ratification by major space powers: the treaty has been ratified only by 17 countries²⁶, leaving out key nations like the United States, Russia, and China, which have not signed or ratified it. In 2023 Saudi Arabia announced its withdrawal from the treaty, after signing the Artemis Accord, with effect recurring from 5 January 2024, which shows the treaty's waning influence. In fact, various nations are showing interest in treaties that offer more flexible and non-binding rules, such as the Artemis Accords.

Another important problem can be seen when looking at commercialization and resource exploitation: One of the main burdens that the treaty imposes on nations is the principle of the common heritage of mankind, which has been a major roadblock for nations and companies interested in lunar mining. The principle mentioned before requires lunar resources to be shared equitably, however, it does so without providing clear guidelines on how such a regime would operate. As private companies like SpaceX and Blue Origin prepare for lunar missions that may involve resource extraction, the Moon Agreement's restrictions become more exposed, especially when it conflicts with national legislation, such as the U.S. Space Resource Exploitation and Utilization Act and the Artemis Accords, which allow for private entities to extract and freely use space resources without being subject to an internal regime.

Of course, a major problem is the lack of an enforcement mechanism or governing body: A critical problem is the lack of a dedicated enforcement mechanism that can resolve disputes among parties; in fact, the treaty calls for the creation of an international regime, however, no such body exists, which makes it difficult to implement its principles. We can observe how different treaties, such as the Law of the Sea Convention, created the International Seabed Authority, which regulates extraction from the ocean floor, which could offer a potential model for lunar governance. Lastly, we can see a state-centric framework: the treaty is fundamentally state-centric, focusing on national responsibility; however, in today's world, private

companies are the main actors when it comes to space mining. The lack of guidelines for these entities shows a clear and critical problem that caused many states to prefer the Artemis Accords, which embraces private sector involvement and offers a more pragmatic approach to space exploration, allowing private entities to operate under a national legal framework.

We can now observe how, in order to make it more relevant in today's world, the treaty must undergo significant changes, such as private sector regulation and revising the common heritage principle. However doing so would drastically change the treaty itself and will impact its very purpose, so it's unclear whether a revision is needed or a completely new treaty might be necessary; although a compromise between interests would definitely be beneficial, an incomplete clear stance could lead to more damages than it could actually resolve.

2.7 Artemis Accord²⁷

The Artemis Accord (from now on AA) represents a new approach to international space cooperation, which provides a framework for civil exploration of celestial bodies under the U.S.'s Artemis Program. The treaty was signed on October 13, 2020, initially by the US and seven other countries²⁸, followed by others; right now, on November 2024, we have a total of 47 partners²⁹. The main purpose of the framework is that, although non-binding, it provides a significant push in shaping international norms around space resource exploitation and exploration.

Now that we've explored all the different treaties, we can fully understand the AA's purpose; in fact, it emerged as a response to the increasingly complex nature of lunar and space exploration, which, as we have seen many times before, includes many private actors and international partners. We can clearly see this evolution in NASA's explanation of the Accord, which "reinforces the commitment by signatory nations to the Outer Space Treaty, the Registration Convention, the Rescue and Return Agreement, as well as best practices and norms of responsible behavior for civil space exploration and use".

²⁶ Armenia, Australia, Austria, Belgium, Chile, Kazakhstan, Kuwait, Lebanon, Mexico, Morocco, Netherlands, Pakistan, Peru, Philippines, Türkiye, Uruguay, Venezuela; https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mt_dsg_no=XXIV-2&chapter=24&clang=_en

²⁷ <https://www.nasa.gov/artemis-accords/>

²⁸ The Artemis Accords were launched with : Australia, Canada, Italy, Japan, Luxembourg, the United Arab Emirates, the United Kingdoms and the United States

²⁹ We refer to countries as partners in the Accords

Now we can clearly see how the purpose of the AA is to extend the principles of the Outer Space Treaty while adapting them to new challenges, such as space resource extraction. A pivotal aspect of the Accords is that they function as bilateral agreements, between NASA and each partner, which has facilitated rapid adoption. The purpose of the AA, as stated in section 1, “is to establish a common vision via a practical set of principles, guidelines, and best practices to enhance the governance of the civil exploration and use of outer space with the intention of advancing the Artemis Program”, so we can clearly see the objective, especially if we observe the 10 core principles of Accords. First, we have an underlining of peaceful purposes: Reiterating the OST, the Accords mandate that all activities shall be conducted for peaceful purposes; Another important theme is transparency: The different partners shall show transparency in their activities, including the exchange of crucial information such as scientific data; Of course, the most important one is about space resources: The extraction and utilization of space resources has to be conducted under the auspices of the Outer Space Treaty, with particular emphasis on Articles II, VI and XI³⁰. The Accords endorse the use of in-situ resources to support sustained lunar operation; Registration of space objects is also mentioned: The accords reiterate the importance of registration, which was previously stated in the Registration Convention. A point that shows the scope of the accords is the usage of the term interoperability: Nations agree to utilize open international standards and strive for interoperability to ensure safe and robust space exploration. Another important aspect is emergency assistance: Signatories commit to rendering assistance to astronauts in distress, reaffirming commitments to the Rescue and Return Agreement.

Other noble goals are, for example: protecting Heritage: The Accords commit to the protection of sites and artifacts with historic values in space; Release of scientific data: Signatories agree to the timely sharing of scientific data, in order to benefit the global community; deconfliction of

³⁰ DLA Piper, Artemis Accords: New law for the moon and outer space?, <https://www.dlapiper.com/-/media/files/insights/publications/2020/07/new-law-for-the-moon.pdf?rev=-1&hash=3D5718424377CD51D23BF0742F592955>

activities: Signatories agree to provide public information regarding the location and nature of operation to prevent harmful interference, implementing Article IX of the Outer Space Treaty. Last but not least, orbital debris and spacecraft disposal: The Accords emphasize planning for the mitigation of orbital debris, including the safe and efficient disposal of spacecraft at the end of their missions. The main issues that arise from the Artemis Accords are³¹, however, still problematic. The main criticism is that the Accords were developed mainly by the US and a select group of allied nations, leading to a bypass of international forums, such as the United Nations, which could cause fragmentation in international space law³². Secondly, the so-called “safety zones” are still vague, and, without a clear definition, they could be interpreted in a way that would put them at the same level as semi-permanent territorial claims³³. Thirdly, we must also consider the commercial interest and the way it is acknowledged and protected in the treaty; in fact, this protection could lead to a prioritization of commercial interests over collective benefits³⁴, which could cause a significant gap in a field that is already hard to get into.

So we can see that while the Artemis Accords are a pivotal point in the field of space law and a step in the right direction, additional work might be needed in order to create a “perfect” legal framework.

III. Jurisdiction Comparison

3.1 European Union

The European Union is a key institution, which plays a fundamental and vital role in determining European space policy. A significant milestone happened in 2003, in which a Framework Agreement between the European Community and ESA was drafted, which entered into force in 2004 as the first step toward a formal EU stance as

³¹https://www.mcgill.ca/iasl/files/iasl/ram_jakhu-presentati on_at_iasl-iaass_webinar-10jul20-final.pdf

³²<https://www.lawfaremedia.org/article/artemis-accords-ste p-toward-international-cooperation-or-further-competition?>

³³ The Artemis Accords, <https://www.cambridge.org/core/journals/international-legal-materials/article/artemis-accords/5874DB518591888E52CF2B816E4593F0?>

³⁴ <https://hir.harvard.edu/the-artemis-accords/?>

to space and the creation of a “Space Council”³⁵. Simultaneously, in 2003, the EU also issued a White Paper on European Space Policy. Two other important steps were a Council resolution on space policy of 2007 aimed at enhancing the coordination of space activities between ESA, the EU, and their member states,³⁶ and the amendment of the EU basic document by the Lisbon Treaty of 2009 to include space competence as an EU function.

Key EU policies and programs underline the increasingly leading role of the EU in space innovation. The 2003 Framework Agreement with ESA³⁷ formalized the collaboration between the EU and ESA, establishing a “Space Council”, while also aligning space activities with EU principles of peace and technological advancement. The Lisbon Treaty³⁸ in 2009 gave the EU competence on space policy, allowing it to enact legislation on space and thus launching an intense legislative drive. The EU Space Program³⁹ 2021-2027 symbolizes the ambition of the EU to become a leading actor in space innovation, with major developments like GALILEO, a global satellite navigation system (GNSS), featuring positioning with unequaled precision, already mounted on over 2.5 billion smartphones; COPERNICUS, or the European Earth Observation (EO) system, gives data on crucial issues like environment and climate problems; EGNOS (European Geostationary Navigation Overlay Service), a system which improves GNSS signals, hence making it possible for 30 countries and over 426 airports to enable navigation. Another fundamental objective lies in the IRIS² Initiative⁴⁰ initiative, which will deploy a constellation of satellites to provide ultra-fast, secure communication by

³⁵ (Lyll & Larsen, 2024)

³⁶ N. Peter, ‘The EU’s Emergent Space Diplomacy’ (2007)

³⁷ Framework Agreement between the European Community and the European Space Agency, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22004A0806%2803%29>

³⁸ Treaty of Lisbon, <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>

³⁹ Eu Space Programme, https://defence-industry-space.ec.europa.eu/eu-space/eu-space-programme_en

⁴⁰ IRIS, the new EU Secure Satellite Constellation https://defence-industry-space.ec.europa.eu/eu-space/iris2-secure-connectivity_en

2027. In parallel, the EU works on an urgent problem: space governance issues.

Furthermore, as orbits around Earth have become increasingly congested, Space Traffic Management (STM) has now become one of the top priorities in the agenda to enable safe and sustainable space activities. The 2023 EU Space Strategy for Security and Defense, on the other hand, spells out measures to guarantee security regarding the space infrastructure of the EU, showing a further reflection of the commitment by the union to address both opportunities and risks associated with the growing importance of space in modern society.

From this overview, it’s possible to see how the EU adopts a collaborative approach, rooted in sustainability and multilateralism, integrating space activities into its broader policy objectives.

3.2 The United States’s Approach

When it comes to main actors, the United States is the main one when it comes to global space policy, given how much it influences space law worldwide. In the U.S., space policy is primarily set by the President, which means that depending on the administration and the candidate, the development of space law and technology could suffer from substantial changes. One pivotal example is the space race during President Kennedy’s mandate; in that case, since the objective was so ambitious (reaching the moon for the first time), his policies caused a major impetus for technological advancement.

In the United States, federal responsibilities related to space activities are distributed across several departments. The Department of Defense and military authorities are heavily involved in space matters. Licensing space activities is mainly the responsibility of the Federal Aviation Administration (FAA), part of the Department of Transportation. Among the various agencies involved with space-related efforts, the most well-known is the National Aeronautics and Space Administration (NASA), which remains at the forefront of U.S. space exploration and scientific research.

A fundamental legislative act in the U.S. is the Commercial Space Launch Competitiveness Act (CSLCA) of 2015⁴¹,

⁴¹<https://www.congress.gov/bill/114th-congress/house-bill/2262/text>

which was introduced to support the growth of U.S. commercial space actors. The main objective of the act is to make it easier for private entities to explore and exploit space resources by clarifying the regulatory framework and promoting a competitive sector.

Although it was able to set a proper framework, it completely abandoned the previous guidelines set by the Outer Space Treaty, and in order to understand this, we need to properly explain the key provisions of the act: firstly we have private ownership of extracted resources, since the act grants US companies the rights to extract and sell the resources mined on celestial bodies; another important aspect is the extension of the liability protection: Under the Title IV of the CSLCA, the act limits liability for private companies under specific conditions, increasing and incentivizing private sector participation; Another important aspect would be the requirement of minimal government regulation: while this choice did in fact raise growth, it also raised concerns about insufficient oversight; last but not least, a pivotal aspect would regard the encouraging competitiveness: Thanks to the clarification of property rights over extracted resources, the act has positioned the U.S. as a leader in the commercial space race.

Regarding the problems that we have seen before, what we need to examine is Title IV of the Act, which regulates "Space Resource Exploration and Utilization". This section recognized commercial property rights in resources extracted from celestial bodies, which, on one hand, was met with enthusiasm from private actors, while on the other was met with harsh criticism from scholars that considered it a violation of international space law, especially when taking into consideration the Outer Space Treaty.

The U.S. has also implemented many policies and initiatives in order to further increase its competitiveness in the space field. One directive was the "Executive order on Encouraging International Support for Space Resource Use (2020)", which reaffirmed the U.S. commitment to the commercial use of space resources, while also encouraging international cooperation; Another important U.S. space policy was Executive Order 13821 (2018), aimed at improving space traffic management (STM), emphasizing the need for better coordination and oversight, especially in order to address the growing risks of orbital debris.

So, in conclusion, we can observe how, while U.S. space policy greatly promotes innovation and commercial growth, it does so in a way that could lead to conflicts with international law, while also minimizing government oversight too much. Balancing international obligations and cooperation with national ambitions is fundamental in order to shape the future of space governance.

IV. Precedents, Case Law, and other approaches

4.1 Cosmos 954 Incident (1978)

In the history of space law, few occurrences have been recorded of precedents, mainly because this field is both particular and new. One of the most important precedents in history is the Cosmos 954 incident of 1978, which marks one of the first practical applications of the 1972 Convention on International Liability for Damage Caused by Space Objects.

On January 24, 1978, a Soviet satellite, Cosmos 954, which was powered by a nuclear reactor, re-entered Earth's atmosphere, losing control, and leading to the dispersion of radioactive debris over Canada's territory. The main factor that led to the environmental contamination concerns was a malfunction that prevented the safe disposal of its nuclear materials.

From what we have previously seen⁴², the Liability Convention clearly states that the launching state must bear the absolute liability for damage caused by its space objects; based on this, Canada invoked this Convention, which led to a claim issued to the Soviet Union for a compensation amounting to approximately 6 million CAD, which was reduced to 3 million CAD after diplomatic negotiations⁴³. This compensation, which was used to cover the costs of various cleanup operations and related expenses, is the first and only instance of application of the Liability Convention to resolve a claim for damages caused by a space object.

4.2 Luxembourg Space Resource Law

⁴² Liability Convention, page 9

⁴³

https://www.jaxa.jp/library/space_law/chapter_3/3-2-2-1_e.html?

With an increasing interest in space resources in the last years, in 2017 Luxembourg decided to enact a new type of legislation to regulate the exploration and development of space resources. This law represents a freer market and is a significant step in the direction that we have yearned for previously since it offers clarity on the ownership and utilization of extraterrestrial resources⁴⁴.

In fact, the key provisions of the law are: ownership rights: A fundamental passage can be found in the very first article, which explicitly states that space resources are capable of being owned⁴⁵. This article, in its short enunciation provides a legal certainty to private operators, which are now sure that their rights over-extracted resources are now protected; Authorization requirements: An authorization coming from the competent minister is required for entities that intend to explore or use space resources⁴⁶. This requirement ensures that activities are conducted according to international obligations; supervision and compliance: The requirement for authorization is only the first step since authorized operators are subject to continuous supervision to ensure adherence to the conditions of their authorization. It's important to understand that this law doesn't contract with the Outer Space Treaty, since the latter prohibits national appropriation of celestial bodies, so we can see the ownership of extracted resources is not explicitly addressed. Since Luxembourg's law focuses on resource utilization rather than territorial claims (which, as stated before, are prohibited), it's capable of operating within the existing international legal framework.

Luxembourg, by enacting such a clear law and guidelines, has set an important precedent for many European countries, which may follow in the near future, by enacting their own framework or by applying to freer international frameworks, for example, the Artemis Accords.

V. The Future: Possible Frameworks

5.1 Homestead Act, a Possible Model for Space Resource Utilization

⁴⁴ Law of July 20th 2017 on the exploration and use of space resources, https://spaceagency.public.lu/en/agency/legalframework/law_space_resources_english_translation.html

⁴⁵ Article 1, see *supra*

⁴⁶ Article 2, see *supra*

In order to properly understand how to conceive a framework for space resource utilization, we need to look back in history and reflect on the way governments used to regulate land ownership and on which condition.

The Homestead Act of 1862 played a pivotal role in the expansion of the United States, thanks to the grant of land ownership to settlers under specific conditions. As humanity ventures into space exploration and settlements planning, this Act offers an ideal precedent for developing new legal frameworks applicable to space.

This Act was a pivotal U.S. legislation, which consisted of giving 160 acres of public land to individuals willing to cultivate and reside on it for five years, which would promote settlement and development of the American West⁴⁷. Through this Act, the U.S. distributed approximately 270 million acres of land, forever impacting the country's demographic and economic landscape. If we want to adapt the Homestead Act's ideas to space colonization and resource utilization, we need to take into consideration several aspects: First of all, it is fundamental to incentivize development, in order to avoid a monopoly that would give the majority of the resources to few corporations that are only interested about the economic aspect, a space-based homestead model should grant rights to individuals and entities that actively develop and utilize extraterrestrial resources, which would promote innovations and investments in space activities; Secondly, another important aspect would be equitable access since, for the same reasons stated above, all nations and entities should be able to engage in space exploration; Thirdly, non exclusivity: While people, under the homestead act, received land rights, in our case this would translate into resource rights; Last but not least, development: Just like people under the Homestead Act were required to develop the land within a specific timeframe, in space claimants should be required to implement sustainable extraction practices or establish the infrastructure necessary for the extraction process.

Although this is only a hypothetical comparison and adaptation, the "Space" Homestead Accord is capable of representing a transformative approach to space resource

⁴⁷ Homestead Act of 1862, <https://www.britannica.com/topic/Homestead-Act?>

governance, providing a robust combination between historical precedent and modern legal principles. So, from what we have seen, we need to implement three fundamental policies in order to create a feasible framework. First, we need to implement a “Space Homestead Accord”, capable of defining the process for claiming and using resources, plus the duty to create infrastructures. Secondly, we need a central international institution, capable of administering claims and enforcing compliance, with severe punishment, such as total exclusion from extraction rights, to use as a deterrent. Thirdly, a mechanism capable of sharing benefits with new companies would incentivize a new era of space economy; this fund should be able to lend money to interesting companies capable of showing tangible plans for extraction missions. Of course, this wouldn’t fund the whole mission, however, it could be necessary in order to break the barriers that are still present in this field. In conclusion, the Homestead Act offers a valuable template for shaping a framework that could be used in the future; by adapting its principles to today’s requirements we can reach many of our objectives, such as fostering innovation, preventing monopolization, and ensuring that access to space remains inclusive.

VI. Conclusion

Humanity’s journey into the universe is filled with boundless potential and difficult challenges. This paper has tried to give a glimpse into the evolution that we need to accept in order to bring the framework of the pasts, which was shaped in an era of rudimentary technology, to a new level, capable of embracing the complexities of today’s space age, driven by private innovation and international collaboration.

Right now, we are standing on the edge of a new epoch, where the Moon is no longer a distant dream that we used to look at in the night sky; and Mars, the beautiful red planet so close yet so distant from us, could become our home one day. Yet, without a proper legal framework, all of these incredible and exciting opportunities, risk being overshadowed by different conflicts, which would only hinder our infinite journey to the unknown.

The future of space law demands a bold yet balanced approach, capable of recognizing sovereignty while also ensuring the universal benefits that come with space exploration. It must ensure sustainable technologies, capable of protecting the cosmic environment, and satisfy our ambitions.

Arthur C. Clarke stated in *2001: A Space Odyssey*, “*The only way of discovering the limits of the possible is to venture a little way past them into the impossible.*” This is exactly why space exploration, and the legal framework on which is based, must embrace the unknown and overcome traditional boundaries, which is the only way of knowing our species’ true potential.

This is not just a legal challenge; it is a moral imperative. Space has always represented the ultimate goal, capable of satisfying not only our thirst for knowledge but also our quest for exploration, always so embedded in our DNA. This is exactly why it is our responsibility to ensure that future generations will be able to have the right tools to *shoot for the stars* and to do so, we need to craft a legal framework capable of reflecting our highest aspirations as a species.

The cosmos awaits, it is our duty to fulfill its expectations.

Bibliography

1. Back in Business? The Moon Agreement, Private Actors and Possible Commercial Exploitation of the Moon and Its Natural Resources, Dr. Frans G. von der Dunk, McGill https://www.mcgill.ca/iasl/files/iasl/Moon-Proceedings-Part_5_2006.pdf
2. Convention for the Establishing of a European Organisation for the Development and Construction of Space Vehicle Launchers, 29 March 1962, in force 29 February 1964, 507 UNTS 177 https://www.jaxa.jp/library/space_law/chapter_1/1-2-2-3_e.html
3. Convention for the Establishment of a European Space Agency, 1297 UNTS 161, 187, <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800df46b>

4. Convention for the Establishment of a European Space Research Organisation, 14 June 1962, in force 20 March 1964, 528 UNTS 33,
http://ops-alaska.com/IOSL/V3P1/1962_ESRO_Convention_EN.pdf
5. Convention on the Regulation of Aerial Navigation, Paris, 1919, ICAO,
https://applications.icao.int/postalhistory/1919_the_paris_convention.htm
6. Council of Europe Recommendation 251, 24 September 1960,
<https://pace.coe.int/en/files/14288/html>
7. DLA Piper, Artemis Accords: New Law for the Moon and Outer Space?, DLA Piper,
<https://www.dlapiper.com/-/media/files/insights/publications/2020/07/new-law-for-the-moon.pdf?rev=-1&hash=3D5718424377CD51D23BF0742F592955>
8. EU Space Programme, European Commission, 2021,
https://defence-industry-space.ec.europa.eu/eu-space/eu-space-programme_en
9. F. Lyall, Who is an astronaut? The inadequacy of current international law, ScienceDirect, 2009
<https://www.sciencedirect.com/science/article/abs/pii/S0094576509005670>
10. Francis Lyall, Paul B. Larsen, Space Law: A Treatise, 3rd edition, 2024,
<https://www.routledge.com/Space-Law-A-Treatise/Lyall-Larsen/p/book/9781032803395>
11. Framework Agreement between the European Community and the European Space Agency, EUR-Lex,
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22004A0806%2803%29>
12. Homestead Act of 1862, Britannica,
<https://www.britannica.com/topic/Homestead-Act>
13. IRIS, the new EU Secure Satellite Constellation, European Commission,
https://defence-industry-space.ec.europa.eu/eu-space/iris2-secure-connectivity_en
14. International Space Station legal framework, ESA, 1998,
https://www.esa.int/Science_Exploration/Human_and_Robotic_Exploration/International_Space_Station/International_Space_Station_legal_framework
15. Kate Howells, The Planetary Society, What is the Outer Space Treaty? Planetary Society, 2024
<https://www.planetary.org/articles/what-is-the-outer-space-treaty>
16. Law of July 20th, 2017 on the exploration and use of space resources, Luxembourg Space Agency,
https://spaceagency.public.lu/en/agency/legalframework/law_space_resources_english_translation.html?
17. Liability Convention, page 9, 1972,
<https://www.unoosa.org/oosa/en/ourwork/space-law/treaties/introliability-convention.html>
18. Outer Space Treaty 1966,
<https://www.unoosa.org/oosa/en/ourwork/space-law/treaties/introouterspacetreaty.html>
19. P.G. Dembling and D.M. Arons, ‘Space Law and the United Nations: The Work of the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space’ (1966),
<https://scholar.smu.edu/jalc/vol32/iss3/2/>

20. Roger Quinland, Galactic Governance: From the Outer Space Treaty to Modern Regulation, *The Space Review*, <https://www.thespacereview.com/article/4843/1>
21. Secure World Foundation, Dr. Peter Martinez, Tanja Masson-Zwaan, Francesca Letizia, Catrina Melograna, Martin Reynders, Robert Rovetto, Mark A. Skinner, Marius Stanciu-Manolescu, Maruska Strah, Olga Volynskaya, Guoyu Wang, *The Need to Improve Registration Practices in the Context of Space Traffic Management*, August 2024, <https://swfound.org/swf-preprints/swf-preprint-the-need-to-improve-registration-practices-in-the-context-of-space-traffic-management/>
22. *Space Millennium: Vienna Declaration on Space and Human Development: Third United Nations Conference on the Exploration and Peaceful Uses of Outer Space*, Vienna, 30 July 1999
23. *The Antarctic Treaty*, ATS, <https://www.ats.aq/e/antarctic treaty.html>
24. *The Artemis Accords*, Cambridge Core, <https://www.cambridge.org/core/journals/international-legal-materials/article/artemis-accords/5874DB518591888E52CF2B816E4593F0>
25. *The Artemis Accords*, NASA, <https://www.nasa.gov/artemis-accords/>
26. *The Artemis Accords: Step Toward International Cooperation or Further Competition?*, Lawfare Media, <https://www.lawfaremedia.org/article/artemis-accords-step-toward-international-cooperation-or-further-competition?>
27. *The Treaty of Lisbon*, European Parliament, <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>
28. To see further information, see “International Space Station legal framework”, ESA, https://www.esa.int/Science_Exploration/Human_and_Rob
29. UNCOPUOS, “GUIDELINES FOR THE LONG-TERM SUSTAINABILITY OF OUTER SPACE ACTIVITIES OF THE COMMITTEE ON THE PEACEFUL USES OF OUTER SPACE” Guideline B.1, “Provide updated contact information and share information on space objects and orbital events,” UNOOSA, https://www.unoosa.org/documents/pdf/PromotingSpaceSustainability/Publication_Final_English_June2021.pdf
30. United Nations General Assembly Resolution 1721, UNOOSA, https://www.unoosa.org/oosa/en/ourwork/space law/treaties/resolutions/res_16_1721.html

"Competition in the Digital World: How the EU and the US Are Addressing New Challenges"

Carlotta Francescon

Department One, Institution One, City One, Country One
Department Two, Institution Two, City Two, Country Two

E-mail: carlotta.francescon@studbocconi.it

Published: 27th of January 2025

Abstract

The paper discusses EU and US regulations of competition focusing on significant legal frameworks that have shaped behaviors in the market and challenges originating from digital markets. It investigates the EU Competition Law, especially Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU), which, respectively, prohibit anti-competitive agreements and abuses of dominance. The paper explains how those provisions impact large firms and their contribution to market competitiveness, while at the same time setting them out in the context of the digital economy, where new challenges are raised with regard to traditional competition rules due to the unique characteristics of tech platforms and the exercise of market power.

The paper tries to give an answer to the problem of whether the present competition law tools were suited to today's landscape, one in which digital technologies take center stage. It discussed the application of competition principles within an increasingly globalized, often borderless context and even questions if it were any longer relevant to talk about a "digital market" when it comes to issues relating to Big Tech.

The paper addresses these challenges as a way to examine the DMA and how it is complementary to existing EU competition law in a manner targeted particularly at the needs of large digital "gatekeepers." This paper will contrast that approach with the more ambivalent US competition law-the Sherman Act and then present the evolving perspectives on the shape of antitrust enforcement, along with critiques of the Consumer Welfare Standard.

The study concludes finally by reflecting on the prospects of competition law in an era of rapid digital transformation, underlining how new regulatory frameworks have increasingly been called for in response to a more complex digital economy dominated by powerful tech giants.

Keywords: Competition Law, Antitrust, Digital Economy

Introduction:

Competition law is the area of the law that seeks to ensure that competition in the marketplace is maintained

with the prohibition of anti-competitive practices while promoting an open, efficient, and dynamic market environment. The purpose of competition law, therefore,

is to protect consumers, businesses, and the economy from distortions in the market caused by the creation of a monopoly or oligopoly, cartels, or the abuse of market power.

The articles that are issued by the European Commission to give penalties to large firms accused of breaching competition rules in the European single market are Articles 101 and 102 of the Treaty on the Functioning of the European Union.

Both the cited two regulate the functioning and enforcement of competition within the confines of the European Union. Article 101 addresses anti-competitive agreements by firms, and Article 102 deals with the abuse of dominance where a firm enjoys considerable market power. The two are aimed at ensuring that the single European market is kept competitive because no single firm can compel restrictive practices that will limit consumer choices, stifle innovation, or create artificial prices.

Some of the key questions framing this discussion are whether the existing set of tools for competition law was effective for today's landscape, where digital technologies took center stage; how to conceive of applying the principles of competition in an increasingly globalized, borderless context; and whether it is still suitable, when referring to the powers held by Big Tech, to speak of a "digital market".

How competition law is regulated in the EU: ¹

¹ Consolidated version of the Treaty on the Functioning of the European Union, Article 101 and Article 102, C

Looking closer to the content of the two articles, it is visible that Article 101 advances the cause of free competition by prohibiting anti-competitive agreements. It prevents firms from reducing competition or to engage in conduct which makes it hard for new firms to enter into the market. Any agreement, decisions, and concerted practices between undertakings that have the purpose or effect of preventing, distorting, or restricting competition within the common market are prohibited.

Amongst these are highlighted a few behaviors that are not allowed. These are: price fixing, where companies set the same prices for goods or services; this decreases competition based on price and injures consumers. Another is limiting productions and developments by directly or indirectly limiting production, investment, or technological progress, with the effect of preventing competition and innovations that would create new supplies of goods and services. It also talks about market or customer partitioning, whereby firms agree to divide the geographical areas or customer segments, with the result of not competing against each other directly and reducing consumer choices. It also mentions applying discriminatory terms, such as giving different prices to similar customers or creating barriers for new competitors, as a method that maintains competitive advantages and closes the market to new entrants. These types of agreements are referred to as "cartels."

326/1, 26.10.2012., n.d.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=cellex%3AC2012%2F326%2F01>

Article 102 TFEU enables an improved enforcement of competition rules through the reinforcement of consumer protection and enhancement of efficiency in markets. It should guarantee that consumers have a wide choice of products and services at fair prices, without being penalized by abusive practices or limited competition.

Article 102 applies in a case of when the undertaking with the dominant market position abuses such in its power in order to acquire some privileges, that is unlawful not a mere positions prohibition against a firm is considered it can be restrictive competition without appropriate reason.

Other practices viewed as an abuse of dominance under Article 102 include predatory pricing, in which the firm sells below cost with the intent of driving other competitors out of the market and ultimately making entry too hard for other firms; discriminatory conditions also exist where the offer of different sales conditions to comparable customers without objective reasons gives rise to unequal treatment, creating a disadvantageous competitive position vis-à-vis their comparators. Refusal of access to essential infrastructure: when an enterprise is in possession of a resource or infrastructure important for the exercise of an activity and refuses to allow competitors access to it without sufficient justification, thus impeding competition. It is also abusive for a company in a dominant position to impose excessive prices or unfair trade terms, where the prices or terms are out of proportion to the economic value of the good or service and are intended to secure an unjust profit. In order for a company to be found to have a dominant position, the relevant market has to be

defined, both in terms of the type of service and the geographical area.

Application of ART. 102 in Digital Economy²

In the recent past, discussions by scholars and antitrust authorities have focused on the digital economy, with particular interest in the unilateral behavior of "tech giants". On the one hand, some discuss propositions for stricter or more innovative enforcement of existing competition regulations. At the same time, on the other hand, there is increasing interest in updating the regulatory framework to embrace challenges that fall beyond the limits of existing regulations.

The characteristics of big tech come with several special factors that make a straight application of Article 102 TFEU quite impossible. Innovation-from incremental improvements to radical inventions-along with network effects, is crucial for competition in digital markets and has increased value with a rise in the user base. Additionally, digital platforms often work in markets with multiple sides, where large scale and free services for consumers give market leaders a big advantage that can affect different connected areas. The Big Data further creates innovations in their use, providing scope for personalizing services, and there are intellectual property rights, including patent and copyright, to protect and incentivize technological

² Pierre Larouche and Alexandre de Streel, *The European Digital Markets Act: A Revolution Grounded on Traditions*, *Journal of European Competition Law & Practice*, 2021, Vol. 12, No. 7, n.d.

developments. These factors make it challenging to apply conventional competition rules.

Abusive practices by large technology companies have been categorized and analyzed, with particular attention to examples of tying and bundling. Tying refers to situations when customers buying one product are required to purchase another product from the same dominant company, usually through technical or contractual means. Bundling is the way a company packages its commodities and sells them. For example, in the case of pure bundling, no commodities are available separately, whereas in mixed bundling, goods may be available singly but with higher discounts if ordered in one bundle. Through this, large tech companies expand their market territories to use their position of strength in one market as competitive leverage into others.

The *Microsoft v. Commission* case (T-201/04) is a pivotal example that underscores the challenges of applying competition law tools to large technology companies and highlights both their effectiveness and limitations. In this case, Microsoft, which dominated the operating system market, was found to have engaged in abusive practices by pre installing its Windows Media Player (WMP) with its operating systems, thus leveraging its dominance to extend its reach into the media player market. The European Commission, by a four-step legal test among which were the presence of two separate products and the possibility of removing competition, concluded that such practice was an infringement of Article 102 TFEU under tying. The importance of the case is to show how antitrust law can handle those practices which result in the restriction of

competition in the market. The decision showed that the use of regulatory tools was one surefire way to rein in the dominance of technology giants, thereby protecting consumer choices and bringing about a competitive balance. The echoes of the Microsoft case still reverberate in other investigations, such as Microsoft's agreement to allow access to third-party browsers after the Commission raised concerns over Internet Explorer, and the present scrutiny of the potential bundling of Teams together with Office.

This case ties into the broader question of whether competition law tools, as currently devised, including under Article 102 TFEU, work effectively in digital markets. It illustrates how competition law can tackle specific practices but requires, often, long investigations and complex legal analysis, which is indicative of limits with respect to speed and agility. This also puts a stamp on the growing need for more *ex ante* measures such as regulatory frameworks-the DMA-that will keep such anti-competitive practices from taking root in the first instance.

This newest probe by the European Commission into Facebook Marketplace adds to the developing ways in which tying practices are being policed in the digital economy. In December 2022, the European Commission issued a statement of objections to Meta/Facebook for allegedly overcharging the company for linking its dominant social platform to its classified ad service, Facebook Marketplace.

The case has a direct link with the wider debate about effectiveness in the area of competition law because it

highlights how the existing rules cope with sophisticated strategies pursued by large technology firms.

Similar is *Microsoft v. Commission*, in which the tying of Windows Media Player to the underlying operating system had shown a firm how to use a dominant position in one market to gain an undue advantage in another.

This, of course, is the very argument that has always been made about whether Facebook's users are "constrained" to use Marketplace, because, unlikely in the case of traditional tying, where there is no doubt that a consumer must purchase two linked products, the nature of the digital setting obscures whether users are truly constrained. This study highlights the fact that competition law must learn more from user-platform interaction and how such platforms use their powerful positions. That means that competition rules might need updating in order to tackle these more subtle ways of influencing users, limiting competition.

In short, although existing competition laws are sufficient to tackle some of these practices, cases like this one reveal real limits when sophisticated strategies are devised by digital platforms. The case of Facebook Marketplace illustrates that updated, more flexible rules are needed to effectively prevent anti-competitive behavior in the fast-evolving digital economy.

What has changed with the Digital Markets Act (DMA)?

The discussion so far illustrates the potential complexity of applying established competition law within digital markets, which often involve novel business models,

innovative (anti)competitive practices, and where market dynamics may not fit well within the conventional methods of defining markets and measuring market power. In both the EU and the US, the movement towards a "more economic approach" introduced a degree of hesitancy when intervening against novel practices or in sectors marked by innovation.

Some scholars, notably Pierre Larouche and Alexandre de Stree, propose supplementing the current *ex post* antitrust rules of Article 102 TFEU with an *ex ante* regulatory framework—a true "code of conduct" binding on large digital companies. This code would set out clear rules, detailing what companies should and should not do to guide their future behavior in the marketplace, while also providing a swift and effective enforcement mechanism for any violations.

This became a reality in the EU with the introduction of the Digital Markets Act (DMA). Formally proposed by the Commission in December 2020, the DMA was signed into law in September 2022, with its obligations set to take effect in Spring 2024.

The Digital Markets Act is intended to complement, rather than override, the principles established by Articles 101 and 102 of the TFEU, which govern competition law. As stated in the Regulation on competition in a given market, the DMA aims to protect a distinct legal interest from the one safeguarded by these existing rules. Therefore, it should be applied without prejudice to the enforcement of Articles 101 and 102.

The DMA imposes numerous specific, prescriptive obligations on large "gatekeeper" digital firms, in an effort

to keep the digital economy “contestable and fair”. Recital (5) “...[M]arket processes are often incapable of ensuring fair economic outcomes with regard to core platform services”. While Articles 101 and 102 of the Treaty on the Functioning of the European Union may apply to the conduct of so-called “gatekeepers,” their field of application remains narrow, as it concerns only specific manifestations of market power, such as dominance in defined markets and anti-competitive conduct. These provisions are applied *ex post* and presuppose heavy and often highly complicated investigations that need to be analyzed case by case. It is underlined that the current European Union legislation does not tackle, or does not satisfactorily tackle, the problems of the functioning of the internal market caused by the conduct of gatekeepers who do not necessarily fall within the definition of dominance under competition law.³

But, how to identify a “gatekeeper”? Article 3 provides criteria for designating gatekeepers, divided into qualitative and quantitative requirements. The qualitative criteria are: have a significant impact on digital marketplaces; provide one or more core platform services that act as essential intermediaries between businesses and consumers; hold a strong and stable position in the market. The quantitative criteria are: annual turnover of at least €7.5 billion in the EU; a market valuation of at least €75 billion; operate in at

³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), n.d. .

least three member states; have a significant number of active commercial and end users⁴.

Of the six companies currently designated as gatekeepers by the European Commission, five are based in the United States and one in China. All operate and have users in Europe, but none are based in the EU. The gatekeepers are: Microsoft (owner of LinkedIn and the Windows PC operating system), Meta (owner of Facebook, Instagram, WhatsApp and others), Alphabet (owner of Google, YouTube and Android), ByteDance (owner of TikTok), Amazon (owner of Amazon Marketplace), Apple (owner of iOS and App Store)

An expansive list of “core platform services” is provided in Article 2(2) DMA⁵. The recitals to the DMA suggest two interlinked reasons for the inclusion of an activity on the list: the fact that certain services have “*the capacity to affect a large number of end users and businesses,*” which furthermore creates a “*more frequent and pronounced*” risk of weak contestability and unfair practicing arising in those sectors.

It encompasses online intermediation services, online search engines, online social networking services, video-sharing platform services, number-independent

⁴ European Commission, The Digital Markets Act: ensuring fair and open digital markets, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

⁵ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital markets act).

interpersonal communications services, operating systems, web browsers, virtual assistants, cloud computing services, and online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the other enumerated core platform services.

Articles 5, 6 and 7 set out a fairly long list of “obligations for gatekeepers”. Article 5 sets out clear and direct obligations for gatekeepers, designed to be “self-executing,” meaning that designated gatekeepers are bound by these rules without further action. Article 6 outlines additional obligations that can be “further specified” following a “possible dialogue” between the Commission and the gatekeeper regarding compliance, though the Commission is not required to engage in such discussions. If the Commission decides to formally specify compliance measures, these become binding for the gatekeeper in question. Article 7 focuses on interoperability requirements for gatekeepers providing “number-independent interpersonal communications services,” such as WhatsApp, Telegram, or Facebook Messenger. Although these services were already recognized as core platform services in the initial proposal, Article 7’s obligations were incorporated later in the legislative process. This article mandates that designated gatekeepers ensure the “basic functionalities” of their services are interoperable with those of other providers by offering the necessary technical interfaces or similar solutions to facilitate compatibility, upon request and without charge. These interoperability obligations, like

those in Article 6, can also be further detailed at the Commission’s discretion.

But if the aim set by Articles 101 and 102 is clear, what is the actual issue when there is no evident negative impact on consumers? How confident can we really be that the effort will be worthwhile, given that the specific restrictions on business freedom and innovation will overall improve market function?

Enforcement is solely entrusted to the Commission, which can issue decisions on non-compliance and systemic non-compliance, imposing fines up to 10% (or 20% in severe cases) of annual turnover, along with structural and behavioral remedies. Gatekeepers under the DMA have proactive duties to assist in enforcement, yet questions remain about whether the Commission has sufficient resources to effectively monitor this.

The DMA’s adoption aimed to streamline enforcement for swift responses to technological advances, relying heavily on market investigations to identify gatekeepers and assess compliance. However, doubts persist regarding whether this accelerated process will be fast enough to handle digital market challenges. Some have suggested that the Commission should leverage interim measures more during investigations to counter delays in traditional competition enforcement.

The U.S. scenario and the new challenges assessed by Lina Khan.

Today, the U.S. market is characterized by an economic structure that reflects the principles of economic structuralism, based on the idea that a concentration of

market power fosters anticompetitive behavior. In a market dominated by a few large firms, competitiveness is limited compared to a market with numerous small or medium-sized firms. The main reasons are that monopolistic or oligopolistic markets facilitate coordination and practices such as price-fixing and tacit collusion; market leaders hinder new entrants; and such firms have greater bargaining power, allowing prices to rise and quality to fall, while still keeping profits high⁶.

The American regulation of the competition system is based on the Sherman Act. The Sherman Act is still today the source of legislation that is referred to in major rulings against the American giants that govern much of the economy to condemn them to pay very onerous fines.⁷ This is because the Sherman Act was conceived in 1890 as a "blank check" to protect large companies from the aggressive practices of large corporations: it was therefore, a resource to protect small entrepreneurs who risked being crushed. The Sherman Act is composed of two sections, which respectively state⁸:

Sherman Act, §1

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal...

⁶ Leah Samuel and Fiona Scott Morton, What Economists Mean When They Say "Consumer Welfare Standard", February 16, 2022

⁷ Brenda Sufirin, Niamh Dunne, and Alison Jone, Jones & Sufirin's EU Competition Law, Text, Cases & Materials, Eighth Edition.

⁸ Sherman Anti-Trust Act ,(1890)

Sherman Act, §2

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony...

In practice, the Sherman Act encompasses two distinct aspects for protecting competition: on one hand, antitrust violations are prosecuted as criminal offenses, leading to severe penalties, including imprisonment, significant fines, and other state-imposed punitive measures. On the other hand, these violations can also be addressed as civil wrongs in private lawsuits, allowing victims of anticompetitive behavior to sue for damages and receive compensation amounting to three times the actual harm suffered, serving as an additional deterrent for companies violating antitrust laws.

Through most of the 20th century, various schools competed to define what the right interpretation and goals of the act were. The two most prominent schools opposed each other: Harvard Law School and Chicago Law School.

Harvard Law School believes that concentrated market structures are bound to give anticompetitive effects, such as less competition and the abuse of market power. Protection of the whole concept of competition is underlined in this approach, whereas consolidation of market power is viewed as problematic, even if it does not immediately result in higher prices. Usually, Harvard scholars support more far-reaching antitrust policies to

avoid conduct that may be harmful and to keep the markets open and competitive.

On the other hand, Chicago Law School believes that there should be minimum government intervention and that markets can self-correct over time. The Chicago approach is more focused on economic efficiency and considers consumer welfare, defined by lower prices and higher output, as the primary goal of antitrust laws. Monopolistic practices, unless they affect consumers adversely, are not considered detrimental. This led to the adoption of what is called the Consumer Welfare Standard. This approach has prevailed up until very recently, when Lina Khan, the current chair at the FTC and part of the New Brandeis movement, suggested that it's not good enough for regulating the challenges presented by the digital giants. Aggressively criticizing the latter, Lina Khan, in her article "Amazon's Antitrust Paradox," claims it is necessary to revert to the old standards of regulating competition.

Lina Khan severely criticizes the approach followed since the 1970s to evaluate market competition: the Consumer Welfare Standard. This standard is focused on the impacts to consumers, principally prices and the availability of products, under the supposition that in a competitive market, consumers would be benefiting from lower prices and higher quality. The assumption is that monopolistic behavior is only destructive when it results in increased price or reduced supply, which thereby limits antitrust intervention to those cases where consumer welfare is visibly compromised.

It is from this position that it becomes critical to begin since it clarifies why Big Tech companies have, until lately, been spared. Predatory pricing strategies are ways large digital platforms have managed to employ to enhance consumer market effects. Notably, in recent times, this view has been criticized due to its failure to tackle the rise of the digital platforms. The companies, in this case Amazon, can easily adopt anti-competitive practices, like predatory pricing and vertical integration, without necessarily raising prices-which would make it hard for the authorities to identify and regulate their market power. These new dynamics have raised debates on antitrust reform in the U.S. using other metrics beyond price: long-term competition, innovation, and overall welfare.

Meanwhile, several antitrust bills are making their way through the US Congress; of these, arguably the most relevant is the American Innovation and Choice Act, which would ban self-preferencing by major tech firms. The bill, proposed by Senator Amy Klobuchar, enjoyed bipartisan support but ultimately didn't have enough to see it through the legislative process. With some suggestion it could be reintroduced later in 2024, it still doesn't enjoy overt backing from either major party.

Conclusion:

In conclusion, as technology continues to reshape the global economic landscape, competition law faces the need for profound transformation. Traditional laws, while solid in their foundations, must be integrated and revisited to meet the challenges posed by an ever-expanding digital economy. The European Union's response, embodied by

the Digital Markets Act, underscores the growing awareness of the need for a more targeted and proactive approach. However, the real challenge will be to strike a balance between innovation and regulation, ensuring that emerging technologies do not suffocate under the weight of outdated rules but also do not thrive at the expense of competition and consumer rights. The future of competition hinges on this complex and global arena: a place where regulations must be agile, and traditional principles must evolve to address the scale and speed of the digital world. Can we safeguard the essence of competition while fostering an economy that remains fair, open, and innovative? Only time will tell if today's initiatives will become the cornerstones of a new regulatory era.

Bibliography:

- Leah Samuel and Fiona Scott Morton, What Economists Mean When They Say “Consumer Welfare Standard”, February 16, 2022.
[https://one.oecd.org/document/DAF/COMP/W/D\(2023\)30/en/pdf](https://one.oecd.org/document/DAF/COMP/W/D(2023)30/en/pdf)
- Lina M. Khan, Amazon’s Antitrust Paradox , the Yale Law Journal,
https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyeh.pdf
- Pierre Larouche and Alexandre de Stree, The European Digital Markets Act: A Revolution Grounded on Traditions, Journal of European Competition Law & Practice, 2021, Vol. 12, No. 7 , n.d.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3911361
- Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 september 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act),. n.d. .
<https://eur-lex.europa.eu/eli/reg/2022/1925/oj/eng>
- Sherman Anti-Trust Act ,(1890)
<https://www.archives.gov/milestone-documents/sherman-anti-trust-act#:~:text=The%20Sherman%20Anti%2DTrust%20Act%20authorized%20the%20federal%20government%20to,foreign%20nations%22%20was%20declared%20illegal.>
- Brenda Sufrin, Niamh Dunne, and Alison Jone, Jones & Sufrin’s EU Competition Law, Text, Cases & Materials, Eighth Edition., n.d.
- Consolidated version of the Treaty on the Functioning of the European Union, Article 101 and Article 102, C 326/1, 26.10.2012., n.d.
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3AC2012%2F326%2F01>
- European Commission, The Digital Markets Act: ensuring fair and open digital markets,
https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-markets-act-ensuring-fair-and-open-digital-markets_en

How do the European Union's GDPR and China's PIPL regulate cross-border data flows?

Elena Fernández-Novel Escobar

International Policy Review, IE University, Madrid, Spain
Advocacy & Litigation, Bocconi University, Milan, Italy

E-mail: efernandezno.ieu2022@studentt.ie.edu

Published: 27th of January, 2025

Abstract

The growing prominence of digitalisation has made data privacy law a critical point for cross-border data flow regulation. This paper will present a comparative analysis of the European Union's General Data Protection Regulation (GDPR) and China's Personal Information Protection Law (PIPL), both foundational regulations aiming to protect data privacy but grounded in different political and legal philosophies. From the GDPR's perspective, individual rights and transparency are at the core of its democratic framework, while the PIPL prioritises state sovereignty and security under an authoritarian governance model. Thus this research paper will examine these key divergences within data localisation mandates, legal bases, consent requirements and enforcement practices, demonstrating the legal complexities posed by international data transfers. Case law and regulatory developments will be used to underscore how these discrepancies act as a barrier to international trade and privacy protection. The paper will propose a harmonised policy framework drawing on existing international agreements, looking for a balance between security, privacy and economic collaboration. Such framework will emphasise the necessity of international cooperation in data governance on a global scale.

Keywords: GDPR, PIPL, data privacy, cross-border data flow, policy framework

I. Introduction

The arrival and continuous development of the digital era has converted information into one of the most significant values in today's economy, exerting pressure on data protection legislation. The reliance on cross-border data flows by its users is being

challenged by the lack of protection within personal information, hence different countries have adopted rigorous data privacy policies to address the issue. Europe's GDPR and China's PIPL both strive for high standards of protection, however, they lie on completely different legal and ideological bases,

resulting in operational barriers for economic entities working across their jurisdictions.

China's PIPL, based on the roots of an authoritarian government, emphasises state control and national security. In other words, it provides greater access to governmental authorities and more strict requirements for data localization. China's approach as stated in Article 42 of the PIPL,

“For any overseas organization or individual whose personal information processing activities damage the personal information rights and interests of citizens of the People’s Republic of China, or endanger the national security or public interests of the People’s Republic of China, the State cyberspace administration may include such overseas organization or individual in the list of restricted or prohibited provision of personal information, announce the same, and take measures such as restricting or prohibiting the provision of personal information to such overseas organization or individual.”¹,

focuses on the state's role in safeguarding user's information within its borders, ensuring that data flows are subject to national oversight. By contrast, the EU's GDPR is grounded on democratic values of individual rights, transparency, and accountability. Prioritising individuals to control their personal data,

their regulation looks to limit both private and governmental interference unless based on lawful grounds, which would in turn, protect and defend privacy and autonomy of EU users. These foundational divergences present the central tension of both frameworks; while the PIPL centers on securing state interests within data regulation, the GDPR upholds personal freedoms and user privacy as a fundamental right that should, above all, be respected.

This paper will undermine how the European Union's GDPR and China's PIPL regulate cross-border data flows by exploring their historical as well as political contexts. Thus, analysing their impact on data localisation, consent requirements and legal bases for data processing. Although both frameworks aim to protect data privacy, their contrasting basis in democratic against authoritarian principles create substantial complications of the interchange of data. This paper argues that these disparities not only set a barrier that limits international data governance, but also the need for a balanced regulation which could hold both, individual's privacy and national interests, hence fostering smoother interchange of information between the EU and China.

¹ PIPL. “Article 42,” March 2, 2022.

II. Background and Context

EU's GDPR, initiated on the 25th of May 2018², builds on a long-standing tradition of privacy rights within the European Union. Considering the in the post-World War II context, it prioritises protecting individual freedoms against state surveillance. When looking at Article 8 of the European Convention on Human Rights it states that the right to privacy remains essential for individual freedom.³ After the wrongs suffered, these privacy regulations aimed to establish a legal framework where citizens could employ control over their own personal data and resist unjustified government or companies' misuse. As Article 1 in the GDPR points; *"This regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data"*.⁴

Examples of Nazi and fascist uses of personal information, were collected through secret police forces including the Gestapo⁵, presenting an urgent need for robust legal protections to protect citizen's

privacy. Additionally, during the Cold War, communist regimes in Eastern Europe institutionalised mass surveillance as a tool for political control, with the Stasi in East Germany embodying state intrusion into citizens' privacy.⁶ We can see further developments during the late 20th and early 21st Centuries highlighting privacy threats beyond state surveillance. For instance, the 2008 global financial crisis, exposing significant corporate misuse of personal data, and eroding public trust in private entities.⁷ Furthermore, the European Union's growth and rise of the Digital Single Market constructed the need for consistent and stable privacy standards across member states to ease cross-border trade while protecting individuals' data rights.⁸

As the GDPR was created in a unified manner across member states, it thus extended Europe's rights-based focus to the digital age, centering on consent, authorization, data minimisation, and transparency.

² General Data Protection Regulation (GDPR). "General Data Protection Regulation (GDPR) – Legal Text," July 13, 2016. <https://gdpr-info.eu/>.

³ European Union Agency for Fundamental Rights. "European Convention on Human Rights - Article 8," October 25, 2018. <https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-8-0>.

⁴ General Data Protection Regulation (GDPR). "Art. 1 GDPR – Subject-Matter and Objectives," July 12, 2016. <https://gdpr-info.eu/art-1-gdpr/>.

⁵ Bitesize, BBC. "The Police State - Nazi Control and Dictatorship 1933-1939 - Edexcel - GCSE History Revision - Edexcel." BBC Bitesize, August 24, 2016. <https://www.bbc.co.uk/bitesize/guides/zsvhk7h/revision/2>.

⁶ Togni, Andrea. "How East Germany's Stasi Perfected Mass Surveillance." *Mises Institute*, July 21, 2023. <https://mises.org/mises-wire/how-east-germanys-stasi-perfected-mass-surveillance>.

⁷ Claessens, Stijn, and Laura E. Kodres. "The Regulatory Responses to the Global Financial Crisis: Some Uncomfortable Questions." *IMF Working Papers* 2014, no. 046 (March 14, 2014). <https://doi.org/10.5089/9781484335970.001.A001>.

⁸ Consilium. "Digital Single Market for Europe." Accessed December 1, 2024. <https://www.consilium.europa.eu/en/policies/digital-single-market/>.

Placed under democratic values, prioritisation of transparency, accountability and individual autonomy is addressed in the GDPR. EU's commitment to uphold human rights by protecting individual freedom from both corporate and governmental influence, it grants data subjects, rights over their personal information, covering rights to access, rectify, delete, and object to processing on grounds of legitimate interest.⁹ Hence, we could state that EU's right-based approach draws as a core philosophy under the GDPR, ensuring data protection as a prerequisite for individual dignity and trust.¹⁰

China's Personal Information Protection Law, initiated on November 1st of 2021¹¹ is a legal code approved by the Standing Committee of the National People's Congress, applied across the country and standing on top of China's legal hierarchy.¹² It lies under an authoritarian approach where national security and control are prominent over individual privacy rights. These privacy laws were enacted to complement the nation's governmental surveillance systems to maintain social order. It can be argued that

it was part of a strategy for the State or political party to position itself as a notable player in the global digital economy aligning or exceeding international expectations.¹³ Reported cases about data misuse by Chinese citizens showed the need for government action via the PIPL to show a commitment to address the issues. During July 2022 a data breach with the Shanghai National Police Database, it is claimed that a hacker had collected personal information on one billion Chinese citizens.¹⁴ Although the PIPL covers provisions for individual rights like the right to access, and delete personal data, it also establishes strict data localization requirements where government approval is necessary for cross-border data transfers.¹⁵ In fact, this is underlined in Article 40 of the PIPL mentioning that; *"If it is indeed necessary to provide such information and data to overseas parties, it shall be subject to the security assessment organized by the State cyberspace administration; if laws, administrative regulations, or the provisions of the State cyberspace administration provide that the*

⁹ Lee A. Bygrave, *Data Privacy Law: A Comparative Perspective* (Oxford: Oxford University Press, 2014), 204.

¹⁰ Pypker, Rhys. "PSWG3: Privacy and Data Protection as Fundamental Rights: A Narrative," n.d. Accessed November 1, 2024.

¹¹ PIPL. "Personal Information Protection Law of the People's Republic of China," November 1, 2021. <https://personalinformationprotectionlaw.com/>.

¹² Deloitte China. "Analysis of the Highlights of the Personal Information Protection Law," August 31, 2021. <https://www2.deloitte.com/cn/en/pages/risk/articles/personal-information-protection-law-analysis.html>.

¹³ "China's Emerging Data Privacy System and GDPR." Accessed November 1, 2024.

<https://www.csis.org/analysis/chinas-emerging-data-privacy-system-and-gdpr>.

¹⁴ Ni, Vincent. "Hacker Claims to Have Obtained Data on 1 Billion Chinese Citizens." *The Guardian*, July 4, 2022. <https://www.theguardian.com/technology/2022/jul/04/hacker-claims-access-data-billion-chinese-citizens>.

¹⁵ Chumak, Alona. "China's New Requirements for Cross-Border Data Transfers." *InCountry* (blog), January 18, 2024. <https://incountry.com/blog/chinas-new-requirements-for-cross-border-data-transfers/>.

security assessment is not required, such provisions shall prevail.”¹⁶

China’s PIPL is influenced by historical and political developments shaping its approach to data governance. The 1980s economic reforms under Deng Xiaoping¹⁷ meant China’s integration into the global economy, representing a phase of modernisation, globalisation and economic liberalisation. It opened China’s frontiers to foreign investments, multinational corporations, and international communication networks, driving technological advancements but meaning a greater need for the population’s privacy protection.¹⁸ Unregulated data flows, cyberattacks and misuse of sensitive information was now possible, underscoring the absence of a comprehensive legal framework to address the issue.

The 1989 Tiananmen Square Protests was a crucial moment where China’s approach to data governance was affected. The government’s use of surveillance technologies, including photographic evidence and informant networks, to identify and suppress

pro-democracy dissent, reinforced the importance of state-driven information regulation as a tool for maintaining public order and stability under an authoritarian regime.¹⁹ It meant a precedent for prioritising national security and sovereignty, making state surveillance a core value under China’s regulation philosophy. By the 2008 Beijing Olympics, international scrutiny of China’s cybersecurity measures highlighted the dual demand to support domestic data protection while presenting itself as a credible state under the international sphere.²⁰

Subsequently, the development of mass surveillance programs, like the Social Credit System²¹ and facial recognition, showcased China’s use of data-driven governance while raising significant concerns over privacy violations. Notorious data breaches like the 2016 Alibaba Taobao breach²² and the 2020 Weibo

¹⁶ PIPL. “Article 40,” March 2, 2022. <https://personalinformationprotectionlaw.com/PIPL/article-40/>.

¹⁷ “Deng Xiaoping.” Accessed December 1, 2024. <https://study.com/learn/lesson/deng-xiaoping-chinese-economic-reform.html>.

¹⁸ Prasad, Eswar S. “I Overview.” IMF eLibrary. Accessed December 1, 2024. <https://www.elibrary.imf.org/display/book/9781589062580/ch01.xml>.

¹⁹ The Editors of Encyclopaedia Britannica. “Tiananmen Square Incident.” *Encyclopedia Britannica*, May 29, 2009. <https://www.britannica.com/event/Tiananmen-Square-incident>.

²⁰ Shepherd, Christian. “China’s Finely Crafted Web of Digital Surveillance for the Beijing Olympics Has Been Years in the Making.” *The Washington Post*, February 2, 2022. <https://www.washingtonpost.com/sports/olympics/2022/02/02/china-digital-surveillance-beijing-winter-olympics/>.

²¹ Kostka, Genia. “China’s Social Credit Systems and Public Opinion: Explaining High Levels of Approval.” *New Media & Society* 21, no. 7 (February 13, 2019): 1565–93. <https://doi.org/10.1177/1461444819826402>.

²² Reporter, Guardian staff. “Hackers in China Attack 20m Accounts on Alibaba’s Taobao Shopping Site.” *The Guardian*, February 4, 2016. <https://www.theguardian.com/business/2016/feb/04/hackers-in-china-attack-20m-accounts-on-alibaba-taobao-shopping-site>.

leak²³, are examples that meant an urgent need for stricter data protection regulation. Additionally, geopolitical tensions as for instance with the United States, was illustrated by trade conflicts and controversies surrounding Huawei and TikTok. Reinforcing the importance of securing national data sovereignty.²⁴

China's centralised structure, empowers state authorities to access personal data for purposes that agree with the "public interest" or national security uses. It could be argued that this term lacks of a precise definition in China's legal framework. However, it is broadly used and interpreted to justify restrictions or requirements on data transfers. It introduces legal uncertainties, leaving room for open enforcement, which could conflict with the principles of legitimate necessity and proportionality under International Law. Nevertheless, when looking at China's political philosophy, which positions individual freedoms as a secondary aspect behind state sovereignty, remains consistent with these localisation mandates and access rights granted to government agencies. Reflecting a view where personal

information, should be controlled by the state to avoid external influences in internal matters, thus prioritising national interests.²⁵

III. Data Localization Requirements against Free Trade Data Flow

Europe's GDPR prioritises free flow of data under specific conditions, demonstrating its commitment to privacy and a smooth digital international economic environment. Free data transfers are permitted within the European Economic Area (EEA).²⁶ However, when data is transferred to a country outside the EEA, specific provisions apply. These provisions ensure that personal data transferred outside the EEA is protected at a level equivalent to the protection it receives within the EEA, as required by the GDPR.²⁷

First, the "basic processing principles" covered under the GDPR shall be respected, as well as accounting the activity under a contract, even if the recipient is acting as a data processor actor.²⁸ These transfers will take place under the basis of an adequate

²³ Business & Human Rights Resource Centre. "China: Weibo Admits to Leak of Personal Data on Millions of Users." Accessed December 1, 2024. <https://www.business-humanrights.org/es/%C3%BAltimas-noticias/china-weibo-admits-to-leak-of-personal-data-on-millions-of-users/>.

²⁴ Abraham Denmark Ryan Hass et al., "Beyond Huawei and TikTok: Untangling US Concerns over Chinese Tech Companies and Digital Security," Brookings, March 9, 2022

²⁵ Deloitte China. "Analysis of the Highlights of the Personal Information Protection Law," August 31, 2021. <https://www2.deloitte.com/cn/en/pages/risk/articles/personal-information-protection-law-analysis.html>.

²⁶ European Data Protection Board. "International Data Transfers." Accessed November 6, 2024. https://www.edpb.europa.eu/sme-data-protection-guide/international-data-transfers_en.

²⁷ European Data Protection Board. "International Data Transfers." Accessed November 6, 2024. https://www.edpb.europa.eu/sme-data-protection-guide/international-data-transfers_en.

²⁸ European Data Protection Board. "International Data Transfers." Accessed November 6, 2024. https://www.edpb.europa.eu/sme-data-protection-guide/international-data-transfers_en.

level of protection where areas like rule of law, respect for human rights, fundamental freedoms, the existence of independent data protection authorities and/or international commitments are assessed. Once a country is addressed as ‘adequate’ data transfers can take place to organisations or corporations outside this non-EEA country. Hence, ‘adequate’ non-EEA countries remain comparable to those in the EEA. However, there is the possibility for adequacy decisions to cover a limited area instead of the country as a whole, or even limited to a specific sector. Until today’s date, the adequacy decisions adopted by the EC are; Andorra, Argentina, Canada (for commercial organisations), Faroe Island, Guernsey, Israel, Isle of Man, Japan, Jersey, New Zealand, Republic of Korea, Switzerland, UK, US (for commercial organisations participating in the EU-US Data Privacy Regulation Framework), and Uruguay. Andorra, Argentina, Uruguay and New Zealand became clear examples in which their legal frameworks meet the EU’s strict criteria for data protection. They have been deemed adequate through rigorous and constant assessments.²⁹

Canada’s adequacy decision applies to commercial organisations under the Personal Information Protection and Electronic Documents Act

²⁹ European Commission. “Data Protection Adequacy for Non-EU Countries.” Accessed November 25, 2024. https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en.

(PIPEDA). This law covers how businesses shall collect, use and disclose personal information in commercial activities, ensuring compliance with GDPR’s principles.³⁰

Japan’s adequacy decision involved the adoption of supplementary rules under its Act on the Protection of Personal Information (APPI), addressing differences with the GDPR (like stricter limits on data sharing and enhanced individual rights). Japan further committed for cooperation with the EDPB.³¹

After Brexit, the UK received an adequacy decision as it retained GDPR principles under its Data Protection Act 2018. It ensures uninterrupted data flows within the UK and the EEA, being subject to periodic reviews.³²

The EU-US Data Privacy Framework (DPF) replaced the Privacy Shield Agreement (PSA) as it was invalidated by the Court of Justice of the EU in the Schrems II decision in July 16, 2020. Under the reason of not adequately protecting EU’s citizens personal data from US’ intelligence agencies. The last framework undertakes robust safeguards against

³⁰ Office of the Privacy Commissioner of Canada. “PIPEDA Requirements in Brief.” Accessed November 25, 2024. https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/.

³¹ European Commission. *Report From the Commission to the European Parliament and the Council on the First Review of the Functioning of the Adequacy Decision for Japan*. Brussels, April 3, 2023.

³² European Commission - European Commission. “Data Protection: Commission Adopts Adequacy Decisions for the UK.” Accessed November 25, 2024. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3183.

government access to personal information as well as enforceable rights for EU citizens via redress mechanisms.³³

Faroe Islands, Guernsey, Isle of Man and Jersey while are not sovereign states, they have established legal frameworks which assure an equivalent level of user's data protection.³⁴

For countries lacking adequacy status, the GDPR regulation allows data transfers through Standard Contractual Clauses (SCCs). Held under Art 46(2)(c) GDPR³⁵, these are a set of standard contracts that allow data exporters to proportion appropriate safeguards for the interchange of personal information. They are legally binding mechanisms for data transfer to countries which lack the adequacy decision. These clauses impose enforceable obligations on both data importers and exporters to ensure compliance with GDPR's principles. They act as contractual safeguards, securing the rights of data subjects are protected and offering an alternative framework aligning with EU's standards.³⁶

³³ "Data Privacy Framework." Accessed November 25, 2024. [https://www.dataprivacyframework.gov/program-articles/FAQs%20%E2%80%93%20EU%E2%80%93U.S.-Data-Privacy-Framework-\(EU%E2%80%93U.S.-DPF\)](https://www.dataprivacyframework.gov/program-articles/FAQs%20%E2%80%93%20EU%E2%80%93U.S.-Data-Privacy-Framework-(EU%E2%80%93U.S.-DPF)).

³⁴ European Commission - European Commission. "Commission Finds That EU Personal Data Flows Can Continue with 11 Third Countries and Territories." Accessed November 25, 2024. https://ec.europa.eu/commission/presscorner/detail/it/ip_24_161.

³⁵ General Data Protection Regulation (GDPR). "Art. 46 GDPR – Transfers Subject to Appropriate Safeguards," July 13, 2016. <https://gdpr-info.eu/art-46-gdpr/>.

³⁶ European Commission. "Standard Contractual Clauses (SCC)." Accessed November 25, 2024. <https://commission.europa.eu/law/law-topic/data-protection>

Additionally, Binding Corporate Rules (BCRs) listed under Art 47 GDPR³⁷ are another option which ensures adequate levels of protection within the share of data within various companies located inside and outside the EEA. These are aimed for multinational groups of companies which normally carry large exchanges of data. These achieve to balance individual privacy rights in times of a globalised economy, as it enables legal pathways to operate internationally at the same time as complying with European data protection standards.

On the other hand, the PIPL demands strict data localization especially for 'critical information infrastructure operators' and data that the government perceives as 'sensitive'. Article 28 of the PIPL refers to sensitive personal information, to the data that, if misused, can infringe upon personal dignity or harm personal or property safety. This includes biometric data, religious beliefs, identities, medical health data, financial accounts, location tracking, among others.³⁸

[n/international-dimension-data-protection/standard-contractual-clauses-scc_en](https://www.personalinformationprotectionlaw.com/PIPL/tag/sensitive-personal-information/).

³⁷ General Data Protection Regulation (GDPR). "Art. 47 GDPR – Binding Corporate Rules," July 13, 2016. <https://gdpr-info.eu/art-47-gdpr/>.

³⁸ PIPL. "Sensitive Personal Information Archives." Accessed November 25, 2024. <https://personalinformationprotectionlaw.com/PIPL/tag/sensitive-personal-information/>.

Security assessments are required for international data transfers, as well as explicit government approval. Non-compliance with these measures includes fines of up to 5% of annual revenue, RMB 50 million or even suspension of operations.³⁹ Sensitive data is measured under the Data Security Law (DSL) where information is classified based on its significance to national security, economic stability, and public interest. Furthermore, the third core law for China's data protection is the Cybersecurity Law (CSL). It obligates network operators and CIOs to store personal data collected on servers within Chinese borders.⁴⁰ Thus, PIPL's authorization path for transfers outside China remains large, requiring explicit consent under controlled conditions. Mandating local information storage limits foreign access to Chinese data, generating operational challenges for multinational companies that must adapt to China's specific regulatory landscape, specially those businesses that rely their activity on data-driven services.⁴¹

Therefore, we could say that GDPR's mechanisms for the exchange of information outside the European Economic Area, at least aim to facilitate international commerce as it allows corporations to manage, organize and distribute data across jurisdictions with standardised frameworks. This particularly benefits multinational companies which depend on data-sharing networks in order to engage with their delivered product or services. Differently, strict localization and conditions for data transfers held under China's PIPL are imposing further costs to these corporations which find with the obligation to build and maintain local data infrastructure inside Chinese borders, as well as explicit government approval to export data abroad. For instance in 2017, Apple Inc, was the first multinational company to construct a data center to comply with China's Data localization law. They invested one billion in partnership with Guizhou Cloud Big Data (GCBD) to construct it in Guizhou province.⁴²

The Standing Committee of the National People's Congress (NPC) of China defends that data localisation achieves national security as it ensures that sensitive personal information is protected from external governments or businesses that could exploit

³⁹ TMO Group. "Data Protection Laws in China: Overview (2024)." TMO Group, August 13, 2024. <https://www.tmogroup.asia/insights/china-data-protection-laws/>.

⁴⁰ TMO Group. "Data Protection Laws in China: Overview (2024)." TMO Group, August 13, 2024. <https://www.tmogroup.asia/insights/china-data-protection-laws/>.

⁴¹ Yuet Ming Tham, "The Impact of China's Data Localization Requirements on Cross-Border Data Transfers," *Journal of Chinese Law* 28, no. 3 (2022): 345-370.

⁴² BloombergNEF. "Apple to Build First China Data Center to Comply With Law," July 12, 2017. <https://about.bnef.com/blog/apple-to-build-first-china-data-center-to-comply-with-local-law/>.

it for economic or political interests.⁴³ As stated in Art 1, General Provisions (DSL);

*“This Law is enacted for the purpose of regulating data processing, ensuring data security, promoting development and utilization of data, protecting the lawful rights and interests of individuals and organizations, and safeguarding the sovereignty, security, and development interests of the state”.*⁴⁴

It could be argued that the free flow of data approach adopted by the EU risks misuse or unauthorised access to personal information, as it exists the possibility that external recipients countries or organisations may cover privacy laws not as strict or robust.⁴⁵

However, we should take into account unintended economic scenarios including trade barriers and decreased innovations data such strict localisation could pose. As mentioned by Jianqiang Li PhD at the theoretical computer science group of Pennsylvania State University in his investigation on China’s PIPL and Impact on International Data Transfers⁴⁶ “data

localisation can inhibit competitions, reduce productivity, and increase prices for local consumers”.

In addition, as previously mentioned the GDPR holds recipient subjects accountable via specific legal provisions and mechanisms like the SCCs and BCRs, requiring strict contractual protections including the external sharing of data outside the EU. It aims to offer a pragmatic regulatory framework that focuses on individual privacy while considering the operational reality of a digital globalised economy.

IV. Consent, Legal Basis and Data Subject Rights

As previously noted, EU’s GDPR reaches a flexible regulatory framework through distinct legal basis beyond consent; these include contractual necessity, compliance with legal obligations, and public interest.⁴⁷ Article 6(1)(c) GDPR⁴⁸ states that businesses or organisations should process personal information when necessary to fulfil a legal obligation, covering those mandated by the EU or member state law. It is often used in cases for financial reporting or court orders. Thus, it allows organisations to collect the data when consent is unfeasible while achieving

⁴³ “Data Security Law of the People’s Republic of China.” Accessed November 6, 2024. http://www.npc.gov.cn/englishnpc/c2759/c23934/202112/t20211209_385109.html.

⁴⁴ “Data Security Law of the People’s Republic of China.” Accessed November 30, 2024. http://www.npc.gov.cn/englishnpc/c2759/c23934/202112/t20211209_385109.html.

⁴⁵ “PIPL vs GDPR - Key Differences and Implications for Compliance in China.” China Briefing News, May 18, 2022. <https://www.china-briefing.com/news/pipl-vs-gdpr-key-differences-and-implications-for-compliance-in-china/>.

⁴⁶ Hu, Tina Y. “PowerPoint Presentation,” n.d. Accessed November 6, 2024.

⁴⁷ Your Europe. “Data Protection under GDPR.” Accessed November 5, 2024. https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index_en.htm.

⁴⁸ General Data Protection Regulation (GDPR). “Art. 6 GDPR – Lawfulness of Processing,” July 12, 2016. <https://gdpr-info.eu/art-6-gdpr/>.

lawful compliance. Further on, Article 6 (1)(b)⁴⁹ allows personal data processing necessary to fulfil contractual obligations, like a purchase order or offering a service, hence essential for service provider organisations. Additionally, Art 6(1)(f)⁵⁰ allows data collection based on legitimate interests, always that such interests do not override fundamental rights and freedoms of the data subject. For this reason, businesses must document a balancing test to demonstrate that their legitimate interest protect and respect subject rights.

Aligning with the fundamental principle of ‘Empowering Data Subjects’⁵¹, the GDPR extends rights to data subjects which include access, rectification, eradication and objection, enhancing them with an absolute control over their information.⁵²

Contrastingly, the PIPL prioritises explicit consent as the first step for cross-border data transfers. These mean a government-led security evaluation or explicit

consent from authoritative subjects, as stated in Article 39 PIPL

“Where a personal information processor provides personal information for any party outside the territory of the People’s Republic of China, the processor shall inform the individuals of the overseas recipient’s name and contact information, the purposes and means of processing, the categories of personal information to be processed, as well as the methods and procedures for the individuals to exercise their rights as provided in this Law over the overseas recipient, etc., and shall obtain individual’s separate consent”⁵³;

highlighting the state’s approach of centralised control. Even though the PIPL includes provisions like contractual necessity or subjects’ rights like access, rectification and elimination, they remain limited to the nation’s security and control, where Chinese sovereignty prevails over subjects’ autonomy.⁵⁴ Cases involving “sensitive personal information”, are described as data that could endanger the safety of persons, property, or mean discriminatory or psychological harm.⁵⁵ For it, consent should be clear,

⁴⁹ General Data Protection Regulation (GDPR). “Art. 6 GDPR – Lawfulness of Processing,” July 12, 2016. <https://gdpr-info.eu/art-6-gdpr/>.

⁵⁰ General Data Protection Regulation (GDPR). “Art. 6 GDPR – Lawfulness of Processing,” July 12, 2016. <https://gdpr-info.eu/art-6-gdpr/>.

⁵¹ Baig, Anas. “GDPR Article 15 Compliance.” Security, January 1, 2024. <https://securiti.ai/article-15-gdpr/>.

⁵² European Data Protection Supervisor. “Rights of the Individual.” Accessed November 5, 2024. https://www.edps.europa.eu/data-protection/our-work/subjects/rights-individual_en.

⁵³ PIPL. “Article 39,” March 2, 2022.

<https://personalinformationprotectionlaw.com/PIPL/article-39/>.

⁵⁴ Deloitte China. “Analysis of the Highlights of the Personal Information Protection Law,” August 31, 2021. <https://www2.deloitte.com/cn/en/pages/risk/articles/personal-information-protection-law-analysis.html>.

⁵⁵ <https://secureprivacy.ai/>. “Understanding China’s PIPL.” Accessed November 5, 2024. <https://secureprivacy.ai/blog/china-pipl-personal-information-protection-law>.

valid and voluntarily given, portraying its purpose and data processing methods.

Similarly to EU's GDPR, China's PIPL permits data processing if it's needed for the fulfilment of a contract with the subject. Furthermore, personal information can be processed if its purpose complies with a legal obligation, or for purposes of public interest matters. In the case of the threat of public health, life safety or property security, data processing is allowed without consent. Nevertheless, it is tight to a constrained procedure, being a rare case to occur.

Furthermore, data subject request access to eliminate, edit or correct their information, but in difference with the GDPR, it must be accepted by the government, complying with the state's governmental and social stability.⁵⁶

This heavy reliance on explicit governmental consent and approval limits processing options generates barriers for multinational organisations. They create operational additional costs and complications, as these companies find the need to adapt to China's specific regulatory framework, requiring localised storage and protocols.

⁵⁶ Briefing, China. "PIPL vs GDPR - Key Differences and Implications for Compliance in China." China Briefing News, May 18, 2022. <https://www.china-briefing.com/news/pipl-vs-gdpr-key-differences-and-implications-for-compliance-in-china/>.

V. Regulatory Enforcement and Penalties

The GDPR assures compliance through a network of independent supervisory authorities (SAs), which are situated in each EU's member states. As they define, "*The EDPS is an independent supervisory authority responsible for ensuring that EU institutions and bodies comply with data protection law when processing personal data*"⁵⁷. In Spain for instance, it is the Agencia Nacional de Protección de Datos (AEPD)⁵⁸ or in Italy the Garante per Protezione dei Dati Personali (GPDP)⁵⁹, which function independently but attach to the European Data Protection Board (EDPB) to assess their compliance with EU's GDPR.⁶⁰

Penalties addressed in Art 83⁶¹ for non-compliance of the GDPR are divided into two tiers. Firstly, the less severe ones which result in a fine of maximum 10 million euros or 2% of the organisation's annual revenue, whichever option is higher. The second tier, includes fines up to 20 million euros or 4% of the

⁵⁷ European Data Protection Supervisor. "Data Protection." Accessed November 6, 2024. https://www.edps.europa.eu/data-protection_en.

⁵⁸ AEPD. "Agencia Española de Protección de Datos." Accessed November 6, 2024. <https://www.aepd.es/>.

⁵⁹ Garante Privacy. "Home." Accessed November 6, 2024. <https://www.garanteprivacy.it/>.

⁶⁰ European Data Protection Board. "Our Members." Accessed November 6, 2024. https://www.edpb.europa.eu/about-edpb/about-edpb/members_en.

⁶¹ GDPR.eu. "Art. 83 GDPR - General Conditions for Imposing Administrative Fines," November 14, 2018. <https://gdpr.eu/article-83-conditions-for-imposing-administrative-fines/>.

business' annual revenue, again the one which is greater. These types of penalties violate basic principles for processing, conditions for consent, data subject rights or share information to IOs or recipient countries lacking an adequate level of data protection.⁶²

Independent SAs contribute to the decentralised system of the GDPR considering individual legal situations while adhering to a standardised framework. The biggest penalty the GDPR imposed became binding in April 2023 for Meta. They received a fine of 1.2 billion euros settled on the cause of SCCs since 2020. The infringement was characterised by a 'systematic, repetitive, and continuous' massive data exchanges across the globe.⁶³ Their decentralised and coordinated organisation allow supervision to tailor local enforcement while maintaining EU's standardisation requirements. It sets high expectations for compliance as the assessment procedures remain clear and transparent. Strict fines incentivize companies to respect the GDPR without putting into risk their operational revenues.

⁶² GDPR.eu. "Art. 83 GDPR - General Conditions for Imposing Administrative Fines," November 14, 2018. <https://gdpr.eu/article-83-conditions-for-imposing-administrative-fines/>.

⁶³ European Data Protection Board. "1.2 Billion Euro Fine for Facebook as a Result of EDPB Binding Decision." Accessed November 6, 2024. https://www.edpb.europa.eu/news/news/2023/12-billion-euro-fine-facebook-result-edpb-binding-decision_en.

China's PIPL is centralised to the Cyberspace Administration of China (CAC), who has the role of executing and interpreting the PIPL, as well as realising investigations and establishing penalties for non-compliance. Businesses can receive fines up to 50 million RMB or 5% of annual revenue.⁶⁴ This would mean infringements like unauthorised cross-border exchanges of sensitive personal data, or inability to act in accordance with localisation conditions. However, there is the possibility of additional sanctions like the suspension of operating licences, restriction of operations, or blacklisting businesses to remove them from the Chinese market.⁶⁵

This CAC's ability poses an additional risk for companies, specially foreign firms that should limit their operations for market access, implementing China-specific compliance protocols which can contradict with international transfer practices. That is to say, organisations whose activity takes place over both China and the EU would require a customised independent compliance framework, increasing their operational costs.

⁶⁴ Kelly Austin et al., "China Passes the Personal Information Protection Law, To Take Effect on November 1.," Gibson Dunn, September 10, 2021, <https://www.gibsondunn.com/china-passes-the-personal-information-protection-law-to-take-effect-on-november-1/?pdf=display>.

⁶⁵ Rogier Creemers, "China's Emerging Data Protection Framework," *Journal of Cybersecurity* 8, no. 1 (2022), <https://doi.org/https://doi.org/10.1093/cybsec/tyac011>

However, progress had been made in March 2024, when the CAC issued new provisions relieving limitations on cross-border data transfers. It states that cross-border exchanges for non-personal or ‘non-important’ data, and specific categories like cross-border e-commerce and emergency health situations, are exempt from the previously mentioned security measures and contractual obligations under PIPL. These provisions aim to decrease multinational’s burden even though CIIOs and shares within ‘important data’ still remain stringent under China’s state control.⁶⁶

VI. Conclusion

This research paper analyses EU’s GDPR and China’s PIPL privacy regulations, influenced by their corresponding historical and political contexts. China being an authoritarian regime focuses on state sovereignty, state security and centralised organisation for the regulation of cross-data transfers. On the other hand, the EU, rooted in the post-World War II situation, prioritises the protection and respect of individual rights, democratic philosophy and transparency. Hence empowering citizens with their fundamental right of privacy. Foundational political philosophies completely shape both frameworks,

⁶⁶ Luo, Yan. “China Eases Restrictions on Cross-Border Data Flows.” *Inside Privacy*, March 25, 2024. <https://www.insideprivacy.com/uncategorized/china-eases-restrictions-on-cross-border-data-flows/>.

leaving the debate between a state-controlled model versus a rights-based model.

Both approaches have a distinct significant impact on international trade, mainly for multinationals whose operational activities depend on the massive transfer of personal information. GDPR’s inclusion of legitimate interests or contractual necessity permits these businesses to process data under clear and strict conditions, increasing flexibility and facilitating compliance of such regulation within Member States. Heavy reliance on explicit consent and approval by the central government held under the PIPL, causes on the other hand, barriers for cross-border operations such as need for specific infrastructures under the state of China (increasing individual multinationals’ operational costs).

Regarding the enforcement structures, the GDPR incorporates stringent fines and procedures of transparency increasing incentives for multinationals to adopt privacy protection measures complying within all member states. However, China’s PIPL framework subjects businesses to enforcement standards lining with national interests, posing a barrier for firms operating within both the PIPL and GDPR.⁶⁷

⁶⁷ European Commission - European Commission. “Questions & Answers: EU-US Data Privacy Framework.” Accessed November 25, 2024. https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3752.

As digital globalisation continues to expand, regulatory differences pose a significant barrier for multinationals. Compliance requirements, legal bases and enforcement structures are key areas of compliance on which more divergences are present within both frameworks, showing the need for mutual privacy protection policies. Mutual adequacy agreements, international outlines, or standardized contractual clauses which respect the essential goals of each government would be key to eradicate such barriers. In fact, the EU-US Data Privacy Framework serves as a prominent example of bilateral agreement designed to facilitate transatlantic data transfers. It establishes binding commitments by US authorities to ensure that access to EU by US government agencies is subject to clear limitations. It also provides for independent oversight mechanisms and robust avenues for redress, ensuring compliance with the GDPR. Similarly, the 2019 Japan-EU mutual adequacy decision enables reciprocal data flows while safeguarding privacy. Japan adopted supplementary rules under its Act on the Protection of Personal Information (APPI), addressing the gap between both frameworks guaranteeing high level of data protection and promoting cooperation between both jurisdictions.⁶⁸

⁶⁸ “European Commission Adopts Adequacy Decision on Japan, Creating the World’s Largest Area of Safe Data Flows,” European Commission - European Commission, accessed January 3, 2025, https://europa.eu/rapid/press-release_IP-19-421_en.htm.

Hence, an expanded-looking data policy would consider both the rights-based framework of the European Union and state-sovereignty focus of China. For this, a collaborative network would be crucial to ensure that needs and values from each jurisdiction are covered.

VII. Bibliography

“1.2 Billion Euro Fine for Facebook as a Result of EDPB Binding Decision.” 1.2 billion euro fine for Facebook as a result of EDPB binding decision | European Data Protection Board, May 22, 2023.

https://www.edpb.europa.eu/news/news/2023/12-billion-euro-fine-facebook-result-edpb-binding-decision_en.

“Agencia Española de Protección de Datos: AEPD.” Agencia Española de Protección de Datos. Accessed January 3, 2025.

<https://www.aepd.es/>.

“Analysis of the Highlights of the Personal Information Protection Law: Deloitte China: Risk Advisory.” Deloitte China, September 30, 2021.

<https://www2.deloitte.com/cn/en/pages/risk/articles/personal-information-protection-law-analysis.html>.

“Analysis of the Highlights of the Personal Information Protection Law: Deloitte China: Risk Advisory.” Deloitte China, September 30, 2021.

<https://www2.deloitte.com/cn/en/pages/risk/articles/personal-information-protection-law-analysis.html>.

“Analysis of the Highlights of the Personal Information Protection Law: Deloitte China: Risk Advisory.” Deloitte China, September 30, 2021.

<https://www2.deloitte.com/cn/en/pages/risk/articles/personal-information-protection-law-analysis.html>.

“Apple to Build First China Data Center to Comply with Law.” BloombergNEF, July 12, 2017.

<https://about.bnef.com/blog/apple-to-build-first-china-data-center-to-comply-with-local-law/>.

“Art. 1 GDPR – Subject-Matter and Objectives.” General Data Protection Regulation (GDPR), August 30, 2016.

<https://gdpr-info.eu/art-1-gdpr/>.

“Art. 46 GDPR – Transfers Subject to Appropriate Safeguards.” General Data Protection Regulation (GDPR), July 8, 2020.

<https://gdpr-info.eu/art-46-gdpr/>.

“Art. 47 GDPR – Binding Corporate Rules.” General Data Protection Regulation (GDPR), March 29, 2018.

<https://gdpr-info.eu/art-47-gdpr/>.

“Art. 6 GDPR – Lawfulness of Processing.” General Data Protection Regulation (GDPR), January 27, 2023.

<https://gdpr-info.eu/art-6-gdpr/>.

“Art. 6 GDPR – Lawfulness of Processing.” General Data Protection Regulation (GDPR), January 27, 2023.

<https://gdpr-info.eu/art-6-gdpr/>.

“Art. 83 GDPR - General Conditions for Imposing Administrative Fines.” GDPR.eu, September 14, 2023.

<https://gdpr.eu/article-83-conditions-for-imposing-administrative-fines/>.

“Art. 83 GDPR - General Conditions for Imposing Administrative Fines.” GDPR.eu,

September 14, 2023.

<https://gdpr.eu/article-83-conditions-for-imposing-administrative-fines/>.

Austin et al. , Kelly. “China Passes the Personal Information Protection Law, to Take Effect on November 1.” Gibson Dunn, July 27, 2024.

<https://www.gibsondunn.com/china-passes-the-personal-information-protection-law-to-take-effect-on-november-1/?pdf=display>.

Bygrave, Lee A. *Data Privacy Law: A Comparative Perspective* . Vol. 204. Oxford University Press, 2014.

“China’s Emerging Data Privacy System and GDPR.” CSIS. Accessed January 3, 2025.

<https://www.csis.org/analysis/chinas-emerging-data-privacy-system-and-gdpr>.

Chumak, Alona. “China’s New Requirements for Cross-Border Data Transfers.” InCountry, January 18, 2024.

<https://incountry.com/blog/chinas-new-requirements-for-cross-border-data-transfers/>.

Claessens, Stijn, and Laura E. Kodres. “The Regulatory Responses to the Global Financial

Crisis: Some Uncomfortable Questions.” *IMF Working Papers* no. 046 (March 14, 2014).

<https://doi.org/https://doi.org/10.5089/9781484335970.001.A001>.

“Commission Finds That EU Personal Data Flows Can Continue with 11 Third Countries and Territories.” European Commission - European Commission. Accessed January 3, 2025.

https://ec.europa.eu/commission/presscorner/detail/it/ip_24_161.

Creemers, Rogier. “China’s Emerging Data Protection Framework.” *Journal of Cybersecurity* 8, no. 1 (2022).

<https://doi.org/https://doi.org/10.1093/cybsec/tyac011>.

Dan Cooper, Laura Somaini. “European Commission Announces Conclusion of First Review of Japan-EU Adequacy Arrangement.” Inside Privacy, May 30, 2023.

<https://www.insideprivacy.com/data-privacy/european-commission-announces-conclusion-of-first-review-of-japan-eu-adequacy-arrangement/>

Data Privacy Framework. Accessed January 3, 2025.

[https://www.dataprivacyframework.gov/program-articles/FAQs%20%E2%80%93%20EU%E2%80%93U.S.-Data-Privacy-Framework-\(EU%E2%80%93U.S.-DPF\)](https://www.dataprivacyframework.gov/program-articles/FAQs%20%E2%80%93%20EU%E2%80%93U.S.-Data-Privacy-Framework-(EU%E2%80%93U.S.-DPF)).

“Data Protection Adequacy for Non-EU Countries.” European Commission. Accessed January 3, 2025.

https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/adequacy-decisions_en.

“Data Protection under GDPR.” Your Europe, January 1, 2022.

https://europa.eu/youreurope/business/dealing-with-customers/data-protection/data-protection-gdpr/index_en.htm.

“Data Security Law of the People’s Republic of China.” 中国人大网. Accessed January 3, 2025.

http://www.npc.gov.cn/englishnpc/c2759/c23934/202112/t20211209_385109.html.

Digital Single Market for Europe - Consilium. Accessed January 3, 2025.

<https://www.consilium.europa.eu/en/policies/digital-single-market/>.

The Editors of Encyclopedia Britannica.

“Tiananmen Square Incident.” Encyclopædia Britannica, December 9, 2024.

<https://www.britannica.com/event/Tiananmen-Square-incident>.

European Commission. “Data Protection: Commission Adopts Adequacy Decisions for the UK.” European Commission - European Commission. Accessed January 3, 2025.

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3183.

“European Commission Adopts Adequacy Decision on Japan, Creating the World’s Largest Area of Safe Data Flows.” European Commission - European Commission. Accessed January 3, 2025.

https://europa.eu/rapid/press-release_IP-19-421_en.htm.

“European Convention on Human Rights - Article 8.” European Union Agency for Fundamental Rights, March 8, 2022.

<https://fra.europa.eu/en/law-reference/european-convention-human-rights-article-8-0>.

“GDPR Article 15 Compliance: Empowering Data Subjects across EU.” Security, November 30, 2024. <https://securiti.ai/article-15-gdpr/>.

Global, Autor:Caixin. “China: Weibo Admits to Leak of Personal Data on Millions of Users.” Business & Human Rights Resource Centre. Accessed January 3, 2025.

<https://www.business-humanrights.org/es/%C3%BAltimas-noticias/china-weibo-admits-to-leak-of-personal-data-on-millions-of-users/>.

“Home.” Home - Garante Privacy. Accessed January 3, 2025. <https://www.garanteprivacy.it/>.

Hu, Tina Y. Lecture. n.d. “International Data Transfers.” International data transfers | European Data Protection Board. Accessed January 3, 2025. https://www.edpb.europa.eu/sme-data-protection-guide/international-data-transfers_en.

Kotska, Genia. “China’s Social Credit Systems and Public Opinion: Explaining High Levels of

Approval.” *New Media & Society*, 1565–93. , 21, no. no.7 (February 13, 2019). <https://doi.org/https://doi.org/10.1177/1461444819826402>.

Law, Author Accessible. “Article 39.” PIPL, May 10, 2022. <https://personalinformationprotectionlaw.com/PIPL/article-39/>.

Law, Author Accessible. “Article 40.” PIPL, May 10, 2022. <https://personalinformationprotectionlaw.com/PIPL/article-40/>.

Law, Author Accessible. “Article 42.” PIPL, May 10, 2022. <https://personalinformationprotectionlaw.com/PIPL/article-42/>.

“Learn and Revise with BBC Bitesize.” BBC News. Accessed January 3, 2025. <https://www.bbc.co.uk/bitesize/learn>.

“Legal Text.” General Data Protection Regulation (GDPR), April 22, 2024. <https://gdpr-info.eu/>.

NAVAS, Leonardo CERVERA. “EDPS Homepage.” European Data Protection Supervisor. Accessed January 3, 2025.
<https://www.edps.europa.eu/en>.

Ni, and Vincent. “Hacker Claims to Have Obtained Data on 1 Billion Chinese Citizens.” The Guardian, July 4, 2022.
<https://www.theguardian.com/technology/2022/jul/04/hacker-claims-access-data-billion-chinese-citizens?via=indexdotco>.

Office of the Privacy Commissioner of Canada. “PIPEDA Requirements in Brief.” Office of the Privacy Commissioner of Canada, May 1, 2024.
https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/pipeda_brief/.

“Personal Information Protection Law of the People’s Republic of China.” PIPL, May 10, 2022.
<https://personalinformationprotectionlaw.com/>.

“PIPL vs GDPR - Key Differences and Implications for Compliance in China.” China Briefing News, July 21, 2022.
<https://www.china-briefing.com/news/pipl-vs-gdpr-key-differences-and-implications-for-compliance-in-china/>.

“PIPL vs GDPR - Key Differences and Implications for Compliance in China.” China Briefing News, July 21, 2022.
<https://www.china-briefing.com/news/pipl-vs-gdpr-key-differences-and-implications-for-compliance-in-china/>.

Prasad, Mr. Eswar S. “I Overview.” IMF eLibrary. Accessed January 3, 2025.
<https://www.elibrary.imf.org/display/book/9781589062580/ch01.xml>.

“Press Corner: European Commission.” European Commission - European Commission. Accessed January 3, 2025.
https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3752.

Pypker, and Rhys. *PSWG3: Privacy and Data Protection as Fundamental Rights: A Narrative*, n.d.

Reporter, Guardian staff. “Hackers in China Attack 20m Accounts on Alibaba’s Taobao Shopping Site.” *The Guardian*, February 4, 2016.

<https://www.theguardian.com/business/2016/feb/04/hackers-in-china-attack-20m-accounts-on-alibaba-taobao-shopping-site>.

“Rights of the Individual.” European Data Protection Supervisor. Accessed January 3, 2025.

https://www.edps.europa.eu/data-protection/our-work/subjects/rights-individual_en.

Ryan Hass, Abraham Denmark, Ryan Hass, Geoffrey Gertz, Margaret M. Pearson Joshua P. Meltzer, and Tanvi Madan. “Beyond Huawei and TikTok: Untangling US Concerns over Chinese Tech Companies and Digital Security.” *Brookings*, March 9, 2022.

<https://www.brookings.edu/articles/beyond-huawei-and-tiktok-untangling-us-concerns-over-chinese-tech-companies-and-digital-security/>.

“Sensitive Personal Information Archives.” *PIPL*, April 13, 2022.

<https://personalinformationprotectionlaw.com/PIPL/tag/sensitive-personal-information/>.

Shepherd, Cristian. “China’s Finely Crafted Web of Digital Surveillance for the Beijing Olympics Has Been Years in the Making.” *The Washington Post*. Accessed January 3, 2025.

<https://www.washingtonpost.com/sports/olympics/2022/02/02/china-digital-surveillance-beijing-winter-olympics/>.

“Standard Contractual Clauses (SCC).” European Commission. Accessed January 3, 2025.

https://commission.europa.eu/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en.

TMO Group. “Data Protection Laws in China: Overview (2024).” *TMO Group*, August 13, 2024.

<https://www.tmogroup.asia/insights/china-data-protection-laws/>.

Togni, Andrea. “How East Germany’s Stasi Perfected Mass Surveillance.” *Mises Institute*, February 3, 2024.

<https://mises.org/mises-wire/how-east-germanys-stasi-perfected-mass-surveillance>.

“Understanding China’s PIPL: Key Regulations, Compliance & Impact.” Accessed January 3, 2025.

<https://secureprivacy.ai/blog/china-pipl-personal-information-protection-law>.

Cross-Border Data Transfers.” *Journal of Chinese Law* 28, no. no.3 (2022): 345–70.

“Who Are the Members of the Board?” Who are the members of the Board? | European Data Protection Board. Accessed January 3, 2025.

https://www.edpb.europa.eu/about-edpb/faq-frequently-asked-questions/who-are-members-board_en.

Xiaoping, Deng. “Lessons Learned with the Chinese Economic Reform.” Study. Accessed January 3, 2025.

<https://study.com/learn/lesson/deng-xiaoping-chinese-economic-reform.html>.

Yan Luo, Xuezi Dan. “China Eases Restrictions on Cross-Border Data Flows.” Inside Privacy, March 25, 2024.

<https://www.insideprivacy.com/uncategorized/china-eases-restrictions-on-cross-border-data-flows/>.

Yuet, Tham Ming. “The Impact of China’s Data Localization Requirements on

AI in Healthcare: Legal Challenges Ahead

Fabio Conigliaro

Law, Bocconi University, Milano, Italy

E-mail: fabio.conigliaro@studbocconi.it

Published: 27th of January, 2025

Abstract

Artificial Intelligence is one of the fastest-growing technologies, finding its applications across many industries. The healthcare sector, however, is one of the most promising yet challenging areas for this technology. While this has the propensity to increase efficiency and diagnostic precision widely, the impact on the legal system is similarly great. The legal and regulatory implications of the application of AI in medical practice will be of essence, especially to demarcate responsibility, ensure privacy, enhance access to data, and protect the basic rights of a patient. This paper seeks to critically evaluate the legal fields that may emerge due to the use of AI in the delivery of healthcare. Examples of present regulations, legal and policy challenges, and related solutions for the future will be analyzed.

Keywords: healthcare, liability, consent

I. Introduction

AI in healthcare is transforming diagnostics, treatment, and patient management, but it also raises important legal concerns. Key issues include data privacy and security, as patient information used by AI must comply with regulations like HIPAA¹ in the U.S. Regulatory bodies like the FDA² are working to establish guidelines for approving AI tools, but the legal landscape remains complex as AI technology evolves. Ensuring transparency, fairness, and patient consent are also critical legal considerations in integrating AI into healthcare.

¹ *Health Insurance Portability and Accountability Act (HIPAA) sets privacy standards for healthcare information.*
<https://www.hhs.gov/hipaa/index.html>

² The FDA regulates medical devices, including those powered by AI.
<https://www.fda.gov/medical-devices>

In the context of the medical industry, AI refers to algorithms and machine learning models that analyze data in medicine with diagnostic decision support, patient monitoring, and treatment design. Examples of AI applications range from AI assisted diagnosis of cancer, decision support systems to help doctors find the best course of treatment to remote patient monitoring. With the integration of AI into healthcare however, many questions about liability, data protection and patients rights arise. In light of this, there is a serious need for clear legal frameworks to address these new emerging challenges.

How can legal frameworks keep up with the rapid integration of AI in healthcare to protect patient rights and ensure accountability?

2. Relevant Legal Regulations

Due to the nature of AI, protection of personal data—especially health data—is one of the main legal issues for AI use in healthcare. The General Data Protection Regulation (EU) 2016/679, also known as the GDPR, is the basic regulation regarding the processing of personal data within the European Union.

Article 9 of the GDPR³ stipulates that "health data are a special category of data," requiring special caution. More precisely, processing health data through AI should meet the following conditions:

Explicit patient consent: The processing of health data by means of AI has to be based on the patient's explicit and informed consent. This presupposes that the patient is perfectly aware of the fact that their data will be used by the AI—for instance, in diagnostics analysis or health profile creation.

Data minimization: this principle—enshrined in Article 5 of the GDPR—dictates that AI will process data for the purposes it was collected and shall be limited to only what is necessary for those purposes. This is highly critical with regards to the diagnosis or monitoring of diseases, facilitated by AI technologies,. It must be ensured that the collection of excessive or irrelevant data is avoided

Data security: AI has to ensure that personal data is protected against unauthorized access, alteration, or loss. All processing of health data has to be done in a secure manner by way of encryption or anonymization in order to avoid abuses or any violations of privacy.

³ GDPR, Article 9: Special conditions for processing health data.
<https://gdpr-info.eu/art-9-gdpr/>

Liability and Medical Malpractice

The other pressing issue being discussed along with the introduction of AI into healthcare is legal liability. In the event of a medical accident—one that was caused either by the faulty AI system or the wrong diagnosis given by an algorithm—who would be responsible: the physician who used it, the company which manufactured the software, or the technology provider?

According to Law 24/2017, the so-called "Gelli-Bianco Law,"⁴ governing liability in the healthcare sector in Italy, damage to a patient because of a medical error is the responsibility of both the health professional and the structure where the treatment has taken place. The introduction of AI brings new complications. Should the diagnosis or choice of treatment be performed by an AI system, the doctor may be held liable for relying on technologies that were not sufficiently verified, with partial liability due to the technology manufacturer for any defect in the software or algorithm.

For now, no specific rules are provided by the actual legal framework with respect to liability in respect of the use of AI in medicine, and the problem will thus have to be resolved on a case by case basis. One possible approach would be to draw up ad hoc legislation which sets out clearly the limits of liability between the doctor, the health-care facility, and the manufacturer of the AI system.

⁴ Law 24/2017 (Gelli-Bianco Law) governs medical liability in Italy.
<https://www.gazzettaufficiale.it/eli/id/2017/03/31/17G00047/sg>

Artificial Intelligence and Ethical Oversight

Another essential legal question relates to the ethical oversight of AI in medicine. There are potential ethical issues with the use of AI: discrimination, data biases, and automated decisions are some factors that could negatively affect a particular group of patients. The European Commission identified, in its White Paper on Artificial Intelligence (2020)⁵, non-discrimination and respect of fundamental rights as key requirements for AI. Besides, the European Society of Artificial Intelligence in Medicine–AIME–while pointing to considerations about code of ethics, stressed that human supervision must be given to final decisions regarding areas which are delicate, such as diagnosis and prescription for treatment.

In Italy, the Code of Medical Ethics, revised in 2021⁶, details how to use healthcare technologies. It states, "The use of technology by physicians should always be geared towards patient interest, and it is up to the physician to remain responsible for the therapeutic decisions even when these are supported by AI."

3. Legal Challenges in Integrating IBM Watson for Oncology into Medicine: A Case Study

Watson for Oncology and the Case of Malformed Treatment Recommendations⁷

Watson for Oncology intended to analyze vast volumes of data and give recommendations on cancer treatments, using big data assistance for the best medical practices and patient data. However, several doctors and hospitals reported that the algorithm suggested wrong treatments—some even not just inadequate but harmful ones.

In 2018, the New York Times reported that in certain cases, Watson for Oncology recommended treatments that did not align with clinical guidelines, including medications not suitable for the patient's type of cancer. Probably the most infamous incident involved the system suggesting a wrong chemotherapy regimen for a colon cancer patient, bringing doubt to those doctors and patients who had trusted the system.

Legal Actions - Ethical Concerns

Although no public lawsuits are known where a patient has directly sued IBM for damages caused by erroneous treatment recommendations from Watson, there have been investigations, disputes, and concerns raised by hospitals and medical professionals. This had led to the revision of contracts between hospitals and IBM. Several healthcare facilities reduced or stopped the usage of Watson for Oncology due to the same reasons.

There are several legal issues presented, which make Watson for Oncology relevant.

⁵ White Paper on AI: European approach to AI ethics and trust.

https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf

⁶ The Code of Medical Ethics, 2021: Technology must always serve patient interests.

<https://portale.fnomceo.it/codice-deontologico/>

⁷ "IBM Watson for Oncology: Key Insights and Use Cases", IBM Watson, 2018.

<https://www.ibm.com/watson-health/learn/oncology>

Firstly the medical liability, in the case of a therapeutic error due to an inappropriate recommendation given by Watson, who would be legally responsible? The doctor who followed the advice given by AI, the hospital that implemented the system, or IBM itself? Secondly data reliability, it is been argued that Watson for Oncology was never fully "trained" on real-world cases; the treatments suggested were wrong, and hence, problems are created with AI systems in medicine. Thirdly diagnostic and therapeutic mistakes, AI could suggest treatments, which would be based on large datasets but not completely tailored or accurate for the individual patient, with the potential for causing clinical harm.

Informed Consent Issues

The integration of AI into clinical practice raises several issues regarding informed consent. Traditionally, informed consent includes the physician explaining to the patient in understandable terms the diagnosis, treatment options, and risks involved.

With AI, it becomes murkier. For example, if an algorithmic diagnosis has been completed, how would a physician explain how a complex, algorithmic system works to the patient? How can the patient be said to make an informed decision if they do not have the expertise in understanding how AI works?

Including an explanation of the AI technologies applied in a particular case, understandable by everyone, in the process of informed consent may enable a patient to agree to or decline treatment on a fully informed basis. Secondly, entirely new legislation will be needed to govern how

informed consent is adapted to the new realities brought into being by AI.

The Challenge of Keeping Regulations Up to Speed with a Rapidly Changing Technology

The second legal issue refers to the fast pace at which innovations are being carried out within the artificial intelligence arena, which often leads to growing inability to further revise regulations on a continuous basis. AI-related technologies, especially those applied to medicine, are developing very fast, and laws and regulations often fail to keep pace. Such regulatory challenges are also well reflected in the Personalized Medicine approach, whereby AI is used to tailor treatments to individual patients based on their genetic background. Regulations concerning medicines and medical devices are not always prepared to tackle the peculiarities of these new technologies.

4. Shaping the Future of Legal Standards in AI-Driven Healthcare

Upon reviewing all these legal frameworks, various actions could be implemented to enhance and modify them in response to the challenges that AI presents in the healthcare sector. To begin with, it would be prudent to create tailored legislation that explicitly delineates legal responsibility in instances of medical mistakes attributable to AI, clarifying the division of accountability among healthcare providers, medical institutions, and technology

creators. This strategy could assist in bridging the existing regulatory void, where liability remains ambiguous.

Moreover, it is imperative to bolster regulations concerning the safeguarding of personal data, especially in relation to sensitive health details. While the GDPR offers overarching principles, the advent of AI introduces heightened privacy threats, such as unauthorized access or data manipulation. As a result, more defined regulations may be necessary regarding the usage and safeguarding of information by algorithms, coupled with stricter surveillance of security implementations.

Another avenue for enhancement involves informed consent. Present regulations are inadequately prepared to deal with the intricacies of algorithmic systems. New legislation should be established to mandate that medical professionals clearly clarify the functioning of AI technologies to patients, allowing them to make genuinely informed choices. This could involve the formulation of consent documents customized to the particular applications of AI in healthcare.

Lastly, there exists a crucial need for the regular updating of regulations to align with the swift evolution of AI technology. Healthcare legislation and regulations ought to be designed with adaptability in mind, ensuring they can be swiftly revised to mirror technological progress. The formation of an interdisciplinary expert panel, comprising legal experts, medical professionals, technology specialists, and patient advocates, could serve as an effective approach

to guarantee that regulations remain pertinent and impactful.

Bibliography:

1. European Union (2016). *General Data Protection Regulation (GDPR)*. Regulation (EU) 2016/679 of the European Parliament and of the Council. Official Journal of the European Union. Available at: <https://gdpr.eu>
2. Health Insurance Portability and Accountability Act (HIPAA) sets privacy standards for healthcare information. Available at: <https://www.hhs.gov/hipaa/index.html>
3. European Commission (2020). *White Paper on Artificial Intelligence: A European approach to excellence and trust*. European Commission. Available at: https://ec.europa.eu/info/sites/info/files/mission-white-paper-artificial-intelligence-feb-2020_en.pdf
4. The Code of Medical Ethics, 2021. Available at: <https://portale.fnomceo.it/codice-deontologico/>
5. European Society for Artificial Intelligence in Medicine (AIME) (2021). *AI in Medicine:*

Ethical and Regulatory Challenges. European Society for Artificial Intelligence in Medicine. Available at: <https://www.aime2021.org>

Protection and AI in Healthcare. Available at: <https://curia.europa.eu>

6. Gelli-Bianco Law (Italy) (2017). *Law No. 24 of 8 March 2017 (Gelli-Bianco Law)*. Official Italian Gazette. Available at: <https://www.gazzettaufficiale.it>
7. IBM Watson Health (2018). *IBM Watson for Oncology: Key Insights and Use Cases*. IBM Watson Health. Available at: <https://www.ibm.com/watson-health/learn/oncology>
8. New York Times (2018). *The Disastrous Rise of Watson, the AI That Was Supposed to Revolutionize Healthcare*. The New York Times. Available at: <https://www.nytimes.com/2018/07/25/technology/ibm-watson-healthcare.html>
9. Harvard Law Review (2020). *Artificial Intelligence and the Law: A Critical Overview of Legal Frameworks and Emerging Regulations*. Harvard Law Review, 133(2), 190-222. Available at: <https://harvardlawreview.org>
10. Jones, M., & Finkelstein, M. (2020). *AI and the Challenges of Informed Consent in Healthcare: Legal and Ethical Perspectives*. *Health Law Journal*, 40(1), 95-118. Available at: <https://healthlawjournal.com>
11. European Court of Justice (2019). *Case C-236/18: Legal Framework for Data*

How do the US and EU differ in their approaches to regulating big tech monopolies such as Google, Amazon, and Apple, what are their implications on competition?

Gabriela Vázquez-Guillén Navarro

IE University, Madrid, Spain
Bachelor in Law and International Relations
E-mail: gvazquezguil.ieu2023@student.ie.edu

Published: 27th of January, 2025

Abstract

Companies such as Google, Amazon, and Apple have completely taken over our lives, influencing nearly everything we do, and turning into global powerhouses. One of these impacts is on the economy, as these companies have become complete monopolies in their industries. This has resulted in the loss of competition, as well as damaging small businesses' potential to grow. Both the United States and the European Union have taken steps to regulate these big tech monopolies. However, their approaches differ: the EU has taken a more punitive approach, imposing large fines on these companies with the aim of increasing market fairness, the US has taken a more laissez-faire approach, in an attempt to ensure consumer welfare, and ensure creativity. While the EU and the US have adopted differing approaches to handling the issue, the EU's strict regulations may have a faster impact, however, there is a risk of stifling innovation, whereas, the US attempts to ensure balance between enforcement and economic growth.

Keywords: Monopolies, Big Tech, Regulation

I. Introduction

Google, Apple, Meta, Microsoft, and Amazon, often referred to as the "Big Tech" companies, have greatly impacted our lives. Not only have they affected the way we communicate, allowing us to reach anyone, no matter where, in a matter of a few clicks: Big Tech companies have completely monopolized their respective market sectors, mostly due to their interest, at times excessive, in growing rapidly and becoming even larger companies, completely diminishing the possibility of competitors' growth.

In an effort to prevent rivals from gaining too much power and becoming a threat to their market share, they either eliminate, buy, or eliminate and buy. The process of 'eliminate and buy' consists of purchasing a competitor to

remove them from the market (eliminate) while gaining their shares and capabilities (buy).

It is an undeniably empirical observation that, for every sector of the market, there is at least one company that has almost complete control. When looking at the search bar industry, for example, Google has nigh-complete control, accounting for "81.05% of the global search market".¹ The remaining 18.95% belongs to other minor search engines

¹ Burt, Sarah Jane. "Bing Vs. Google: We Compare Users, Search Features, Ads + AI." HawkSEM, June 25, 2024. <https://hawksem.com/blog/bing-vs-google/#:~:text=Google%20dominates%20the%20global%20search,86.6%20billion%20visits%20per%20month>.

such as Bing, and it is thus hardly deniable that Google has *de facto* completely monopolized this sector.

It would also not be an absurd statement to say that people simply cannot go about their daily lives without Big Tech companies. Following the COVID-19 Pandemic, their already massive influence has grown exponentially, “*as we have all become ever more dependent on our smart devices to stay connected with our personal and professional worlds.*”² Not only have they become essential in our everyday lives, but they constitute significant contributions to our economy. Despite their relevance in both the economic and social contexts, this should never be taken to mean that these companies should be allowed unlimited powers, but rather that the need for regulation should be even more self-evident. This raises the question: How do the US and EU differ in their approaches to regulating big tech monopolies such as Google, Amazon, and Apple, what are their implications on competition?

II. Excessive reliance and the need for some form of regulation

Nowadays, a large majority of companies and even governments are reliant on Cloud infrastructure from companies such as Amazon, Microsoft, and Google. The reliance on these major companies is a result of the need for reliable, and efficient cloud services. Companies and even public services are reliant on such in many instances, especially in times of war, as a way of protection against cyberattacks. This has, in turn, begun to result in social,

economic, and geographic discrepancies.³ This has led countries, especially ones in the European Union, to come to the realization that their over-reliance on Big Tech monopolies is likely to become a threat to the digital sovereignty of the EU.

Granting excessive leeway to such cornerstones of our infrastructure would place all bargaining power in the hands of a select few entities whose only ultimate goal is profit, and which would certainly abuse their power over small businesses and clients. Their far-reaching influence over numerous aspects of daily life, and especially the one they exert over significant swathes of our industrial sectors means that they can create extensive damage and widespread destruction, therefore, it is essential that proper means of regulation are put in place. Overreliance from many sectors such as healthcare leaves these sectors exposed, meaning that the smallest impact to their database such as a cyberattack can completely paralyze certain industries. Especially those following COVID-19, both the US and the EU have thus felt the need for regulation to be passed to limit their power.

However, the approach between these global powerhouses differs. The EU has a history of imposing large fines on companies to increase market fairness; the US, on the other hand, has taken a more *laissez-faire* approach and its antitrust laws have instead remained focused on consumer welfare, despite a strong need for bigger scrutiny of monopolies. The US and the EU thus have replicated their different approaches in their attempts to manage Big Tech conglomerates and concentrations, which naturally has resulted in very different market and corporate outcomes; due to this, the EU’s more stringent drive towards regulation of Big Tech monopolies will have a greater short-impact on changing competition, while the US’

² Jacobides, Michael G. “Regulating Big Tech in Europe: Why, so What, and How Understanding Their Business Models and Ecosystems Can Make a Difference.” *SSRN Electronic Journal*, December 21, 2020. <https://doi.org/10.2139/ssrn.3765324>.

³ Dezeure, Freddy, Lokke Moerel and George Webster. “Digital Sovereignty Is Impossible Without Big Tech” *Atlantisch Perspectief* 48, no. 1 (2024): 30–35. <https://www.jstor.org/stable/48761751>.

choices will have a more lasting impact in the long-term, and change innovation and competition in the long run.

III. The EU Approach

The European Union has strongly advocated for stringent regulation of big tech monopolies in an attempt to limit their power and abuse. The European Commission passed the Digital Markets Act in an effort to ensure this is accomplished; starting in 2022, however, the European Commission seems to have also taken other approaches to curbing the power of Big Tech.⁴ The Commission has e.g. embarked in litigation to regulate these companies, such as Google and Alphabet v. Commission (Google Shopping), or a case brought against Facebook Marketplace.

The EU's focus on regulating Big Tech comes from a long and storied background history of regulation of monopolies in general. Regulation began in 1957 through the creation of the Treaty on the Functioning of the European Union. The application of Article 102 of the Treaty on the Functioning of the European Union prohibits "*abusive behaviour by companies holding a dominant position on any given market*".⁵ This provision forbids a company holding a dominant position to abuse said position for anti-competitive reasons. Most cases concerning abuse of dominant positions "*concern practices having an exclusionary effect on actual or potential competitors*".⁶ Additionally, Article 101 of the Treaty on the Functioning of the European Union "*prohibits agreements between two or more independent market*

operators, which restrict competition".⁷ Both of these articles clearly take an aggressive stand against monopolies, impeding two or more companies to create agreements which limit competition.

The articles present regulation of monopolies as a right by the EU, and the The European Union's rather intolerant disposition towards monopolies has thus generally led to clear guidelines for their regulation, enforcement, and disciplining; Big Tech monopolies remain however a daunting challenge due to the aforementioned issue of society's arguably excessive reliance on the services they provide.

The EU is generally enthusiastic about regulation, however, this is not the case when it comes to tech monopolies, for various reasons. Firstly, the technological environment is complex and new, therefore lack of knowledge plays a factor in making it hard to regulate, as the field is not the same as regulating traditional monopolies. Additionally, there is the aforementioned dependence on technological companies, especially those which have taken over their sectors such as Facebook, Google, and Amazon. They are the reason for many jobs and the economic status of member countries. These factors make the regulation of tech monopolies a challenging mission, even though the EU is generally prone to regulation.

Despite this, the European Union passed the Digital Markets Act to regulate technological powerhouses, in efforts to "*to make the markets in the digital sector fairer and more contestable*".⁸ For a fairer digital sector to be achieved, it establishes a set of criteria to identify gatekeepers, which are "*large digital platforms providing so*

⁴ Jacobides, Michael G. "Regulating Big Tech in Europe: Why, so What, and How Understanding Their Business Models and Ecosystems Can Make a Difference." *SSRN Electronic Journal*, December 21, 2020. <https://doi.org/10.2139/ssrn.3765324>.

⁵ Competition Policy. "Application of Article 102 TFEU," n.d. https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/application-article-102-tfeu_en#:~:text=Article%20102%20prohibits%20abusive%20behaviour.on%20actual%20or%20potential%20competitors.

⁶ *Ibid.*

⁷ European Commission. "Antitrust and Cartels." Competition Policy. Accessed November 29, 2024. https://competition-policy.ec.europa.eu/antitrust-and-cartels_en.

⁸ Digital Markets Act (DMA). "About the Digital Markets Act," n.d. https://digital-markets-act.ec.europa.eu/about-dma_en.

called core platform services, such as online search engines, app stores, messenger services”.⁹ The criteria established by the Act sets out a list of “dos and don’ts”, such as “allow their business users to promote their offer and conclude contracts with their customers outside the gatekeeper’s platform”¹⁰ (which would be an example of a “do”). On the other hand, treating services or products offered by gatekeeper platforms more favorably in comparison to those offered by other platforms which are similar would be an example of a don’t.

This act has thus set strict parameters for how gatekeepers are allowed to act when it comes to operations with other businesses, ensuring that they are not to abuse said power and take advantage of small business competitors. The commission has also established a set of penalties to ensure these guidelines are followed, such as fines of up to 20% of the company’s total worldwide annual turnover depending on the severity and frequency of infringements.¹¹ The Act also allows the Commission to conduct market investigations “to ensure that the new gatekeeper rules keep up with the fast pace of digital markets.”¹²

This act isn’t the only proactive measure the Commission has taken to regulate these companies. The Commission has also brought cases against big tech monopolies such as Google and Facebook. The Google and Alphabet v. Commission was a 2021 case, which convicted Google of abusing dominance as a search engine. The Commission found that Google was infringing Article 102 of The on the Functioning of the European Union (TFEU), alongside, an infringement of Article 54 of the Agreement on the European Economic Area (EEA).¹³ Article 54 prohibits “any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Google and Alphabet v Commission* (Case T-612/17), 10 November 2021.

as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties.”¹⁴

The Facebook case was also deemed to be in violation of Article 102 of TFEU and Article 54 of the EEA.¹⁵ The Commission stated that “the company breached EU antitrust rules by distorting competition in the markets for online classified ads.”¹⁶ Additionally, the Commission raised concern that “Meta is imposing unfair trading conditions on Facebook Marketplace’s competitors for its own benefit.”¹⁷ In its preliminary hearings, the Commission deemed that Meta (Facebook) was dominant in the personal networks market, alongside the international market for online advertising. Therefore, the Commission established that Facebook was in violation of Article 102 and Article 54.

The European Commission is not alone, within the framework of the EU, to have undertaken steps to curb the Tech giant’s market dominance, as the Member States of the European Union themselves, such as France, have deployed legal instruments within their purview. Indeed, France has pushed for a digital tax to be imposed on big tech companies,¹⁸ nicknamed the “G.A.F.A. Tax” (acronym for Google, Apple, Facebook, and Amazon), “will impose a 3% levy on the total annual revenues of the

¹⁴ EEA Agreement (Article 54)

¹⁵ Case T-451/20 *Meta Platforms Ireland v Commission*, EU:T:2023:276

¹⁶ European Commission. (2022, December 19). *Antitrust: Commission sends statement of objections to meta over abusive practices benefiting Facebook Marketplace*. European Commission - European Commission.

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728

¹⁷ European Commission. (2022, December 19). *Antitrust: Commission sends statement of objections to meta over abusive practices benefiting Facebook Marketplace*. European Commission - European Commission.

https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7728

¹⁸ Brattberg, Erik. “Technology and Digital Issues.” *Reinventing Transatlantic Relations on Climate, Democracy, and Technology*. Carnegie Endowment for International Peace, 2020, p.2.

<http://www.jstor.org/stable/resrep27698.7>

*largest technology firms providing services to French consumers*¹⁹.

The EU financial service “*is heavily regulated. Notably, the EU legislative framework represents a quite solid tool to address the concerns raised regarding the stability of the financial system and the lack of a level playing field among competitors*”.²⁰ It is the EU’s acknowledgment of the lack of a level playing field among competitors which has fueled interest and desire to regulate big tech companies. Due to the constant evolution of technology, not just in the big tech sector, but also when it comes to FinTech firms has led to further work “*being conducted by EU supervisory and legislative authorities on the prudential risks and opportunities stemming from the use of new technologies.*”²¹ The European Union has taken proactive steps in numerous ways such as passing the Digital Markets Act and taking on multiple court cases which have directly prosecuted companies such as Facebook and Google.

Through these regulatory efforts, we can catch a glimpse into the European Union’s awareness of the risks posed by growing technologies and their purveyors, its awareness of the impact their products have on the citizens of the EU, and both consumers and States’ ever-increasing dependency on them. The EU seems to have taken it upon itself to show the world that increasing regulation is required for Big Tech companies to continue to help economies as competition is essential for economic growth as “*businesses will have greater incentives to lower prices, to improve the quality of their products and services, and to provide buyers with more options.*”

¹⁹ Chrisafis, Angelique. “France’s Digital Minister Says Tax on Big Tech Is Just the Start.” *The Guardian*, January 12, 2020. <https://www.theguardian.com/world/2020/jan/12/frances-digital-minister-tax-on-tech-giants-just-the-start-cedric-o-gafa#:~:text=France%20is%20to%20become%20the,providing%20services%20to%20French%20consumers>.

²⁰ Scopsi, Martina. “The Expansion of Big Data Companies in the Financial Services Industry, and EU Regulation.” *Istituto Affari Internazionali (IAI)*, 2019.

<http://www.jstor.org/stable/resrep19656>.

²¹ *Ibid.*

IV. The United States and its relaxed approach

In comparison to the European Union, the United States has taken a less regulatory approach when it comes to dealing with monopolization. This, of course, should not be taken to mean that there has not been regulation at all: over the years, numerous cases have been fought against US-based Big Tech conglomerates such as Google, Facebook, and Amazon, which faced accusations of monopolization and abuse of dominance. A prime example of such actions would be the *Federal Trade Commission v. Facebook, Inc.* case, in which Facebook was sued for illegally maintaining its personal social networking monopoly through a years-long course of anticompetitive conduct.²² In the trial, Facebook was alleged to have been performing and upholding a scheme whereby it strategically acquired rival companies such as Instagram and WhatsApp in an attempt to eliminate the possibility of threats to its monopolistic position.

Although a decision on the matter is yet to be reached, the case serves as an optimal representation of how the United States has been dealing with its issue over Big Tech conglomerates. The United States approaches monopolization on a case-by-case basis rather than passing laws that are binding on all companies. The United States does, of course, have some legislation on the matter, mainly in the form of the Sherman Antitrust Act²³; this act was

²² “Facebook has willfully maintained its monopoly power through its course of anticompetitive conduct, including through its course of anticompetitive acquisitions and anticompetitive conditioning of access to interconnections”, in *Federal Trade Commission v. Facebook, Inc.* No. 1:20-cv-03590-JEB. D.D.C. (Complaint filed January 13, 2021)

https://www.ftc.gov/system/files/documents/cases/051_2021.01.21_revised_partially_redacted_complaint.pdf.

²³ Cornell Legal Information Institute. “Sherman Antitrust Act.” Legal Information Institute. Accessed November 26, 2024. https://www.law.cornell.edu/wex/sherman_antitrust_act#:~:text=Sherman%20Antitrust%20Act%20of%201890,is%20codified%20in%2015%20U.S.C.

passed in 1890 and declares unlawful any person's action to "monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations"²⁴ Aside from the Sherman Antitrust Act, the US also has the Clayton Antitrust Act, and the Federal Trade Commission Act. The Clayton Antitrust Act prohibits "certain actions that might restrict competition, like tying agreements, predatory pricing, and mergers that could lessen competition".²⁵ On the other hand, the Federal Trade Commission Act allows the Commission to "(a) prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce; (b) seek monetary redress and other relief for conduct injurious to consumers; (c) prescribe rules defining with specificity acts or practices that are unfair or deceptive, and establishing requirements designed to prevent such acts or practices; (d) gather and compile information and conduct investigations relating to the organization, business, practices, and management of entities engaged in commerce; and (e) make reports and legislative recommendations to Congress and the public."²⁶ These acts monitor competition in the US and regulate how companies conduct business.

The application of the Sherman Antitrust Act to big tech monopolies can be seen in the U.S and Plaintiff States v.

Google case.²⁷ This case began in late 2020 when two lawsuits were filed alleging violation of the Sherman Antitrust Acts section 1 and 2 by Google. According to the US Department of Justice, Google had unlawfully used its distribution agreements to circumvent competition, and in turn, ensure that it maintains its monopoly in the search service and online advertising markets industries.²⁸

Google was convicted due to its anti-monopoly conduct in trying to eliminate competition through online advertising, which is in violation of the Sherman Antitrust Act Section 2, . The court held that Google has monopoly power in the general search service and general search text ad markets and that the distribution agreements Google holds have anticompetitive effects, to which the company hadn't offered valid procompetitive arguments.²⁹

Importantly, the court also found that Google had exercised its monopoly power by charging super competitive prices for general search text ads, which allowed Google to earn monopoly profits³⁰. This was hailed as an important victory in the US: "This victory against Google is an historic win for the American people," said Attorney General Merrick Garland,³¹ as it established that regardless of the size of the company and its impact on the economy, it was not above the law, and its conduct had to be in accordance with the regulations in place.

²⁴ U.S. Department of Justice, "Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act," *Antitrust Division*, accessed November 13, 2024, <https://www.justice.gov/archives/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-1#:~:text=Section%20of%20the%20Sherman%20Act%20makes%20it%20unlawful%20for,foreign%20nations%20.%20.%20.%20.%22.>

²⁵ US Department of Justice. (2023, December 20). *The antitrust laws*. Antitrust Division US Department of Justice. <https://www.justice.gov/atr/antitrust-laws-and-you>

²⁶ Federal Trade Commission. (2024, April 3). *Federal Trade Commission Act*. Federal Trade Commission. <https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act>

²⁷ *United States v. Google LLC*. No. 20-cv-3010 (APM) and No. 20-cv-3715 (APM), D.D.C. (Filed 2020)

²⁸ U.S. Department of Justice, "Complaint: *United States et al. v. Google LLC*, Case No. 20-cv-3010 (APM)", *Antitrust Division*, October 2020, accessed on November 18, 2024: <https://www.justice.gov/atr/case-document/file/1329131/dl?inline>

²⁹ *United States v. Google LLC*. No. 20-cv-3010 (APM) and No. 20-cv-3715 (APM), D.D.C. (Filed 2020)

³⁰ *United States v. Google LLC*. No. 20-cv-3010 (APM) and No. 20-cv-3715 (APM), D.D.C. (Filed 2020)

³¹ U.S. Department of Justice, "Justice Department Statements on U.S. District Court for the District of Columbia's Decision in *U.S. v. Google*," *Office of Public Affairs*, August 2024, accessed November 13, 2024: <https://www.justice.gov/opa/pr/justice-department-statements-us-district-court-district-columbias-decision-us-v-google>.

Additionally, the decision further reinforced that monopolistic practices undermine consumer welfare and fair competition, reaffirming that companies such as Google should be punished for such behaviour. Both the Facebook case and the Google decision demonstrate the steps the United States has been taking to limit monopolistic attitudes in technological companies.

It is significant to note that the United States has always followed a more *laissez-faire* approach, regulating on a case-by-case basis, rather than creating new laws to adapt in accordance with our society's changes. Another case that demonstrates this approach is *FTC v. Amazon*, in which the Federal Trade Commission (FTC), alongside attorney generals from 17 different states, sued Amazon, alleging illegal "*price spiking*."³² With this term, the FTC claimed that Amazon was using a secret algorithm that would lock competitors into higher prices. This algorithm is referred to as Project Nessie, which manipulates rivals' weaker pricing algorithms, in turn, locking competitors into higher prices.³³ The algorithm was used for years to improve Amazon's profits and force competitors to raise their prices. The FTC claims that Amazon had thus violated major antitrust laws such as the Sherman Antitrust Act, the Clayton Antitrust Act, and the Federal Trade Commission Act. Alongside the statutes mentioned above, there are also several antitrust State laws that companies have to abide by such as the Washington State Consumer Protection Act which states that it "*shall be unlawful for any person to monopolize, or attempt to*

monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce."

The United States thus does not have any general laws that have been developed recently as a response to the growth in big tech companies like the EU Digital Markets Act, but rather they fight monopolization on a case-by-case basis. The US has acts that limit competition as a whole and which companies have to abide by, under threat of a legal and even criminal prosecution.

V. Conclusions

Both the European Union and the United States have clearly taken steps to adapt their antitrust disciplines to limit Big Tech companies' ever-increasing attempts at concentrating power and preventing them from monopolizing their market sector; in doing so, however, their approaches have clearly differed.

The European Union has taken a proactive approach in lockstep with the recent growth of technology: acts and regulations have been passed to combat the growth of companies. As mentioned above, legislation such as the Digital Markets Act has been passed to prevent monopolization, in a more concerted general effort to ensure the European market's fairness and prevent small competitors from being harmed.

On the other hand, the US has kept on relying on a reactive approach, taking on individual cases rather than passing laws of general effect and broad applicability to prevent anticompetitive conduct and monopolizing tendencies. The cases brought against Amazon, Google, and Facebook all occurred after they were suspected of illegal conduct, and yet no laws or acts were passed beforehand or afterward to prevent said conduct.

This difference in approaches is also certain to lead to a difference in outcome. For instance, the European Union's regulation is immediate and follows strict regulations with large fines and penalties, which can quickly change how

³² Mehta, Vaidehi. "Amazon's Pricey Secrets Lead to FTC Lawsuit for Antitrust Violations - Courtside." Findlaw, October 12, 2023.

<https://www.findlaw.com/legalblogs/courtside/amazons-pricey-secrets-lead-to-ftc-lawsuit-for-antitrust-violations/>

³³ Mattioli, D. (2023, October 3). *WSJ News exclusive | Amazon used secret 'project nessie' algorithm to raise prices.* Wall Street Journal. <https://www.wsj.com/business/retail/amazon-used-secret-project-nessie-algorithm-to-raise-prices-6c593706>

the market functions for companies, as its dynamics could be changed very quickly and prompt smaller businesses or competitors to enter the field or acquire power. This can be seen in the Digital Markets Act alongside multiple high-profile antitrust cases.

On the other hand, the US case-by-case approach will most likely have an impact in the long term. The US fighting against monopolization on a case-by-case basis rather than establishing strict regulation is meant to prevent the stifling of creativity and allow companies room to grow and create, whereas legislation such as the one established in the EU may limit that creativity as there are strict rules that have to be followed constantly, the US only limits companies once they have broken a rule. This, however, may allow monopolistic behaviors to be sustained over prolonged periods of time.

The impact of these approaches on big tech companies is undeniable. The European Union has levied multi-billion dollar fines, which have caused significant damage to Tech companies. These measures may diminish the dominance of these US-based tech giants, and allow for European-based companies to grow and compete. However, they are running the risk of stifling innovation due to the financial burden of developing in the EU. Meanwhile the US approach, which places a bigger emphasis on innovation, gives Tech companies an advantage in their attempt to completely monopolize their sectors. The differing approaches in large part stem from a historical basis, the US' more relaxed attitudes to monopolistic conduct are rooted in the Sherman Antitrust Act, which focused on fostering innovation and low prices. On the other hand, the EU is influenced by the post-World War II economic climate, with a focus on preventing market dominance and ensuring fairness.

Bibliography

- Brattberg, Erik. "Technology and Digital Issues." *Reinventing Transatlantic Relations on Climate, Democracy, and Technology*. Carnegie Endowment for International Peace, 2020, p.2.
<https://www.jstor.org/stable/resrep27698.7>
- Burt, Sarah Jane. "Bing Vs. Google: We Compare Users, Search Features, Ads + AI." HawkSEM, June 25, 2024.
<https://hawksem.com/blog/bing-vs-google/#:~:text=Google%20dominates%20the%20global%20search,86.6%20billion%20visits%20per%20month>
- Case T-451/20 *Meta Platforms Ireland v Commission*, EU:T:2023:276
- Chrisafis, Angelique. "France's Digital Minister Says Tax on Big Tech Is Just the Start." *The Guardian*, January 12, 2020.
<https://www.theguardian.com/world/2020/jan/12/frances-digital-minister-tax-on-tech-giants-just-the-start-cedric-o-gafa#:~:text=France%20is%20to%20become%20the.providing%20services%20to%20French%20consumers>
- Competition Policy. "Application of Article 102 TFEU," n.d.
https://competition-policy.ec.europa.eu/antitrust-and-cartels/legislation/application-article-102-tfeu_en#:~:text=Article%20102%20prohibits%20abusive%20behaviour,on%20actual%20or%20potential%20competitors
- Cornell Legal Information Institute. "Sherman Antitrust Act." Legal Information Institute. Accessed November 26, 2024.
https://www.law.cornell.edu/wex/sherman_antitrust_act#:~:text=Sherman%20Antitrust%20Act%20of%201890,is%20codified%20in%2015%20U.S.C
- Dezeure, Freddy, Lokke Moerel, and George Webster. "Digital Sovereignty Is Impossible Without Big Tech." *Atlantisch Perspectief* 48, no. 1 (2024): 30–35.
<https://www.jstor.org/stable/48761751>
- EEA Agreement (Article 54)
- Digital Markets Act (DMA). "About the Digital Markets Act," n.d.
https://digital-markets-act.ec.europa.eu/about-dma_en
- European Commission. "Antitrust and Cartels." Competition Policy. Accessed November 29, 2024.
https://competition-policy.ec.europa.eu/antitrust-and-cartels_en
- European Commission. (2022, December 19). *Antitrust: Commission sends statement of objections to meta over abusive practices benefiting Facebook Marketplace*. European Commission - European Commission.
- "Facebook has willfully maintained its monopoly power through its course of anticompetitive conduct, including through anticompetitive acquisitions and anticompetitive conditioning of access to interconnections", in *Federal Trade Commission v. Facebook, Inc.* No. 1:20-cv-03590-JEB. D.D.C. (Complaint filed January 13, 2021)
https://www.ftc.gov/system/files/documents/cases/051_2021.01.21_revised_partially_redacted_complaint.pdf
- Federal Trade Commission. (2024, April 3). *Federal Trade Commission Act*. Federal Trade Commission.
<https://www.ftc.gov/legal-library/browse/statutes/federal-trade-commission-act>
- Google and Alphabet v Commission* (Case T-612/17), 10 November 2021.
- Jacobides, Michael G. "Regulating Big Tech in Europe: Why, so What, and How Understanding Their Business Models and Ecosystems Can Make a Difference." *SSRN Electronic Journal*, December 21, 2020.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3765324
- Mattioli, D. (2023, October 3). *WSJ News exclusive | Amazon used secret 'project nessie' algorithm to raise prices*. Wall Street Journal.
<https://www.wsj.com/business/retail/amazon-used-secret-project-nessie-algorithm-to-raise-prices-6c593706>
- Mehta, Vaidehi. "Amazon's Pricy Secrets Lead to FTC Lawsuit for Antitrust Violations - Courtside." Findlaw, October 12, 2023.
<https://www.findlaw.com/legalblogs/courtside/amazon-s-pricy-secrets-lead-to-ftc-lawsuit-for-antitrust-violations/>

Scopsi, Martina. “The Expansion of Big Data Companies in the Financial Services Industry, and EU Regulation.” Istituto Affari Internazionali (IAI), 2019. <https://www.jstor.org/stable/resrep19656>

United States v. Google LLC. No. 20-cv-3010 (APM) and No. 20-cv-3715 (APM), D.D.C. (Filed 2020)

U.S. Department of Justice, “Competition and Monopoly: Single-Firm Conduct Under Section 2 of the Sherman Act,” *Antitrust Division*, accessed November 13, 2024, <https://www.justice.gov/archives/atr/competition-and-monopoly-single-firm-conduct-under-section-2-sherman-act-chapter-1#:~:text=Section%20of%20the%20Sherman%20Act%20makes%20it%20unlawful%20for,foreign%20nations%20.%20.%20.%20.%22>

U.S. Department of Justice, “*Complaint: United States et al. v. Google LLC*, Case No. 20-cv-3010 (APM)”, *Antitrust Division*, October 2020, accessed on November 18, 2024: <https://www.justice.gov/atr/case-document/file/1329131/d?inline>

U.S. Department of Justice, “Justice Department Statements on U.S. District Court for the District of Columbia’s Decision in *U.S. v. Google*,” *Office of Public Affairs*, August 2024, accessed November 13, 2024: <https://www.justice.gov/opa/pr/justice-department-statements-us-district-court-district-columbias-decision-us-v-google>

US Department of Justice. (2023, December 20). *The antitrust laws*. Antitrust Division US Department of Justice. <https://www.justice.gov/atr/antitrust-laws-and-you>

Watchers in the Dark: an overview of State security policies in the age of AI

Iacopo Brini

Law School, Università Commerciale L. Bocconi, Milan, Italy

E-mail: iacopo.brini@studbocconi.it

Published: 27th of January, 2025

Abstract

The rise of new and powerful Artificial Intelligence technologies is beginning to present, as their development seems to become ever more exponential, extremely urgent questions on worldwide governmental reliance on their use, and whether something should (or indeed can) be done to limit their prevalence.

Through a panoramic view on the general structure of security frameworks, this paper will analyse what kinds of technologies have been implemented by different states, with a focus on the People's Republic of China and the Russian Federation and their embracing of new developments in surveillance, as well as a brief contrast with the United States, to try and paint the current state of affairs in security policy, and what may lie ahead in the uncertain seas of the digital age.

The paper will review the national security frameworks of China, Russia and the United States, emphasizing how each state has shown varying degrees of enthusiasm towards AI integration, and will then suggest that specific, rule of law-oriented regulation seems unlikely in the face of a State's interest to better its surveillance capabilities. Limitations are instead likely to come as results of bargaining processes between world powers.

Keywords: AI, State Security, Surveillance

I. Introduction

National Security is, at its heart, the science and praxis of handling threats to the State. A menace of this sort is essentially any sort of force that positions itself against the interests and priorities of the State, whether through military means or with any other instrument that is

suitable to harm the State's three cornerstones of territory, sovereignty and people.

These forces working to the State's detriment may come from abroad, from foreign players and known or unknown enemies, but the trickiest and often the most subtle and

vicious threats come from within the confines of the State itself; sometimes, perhaps, from the citizens themselves.

The duty of a national security apparatus is thus of a far more preventative nature than it is reactive. A State has its army to react to aggressions, and its police forces and criminal justice system to enforce its laws and punish (and, hopefully, reform) its citizens. The State security apparatus exists to act before these instruments become necessary, to act upon threats far before they materialise and ideally before they even gain the potential to do so.

The obvious primary instrument for this preventative purpose is one that allows the security forces to have a clear, dynamic picture of whatever is currently happening inside and outside of the State's borders: surveillance. While a general definition would sound something like the "*collection, recording, and classification of information about people, processes, and institutions*",¹ the aspect that has truly come to the fore in the Digital Age is the interplay between traditional systems of surveillance² and the plethora of technological developments in the last two decades. The possibilities of integrating novel technologies, such as Artificial Intelligence, to streamline, improve, expand or even run a State's security apparatus are endless, and endlessly growing, endowing governments with more and more powers they are sure to enjoy and which they are unlikely to shed voluntarily. The new and rising question thus becomes just how much governments are reliant on the use of AI-powered intelligence gathering and

surveillance, and what avenues of control and regulation, if any, can be undertaken in order to limit its prevalence.

II. *Qui Custodes?* State security frameworks across the world

To better understand this interplay, the first question to be answered is who are the players behind surveillance programs and the main drivers of their integration with ever more sophisticated instruments: in short, who are the custodians of the State, charged with its proactive defence?

In the People's Republic of China, the security of the communist political regime is entrusted to a specific agency, which acts as an organic constituent of the State Council, the Ministry for State Security (MSS). The MSS functions as China's intelligence, security and secret police agency in one, and "*can be described as an institution similar to the FBI and the Central Intelligence Agency (CIA) combined under one intelligence directorate [...]*".³

While most China's foreign intelligence and surveillance operations remain under the general purview of the MSS, the Ministry of Public Security (MPS) also plays a central role in national security and public safety within, and often without,⁴ the State's borders: together, the MSS and the MPS compose most of the People's Police, the civilian equivalent to the People's Armed Police, which instead reports to and is part of the People's Liberation Army, China's armed forces. Specifically, while the Ministry of

¹ Brayne, Sarah. "Big Data Surveillance: The Case of Policing" *American Sociological Review* 82, no. 5 (2017): 977–1008.

² And the regulatory framework they operate under

³ According to a criminal complaint filed in *United States v. Claiborne*, 1:17-cr-00069, (D.D.C.).

⁴ Gallardo Cristina, 'Secret Chinese 'police stations' to be investigated around Britain', November 1, 2022, <https://www.politico.eu/article/uk-police-china-london-glasgow-investigating-unacceptable-chinese-police-stations-in-britain/>

Public Security handles the vast majority of officers under the moniker of the ‘Public Security Police’,⁵ the Ministry of State Security runs its own ‘State Security Police’ as the secret police within China itself. This compact, unitary structure of interwoven pieces owing ultimate loyalty to the Party administrators in the State Council makes the Chinese framework uniquely suitable for in-house development of AI technologies, with great potential for speedy and uniform implementation across all forces involved once they are developed.

In the Russian Federation, the main agencies that oversee the State’s security are the Federal Security Bureau (FSB), the Ministry of the Interior (MVD) and the recently created National Guard (more commonly referred to as ‘Rosgvardiya’). Despite being ostensibly separate institutions with a separate focus on internal or external security, the Russian tendency is to treat them as a unitary field, where all players need to be well-versed both in ‘offensive’ intelligence and ‘defensive’ counterintelligence, *domi bellique*.⁶

This philosophy is espoused in particular by an old guard of so-called ‘securocrats’, more or less the same age as President Vladimir Putin and often sharing his intelligence background, who began their careers in the waning days of the Soviet golden age. The FSB is by all means the direct

successor of the infamous Soviet KGB, and is thus responsible for counterintelligence and counterterrorism operations both abroad and at home, as well as being tasked with the Russian Federation’s border security. According to the securocrat philosophy, it often operates with broad authority in monitoring internal political opposition and handling internal security threats.

The National Guard, on the other hand, was created in 2016 by concentrating the paramilitary public order force (the ‘interior troops’) previously under the Ministry of the Interior with the formerly separate OMON and SOBR, respectively the riot police and SWAT teams. It answers directly to the President, and is tasked with maintaining public order, quelling domestic unrest, acting as a territorial defence force and thus broadly to ensure regime security from foreign infiltration and homegrown insurrection.⁷ The MVD was thus left mostly with the task of handling the police forces of the country and helping with day-to-day crime.

A final mention should be made for the Main Intelligence Directorate (GRU), the military’s SIGINT arm, and the Investigative Committee of the Russian Federation (SKRF), which was spun off in 2011 from the Prosecutor General Office (GPRF) and is responsible for investigating serious crimes and inspecting government

⁵ Whose 1st Bureau is tasked with maintaining social and political stability and handling threats to ‘national unity’

⁶ “In Russia, the foreign and domestic dimensions of security are viewed essentially as two sides of the same coin”, Galeotti Mark, ‘The Law Enforcement Agencies: Russian Domestic Security and International Implications’, *Security Insights*, No. 45 (February 2020), p.1

⁷ “The National Guard has a specific mission over and above simply supporting the regular military in territorial defense, and it has wargamed operations against insurgents backed by foreign special forces”, Galeotti Mark, ‘The Law Enforcement Agencies: Russian Domestic Security and International Implications’, *Security Insights*, No. 45 (February 2020)

agencies, a move widely regarded as a power grab by the old-guard General Alexander Bastrykin.⁸

The securocrat-run system of parallel, personalistic agencies discourages development and uniform implementation and use of new AI applications for surveillance, as every moving part within the system is incentivized to keep its achievements and improvements for itself to ensure pleasing the leader, President Putin, at the expense of both Russia's enemy and the agency's own rival securocrats.

As for the United States of America, the answer is rather ample and vague, since the country does not have a unified 'ministry of the interior' or a comparable unitary institution tasked with the management of security within the State's borders, nor does it have a single intelligence agency entrusted with surveillance of foreign enemies.

The U.S.'s history as an initially loose federation meant that "police power", under the Tenth Amendment, was entrusted solely with the constituent States of the Union. The deceptively-named Department of the Interior's original field of competence was essentially anything that was not covered by a more specific Department (e.g. War, Justice, Treasury Depts.), but this never included law enforcement, which at the federal level remained a minor affair until the 20th Century, and which until 9/11 and the creation of the Department of Homeland Security, had no real bureau of its own.

As such, it is no surprise that the United States currently presents a set of seventeen federal agencies composing an

⁸ Galeotti Mark, 'The Law Enforcement Agencies: Russian Domestic Security and International Implications', *Security Insights*, No. 45 (February 2020)

'Intelligence Community' placed under the leadership of a Director of National Intelligence (DNI) and his Office,⁹ for a total of eighteen disparate entities which on their own belong and report to a series of federal Executive Departments. The DNI's role is to coordinate cooperation between these components, though he does not have executive authority over them, which exacerbates the obvious concerns about cross-agency interference, competence disputes and excessive overlapping of surveillance activities¹⁰

Within the overlaps and fragmentation of the Intelligence Community, the agencies most involved with surveillance and general preventative internal security are the Federal Bureau of Investigations' Intelligence Branch and the Department of Homeland Security's Office of Intelligence and Analysis, whilst the National Security Agency, which conducts counterintelligence operations by focusing on 'signals intelligence' (SIGINT),¹¹ maintains that it relies on the FBI to collect information on foreign intelligence activities within the borders of the United States.

The very different characteristics of all three systems are key factors in understanding policies and decisions on the adoption of AI-powered surveillance systems and similar tools, which a centralised and heavily top-down system like the Chinese one is more likely to seamlessly adopt and

⁹ Executive Order 12333 of December 4, 1981, 'United States Intelligence Activities', 46 FR 59941, *Code of Federal Regulations*, Title 3 (1981), p. 200

¹⁰ Not necessarily to the knowledge of the agencies themselves, which might both put a suspect under surveillance without knowing of the other's activities.

¹¹ I.e. surveillance, as opposed to 'human intelligence gathering', or HUMINT, which is more the CIA and DIA's purview

integrate, as opposed to the difficulties which the Russian intelligence ecosystem is likely to face; in contrast, the United States' fragmentary galaxy of intelligence agencies presents a more difficult path to predict, owing to the larger degree of autonomous decision making on matters of AI use and implementation.

III. *Quomodo custodes custodient?* New and old instruments of surveillance

The novelties in surveillance mostly regard the meteoric rise of 'artificial intelligence', more widely known as AI. The term itself encompasses a number of technological developments, each building on the other and on the less broad concept of AI as "*giving computers behaviours which would be thought intelligent in human beings*"¹² These novelties mostly involve the fields of 'machine learning', i.e. computers creating mathematical algorithms based on accumulated data, thus coming to solutions for inputs they were not specifically programmed to resolve, and 'big data', i.e. the enormous volumes of information that are stored and fed into machine learning programs to refine the 'thinking' of an AI. Digital tools are increasingly being implemented with trained AIs to allow them to perform more complex tasks, requiring decisions and actions in addition to mere observation.¹³

From around 2012 onwards, improvements in raw computing power and the spread of training datasets for machine learning led to a significant improvement in the quantity of big data that can be analysed by systems, allowing them to directly learn from the data how to perform complex tasks.¹⁴ From then on, AI has been on a constant improvement streak that in some cases has been self-sustaining: ever-better AI models have become ever more efficient at sifting through ever-bigger datasets, improving machine learning. An obstacle remains in that data still needs to be 'labelled' for AI to have context in its decision-making; this labelling usually involves sensitive, personal data which contextualises broader mundane datasets.¹⁵

As stated in the foregoing section, State security frameworks of various complexity are all set in place to protect internal order from incoming threats, and the most efficient way to do so is through surveillance. In this current digital age, this set of practices has expanded to include acts "*of real-time and retrospective viewing, processing and cataloguing of online footprint against the will and/or knowledge of the actor(s) to whom such data belong*"¹⁶

Digital surveillance extends over a number of domains, among which the main ones are data collection, imagery collection, Internet monitoring, geolocation and biometrics: all tools whose main task is to "*intercept*

¹² The Society for the Study of Artificial Intelligence and Simulation of Behaviour. What is Artificial Intelligence. AISB Website. <http://www.aish.org.uk/public-engagement/what-isai> Accessed 6th november 2024

¹³ Wright, Nicholas D., ed. "The Technologies: What Specifically Is New?" *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019, p.3

¹⁴ *Ibid.*, p.5

¹⁵ *Ibid.*, p.6-7

¹⁶ Ünver, H. Akin. "Politics of Digital Surveillance, National Security and Privacy." Centre for Economics and Foreign Policy Studies, 2018.

external and domestic communication, data transfers and network monitoring”,¹⁷ in essence pertaining to the more traditional definition of SIGINT practices. Specifically, bulk data interception has radically improved through the Internet’s development and spread throughout the world, whilst Internet Communication Technology (ICT) monitoring is the old surveillance of human activity, including networks of friends, locations visited and other habits, merely transposed onto our modern social media platforms (Twitter, Facebook or Instagram) and communication apps (Whatsapp, Telegram, Messenger or even the old SMS)

More specifically, States and their agencies employ AI (in the broadest sense) within a few relevant groups¹⁸ of surveillance systems: facial recognition devices and their incorporated data gathering and processing capabilities,, smart (i.e. predictive) policing of communities and individuals, as well as ‘internet of things’ networks which avail the aforementioned with even more reach into mundane household appliances, and general cloud computing which allows for sizeable increments in processing power.¹⁹ This AI-supported surveillance network forms *“part of a suite of digital repression*

tools—information and communications technologies used to surveil, intimidate, coerce, and harass opponents [...] that challenge the State”: they are thus meant to coadiuvate and reinforce the already existing State security infrastructure, more than any kind of replacement.

As an example of the potential for integration of the *“digital repression suite”* in everyday life, one need not look further than smart cities, which conceptually could be equipped with arrays of tracking sensors transmitting real-time data on all aspects of the city’s operations, from directing emergency vehicles through traffic congestion to monitoring energy overuse and waste management, as well as of course, overseeing public safety. The command centre would gather this information and react immediately to any perceived emergency (or threat); within this, AI is implemented as an early-warning system of sorts, pre-screening the massive amounts of data for anything suspicious. The data is likely to come mainly from facial recognition biometric technologies, which match camera footage with vast databases or aggregate demographic trends, and may already pre-interpret general crowd movements and opinions in the same way. The ‘smart police’ will then have clearer records and patterns on which to base predictions provided by algorithms, and act consequently.²⁰ It should be no wonder that the People’s Republic of China is the world’s foremost leader in smart city development, with the National New-Type Urbanization Plan for 2014-2020 explicitly including smart city development, with a focus on information

¹⁷ Ünver, H. Akin. “Politics of Digital Surveillance, National Security and Privacy.” Centre for Economics and Foreign Policy Studies, 2018.

¹⁸ Feldstein, Steven. “Types of AI Surveillance.” *The Global Expansion of AI Surveillance*. Carnegie Endowment for International Peace, 2019.

¹⁹ *As one expert put it, if video surveillance is the “eyes” then cloud services are the “brains” that “connect cameras and hardware to the cloud computing models via 5G networks.*”, Feldstein, Steven. “AI Surveillance Enabling Technologies.” *The Global Expansion of AI Surveillance*. Carnegie Endowment for International Peace, 2019.

²⁰ Feldstein, Steven. “Types of AI Surveillance.” *The Global Expansion of AI Surveillance*. Carnegie Endowment for International Peace, 2019

network and broadband expansion, as well as the digitization of planning management and what it called “*sophisticated social governance*”.²¹

IV. China and Russia: affinities and divergences under an ‘authoritarian’ approach

China and Russia can be, and often are, described as illiberal regimes. The aforementioned structure of the security apparatuses of both countries shows that, whilst having some differences in how security is handled, both states broadly adhere to the principle that security necessities trump the rule of law. Whilst Russia however follows the unitary securocrat philosophy which sees any foreign threat as a domestic issue and *vice versa*, China espouses the concept of ‘social supervision’, i.e. mobilising the whole of society by turning citizens into watchers and monitors, reporting suspicious activity in the digital field, whilst being watched and monitored themselves by the State entities.²²

Most importantly, though, the People’s Republic of China’s authoritarian approach to the new technologies in surveillance is rather positive and welcoming: the upsides to implementing these upgrades into the current state security structures are apparent and manifold for the ruling CCP, starting with AI-powered selective restriction of the free flow of information on the Internet, with an ever-more “*selective censorship of specific topics, and selective*

targeting of specific behaviours”²³ which in China is currently embodied in what is called the ‘Great Firewall’.

The possibility of predictive policing of dissent by AI-extrapolated trends in individual or group bulk data accumulated by conventional means is an enticing means to reduce the economic and social burden of the repressive State security apparatuses. These AI implements will be made accurate and precise thanks to the unrestricted use of ‘ground truth’ data from personal data such as tax returns, medical records, criminal records, police records, sexual health clinics, bank statements, genetic data, physical monitoring (e.g., location, biometrics, CCTV face monitoring) to ‘label’ the bulk data accumulated through surveillance.²⁴ In the People’s Republic of China, the Ministry of State Security operates under the National Security Law and Counterespionage Law, which already authorize broad surveillance and information gathering and stockpiling under the guise of counter-espionage activities. The Counterespionage Law in particular was amended in 2023 to extend to information on “*national security and interests*” the same protection granted to State secrets.²⁵

Additionally, the National Intelligence Law of 2017 empowered both the MSS and the Ministry of Public Security’s Internal Security Bureau with expansive

²¹ Richard Hu, *Reinventing the Chinese City*, Columbia University Press, 2023.

²² Ünver, H. Akin. “Politics of Digital Surveillance, National Security and Privacy.” Centre for Economics and Foreign Policy Studies, 2018.

²³ Wright, Nicholas D., ed. “Artificial Intelligence and Domestic Political Regimes: Digital Authoritarian, Digital Hybrid, and Digital Democracy.” *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.

²⁴ *Ibid.*, p. 29-31

²⁵ Goldberg, Adam et al., “China Amends the Counter-Espionage Law”, Pillsbury Law, May 15, 2023, <https://www.pillsburylaw.com/en/news-and-insights/china-counter-espionage-law.html>

authority to collect any and all digital citizen and company data at will, without any warrant.²⁶ owing to the secrecy of Court proceedings in China, especially over State matters, there is little to no accessible caselaw over the implementation of the Security, Intelligence or Counterespionage Laws, though some examples of people being brought up on “espionage charges”²⁷ most likely refer to one or more components of the trifecta.

The only oversight over surveillance operations remains thus solely of a centralised political nature, and integration of AI technology into this system can be found in the ‘Next Generation Artificial Intelligence Development Plan’ of July 2017. The plan laid out the infamous ‘Social Credit’ system, which among other implications, empowers State agencies to monitor and rate individual’s behaviour through big-data collection and analysis. Such efforts are of course spurred and enabled by the aforementioned developments in facial recognition and data accumulation, since the ultimate aim of the program is “*a broader political control process known as ‘social management’*”.²⁸

While the topic of social management could warrant, and indeed it has, its own series of papers and reviews, a

broad summary could frame it as the pursuit of a “holistic” or “comprehensive” State security,²⁹ the buzzword slogan for an organised micro- and macro-management system of Party leadership control over the CCP and the general citizenry, to optimize interactions “*vertically (within the Party), horizontally (between agencies), and holistically, between the Party and society*”.³⁰ The potential for automation or heavy integration, through AI, of such a system is lost on no one in China.³¹

The case of the Russian State is indeed both similar and different. The Russian Federation is still an illiberal regime, but it features less oppressive characteristics to a Western observer’s eye; the populace is generally less constricted in its daily life, and the perceived need by the Kremlin’s ruling clique of seurocrats and technocrats (the younger élites, who are less defence-oriented than their older peers and more open to reforming current power structures) is that the population ought to be kept reasonably happy and unaware, so to speak, of the boot that quashes them. As such, the authoritarian approach of the Russian regime in terms of surveillance and manipulation of online discourse does not pass through “*systemic technical censorship*”³² such as the ‘Great Firewall’ and instead relies on a mix of “less

²⁶ Ünver, H. Akin. “Politics of Digital Surveillance, National Security and Privacy.” Centre for Economics and Foreign Policy Studies, 2018.

²⁷ Neely, Jason, and Elaine Hardcastle. “Japan’s Astellas Says Employee Indicted by China’s Prosecutors | Reuters.” Reuters, August 21, 2024. <https://www.reuters.com/business/healthcare-pharmaceuticals/japans-astellas-says-employee-indicted-by-chinas-prosecutors-2024-08-21/>.

²⁸ Hoffman, Samantha. “Managing the State: Social Credit, Surveillance, and the Chinese Communist Party’s Plan for China.” Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.

²⁹ Corff, Oliver. “‘Rich Country, Strong Army’: China’s Comprehensive National Security.” Federal Academy for Security Policy, 2018. <http://www.jstor.org/stable/resrep22151>.

³⁰ Hoffman, Samantha. “Managing the State: Social Credit, Surveillance, and the Chinese Communist Party’s Plan for China.” Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019, p.49

³¹ “*In the construction of the social credit system, current research and development is largely focused on areas such as big-data analysis and integration to support the collection of information and ensure its effective use for intelligence.*”, *Ibid.* p.52

³² *Ibid.* p. 31

overt means, more plausibly deniable, legalistic, and often nontechnical mechanisms to manipulate online information flows, narratives, and framings to affect and shape public opinion without resort to universal censorship".³³

Specifically, the main instruments reside in a slew of legislation which began in 2012 with the establishment of a blacklist of censored sites and grew rapidly to include the 2013 anti-piracy provisions³⁴ (which burdened Internet providers with liability for violations) and anti-LGBT propaganda law³⁵ (which extended the 2012 blacklist to almost anything having to do with sexual orientation), as well as the 2014 "Law on Pre-Trial Blocking of Websites" (which provided for immediate blocking of sites that are deemed to contain 'incitement to extremism or riots').³⁶ A suicide prevention site, Pobodish.ru,³⁷ was among the domains affected by the blacklisting provisions, as well as Wikipedia.ru, whose editors had to conform and reword

the Russian-language entry for "cannabis" in order to have the page unblocked.³⁸

The 'System Operational-Investigatory Measure' (SORM) in particular has long been the legal basis of lawful surveillance of digital communications and telecommunication networks.³⁹ It lays out a set of requirements that define the legal limits of surveillance, namely allowing tracking and storage of metadata without a warrant, but requiring it for access to the data itself. A SORM law has been in force in Russia since 1995, first providing for obligatory instalment of Federal Security Bureau hardware to all telecom operators, then extended to Internet Service Providers' servers in 1998 and finally with the current SORM-3⁴⁰ layout developed in 2014 to include all social media platforms.⁴¹ Further enabling came with the 'Anti-Encryption Law' of 2016, which required all encrypted services to provide the FSB with encryption keys or other means of decoding their data.

These laws are not enforced so thoroughly or with the same zeal as, for example, the Chinese would; they instead serve more to create a "*chilling effect both for content producers and intermediaries as well as providing legal*

³³ Kerr, Jaclyn. "The Russian Model of Digital Control and Its Significance." Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.

³⁴ Federal Law No.187-FZ, Rossiyskaya Gazeta, July 2, 2013, No. 187

³⁵ Federal Law 135-FZ, Rossiyskaya Gazeta, July 2, 2013, No. 6117

³⁶ Kerr, Jaclyn. "The Russian Model of Digital Control and Its Significance." Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.

³⁷ Soldatov, Andrey, "What did Russia block this Autumn?," Index on Censorship, November 22, 2013, <https://www.indexoncensorship.org/2013/11/russia-censored-autumn-2013/>

³⁸ Omidi, Maryam, "Blackout: why Russian internet sites are going dark over anti-piracy laws", New East Digital Archive, August 1st, 2013,

<https://www.new-east-archive.org/articles/show/1273/blackout-why-russian-internet-sites-are-going-dark-over-anti-piracy-laws>

³⁹ Ünver, H. Akin. "Politics of Digital Surveillance, National Security and Privacy." Centre for Economics and Foreign Policy Studies, 2018.

⁴⁰ Ministry of Communications of the Russian Federation, Order n.83 (16th April 2014)

⁴¹ Ünver, H. Akin. "Politics of Digital Surveillance, National Security and Privacy." Centre for Economics and Foreign Policy Studies, 2018.

grounds for subsequent blockings or prosecutions”.⁴² This system presents a “*plausible, lower-tech alternative to the tech-heavy Chinese approach*”, which replaces the massive filtering devices of the MSS and the MPS with intimidation, self-censorship for fear of reprisal, complex laws subject to arbitrary application and general information manipulation through AI-supported government propaganda.⁴³ Replacing filtering with oversight, the Russian digital authoritarianism model still necessitates communications to be pervasively collected, with little to no limit to what law enforcement can do once a SORM probe allows them access.

Owing to this, the Russian approach to AI-implementation is ultimately less focused on developing new and innovative tools for active control, looking instead to utilise AI to better surveil the relatively free-flowing Internet through SORM-compliant devices. Russian intelligence, however, is still a child of the securocrat approach to State security, and is thus characterized by a proactive and offensive posture that sees attack as the best form of defence; so-called Russian ‘trolls’, bot farms and a series of other tools for disinformation and hacking campaigns, which are set to become AI-managed

or even AI-run,⁴⁴ are all already employed abroad by the Russian Federation’s security agencies against its geopolitical enemies, with more abandon than at home, where a lighter approach is employed and the need for modernisation⁴⁵ and constant updating of technological instruments of surveillance is perhaps not so heartily felt.

V. The United States: hypocrisy and deceit in the struggle for privacy

In the face of such potent and widespread integration of digital and AI surveillance technologies by its main geopolitical rivals, the US has found itself at some disadvantage: it has strived to close the gap with its competitors on the global stage while simultaneously needing to balance a set of liberal, democratic principles enshrined at its cultural and legal core, acknowledging the need for espionage abroad and surveillance for counterterrorism domestically, but having to contend with existing checks and balances that at least attempt to constrain the State’s domestic security apparatus. Faced with this struggle and almost impossible balancing act, the United States Intelligence community has often faltered to

⁴² Kerr, Jaclyn. “The Russian Model of Digital Control and Its Significance.” Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019, p.66

⁴³ Morgus, Robert. “The Spread of Russia’s Digital Authoritarianism.” Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.

⁴⁴ “Specifically, the Russian government and military are investing heavily in creating the intellectual and physical infrastructure necessary to facilitate AI development across the country, pushing for results in certain civilian and weapons platforms”.

Bendett, Samuel. “The Development of Artificial Intelligence in Russia.” Edited by Nicholas D. Wright. *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019

⁴⁵ *Ibid.*, p.168

the side of convenience, rather than taking the more principled high road.⁴⁶

Ever since Justice Brandeis's dissent⁴⁷ in *Olmstead v. United States*, Fourth Amendment jurisprudence has been thoroughly sceptical of surveillance operations, though the exception of 'national security' has always proved a potent enemy.⁴⁸ In 1967, *Katz v. United States* established the legal precedent that enforcement agencies were mandated to procure a warrant before intercepting personal communications.⁴⁹ However, this did not stop projects such as MINARET and SHAMROCK, both US Government exercises spanning from 1967 to 1978, which that intercepted and collected exorbitant numbers of electronic communications of US citizens in a "coordinated FBI-CIA, and DoD effort to serve as domestic counterespionage against the USSR".⁵⁰ The Federal Bureau

of Investigations simultaneously ran the COINTELPRO initiative, amassing over 500,000 dossiers on American citizens, while the Central Intelligence Agency oversaw Operation CHAOS and built a database that tracked 300,000 people. These infamous examples, combined with the more recent and well known NSA wiretapping scandals, provide concrete evidence of the willingness of U.S. intelligence agencies to disregard, evade or otherwise bend existing caselaw and statutes in the pursuit of a higher perceived need, that of safeguarding the State at all costs.

Currently, the Federal electronic surveillance statutes⁵¹ are commonly referred to collectively as "Title III" and present a series of restrictions⁵² on the use of most electronic surveillance devices and techniques, including the requirement that a high-level Department official specifically approve the use of many of these types of electronic surveillance prior to an Assistant United States Attorney obtaining a court order authorizing interception. Chapter 7 in particular contains the specific mechanisms, including applicable approval requirements, for the use of wiretaps, "bugs" (oral interception devices), roving taps, video surveillance, and the consensual monitoring of wire or oral communications, as well as emergency interception procedures and restrictions on the disclosure and evidentiary use of information obtained through electronic surveillance.

⁴⁶ Wright, Nicholas D., ed. "Artificial Intelligence and Domestic Political Regimes: Digital Authoritarian, Digital Hybrid, and Digital Democracy." *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.

⁴⁷ "The makers of our Constitution [conferred, as against the government, the right to be let alone - the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment [...]]." *Olmstead v. United States*, 277 U.S. 438 (1928)

⁴⁸ "Attorney General Jackson responded to the decision by reinstating the general ban on wiretapping. But within months President Roosevelt overturned Jackson's policy. A May 21, 1940 memorandum indicated that 'in the President's view the Supreme Court did not intend to have its decision apply to grave matters involving the defense of the nation'", Donohue, Laura K. "Anglo-American Privacy and Surveillance." *The Journal of Criminal Law and Criminology* (1973-) 96, no. 3 (2006): 1059-1208.

⁴⁹ Ünver, H. Akin. "Politics of Digital Surveillance, National Security and Privacy." Centre for Economics and Foreign Policy Studies, 2018.

⁵⁰ *Ibid.*, p.7

⁵¹ 18 U.S.C. § 2510, *et seq.*

⁵² U.S. Department of Justice, *Justice Manual*, (2018), 9.7000 *et seq.*, <https://www.justice.gov/jm/jm-9-7000-electronic-surveillance>, accessed Nov. 3rd 2024.

However, perhaps providing the best evidence of the power of the “national security” exception over the general tendency of American privacy law, interceptions conducted pursuant to the Foreign Intelligence Surveillance Act of 1978⁵³ were specifically excluded from the coverage of Title III.⁵⁴

The Foreign Intelligence Surveillance Act of 1978⁵⁵ in fact established separate procedures for the surveillance and collection of foreign intelligence on American soil; its foremost requirement is for federal law enforcement and intelligence agencies to obtain an authorization to proceed with surveillance operations from a Foreign Intelligence Surveillance Court (FISC), which operates *in audita altera parte* and whose proceedings are held in secret. The FISC was immediately subjected to heavy criticism and decried as a rubber-stamp for its characteristics, and the fact that denials of a warrant are subject to review from a Foreign Intelligence Surveillance Court of Review (FISCR), essentially making it impossible for a surveillance warrant to be denied.

Additionally, in the aftermath of 9/11, surveillance practices like bulk metadata collection, biomedical surveillance and network interception were essentially liberalised and encouraged with a sweeping series of legislation, most notably within Title II of the Patriot Act,⁵⁶ aptly named ‘Enhanced Surveillance Procedures’;

among other provisions, it removed distinctions between surveillance in criminal investigations and surveillance for the purposes of gathering foreign intelligence, and authorised⁵⁷ the use of a type of administrative subpoena known as ‘National Security Letter’ (NSL), which authorised the FBI and other domestic agencies to forcibly gather information for national security purposes, while also adding a non-disclosure obligation on the disclosing party, without any prior judicial review.

Infamously, following the legal erasure of surveillance safeguards in 2001 the National Security Agency’s Terrorist Surveillance Program was authorised to collect and store US citizens’ phone calls, emails and other digital activities, without a FISA warrant and within the territory of the United States;⁵⁸ under mounting public pressure the practice waned after 2007, when the NSA started seeking FISA warrants again, and it came to the fore again after the 2013 Snowden leaks.

Given this tortuous and narrow path between the requirements of the Fourth Amendment and the historical practice of the State security apparatus within the United States, it is no wonder that the reception to implementing new technologies has been rather more lukewarm, at least in public, than it has been with its direct rivals. The Intelligence Community itself, however, has steadied its course and weathered most of the storm of the last decades of opposition to surveillance with its powers intact: the

⁵³ 50 U.S.C. § 1801, *et seq.*, 92 Stat. 1783

⁵⁴ 18 U.S.C. § 2511(2)(a)(ii), (2)(e), and (2)(f).

⁵⁵ ‘FISA Act’, 50 U.S.C. ch. 36, Pub. L. 95–511, 92 Stat. 1783

⁵⁶ ‘PATRIOT Act’, 18 USC § 2712, 31 USC § 5318A, 15 USC § 1681v, 8 USC § 1226A, 18 USC § 1993, 18 USC § 2339, 18 USC § 175b, 50 USC § 403-5b, 51 USC § 5103a, Pub. L. 107–56, 115 Stat. 272

⁵⁷ Section 505 of the Act

⁵⁸ The ‘Protect America Act of 2007’, Pub. L. 110–55, 121 Stat. 552, instead allowed warrantless wiretapping when foreign intelligence targets were “*reasonably believed*” to be outside the United States

Freedom Act of 2015⁵⁹ reinstated most of the Patriot Act's provisions, though with some more safeguards and increased FISA oversight and involvement.

Progressive technological development and Artificial Intelligence implementation is thus still happening, though mostly under wraps and without much fanfare, owing to the need of preserving a façade of rule-of-law and Fourth Amendment preservation whilst not falling behind with rivals less concerned with keeping up appearances: thus, the Federal Bureau of Investigations was reported⁶⁰ to be using AI technologies through a system it calls the "Complaint Lead Value Probability", which serves to "*prioritize tips by conducting algorithm scores and triaging*", i.e. to preliminarily evaluate which complaints should be addressed further. The Department of Homeland Security instead unveiled an agency-wide roadmap called 'Innovation, Research and Development (IRD) Strategic Plan' for pursuing emerging technologies, including Advanced Sensing, AI and Autonomous Systems, Biotechnology, Cybersecurity, Data Integration, Analytics, Modelling and Simulation and Digital Identity and Trust.⁶¹ Finally, and perhaps most worryingly, the private

company SpaceX has been developing a network of hundreds of advanced, top-of-the-line spy satellites for the National Reconnaissance Office (NRO), raising additional questions regarding the involvement of private contractors in such delicate surveillance matters; this issue seems poised to be uniquely American, given the nature of Russian and especially Chinese companies as formal subjects of private law, but in actuality enduring a level of State oversight or even direct control that is alien to U.S. companies.⁶²

⁵⁹ 'USA Freedom Act', 12 U.S.C. § 3414; 15 U.S.C. § 1681u; 18 U.S.C. § 2709; 18 U.S.C. § 3511; 50 U.S.C. § 1881a, Pub. L. 114-23, 129 Stat. 268 (2015)

⁶⁰ Heilweil, Rebecca. 'The FBI is using AI to mine threat tips, but isn't sharing much detail', *Fedscoop*, (October 17, 2024), available at <https://fedscoop.com/fbi-ai-tool-threat-tips/#:~:text=The%20Federal%20Bureau%20of%20Investigation,how%20the%20system%20actually%20works>. (accessed 3rd Nov. 2024)

⁶¹ Yellig, John. 'Homeland Security Unveils Emerging Technologies Road Map', *IoT World Today*, (June 4, 2024), available at <https://www.iotworldtoday.com/security/homeland-security-unveils-emerging-technologies-road-map>

⁶² Miglio, Michela. 'SpaceX's Spy Satellites And The Future Of Space Warfare', *Praesidium* 1, October 2024, p.33

VI. Conclusions

State surveillance is not inherently unlawful.⁶³ There is legitimate justification in resorting to surveillance, but all legitimacy truly rests in the characteristics of the State that performs it, and in the predisposition and mentality of its agents in the various State security frameworks: a democracy is bound to at least attempt to use it under the tenets and constraints of the rule of law, while an authoritarian partocracy cannot but employ it to serve its own needs, and perhaps reap more benefits from it because of its lack of restraint. Indeed, for example, China does not have an advantage in terms of number of electronic device users, given the global user bases for the U.S.'s tech giants like Facebook or Google, but it does have an advantage in terms of integration and combination of data both across platforms and with personal, private 'ground truth' data for AI training, something the US simply cannot replicate with the same level of efficacy.

Unfortunately, little can be done to "fix" this disadvantage that modern digital democracies find themselves without utterly betraying the fundamental principles these States stand for. The United States' history of Fourth Amendment violations in pursuit of State security perhaps best exemplifies how intelligence agencies will have little to no qualms in resolving this conundrum on the side of increasing surveillance, resorting to any new technology and improvement with all possible speed: to a State agent, their utility far outweighs any concern over

preserving rights, which could not exist if the State itself is at risk. In this, one could be tempted to draw some parallels with the securocrat mindset of the Russian "old guard", which focuses on safeguarding Russia from external or internal threats at all costs, often resorting to less subtle means of enforcement that guarantee results at the expense of public image.

AI-integration cannot, however, be allowed to run rampant. As with its development in other fields, Artificial Intelligence in surveillance is uniquely poised to encourage recourse to this instrument, which will become ever-easier, ever-faster and ever more precise.

Additionally, AI development is a self-monopolising field: the more a purveyor of this technology improves it, the more the technology itself will help in its own improvement, expansion and increase of capabilities. A private actor which enters this cycle will see its bargaining power against States multiply tenfold, which is an outcome of unimaginable damaging potential, but a State that runs its own AI development will simply have little to no checks over its direction and pace, and will encourage itself to develop more, which will lead to even more usage and even more surveillance.

As such, there is a distinct lack of incentives for States with a stake in this AI 'arms race' to limit themselves and their development capability, lest they find themselves at a disadvantage, and there is a plethora of motivating factors for all players involved to engage in relentless competition.

The European attempt at legislation and regulation, the recently approved AI Act of 2024,⁶⁴ should be seen more as

⁶³ Feldstein, Steven. "Distinguishing Between Legitimate and Unlawful Surveillance." *The Global Expansion of AI Surveillance*. Carnegie Endowment for International Peace, 2019. <http://www.jstor.org/stable/resrep20995.6>.

⁶⁴ Regulation (EU) 2024/1689

a sign that the European Union and its constituent states are not real parties to the competition over integrating AI in the security and surveillance fields, owing to a combination of industrial weakness, technological reliance on US firms, and a lack of political willingness to craft a joint strategy over the matter. The ‘regulatory approach’, as it has been often named, cannot be reproduced anywhere else: surely not in the People’s Republic of China, which stands to gain the most from these new technologies and has set them as cornerstones of its five-year plans towards economic development and control of the population, and neither in the Russian Federation, whose employment of AI for its online disinformation and manipulation campaigns has proven vastly successful.

If the United States aims to reduce the threat of Artificial Intelligence in the surveillance field, it will have to contend with three main obstacles: the first, as mentioned above, is that its competitors are not willing to slow down their operations, and their objective is precisely to put the U.S. and its allies on the back foot of the global surveillance field; the second is that owing to the lack of incentives, the only approach that can produce any sort of result is enticing its geopolitical enemies through concession and compromise in other fields, where the United States may still hold an edge; the third is the strong internal opposition it is certain to face.

As such, some prudent, well-formulated regulation will certainly need to exist to curb the worst cases of excess and abuse, but any outright bans or forcible restrictions in the implementation of AI and similar techniques into democratic security systems would certainly result in these

systems availing themselves clandestinely, and still suffering a competitive disadvantage against models of outright control such as the Chinese one, and hybrid authoritarianism like the one currently holding sway in Russia.

To address the first and second obstacles, the U.S. might have to rely on concessions in trade or, possibly, in geopolitical influence, allowing its opponents some added liberties when dealing, e.g., with proxy conflicts such as the Ukrainian War and the Syrian Civil War. This, however, poses a secondary question: is such a sacrificial move even worth trying, in order to limit the spread of AI and digital surveillance? The answer the Intelligence Community of the U.S. will give is most certainly a resounding ‘no’, which will have dangerous implications when taking a look at the history of covert, unauthorised, grey-zone operations its component agencies have shown themselves to be willing to engage in over the last century, despite all legal infrastructure currently standing guard over the right to Privacy.

In the end, we already know the answer to the age-old question, *quis custodiet ipsos custodes?* The most sincere response is that our custodians ‘watch themselves’, so to speak, and thus the answer cannot truly be found in attempting to control them; the aim should instead be to create the necessary conditions, in the global exchequer, for it to be convenient and hopefully necessary for our watchers to quell their paranoia and begin to limit themselves.

Bibliography

Books and Journal Articles:

- Bendett, Samuel. "The Development of Artificial Intelligence in Russia." In *Artificial Intelligence, China, Russia, and the Global Order*, edited by Nicholas D. Wright, Air University Press, 2019.
- Brayne, Sarah. "Big Data Surveillance: The Case of Policing." *American Sociological Review* 82, no. 5 (2017): 977–1008.
- Corff, Oliver. "'Rich Country, Strong Army': China's Comprehensive National Security." *Federal Academy for Security Policy*, 2018. <http://www.jstor.org/stable/resrep22151>.
- Donohue, Laura K. "Anglo-American Privacy and Surveillance." *The Journal of Criminal Law and Criminology* 96, no. 3 (2006): 1059–1208.
- Feldstein, Steven. "AI Surveillance Enabling Technologies." In *The Global Expansion of AI Surveillance*, Carnegie Endowment for International Peace, 2019. <http://www.jstor.org/stable/resrep20995.6>.
- Feldstein, Steven. "Distinguishing Between Legitimate and Unlawful Surveillance." In *The Global Expansion of AI Surveillance*, Carnegie Endowment for International Peace, 2019. <http://www.jstor.org/stable/resrep20995.6>.
- Feldstein, Steven. "Types of AI Surveillance." In *The Global Expansion of AI Surveillance*, Carnegie Endowment for International Peace, 2019. <http://www.jstor.org/stable/resrep20995.6>.
- Galeotti, Mark. "The Law Enforcement Agencies: Russian Domestic Security and International Implications." *Security Insights*, no. 45 (February 2020).
- Goldberg, Adam, et al. "China Amends the Counter-Espionage Law." *Pillsbury Law*, May 15, 2023. <https://www.pillsburylaw.com/en/news-and-insights/china-counter-espionage-law.html>.
- Hoffman, Samantha. "Managing the State: Social Credit, Surveillance, and the Chinese Communist Party's Plan for China." In *Artificial Intelligence, China, Russia, and the Global Order*, edited by Nicholas D. Wright, Air University Press, 2019.
- Kerr, Jaclyn. "The Russian Model of Digital Control and Its Significance." In *Artificial Intelligence, China, Russia, and the Global Order*, edited by Nicholas D. Wright, Air University Press, 2019.
- Miglio, Michela. "SpaceX's Spy Satellites and the Future of Space Warfare." *Praesidium* 1 (October 2024), p. 33.

- Morgus, Robert. “The Spread of Russia’s Digital Authoritarianism.” In *Artificial Intelligence, China, Russia, and the Global Order*, edited by Nicholas D. Wright, Air University Press, 2019.
- Ünver, H. Akin. “Politics of Digital Surveillance, National Security and Privacy.” *Centre for Economics and Foreign Policy Studies*, 2018.
- Wright, Nicholas D., ed. “Artificial Intelligence and Domestic Political Regimes: Digital Authoritarian, Digital Hybrid, and Digital Democracy.” In *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.
- Wright, Nicholas D., ed. “The Technologies: What Specifically Is New?” In *Artificial Intelligence, China, Russia, and the Global Order*. Air University Press, 2019.
- 59941, *Code of Federal Regulations*, Title 3 (1981): 200.
- Federal Law No. 187-FZ, *Rossiyskaya Gazeta*, July 2, 2013, No. 187.
- Federal Law No. 135-FZ, *Rossiyskaya Gazeta*, July 2, 2013, No. 6117.
- FISA Act, 50 U.S.C. ch. 36, Pub. L. 95–511, 92 Stat. 1783.
- Ministry of Communications of the Russian Federation, Order n. 83 (16 April 2014).
- *Olmstead v. United States*, 277 U.S. 438 (1928).
- *PATRIOT Act*, Pub. L. 107–56, 115 Stat. 272.
- *Protect America Act of 2007*, Pub. L. 110–55, 121 Stat. 552.

Cases and Legal Documents:

- 18 U.S.C. § 2510 et seq.
- 50 U.S.C. § 1801 et seq., 92 Stat. 1783.
- 18 U.S.C. § 2511(2)(a)(ii), (2)(e), and (2)(f).
- Executive Order 12333 of December 4, 1981, “United States Intelligence Activities.” 46 FR
- Regulation (EU) 2024/1689.
- Section 505 of the Act.
- *United States v. Claiborne*, 1:17-cr-00069 (D.D.C.).
- *USA Freedom Act*, Pub. L. 114-23, 129 Stat. 268 (2015).

Web Articles:

- Gallardo, Cristina. “Secret Chinese ‘Police Stations’ to Be Investigated Around Britain.” *Politico*, November 1, 2022. <https://www.politico.eu/article/uk-police-china-london-glasgow-investigating-unacceptable-chinese-police-stations-in-britain/>.
- Heilweil, Rebecca. “The FBI Is Using AI to Mine Threat Tips, but Isn’t Sharing Much Detail.” *Fedscoop*, October 17, 2024. <https://fedscoop.com/fbi-ai-tool-threat-tips>.
- Neely, Jason, and Elaine Hardcastle. “Japan’s Astellas Says Employee Indicted by China’s Prosecutors.” *Reuters*, August 21, 2024. <https://www.reuters.com/business/healthcare-pharmaceuticals/japans-astellas-says-employee-indicted-by-chinas-prosecutors-2024-08-21/>.
- Omid, Maryam. “Blackout: Why Russian Internet Sites Are Going Dark Over Anti-Piracy Laws.” *New East Digital Archive*, August 1, 2013. <https://www.new-east-archive.org/articles/show/1273/blackout-why-russian-internet-sites-are-going-dark-over-anti-piracy-laws>.
- Soldatov, Andrey. “What Did Russia Block This Autumn?” *Index on Censorship*, November 22, 2013. <https://www.indexoncensorship.org/2013/11/russia-censored-autumn-2013/>.
- The Society for the Study of Artificial Intelligence and Simulation of Behaviour. “What Is Artificial Intelligence.” *AISB Website*. <http://www.aisb.org.uk/public-engagement/what-is-ai>.
- Yellig, John. “Homeland Security Unveils Emerging Technologies Road Map.” *IoT World Today*, June 4, 2024. <https://www.iotworldtoday.com/security/homeland-security-unveils-emerging-technologies-road-map>.

How Do the UK and China Regulate the Use of Facial Recognition Software in Public Surveillance Systems, and What Are the Ethical and Legal Implications of Their Differing Approaches To Transparency, Privacy Protection, and State Control?

Nathalie Sofia Cooper

IE University, Segovia, Spain

Email: Ncooper.ieu2023@student.ie.edu

Published: 27th of January, 2025

Abstract

This paper investigates the use of Facial Recognition Technologies (FRT) in public surveillance systems in the United Kingdom and China. It assesses the respective countries' approaches to privacy, data protection, and state control. Through the use of case law such as *R (Bridges) v. South Wales Police* as well as a detailed analysis of key legislation including China's cybersecurity law, this paper draws two main conclusions: the first is that facial recognition in the UK is constricted by law through the country's strong democratic tradition and strict data protection laws despite a strong desire to increase use of such technology by security forces. The second conclusion drawn is that FRT in China is less heavily regulated due to its authoritarian system of government that places more importance on state security rather than individuals' right to privacy and data protection. Finally, this paper identifies the problems that may arise for the protection of individual rights with a more lenient legal approach to FRT through assessing the ethical and legal implications of the use of these technologies in public surveillance systems.

Introduction

This paper will discuss the legal and ethical implications of the use of facial recognition software in public spaces in the UK versus China. It will comment on the differing approaches of the two countries with regards to transparency, privacy protection, and state control. Facial recognition technology is a type of technology that uses an algorithm to both verify and identify an individual from an image or a video¹. Its origins can be traced back as early as the 1960s, when Woodrow Wilson Bledsoe devised a mechanism to identify peoples' faces and compare it to data points of already stored photos². Initially, this system was neither fast nor efficient, but by the early 2000s and from 2010 onwards, it became more digitalised and widespread. In 2011 for example, FRT was used to identify Osama Bin Laden, while in 2014, Facebook developed the 'tag' feature in social media photos, which expanded the scope of the software massively³.

Over the course of the past decade, this technology has grown to immeasurable popularity, and has become a crucial part of

identification in our daily lives; from registering at the workplace to signing into our phones, it is clear that FRT is everywhere. This has put a substantial strain on our legal systems and our personal rights related to them. While on one hand the software has improved our security measures (when it comes to, for example, the identification of criminals), as well as optimized our day-to-day administrative tasks, it has, in some countries, been subject to misuse. This misuse includes, amongst others, improper data storage, abuse of personal data, and a lack of transparency⁴. As a result of this, there have been many questions as to where this software stands with regards to our individual/human rights, as well as how it affects our right to privacy. In order to assess this criterion and see how facial recognition technology in public surveillance systems is regulated, this paper will analyse two different jurisdictions with opposing approaches to privacy, transparency, and state influence: the UK and China. It will be argued that the UK, which has a strong democratic tradition, emphasises individual privacy and regulatory transparency as opposed to robust state control. While there has not yet been specific legislation targeted at FRT in the UK, this paper will analyse the different sources from which the UK draws upon to regulate this technology. On the other hand, China, which has an authoritarian regime,

¹ Singh, Shilpi, and Prasad. "Techniques and Challenges of Face Recognition: A Critical Review." *Procedia Computer Science* 143 (2018): 536–43. <https://www.sciencedirect.com/science/article/pii/S1877050918321252>.

² Klosowski, Thorin. "Facial Recognition Is Everywhere. Here's What We Can Do About It." *Wirecutter: Reviews for the Real World*, July 15, 2020. <https://www.nytimes.com/wirecutter/blog/how-facial-recognition-works/>.

³ Sample, Ian. "What is facial recognition - and how sinister is it?" *The Guardian*, July 29, 2019. <https://www.theguardian.com/technology/2019/jul/29/what-is-facial-recognition-and-how-sinister-is-it>.

⁴ Civil Liberties Union for Europe. "Civil Liberties Union for Europe | liberties.eu," November 29, 2024. <https://www.liberties.eu/en>.

places more importance on state control as opposed to privacy protection and ethical standards. Therefore, while the UK restricts facial recognition technology through stringent legal provisions, China's state-controlled surveillance systems reflects a higher emphasis on security than privacy.

The UK's 'Privacy First' Legal Framework and Regulatory Approach

The UK's strict regulation of facial recognition software and its protection of privacy rights is reflected in its strong democratic tradition. As mentioned before, because of how new this technology is, there have not yet been **specific** laws to regulate it, however there are countless sources of law governing privacy rights and data protection which are directly applicable to the topic of Facial Recognition Technology (FRT). This includes, amongst others, judicial rulings and statutes. The protection of citizens from the abuse of FRT by the government and the police is reflected by robust regulatory frameworks like The Framework Convention on Artificial Intelligence (FCAI), the Data Protection Act (2018) (DPA) and the Surveillance Camera Code of Practice (2013) (SCCP).

The first regulatory framework which governs the UK's facial recognition system in public places is the 'Council of Europe Framework Convention on AI'. This convention is considered the first

"legally binding international agreement on AI" and was signed by the UK in September 2024⁵. It includes provisions which regulate rights within the scope of Artificial Intelligence and include the widespread use of facial recognition technology, which the UK has widely been using in public surveillance systems to, for example, identify and convict people of crimes⁶. It includes regulatory frameworks and provisions to protect individuals and their data, as well as human rights and the rule of law. It also incorporates vital safeguards, such as the principle of self-determination (which allows people to "decide their own destiny in the international order"⁷) and the principle of equality (the idea that individuals should be treated alike in the eyes of the law). These, while accepting the widespread use of AI and its effects on our day-to-day life, aim at promoting state transparency⁸. Nevertheless, the framework did not come without scrutiny. There have been concerns as to whom the treaty actually applies to, and which actors it exempts. Francesca

⁵ EEAS. "The European Commission signs historic Council of Europe Framework Convention on Artificial Intelligence and Human Rights," n.d. https://www.eeas.europa.eu/delegations/council-europe/european-commission-signs-historic-council-europe-framework-convention-artificial-intelligence-and_en?s=51.

⁶ GOV.UK. "Amended Surveillance Camera Code of Practice (accessible version)," March 3, 2022. <https://www.gov.uk/government/publications/update-to-surveillance-camera-code/amended-surveillance-camera-code-of-practice-accessible-version>.

⁷ LII / Legal Information Institute. "self determination (international law)," n.d. [https://www.law.cornell.edu/wex/self_determination_\(international_law\)#:~:text=Self%Determination%20denotes%20the%20legal,a%20number%20of%20international%20treaties](https://www.law.cornell.edu/wex/self_determination_(international_law)#:~:text=Self%Determination%20denotes%20the%20legal,a%20number%20of%20international%20treaties).

⁸ Babická, Karolína. "Understanding the Scope of the Council of Europe Framework Convention on AI." *Opinio Juris*, October 31, 2024. <https://opiniojuris.org/2024/11/05/understanding-the-scope-of-the-council-of-europe-framework-convention-on-ai/>.

Fanucci, one of the many drafters of the treaty as well as a legal expert at ECNL, voiced her concerns about the extent to which the treaty limits the activities of private actors⁹. Despite the Convention being one of the most progressive pieces of AI legislation, it is clear that it has some loopholes that may lead to abuse. Firstly, it provides for an insufficient regulation of private companies as opposed to the public sector, which Fanucci described as “disappointing”¹⁰. The Convention also allows exceptions for the use of AI in national security contexts, which could allow for states to abuse it in ways that can negatively infringe on human rights.

For the UK, this framework enhances the already-existing British legislation on privacy and data-protection, such as the DPA and the SCCP, by governing the use of AI in the use of facial recognition technology and preventing the state from abusing its discretionary power and infringing on individual rights. It also makes sure that there are harmonised efforts across Europe to control and answer for the widespread use of AI. The ‘human-centric’ design of the legislation allows for FRT to serve the wider public good without, once again, compromising personal privacy.

⁹ Reuters. “US, Britain, EU to Sign First International AI Treaty,” September 5, 2024. <https://www.reuters.com/technology/artificial-intelligence/us-britain-eu-sign-agreement-ai-standards-ft-reports-2024-09-05/>.

¹⁰ Reuters. “US, Britain, EU to Sign First International AI Treaty,” September 5, 2024. <https://www.reuters.com/technology/artificial-intelligence/us-britain-eu-sign-agreement-ai-standards-ft-reports-2024-09-05/>.

The Surveillance Camera Code of Practice (2013) (aka the SCCP) was issued under the Protection of Freedoms Act in 2012¹¹, and is another piece of legislation that solidifies the notion that Facial Recognition Software in public places is heavily regulated in the UK. When looking at the code’s main doctrines, it is evident that state surveillance and facial recognition are guided by three main principles – firstly, there should be as much transparency as possible in surveillance. This includes a “published contact point for access to information and complaints”¹², and all rules and policies to do with surveillance must be clear and accessible by all parties affected. Secondly, there must be a justified, legal, and legitimate claim in order to use such technologies and the data collected by them – they should not be unnecessarily stored if they have already been used, and their use must follow specified procedures that do not infringe upon the right to privacy. Thirdly, the methods of surveillance cannot be excessively intrusive – this relates to transparency, as well as who is able to access such recordings/images and making sure that they are being appropriately used. By enforcing the aforementioned standards, the code balances public safety and the duty of state agents such as

¹¹ GOV.UK. “Amended Surveillance Camera Code of Practice (accessible version),” March 3, 2022. <https://www.gov.uk/government/publications/update-to-surveillance-camera-code/amended-surveillance-camera-code-of-practice-accessible-version>.

¹² GOV.UK. “Amended Surveillance Camera Code of Practice (accessible version),” March 3, 2022. <https://www.gov.uk/government/publications/update-to-surveillance-camera-code/amended-surveillance-camera-code-of-practice-accessible-version>.

the police to punish crimes and fulfil their duties while maintaining the notion of an individual's right to privacy.

Finally, the Data Protection Act (2018) can be considered one of the biggest pieces of legislation that governs the UK's right to privacy and the processing of data – it enshrined key provisions from the EU's General Data Protection Regulation (GDPR) into British law, even after Brexit. Similarly to the SCCP, it also specifies that personal data (including data derived from facial recognition technology), can only be used with a legitimate and lawful purpose, and that privacy rights cannot be infringed upon. There is also an explicitly stated right to know and find out what data different organisations and the government have about you – fulfilling the requirement of transparency. You are also able to object to the way in which your data is being used¹³, and data can either be deleted (with the 'Right to be Forgotten') or erased completely. Therefore, this act clearly protects individuals against the unlawful processing and use of their private information by the state and related actors, including data from FRTs, which reflects the UK's strong belief in democratic principles. Case law in the UK, such as the ruling in *R (Bridges) v South Wales Police (2020) EWCA civ 1058* further proves the limitations on FRT and emphasises the UK's privacy-first approach.

¹³ Government Digital Service. "Data protection." GOV.UK, September 16, 2015. <https://www.gov.uk/data-protection>.

The case of *R (Bridges) v South Wales Police (2020) EWCA civ 1058* marked the first official scrutiny of UK courts of FRT. Ed Bridgers, a resident of Cardiff, challenged the use of facial recognition software by the South Wales Police, claiming that its use violated his privacy rights under the DPA 2018, art. 8 of the ECHR, and the Human Rights Act (1998) (HRA). This occurred after he attended a protest on March 27th, 2018. He was not made aware by the Police that they were going to utilise FRT on him. The Court of Appeal ruled in his favour, and held that the South Wales Police, through its use of FRT, violated art. 8 of the ECHR, the DPA 2018, and the Public Sector Equality Duty of the Equality Act¹⁴. The judgement of the Court of Appeal set an important example for the limitations of Britain's use of FRT, proving that the UK values individuals' right to privacy over the interests of the state. This case proved that this type of mass data collection through automatic facial recognition technology could have a disproportionate effect on individual rights, such as the freedom of expression, the right to privacy, and the freedom of assembly¹⁵. It also paved the

¹⁴ Squires, Dan, QC, Aidan Wills, Liberty, Jason Beer QC, Francesca Whitelaw, Richard O'Brien, Thomas Yarrow, et al. "R (Bridges) -v- CC South Wales & ors." *Court of Appeal (Civil Division) Case No: C1/2019/2670*, August 11, 2020. <https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Bridges-Court-of-Appeal-judgment.pdf>.

¹⁵ Columbia Global Freedom of Expression. "R v. the Chief Constable of South Wales Police - Global Freedom of Expression." *Global Freedom of Expression*, July 12, 2023. <https://globalfreedomofexpression.columbia.edu/cases/r-v-the-chief-constable-of-south-wales-police/#:~:text=The%20judgment%20of%20the%20Court,Article%208%20of%20the%20European>.

way for citizens to be able to express themselves however they want without their data being captured and used against them in the context of social protests (as was the case with Mr. Bridges), as well as other circumstances.

Therefore, the UK's privacy-first approach strongly reflects its democratic values and its belief in the principles of transparency, proportionality, and the protection of individual autonomy. Through the use of three key pieces of legislation (the DPA 2018, the SCCP, and the Framework Convention on AI), as well as the ruling in *R (Bridges) v. South Wales Police (2020)*, it is clear that the UK ensures the FRT is not being overused and that the state and its actors do not infringe upon individual rights when collecting data from such technologies. By prioritising the above-mentioned principles, as well as the relevant legal provisions, the UK ensures that there is no unchecked use of surveillance technology, guaranteeing that facial recognition software is used ethically and in a responsible manner.

China's Surveillance Infrastructure and State Control Priorities

China's approach to surveillance, facial recognition software, as well as privacy is vastly different from the UK's – this can be accredited to its socialist-authoritarian political system, which emphasises state control and state security

over all else. The fear of repression, constant surveillance, and absolute adherence to state-controlled entities are just some of the main ways through which China has nurtured its 'Chinese Dream' that Xi Jinping and the communist party have propagated in recent years¹⁶. This allows for the extensive use of FRT in public places, without legal provisions to protect individuals or their right to privacy. This is facilitated through two main legislative and policy frameworks, namely the Cybersecurity Law of 2017 and the Social Credit System. While existing legal apparatus (such as cybersecurity laws) are promising steps toward better data protection, most of them are far too general or their language is much too vague to actually establish individuals' clear-cut rights. The 2017 Cybersecurity Law was supposedly made to protect national security, public interest, and ensure cybersecurity¹⁷. It does so through legally authorising the storage and collection of data from domestic servers (that companies, public organisations, and surveillance systems gather) and giving access to the government in the name of national security¹⁸. This gives the government access to an enormous range of personal data and

¹⁶ BBC News. "What does Xi Jinping's China Dream mean?," June 5, 2013. <https://www.bbc.com/news/world-asia-china-22726375>.

¹⁷ DigiChina. "Translation: Cybersecurity Law of the People's Republic of China (Effective June 1, 2017) - DigiChina," August 16, 2022. <https://digichina.stanford.edu/work/translation-cybersecurity-law-of-the-peoples-republic-of-china-effective-june-1-2017/>.

¹⁸ Wang, Zhizheng. "Systematic Government Access to Private-Sector Data in China." In *Oxford University Press eBooks*, 241–58, 2017. <https://doi.org/10.1093/oso/9780190685515.003.0011>.

information about citizens, directly infringing upon their rights. It also means that any state entity or company in China can use technologies such as surveillance systems and facial recognition software to collect information about individuals. For example, Article 29 advocates for the “cooperation between network operators in areas such as the gathering, analysis, reporting, and emergency handling of cybersecurity information”¹⁹. Furthermore, what often appears in the Act are vague terms such as ‘national security’ and ‘public interest’ – these give the government extensive discretion to process, store, and collect any data they see fit. There are also provisions that raise concerns over how much the Chinese government actually protects privacy rights as opposed to state interests – Articles 31 as well as 37 urges for the ‘critical protection of information infrastructure’. However, without clear definitions to do with data protection, they create centralised data repositories the government can access with great ease. Therefore, it is clear that the 2017 Cybersecurity Law grants more power to the state as opposed to having been created to protect individuals from privacy abuse – it reinforces an authoritarian approach to FRT and public surveillance. This has come under international criticism – the US, which went from openly criticising China’s

¹⁹ DigiChina. “Translation: Cybersecurity Law of the People’s Republic of China (Effective June 1, 2017) - DigiChina,” August 16, 2022. <https://digichina.stanford.edu/work/translation-cybersecurity-law-of-the-peoples-republic-of-china-effective-june-1-2017/>.

Cybersecurity Law to banning certain Chinese websites from operating in America, has been at the forefront of the disapproval²⁰. More criticism came when China began exporting their CCTV cameras to Europe, where the technology “Hikvision” allowed Chinese tech firms to access all the data recorded²¹. China’s approach reflects the ethical and human rights challenges associated with facial recognition software in public spaces – this has caused China to adopt an environment that lacks both privacy protections as well as democratic accountability.

China’s attitude towards facial recognition software and privacy is also reflected in its development of the Social Credit System – a government-led initiative that monitors and assesses the behaviour of all citizens and enterprises in the country. According to a publication by Princeton University²², the System uses FRT to track individuals across all sectors, from public transportation and the workplace to residential neighbourhoods and crowds – it then analyses their behaviour and gives them social credit scores according to how they act. This

²⁰ Pearson, James, Raphael Satter, and Christopher Bing. “US, UK accuse China of cyberespionage that hit millions of people.” Reuters, March 25, 2024.

<https://www.reuters.com/technology/cybersecurity/us-sanctions-chinese-cyberespionage-firm-saying-it-hacked-us-energy-industry-2024-03-25/>.

²¹ Klingert, Liv. “China’s cameras face fresh scrutiny in Europe.” *POLITICO*, October 10, 2021.

<https://www.politico.eu/article/hikvision-china-surveillance-chinese-tech-europe/>.

²² Journal of Public and International Affairs. “The Social Credit System: Not Just Another Chinese Idiosyncrasy,” n.d. <https://jpia.princeton.edu/news/social-credit-system-not-just-another-chinese-idiosyncrasy>.

either penalises or rewards citizens, nurturing a culture of compliance and strict adherence to rules due to the feeling of constant state surveillance. The system is available and published online for anyone to see, alongside the name and the social credit score of the individual – it provides details on the deeds done, the legal status of the person, and their full profile. Some experts²³ have even speculated that the system goes so far as to give you a higher social credit score if you purchase items such as diapers but lower if you buy alcohol or video games. Eating on trains is also punished, as is spreading false rumours about other people, or cheating in online games²⁴. The impact on individual lives is wide-ranging – with a good social credit score, citizens get preferential treatment when interacting with the government²⁵. This can, for example, lead to the government giving you priority in granting subsidies. Nevertheless, there are also negative implications for citizens with a ‘bad’ score. They can be restricted from sending their children to private school or travelling to places by plane²⁶. The System, powered by FRT,

makes citizens subject to continuous surveillance and awareness that they are being watched, judged, and controlled at all times. This encourages conformity to state-outlined social values, restricting diversity and the accountability of the government. Compared to the UK, it is clear that China prioritises state surveillance over individual privacy, and that there is no clear regulatory framework that protects your individual freedom. The ethical implications of the Social Credit System in China is therefore profound – not only can the state access nearly all aspects of an individual’s life through facial recognition software, but the public can access the name, photo, and social credit number of any individual in China. The System, powered by FRT, makes citizens subject to continuous surveillance and awareness that they are being watched, judged, and controlled at all times. This encourages conformity to state-outlined social values, restricting diversity and the accountability of the government.

Conclusion

In conclusion, the UK and China’s regulatory approaches differ fundamentally. The UK has a transparency and privacy-focused approach due to its democratic tradition – acts such as the DPA, the SCCP, and the Framework Convention on AI all protect the individual’s right to privacy and freedom – the abuse of FRT is also heavily

²³ Mitchell, Anna, and Larry Diamond. “China’s Surveillance State Should Scare Everyone.” *The Atlantic*, February 5, 2018. <https://www.theatlantic.com/international/archive/2018/02/china-surveillance/552203/>.

²⁴ Lamb, Naiyie. “Is China’s Social Credit System Really Orwell’s Big Brother?” PIA VPN Blog, January 30, 2024. <https://www.privateinternetaccess.com/blog/in-china-your-credit-core-is-now-affected-by-your-political-opinions-and-your-friends-political-opinions/>.

²⁵ Yang, Zeyi. “China just announced a new social credit law. Here’s what it means.” *MIT Technology Review*, August 4, 2024.

²⁶ Yang, Zeyi. “China just announced a new social credit law. Here’s what it means.” *MIT Technology Review*, August 4, 2024. <https://www.technologyreview.com/2022/11/22/1063605/china-announced-a-new-social-credit-law-what-does-it-mean/>.

limited by the judiciary. While both models prioritise national security in some sense, it is clear that China has rather included this as a vague term that allows for more state interference in private life. It is therefore evident that the country has a more security-oriented and opaque practice, that allows it to easily monitor and control citizens through FRTs. While both models reflect different political systems, and it is necessary to take the political reality of the time in each country into account, it seems that democratic frameworks work better to safeguard human rights and individual rights than authoritarian ones. In the future, it will be necessary for China to start prioritising individuals, and developing clear laws with specific provisions that protect people from state control and abuse.

The real question, however, remains – is there any hope for the protection of individual rights in a world of ever-expanding facial recognition technology? Whether it's in the UK or in China, it is clear that each individual system will have its

own peculiarities, given their respective histories. The UK's regulatory framework, while having made substantial steps towards granting individuals' privacy rights, could improve by creating more specific legislation that targets private companies as opposed to purely the public sector. This would ensure that human rights are protected even in private scenarios of FRT. China must take more urgent and extensive measures. Firstly, it should implement comprehensive privacy laws. Independent bodies could monitor compliance with these legal frameworks, free from the government's control. China should also aim at promoting transparency and accountability and adhere to international standards of facial recognition software use. Overall, the battle for privacy in the modern technological sphere is not only about law or technology – it is a test of how well we can safeguard individual freedoms and privacy in the face of the state and ever-evolving technologies.

BIBLIOGRAPHY

Babická, Karolína. “Understanding the Scope of the Council of Europe Framework Convention on AI.” *Opinio Juris*, October 31, 2024.

<https://opiniojuris.org/2024/11/05/understanding-the-scope-of-the-council-of-europe-framework-convention-on-ai/>.

BBC News. “What does Xi Jinping’s China Dream mean?,” June 5, 2013.

<https://www.bbc.com/news/world-asia-china-22726375>.

Civil Liberties Union for Europe. “Civil Liberties Union for Europe | liberties.eu,” November 29, 2024. <https://www.liberties.eu/en>.

Columbia Global Freedom of Expression. “R v. the Chief Constable of South Wales Police - Global Freedom of Expression.” *Global Freedom of Expression*, July 12, 2023.

<https://globalfreedomofexpression.columbia.edu/cases/r-v-the-chief-constable-of-south-wales-police/#:~:text=The%20judgment%20of%20the%20Court,Article%208%20of%20the%20European>.

DigiChina. “Translation: Cybersecurity Law of the People’s Republic of China (Effective June 1, 2017) - DigiChina,” August 16, 2022.

<https://digichina.stanford.edu/work/translation-cybersecurity-law-of-the-peoples-republic-of-china-effective-june-1-2017/>.

DigiChina. “Translation: Cybersecurity Law of the People’s Republic of China (Effective June 1, 2017) - DigiChina,” August 16, 2022.

<https://digichina.stanford.edu/work/translation-cybersecurity-law-of-the-peoples-republic-of-china-effective-june-1-2017/>.

EEAS. “The European Commission signs historic Council of Europe Framework Convention on Artificial Intelligence and Human Rights,” n.d.

https://www.eeas.europa.eu/delegations/council-europe/european-commission-signs-historic-council-europe-framework-convention-artificial-intelligence-and_en?s=51.

GOV.UK. “Amended Surveillance Camera Code of Practice (accessible version),” March 3, 2022.

<https://www.gov.uk/government/publications/update-to-surveillance-camera-code/amended-surveillance-camera-code-of-practice-accessible-version>

GOV.UK. “Amended Surveillance Camera Code of Practice (accessible version),” March 3, 2022.

<https://www.gov.uk/government/publications/update-to-surveillance-camera-code/amended-surveillance-camera-code-of-practice-accessible-version>

GOV.UK. "Amended Surveillance Camera Code of Practice (accessible version)," March 3, 2022.
<https://www.gov.uk/government/publications/update-to-surveillance-camera-code/amended-surveillance-camera-code-of-practice-accessible-version>

Government Digital Service. "Data protection." GOV.UK, September 16, 2015.
<https://www.gov.uk/data-protection>

Journal of Public and International Affairs. "The Social Credit System: Not Just Another Chinese Idiosyncrasy," n.d.
<https://jpia.princeton.edu/news/social-credit-system-not-just-another-chinese-idiosyncrasy/>.

Klingert, Liv. "China's cameras face fresh scrutiny in Europe." *POLITICO*, October 10, 2021.
<https://www.politico.eu/article/hikvision-china-surveillance-chinese-tech-europe/>.

Klosowski, Thorin. "Facial Recognition Is Everywhere. Here's What We Can Do About It." *Wirecutter: Reviews for the Real World*, July 15, 2020.
<https://www.nytimes.com/wirecutter/blog/how-facial-recognition-works/>.

Lamb, Naiyie. "Is China's Social Credit System Really Orwell's Big Brother?" PIA VPN Blog, January 30, 2024.
<https://www.privateinternetaccess.com/blog/in-china-your-credit-score-is-now-affected-by-your-political-opinions-and-your-friends-political-opinions/>.

LII / Legal Information Institute. "self determination (international law)," n.d.
[https://www.law.cornell.edu/wex/self_determination_\(international_law\)#:~:text=Self%20etermination%20denotes%20the%20legal,a%20number%20of%20international%20treaties](https://www.law.cornell.edu/wex/self_determination_(international_law)#:~:text=Self%20etermination%20denotes%20the%20legal,number%20of%20international%20treaties)

Mitchell, Anna, and Larry Diamond. "China's Surveillance State Should Scare Everyone." *The Atlantic*, February 5, 2018.
<https://www.theatlantic.com/international/archive/2018/02/china-surveillance/552203/>.

Pearson, James, Raphael Satter, and Christopher Bing. "US, UK accuse China of cyberespionage that hit millions of people." Reuters, March 25, 2024.
<https://www.reuters.com/technology/cybersecurity/us-sanctions-chinese-cyberespionage-firm-saying-it-hacked-us-energy-industry-2024-03-25/>.

Reuters. "US, Britain, EU to Sign First International AI Treaty," September 5, 2024.
<https://www.reuters.com/technology/artificial-intelligence/us-britain-eu-sign-agreement-ai-standards-ft-reports-2024-09-05/>

- Reuters. "US, Britain, EU to Sign First International AI Treaty," September 5, 2024.
<https://www.reuters.com/technology/artificial-intelligence/us-britain-eu-sign-agreement-ai-standards-ft-reports-2024-09-05/>
- Sample, Ian. "What is facial recognition - and how sinister is it?" *The Guardian*, July 29, 2019.
<https://www.theguardian.com/technology/2019/jul/29/what-is-facial-recognition-and-how-sinister-is-it>.
- Singh, Shilpi, and Prasad. "Techniques and Challenges of Face Recognition: A Critical Review." *Procedia Computer Science* 143 (2018): 536–43.
<https://www.sciencedirect.com/science/article/pii/S1877050918321252>.
- Squires, Dan, QC, Aidan Wills, Liberty, Jason Beer QC, Francesca Whitelaw, Richard O'Brien, Thomas Yarrow, et al. "R (Bridges) -v- CC South Wales & ors." *Court of Appeal (Civil Division) Case No: C1/2019/2670*, August 11, 2020.
<https://www.libertyhumanrights.org.uk/wp-content/uploads/2020/02/Bridges-Court-of-Appeal-judgment.pdf>.
- Wang, Zhizheng. "Systematic Government Access to Private-Sector Data in China." In *Oxford University Press eBooks*, 241–58, 2017.
<https://doi.org/10.1093/oso/9780190685515.003.0011>.
- Yang, Zeyi. "China just announced a new social credit law. Here's what it means." *MIT Technology Review*, August 4, 2024.
<https://www.technologyreview.com/2022/11/22/1063605/china-announced-a-new-social-credit-law-what-does-it-mean/>
- Yang, Zeyi. "China just announced a new social credit law. Here's what it means." *MIT Technology Review*, August 4, 2024.
<https://www.technologyreview.com/2022/11/22/1063605/china-announced-a-new-social-credit-law-what-does-it-mean/>.

Coercion in the Digital Sphere: Sextortion and the Need for Comprehensive Cross-Border Cybercrime Legislation

Nikola Pantelić

IE University, Madrid, Spain
Bachelor in Law

E-mail: npantelic.ieu2024@student.ie.edu; 13pantelicnikola@gmail.com

Published: 27th of January, 2025

Abstract

Sextortion, a rapidly evolving cybercrime that involves the exploitation of victims through threats of disseminating explicit material, presents significant challenges for legal systems worldwide. This paper aims to examine the underlying issues of defining, recognising and legislating sextortion through a comparative law and policy approach. It is focused on two of the most prominent systems of common law traditions - the United States and the United Kingdom. Despite their advanced legal frameworks, policy-makers in both jurisdictions and international organs of justice have failed to provide a proper solution that would meet the victims of the cybercrime with legal certainty, consistency and continuity. While the situation is far from ideal, the proposed Michigan House Bill, also known as Jordan D's Law, provides a realistic step toward codifying and addressing sextortion comprehensively.

Keywords: *sexortion, cybercrime, exploitation, Jordan D's Law, The King v. McCartney [2024], international justice*

1. Introduction

With each major technological advancement, concerns about cybersecurity and cybercrime weigh more heavily on daily life. Both citizens and policy-makers of modern societies continuously strive to grasp applicable ways to redefine privacy and protection methods. The difficulty of that task shall not at any point be overlooked considering that as soon as a recent problem gets solved and regulated a new variant of that same problem takes shape, leading policy-makers into a never-ending loop. The expansion of human life from the analogue into both the analogue and digital spheres made it inevitable for the said new variants of crime to emerge and take on roles once held exclusively by analogue criminal experiences. A prime

example of such a variant is 'sexortion'. Issues related to the recognition and regulation of 'sexortion' in modern legal systems arise as soon as the need to define it emerges. This paper is intended to examine the different issues legislators and legal professionals face when tackling sextortion cases, given through examples of different practices in two of the most influential common law traditions — the United States of America and the United Kingdom.

1.1 Differentiation of sextortion from other cyber sex-crimes

Having the fundamental human right to privacy recognised and enforced is an essential pillar of a peaceful and dignified life. The ability to autonomously make

decisions about one's own body, sexual engagements and interactions is a vital component of this extra-patrimonial right; therefore, the development of an understanding of sexual freedoms and limitations on the internet was deemed necessary from the very start. The legal viewpoint on this matter aims to define different kinds of sexual crime and violence in order for policies and regulations to be specific enough to be enforceable.

While there is no one clear definition of sextortion, the term refers to scenarios where offenders threaten to reveal sexual images to blackmail victims into providing more pictures, participating in sexual acts, or complying with other demands. It is a phenomenon practised exclusively online and it is a great concern for cybersecurity and the safety of people. As emphasised by Wolak, Finkelhor, Walsh and Treitman¹, the difference between similar digital sexual privacy-invading acts (sexting, non-consensual pornography, revenge pornography) and sextortion is that sextortion must involve the element of an explicit threat. In sextortion cases, perpetrators not only obtain sexually explicit content of the victims — either through hacking, catfishing, or other forms of deception — but also threaten to release this content publicly or send it to the victim's family, friends, or colleagues, unless their demands are met. These threats can take various forms, such as the immediate risk of exposure or the use of escalating threats over time, creating psychological coercion. The demands are either sexual (e.g., requesting more photos, videos, or even in-person sexual favours) or financial in nature.

While the 'common sense' principle of ignoring such situations and hoping they would go away might suffice in some cases, specific groups and communities suffer great damages from the lack of regulation of these situations and are disproportionately targeted due to their vulnerability. This digital form of sexual exploitation at

times leads to a form of slavery which is, again, more likely to happen to members of underprivileged communities of the society and the two predominant types of slavery are sexual and financial (financial entails both due to the nature of the phenomenon).

It is important to note that the word 'sextortion' is not used in a sense that is laid out in some earlier works of the United Nations – for example, the International Association of Women Judges defined sextortion as the abuse of power to obtain a sexual benefit or advantage in a 2012 toolkit². The sextortion referred to in this paper is the aforementioned cybercrime (threat of disseminating pornographic content) and should not be mixed up with the sextortion used in IAWJ's toolkit (abusing power for sexual favours).

2. The issue of defining sextortion

The root of the problem of defining and regulating sextortion is its international nature. Acts committed online, utilising a globalised network that the internet is, inherently include cross-border cases. Many sextortion cases remain unresolved because the perpetrator and the victim are not in the same country, and applicable laws differ (if any are in place). Most systems do not recognise sextortion in their legislation and rely on criminal and other cyber legislation or precedent when resolving such cases while some do not even recognise sextortion as a term. The word is usually used colloquially to further describe a case in everyday speech, jurisprudence, obiter dicta, etc.

The way that systems treat sextortion (if they do) is often in conflict with jurisprudence as they usually see extortion as a child exploitation matter rather than violence against people from all walks of life. A good example of this is Benjamin Wittes's critique of the U.S. Justice

¹ Wolak, Janis, David Finkelhor, Wendy Walsh, and Leah Treitman. "Sextortion of minors: Characteristics and dynamics." *Journal of Adolescent Health* 62, no. 1 (2018): 72-79.

² International Association of Women Judges. *Naming, Shaming, and Ending Sextortion: Stopping the Abuse of Power through Sexual Exploitation*. Funded by the Government of the Netherlands, 2012.

Department's approach³, arguing it is primarily an issue of violence against women. At the time of the work of Mr. Wittes on the matter, that statement could make logical sense yet with the development of sextortion cases, it has been established that the target group are teenage boys. A similar approach to one of the US institutions is the one of the European Union Agency for Law Enforcement Cooperation (EUROPOL) which argues that while sextortion can be financial and sexual it only regards children. Furthermore, EUROPOL even goes so far as to recommend the term 'sextortion' be changed for 'online sexual coercion and extortion of children'⁴. The situation in the United Kingdom is diametrically opposite to the one in the EU – it concerns people of all ages yet it only narrows the term down to 'Financially Motivated Sexual Extortion'. Due to the overarching differences in the definition of the act and the difference in the legislation (usually a lack thereof), resolving a sextortion case committed by someone in North Macedonia to someone in Paraguay is virtually impossible yet the case remains very real and likely represents an agony to the sextorted party.

3. Sextortion across jurisdictions

Comprehending the complexities, similarities and differences in treating sextortion cases would be more plausible in the case of a deeper comparison of legal systems being made. Therefore, examining the mechanisms of the US legal system with those of the United Kingdom shall suffice in answering the question of differences in treatment internationally. To clarify, the different jurisdictions within the UK will be considered collectively in this context because of the substantial similarities and overlaps among them, the cross-border nature of sexual extortion, and the current global scarcity of relevant legislation. This approach will allow for a more cohesive

analysis while addressing the shared legal principles and frameworks present in these jurisdictions. The comparative analysis is conducted to shed light on the differences – good practices and inefficient ones. Due to the nature of the matter, international policy-making and cooperation on all levels can be deemed inevitable from the very start and, per that, this analysis should also outline possible framework for international policies.

3.1 Executive's report on sextortion in the United Kingdom

In a report from 29 April 2024, The National Crime Agency of the United Kingdom (NCA)⁵ has issued an urgent warning about a sharp increase in sextortion cases, once again defining sextortion as individuals being blackmailed and threatened with sexual images to meet certain demands for money, limiting sextortion to sexual extortion for financial gain. Consistency in the definition continued as the report stated that both men and women of all ages were targeted. Victims were urged not to pay or engage further with the scammers but to report the crime and seek support and the importance of maintaining privacy settings on social media and being cautious when interacting online was reiterated. As the warning was issued to educational professionals, it is clear that the United Kingdom government has realised the importance of spreading awareness on the matter. The report stipulated both that the number of reported cases increased by approximately 149% from 2022 to 2023 and that 91% of the victims were males aged 14 to 18. British authorities also expressed consciousness of the fact that these cases transcend borders – the report stated that such crimes are often perpetrated by groups from West Africa and Southeast Asia).

Through a single report, the UK has expressed alertness, recognition of internationalism of the issue, guidelines for citizens, and understanding of the vulnerable

³ Wittes, Benjamin. "Cyber Sextortion and International Justice." *Geo. J. Int'l L.* 48 (2016): 941..

⁴ Europol. *Online Sexual Coercion and Extortion of Children.* <https://www.europol.europa.eu/crime-areas/child-sexual-exploitation/online-sexual-coercion-and-extortion-of-children>

⁵ National Crime Agency. *NCA Issues Urgent Warning About Sextortion.* <https://www.nationalcrimeagency.gov.uk/news/nca-issues-urgent-warning-about-sextortion>

group and the broader scope of people affected on the one hand. By issuing the warning to educational professionals, the Kingdom opened the door to the idea of educational clauses in prospective attempts at enacting legislation. On the other hand, it remained silent on how cooperation with West African and Southeast Asian countries would be of help in resolving cross-border cases and how not all cases of sextortion are financially motivated. As it is a warning, it cannot be expected of it to include information about how the country is working to resolve the issue, yet the said warning is basically the only form of communication between organs of the government and the people on this matter.

3.2 Executive's report on sextortion in the United States

In a warning issued by the FBI Sacramento Press Office on 17 January 2024⁶, parents, caregivers and education workers were warned about sextortion as 'a growing threat preying upon the nation's teens'. The reports are, indeed, similar and have almost the same approach – both reports lead to the same conclusion: sextortion disproportionately affects young people, specifically young men aged 14 to 17. It has been reported that 20 suicides were committed by sextortion victims between October 2021 and March 2023 which led Democrats in Michigan to propose some of the most important US sextortion legislation which is a remarkable improvement in recognition of different types of cybercrimes. While financial sexual extortion is considered the most prevalent type, this report and most U.S. reports and legislation do not limit sextortion to purely financial exploitation, as is the case in the UK. The awareness of different types of sextortion in the States is also clear due to the fact that the FBI offers access to different resources for financial and non-financial sextortion. A similar pattern to

⁶ FBI Sacramento. *Sextortion: A Growing Threat Preying Upon Our Nation's Teens*. FBI Sacramento Press Office, January 17, 2024.

<https://www.fbi.gov/contact-us/field-offices/sacramento/news/sextortion-a-growing-threat-preying-upon-our-nations-teens>

the one seen in the United Kingdom was established in the States when it came to the areas of the world from which perpetrators usually operate – West Africa and Southeast Asia lead in organised crime groups committing privacy-invading cyber crimes. Finally, an important problem (that the proposed legislation in the State of Michigan is currently trying to target) is the age of the victims. Even though progress is being made and sextortion is a directly recognised cybercrime, in order for the said cybercrime to be considered sextortion, the victim generally needs to be a minor. All resources address the sextortion of minors but tend to ignore the possibility of persons over the age of majority experiencing the same thing.

3.3 Legislative and practical approach in the UK

A UK-based Non-Governmental Organisation, SafeGuarding Hub, in its attempt to support this cybercrime as a topic of conversation within the nation's civil society also pointed out the legal mechanisms lawyers use when trying to tackle cases of sextortion. This paragraph heavily relies on their analysis⁷ of the current legal landscape and the Acts mentioned on their website.

Section 21 of The Theft Act 1968 covers the issue of blackmail with the intent of financial gain or causing loss. As defined by the executive of the United Kingdom, sextortion is seen as blackmail for financial gain and therefore this can be applicable, yet in case of demands being of non-financial nature, such as providing the perpetrator with more sexual services, The Theft Act is of no use. The Protection from Harassment Act of 1997 only includes sextortion cases if they include persistent, intimidating and harassing behaviour, which basically insists on the constant feature of the situation. Section 127 of The Communications Act 2003 states that 'a person may be guilty of an offence by persistently making use of a public communications network for the purpose of

⁷ Safeguarding Hub. *Sextortion – Guide and Resources*. Published May 12, 2023. Accessed November 6, 2024.

<https://safeguardinghub.co.uk/sextortion-guide-and-resources/>

causing annoyance, inconvenience or needless anxiety to another person’.

This is especially relevant in addressing the technological aspect of sextortion as cooperation with social media companies tends to be the only way to gather enough evidence to prove such a crime. A good example of what happens when there is a lack of cooperation is the arrest of Pavel Durov in Paris in August 2024⁸. He was accused of his platform allowing for the distribution of child sexual abuse images. Durov’s platform is one of the predominant platforms used for all types of cybercrime, including sextortion.

The Computer Misuse Act of 1990 covers unauthorised computer access, including images obtained by hacking. It can be used if sextortion images are acquired through unauthorised computer access or hacking which is often the case. Sexual Offences Act 2003 is applicable when the sextortion victim is a child, as the act includes several child protection provisions. This is one of the more usually argued acts considering that the majority of sextortion cases concern minors, teenage boys specifically, as mentioned earlier. Protection of Children Act 1978 completely criminalises possession of any sexually explicit images of children which is relevant, again, for the majority of UK sextortion cases due to the targeted demographic.

A cross-border sextortion case governed by courts in Northern Ireland showcased the excessive amount of legislation that has to be applied to such cybercrimes. As this one includes children, it is a good example of the application of the previously mentioned Sexual Offences Act 2003.

The King v. Alexander McCartney [2024] is a case of a man in his mid-20’s who had conducted various atrocious acts extorting young girls worldwide for sexual favours. His victims were from Northern Ireland, the rest

of the UK, the Republic of Ireland, continental Europe, New Zealand, Australia and the United States. He strategically abused underage girls experimenting with homosexuality to further secure himself throughout the execution of crimes because they would not only have to report that they were being sexually exploited but also that they might be gay. He would send them a photograph of a girl as if it were a picture of himself and then encourage them to send him compromising images back. During the initial phases of the trial, this case was treated as a catfishing case, which is another type of cybercrime. The importance of clear-cut differentiation between cybercrimes in legislation can be reemphasised by this example as a lack thereof may lead to confusion and delay of justice. Later on, the case was classified as a sextortion case yet it involved no monetary extortion which is a point to raise when discussing the definition provided by the executive in the United Kingdom.

The victims would send their explicit images and receive back a template message stating that they had been catfished and that they would have to do as he said. He threatened to upload the images to the internet or send them to the victim’s contacts. At times, he would send information about the victim’s whereabouts to intimidate them further, showing that he knew where they lived and went to school. The demands would be of sexual nature, including self-penetration, inclusion of younger siblings and animals in the acts, and showing one’s face in the process. It is stated that ‘the chat conversations recovered from the defendant’s devices make for the most disturbing reading for any normal person, though more so for any parent.’ In this array of crimes, he committed manslaughter, when his conduct caused 12-year-old C.T. in West Virginia to commit suicide by shooting herself in the head with her father’s gun, as reported by Homeland Security of the United States.

This, above all disturbing and excruciating, series of events was judged on in Northern Ireland using a variety of precedents and legislation, and within obiter dicta of the case, the judge cherished the work of international law

⁸ Satariano, Adam, Paul Mozur, and Aurelien Breeden. "Telegram Becomes Free Speech Flashpoint After Founder’s Arrest." *The New York Times*, August 25, 2024. Updated August 26, 2024. <https://www.nytimes.com/2024/08/25/technology/pavel-durov-telegram-detained-france.html>

enforcement. Most notably, other than the Sexual Offences Act 2003 which enabled the imposition of a Sexual Offences Prevention Order (SOPO) to further restrict McCartney's actions, the case relied on the Offences Against the Person Act of 1861 for the manslaughter charges which granted him the maximum imprisonment sentence. A collection of Northern Irish laws was also employed, including the Sexual Offences Order 2008 for causing children to engage in sexual activity and sexual communication with children. The Protection of Children Act 1978 was utilised due to the defendant's making, possessing and distributing indecent images of children. Common law principles for determining blackmail were also used. With the prosecution's and the State's marvellous work, McCartney was convicted to a life sentence in prison with a 20-year tariff.

3.4 Evaluation of the UK's practical approach to sextortion

It is crucial to note that treating the same crime by using multiple different sources of the law and multiple different acts above all leads to inconsistency and an overall lack of legal certainty and trust in the system. Sextortion cases are sometimes treated with an up to 2 years imprisonment sentence and sometimes with up to 14 years imprisonment (under The Theft Act 1968, Section 21). The fact that both non-governmental and governmental organisations have brought up concerns is an indication of a necessity for legislating sextortion. It is certain that there is a need for a codified statutory law that clearly defines sextortion (gives it proper status and recognition as a cybercrime of its own sort), differentiates between sextortion and other sexual-exploitation cybercrimes, facilitates the exact way in which cooperation with social media companies should be conducted in order to prevent and resolve sextortion cases, includes a clear, rigorous and above all consistent penalty system for this crime in the UK. Had it been for a nationwide clearly defined and differentiated Act that determined what sextortion is and what is another type of cybercrime, the case of *The King v.*

McCartney would likely have experienced a lower amount of set-backs. The statutory law should also take into account the overarching international component of treating sextortion cases.

3.5 The current practical approach to sextortion across the US

In the United States, the federal law that applies is a complex patchwork and can only do so much as a lot of competencies for passing legislation derived from the US Constitution belong to the states specifically.

Individual states mostly haven't regulated sextortion and the precedent applied differs. The aforementioned *Georgetown Journal of International Law* (number 48; 2016-17) states that when sextortion victims are children, there are child exploitation and child pornography statutes that aid in facilitating the trial but that the true problem arises when the victim is not a minor. The regular interstate extortion statute is used in other cases and it grants a two-year maximum sentence. The article also mentioned that interstate stalking statutes are oftentimes used but they do not target the issue itself even though they can be effective. It's of grave importance to recognise that sextortion is primarily a cybercrime and should be treated as such. A lot of the time, sextortion involves non-consensual unauthorised access to the victim's device or accounts with the goal of obtaining compromising images or videos, which is when The Computer Fraud and Abuse Act (CFAA) can be applied.

3.6 Movement towards legislating sextortion in the US

As previously mentioned, due to the decentralised federal administrative system of the US the majority of law-making competencies are up to the individual federal states (in accordance with Article 8 of the US Constitution). In the statistics section of the paper, it was established that suicides have taken place, especially among young men, due to sextortion crimes. One of these suicide cases attracted significant levels of attention from the Democratic party representatives in the State of Michigan

who have decided to take action and propose codified and clear-cut legislation on the topic.

4. Jordan D's Law as a potential future of regulating sextortion cases

At the end of June 2024, they introduced the Michigan House Bill 5887 (HB-5887), also known as 'Jordan D's Law,' named after Jordan Demay, a 17-year-old from Marquette who took his own life amidst being targeted by a Nigeria-based global sextortion ring⁹.

HB-5887 sticks out as the first US bill to state that 'an individual who intentionally and maliciously threatens to release, exhibit, or distribute sexually explicit visual material of another individual in order to compel or attempt to compel another individual to do any act or refrain from doing any act against the individual's will with the intent to obtain additional sexually explicit visual material or anything else of value is guilty of a felony'. This falls out of the realm of the regular US sextortion definition that solely focuses on the cybercrime as a child exploitation and abuse issue by including everyone who may fall victim to it. Regardless, it tackles sextortion in the most direct manner by outlawing the content of its definition. It is the first piece of US (and broader) legislation that has a hands-on approach and that defines the exact method of assigning penalties to perpetrators once caught and deemed guilty. For a first offence, the penalty is up to 5 years in prison, escalating to 10 years for a second offence, and up to 20 years for additional offences. If the victim is a minor or vulnerable adult, or if the coercion leads to serious injury or death, the penalty can reach 20 years, even for a first offence. Offenders under 18 face a misdemeanour charge, with a maximum penalty of 1 year and possible counselling. This Partisan Bill was proposed in June and at the time of writing has the status of an *introduced* law and is yet to be decided on.

⁹ Caron, Jack. "JORDAN D'S LAW: Michigan Democrats Push for Updated Sextortion Laws." FOX 17, July 25, 2024. <https://www.fox17online.com/news/morning-news/jordan-ds-law-michigan-democrats-push-for-updated-sextortion-laws>

A codified document such as this one ensures legal certainty and continuity and is exactly what victims of cybercrime need. Even though it is just a start and doesn't resolve all the issues that exist it can most certainly be considered a step in the right direction towards a feasible and sensible approach to preventing and resolving sextortion cases. If Jordan D's Law is passed, it could serve as an example of good practice in regulating sextortion and other cybercrimes. Addressing one issue effectively could prompt lawmakers to prioritise protecting individuals' privacy in an increasingly digital world.

5. Conclusion

It is vital to bear in mind that the law alone cannot resolve challenges such as this one. Policy-making, as the process of enacting deliberate principles, rules and guidelines, should adopt a multifaceted approach to addressing issues while adapting to an ever-changing societal landscape. Even though the most important pillar of solving cybercrime is having up-to-date laws, the rise of technology has showcased a different problem humankind is experiencing - a lack of communication and cooperation. Sextortion, an inherently international problem, is not only not regulated locally but does not even have international law from which local policies can be derived. There are almost no guidelines by international organisations for prevention and coping with the very real experience endured by thousands each year. There is no clear set-in-stone definition of sextortion. Virtually, sextortion is an undeniable cybercrime that stays invisible in the eyes of the international community.

The lack of unified worldwide norms presents major obstacles for groups like EUROPOL and INTERPOL, which have defined sextortion in their own ways and are actively striving to eradicate it. The policing institutions in question have made progress in sharing intelligence and enforcing the law, but the larger-scale battle against sextortion is impeded by the absence of a single international policy. International agencies and institutions, notably including the United Nations, in

contrast to INTERPOL and EUROPOL, have yet to offer specific guidelines and recommendations on how governments ought to operate and once they do, it would be invaluable if they took into account both intergovernmental cooperation (making similar and complementary laws in regards to the issue and sharing intelligence on international sextortion chains) and cooperation with social media companies (such as Snapchat, Facebook, Telegram, and various dating applications, where the majority of sextortion cases take place).

Cybercrime and emerging technologies represent an opportunity for the international community and policy-making institutions to take a firm, united stance by sending a cohesive global response. It is a chance for legislation and its enforcement to match worldwide and for technological misuse to be reduced to a minimum.

6. Bibliography

- Caron, Jack.** "JORDAN D'S LAW: Michigan Democrats Push for Updated Sextortion Laws." FOX 17, July 25, 2024. <https://www.fox17online.com/news/morning-news/jordan-ds-law-michigan-democrats-push-for-updated-sextortion-laws>
- Europol.** *Online Sexual Coercion and Extortion of Children*. Accessed November 6, 2024. <https://www.europol.europa.eu/crime-areas/child-sexual-exploitation/online-sexual-coercion-and-extortion-of-children>
- FBI Sacramento.** *Sextortion: A Growing Threat Preying Upon Our Nation's Teens*. FBI Sacramento Press Office, January 17, 2024. <https://www.fbi.gov/contact-us/field-offices/sacramento/news/sextortion-a-growing-threat-preying-upon-our-nations-teens>
- International Association of Women Judges.** *Naming, Shaming, and Ending Sextortion: Stopping the Abuse of Power through Sexual Exploitation*. Funded by the Government of the Netherlands, 2012.
- National Crime Agency.** *NCA Issues Urgent Warning About Sextortion*. Accessed November 6, 2024. <https://www.nationalcrimeagency.gov.uk/news/nca-issues-urgent-warning-about-sextortion>
- Safeguarding Hub.** *Sextortion – Guide and Resources*. Published May 12, 2023. Accessed November 6, 2024. <https://safeguardinghub.co.uk/sextortion-guide-and-resources/>
- Satariano, Adam, Paul Mozur, and Aurelien Breeden.** "Telegram Becomes Free Speech Flashpoint After Founder's Arrest." *The New York Times*, August 25, 2024. Updated August 26, 2024. <https://www.nytimes.com/2024/08/25/technology/pavel-durov-telegram-detained-france.html>
- Wittes, Benjamin.** "Cyber Sextortion and International Justice." *Geo. J. Int'l L.* 48 (2016): 941.
- Wolak, Janis, David Finkelhor, Wendy Walsh, and Leah Treitman.** "Sextortion of minors: Characteristics and dynamics." *Journal of Adolescent Health* 62, no. 1 (2018): 72-79.
6. 1. *Case law and legislation*
- Computer Fraud and Abuse Act of 1984**, 18 U.S.C. § 1030 (1984).
- Computer Misuse Act of 1990**, 18 UK Public General Acts, c. 18, § 1 (1990).
- Communications Act of 2003**, c. 21, UK Public General Acts, Series § 127 (2003).
- Criminal Justice (Northern Ireland) Order of 2008**, 1769 N.I., UK Statutory Instruments, Series (2008).
- House Bill No. 5887**, 1931 PA 328, Michigan Penal Code, § 213b (2024).
- Offences Against the Person Act of 1861**, 24 & 25 Vict., c. 100 (1861).
- Protection from Harassment Act of 1997**, c. 40, UK Public General Acts, § 1-10 (1997).
- Protection of Children Act of 1978**, 37 UK Public General Acts, c. 37 (1978).
- Sexual Offences Act of 2003**, 42 UK Public General Acts, c. 42, §§ 1-143 (2003).
- The King v. Alexander McCartney**, NICC, [2024].
- Theft Act 1968**, c. 60, § 21, United Kingdom Public General Acts, 1968.
- U.S. Constitution**, 1 U.S.C. Art. VIII (1787).

ECONOMICS CHAPTER

Random city typology: A path-dependent urban design with irreversible consequences

Alberto Alonso Inope La Rosa, and Vrushab Shekhar

IE School of Economics, Politics & Global Affairs, IE University, Madrid, Spain
E-mail: ainope.ieu2022@student.ie.edu vshekhark.ieu2022@student.ie.edu

Published January, 2025

Abstract

This paper builds upon the concept of random city typologies by Burke et al. (2022) by providing an expanded framework for randomness in developing cities. Then, the first and second-level disadvantages of random city typologies are explored. A connection is made between random cities and poor quality of life. The paper also brings attention to the problem of path dependence in random cities and explains why the self-reinforcing mechanisms of informality and urban sprawl impede the remediability of a random city. Two feasible solutions are suggested and evaluated based on the sustainability and competitiveness of the urban design. The first approach relates to the Egyptian solution of building new cities with centrally planned typologies. The second approach applies the 15-minute city standard to pre-existing random cities.

Keywords: Urban design factors, City typologies, Random city, Path dependency, 15-minute city standard (FMC)

I. Introduction

Urbanization represents the largest human migration phenomenon in all history, as more than 56% of the world population live in cities as of 2023¹. The trends in rural-to-urban migration indicate that by 2025, about 70% of humanity will settle in cities². As a result, the increase in urban population is regarded as a deterministic axiom with no signs of slowing down. For that reason, the field of urban economics has thoroughly studied the causes and consequences of urbanization. The causes are mostly related to better labor opportunities, agglomeration economies, higher salaries, and thus higher remittances for a migrant's family³. On the other side, the consequences of urbanization include several urban issues such as pollution, crime, housing shortages, traffic congestion, and urban sprawl⁴. As the urban population increases dramatically, the ability of cities to address these urban issues has become a major concern. Consequently, urban

¹ World Bank, "Urban Development Overview."

² World Bank.

³ Hung and Peng, "Rural-Urban Migration with Remittances and Welfare Analysis."

⁴ Burke et al., "Geospatial Analysis Framework for Evaluating Urban Design Typologies in Relation with the 15-Minute City Standards."

economists have focused their research on the sustainable development of cities⁵. In this way, the field seeks to contribute insights that aid cities in their efforts to accommodate higher inflows of urban residents.

However, the literature on urban economics has mostly concentrated on the urban issues of western cities in the United States and Europe⁶. Meanwhile, the academic community has left particular concerns about developing cities relatively untapped. There have been undeniable advances in linking urban economics to development economics⁷ and formalizing urban characteristics of developing cities such as Mexico City's street markets⁸ or Lagos' urban informality⁹. However, the theory of developing cities remains at its early stages and still dismisses many urban particularities. For instance, the urban form and spatial layout of developing cities is an unexplored subject, which could benefit from a unified framework that expands upon the randomness factor in urban development. Spatial expansion in developing countries differs from the planned suburbanization of American cities¹⁰, where middle to high-earning individuals develop the land on the outskirts. Instead, spatial expansion in developing cities occurs at the peripheries, where land is often sold illegally by land traffickers or occupied by migrants. This peripheral land is developed in an improvised fashion, with self-built irregular establishments and the enmeshing of new and old infrastructure¹¹. The resulting urban form is defined by its disorder and lack of homogeneity, which leads to the conspicuous randomness present in developing cities. The factor of randomness is traversal to the spatial organization of developing cities and serves as a heuristic device to characterize developing urban design. However, the urban form of developing cities is understated when it is simplified to only randomness. In reality, the urban form possesses a complex typology derived from the entanglement of developed and developing areas¹², which is characterized by the coexistence of entrenched informality with planned mass-produced housing and private initiatives.

This paper contributes to the literature by formalizing the urban form of developing cities under the typological framework of Burke et al. (2022). The adoption of this framework allows for further exploration of the randomness factor in developing cities and how it affects the spatial distribution of urban design factors. Utilizing the typological framework, this paper endeavors to highlight the intrinsic disadvantages of the urban design present in random city typologies. These disadvantages illustrate how poor urban design is an inhibiting factor for economic development in random city typologies. Additionally, the paper explains the problem of path dependence on urban forms and how it can become a long-term issue for developing countries experiencing rapid urbanization.

⁵ Metaxas, Juarez, and Gavriilidis, "Planning and Marketing the City for Sustainability."

⁶ Glaeser and Henderson, "Urban Economics for the Developing World."

⁷ Harris and Todaro, "Migration, Unemployment and Development."

⁸ Heathcott, "Architecture, Urban Form, and Assemblage Aesthetics in Mexico City's Street Markets."

⁹ Streule et al., "Popular Urbanization."

¹⁰ Mabin, Butcher, and Bloch, "Peripheries, Suburbanisms and Change in Sub-Saharan African Cities."

¹¹ Gilbert and De Jong, "Entanglements of Periphery and Informality in Mexico City."

¹² Gilbert and De Jong.

The paper continues as follows: Section 2 covers the main literature related to urban design, city typologies, and the definition of random cities. Section 3 presents a framework of first and second-level disadvantages that are inherent to random cities. Section 4 expands upon the path dependency problem of random cities and explains why self-reinforcing loops suffer from irreversibility. Section 5 presents the feasible solutions for random cities and evaluates how [1] the Egyptian solution, and [2] the 15-minute city standard may counteract the deepening of random typology structures. Finally, section 6 concludes.

2. Literature Review

Urban design is the art of placing physical elements in public spaces for the enjoyment and utilization of the population¹³. These physical elements are defined as urban design factors, which involve any quality of street composition¹⁴ that alters the behavior between individuals and the environment. Examples of urban design factors include the placement of monuments and main plazas, tree density, street connectivity, location of parking spots, distribution of waste bins, and the general land-use mix. Specifically, the land-use mix refers to the diversification of physical spaces with myriad functions (e.g., residential districts for housing, or malls for shopping).

On an aggregate level, cities are composed of a group of interdependent urban design factors with synergies and parasitic relations. In most cases, the outcomes from clustering different urban design factors are unique and cannot be replicated due to inherent socio-cultural divergences. However, Burke et al. (2022) present a framework for characterizing cities that share analogous configurations of urban design factors¹⁵. The framework introduces the concept of city typologies, which condenses the multiple urban forms and patterns into three dimensions: [1] the topological features, [2] morphology, and [3] the city order. The topology of a city is mainly determined by the network of the street layout, and how it adjusts to elevation changes, geographical landscapes, and climatic conditions. Meanwhile, the morphology of a city describes the overall architectural aesthetics, the outline of its buildings, and the function of a designed building depending on its residential, commercial, industrial, or educational usage¹⁶. Finally, the city order talks about the harmonization of urban design factors and how their interplay may lead to varying degrees of entropy. Burke et al. (2022) propose city typologies as a comparable metric to evaluate cities across time and space in a quantifiable manner. City typologies also offer a unified methodology to assess urban performance based on structural patterns of the street layout.

¹³ Molaei, "The Role of Urban Design Qualities in Metro Stations Approaching Indigenous Patterns."

¹⁴ Ortega et al., "Evaluating the Impact of Urban Design Scenarios on Walking Accessibility."

¹⁵ Burke et al., "Geospatial Analysis Framework for Evaluating Urban Design Typologies in Relation with the 15-Minute City Standards."

¹⁶ Weerasekara et al., "The Impact of Building Morphology Factors on the Cost and Aesthetical Appearance of Urban Detached Residential Buildings in Sri Lanka."

The historical depth of cities has led to the coexistence of multiple spatial layouts, which overlap and merge. Burke et al. (2022) capture well-defined patterns among spatial layouts and denote them as “*pure typologies*” for simplification purposes. Each pure typology is derived from network theory and describes a specific spatial organization of streets and buildings. Fig.1 provides a visual representation of pure typology structures, and classifies them according to the pattern followed. Typologies that follow a homologous pattern (e.g., a grid-based pattern) are classified as distributed. Typologies structured in different levels (e.g., central and smaller locations) are classified as hierarchical. Typologies with several scales and overarching concepts (e.g., fractal centers) are labeled as scalar & harmonic. Finally, typologies with no underlying pattern (e.g., random attributes) are considered irregular.

This paper focuses on the random city typology (see Figure 1), which is characterized by its irregular street layout and the absence of planned patterns¹⁷. Cities that fall under the random city typology are hereinafter referred to as “*random cities*”. Random cities differ from organic typologies because the streets are not integrated to fit the overall urban connectivity. Instead, random typologies forcefully chaotically insert new streets and buildings while disregarding urban harmony. This chaotic characteristic is also shared with atomized typologies, but random cities do not have low-density areas of undeveloped land.

Given the description of random cities by Burke et al. (2022), this paper expands upon the definition by incorporating the implied consequences of randomness and uncontrolled urban growth. Firstly, random cities are densely populated, as most of the urban land is developed and occupied. As a result, random cities often have overcrowding issues that put stress on public services. Secondly, random cities are mostly improvised, although infrastructure projects can sparsely give structure to specific areas. Random cities improvise by morphing existing structures to fit the demands of the growing population. For instance, the vertical growth of apartments and constructions in dangerous sites (e.g., riversides, mountain slopes) are done to increase the supply of housing near the city center. Thirdly, random cities have a high degree of informality, as informal constructions are usually built in irregular places and are devoid of urban harmony. This informality is often seen in slums (e.g., São Paulo, Mexico City), where residents self-build inadequate housing without having the proper engineering or architectural training¹⁸. Fourthly, random cities are prone to urban sprawl, as rural-to-urban migrants informally settle in the peripheries of the city. Although urban sprawl is characterized by low-density land¹⁹, peripheral urbanization gradually becomes densely populated. Eventually, areas of urban sprawl are absorbed and integrated into the city. Although the concept of random cities is not exclusive to developing cities, the attributes of random cities are representative of the current situation of many developing cities.

¹⁷ Weerasekara et al.

¹⁸ Ren, Zhang, and Zhou, “Visualizing Urban Slum Population across the Globe.”

¹⁹ García-Palomares, “Urban Sprawl and Travel to Work.”

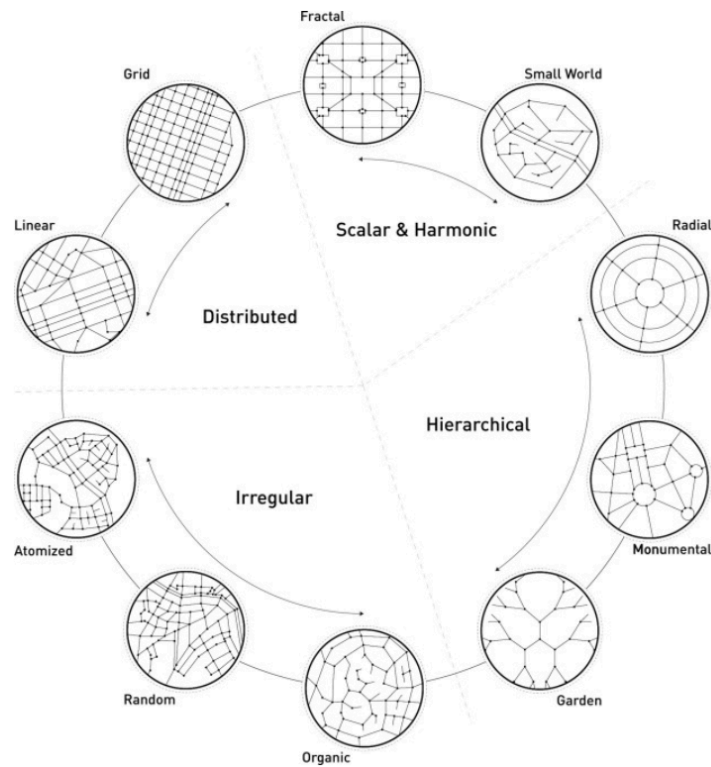


Fig.1. List of Pure City Typologies
Source: Burke et al. (2022)

This paper utilizes two main evaluation criteria present in the literature for assessing urban design solutions: [1] design sustainability²⁰, and [2] design competitiveness²¹. On the one hand, urban sustainability refers to the integration of city subsystems within a cohesive network that operates in symbiosis without harming the development possibilities of the neighboring areas. Therefore, urban sustainability is not only circumscribed to environmental factors such as levels of GHG emissions or air quality but rather to the constricting power of a city on its surroundings. On the other hand, design competitiveness encompasses the innovative potential of a city and its ability to integrate technology (Internet of Things) into its urban design factors. Ning et al (2017) further subdivide design competitiveness according to its benefit, design capacity, and design strategy²². The benefit mainly relates to the value added by R&D, the design capability comprises the prioritization of technology and R&D, and the design strategy mainly focuses on policy support to urban initiatives. These metrics provide a theoretical framework to measure the competitiveness of an urban policy, thus facilitating comparisons in efficiency among different urban planners. This paper endeavors to conduct qualitative comparisons between urban policymaking solutions based on their ability to address the issues brought by random cities.

²⁰ Zhang and Li, "Urban Resilience and Urban Sustainability."

²¹ Ning et al., "Research on an Evaluation System for Urban Design Competitiveness."

²² Ning et al.

3. Disadvantages of a Random City

The irregular nature of random typologies is not exclusively pernicious, as the lack of a rigid structure can contribute to a more flexible street layout. For instance, the spontaneity of Istanbul's city design is considered a valuable aspect of urban harmony, culture, and identity²³. However, random typologies suffer from inherent disadvantages derived from the lack of supervisory mechanisms in urban design factors. The absence of supervision allows chaos to reign, which translates into individuals modifying the public spheres for their self-interests²⁴. The uncontrollable characteristic of randomness leads to a series of negative consequences, which have been formalized in this section of the report.

The disadvantages of random cities are divided into two levels. The first level describes the general urban category that is hindered by randomness, whereas the second level refers to the specific activity or service negatively affected by randomness. Table 1 summarizes the list of first-level and second-level disadvantages, and includes a small description to explain the negative effect of random typologies on the indicator.

First-level Disadvantage	Second-level Disadvantage	Description
Environmental	Waste Management	Inconsistent waste collection mechanisms.
	Pollution	Higher air and noise pollution from car congestion.
	Green Spaces	Random allocation of green spaces.
Access to Basic Amenities	Public Transportation	Underdeveloped public transportation infrastructure.
	Electricity & Water	Topographical barriers to extending basic services.
	Healthcare Services	Deficient street connectivity & increased disease spread.
Security	Reduced Walkability	Lack of urban design factors for security.
	Theft	Perception of low security in public areas.
	Other Illegal Activities	Higher incidence in informal areas.
Spatial Distribution	Urban Sprawl	Lack of planning for city expansion.
	Centralization	Central structure of employment.
	Overpopulation	Poor control over population growth.

Table 1. Disadvantage of the Random City Typology
Source: Own elaboration

One of the main first-level disadvantages is related to environmental issues, as random typographies struggle to enforce compliance with environmental practices. At the second-level, random typologies hinder waste management, aggravate pollution, and reduce green spaces per square kilometer. Firstly, waste management has become a major problem for

²³ Turgut, "Istanbul."

²⁴ Streule et al., "Popular Urbanization."

developing cities due to the absence of a reliable mechanism for waste collection²⁵. In random typologies, creating a one-size-fits-all solution for waste management is unfeasible due to the divergent morphology of the city. Without proper enforcement mechanisms, illegal dumpsites proliferate alongside informal waste collectors²⁶. Secondly, random cities amplify air and noise pollution through augmented car traffic. The literature establishes a direct relationship between urban planning decisions and outcomes for car congestion²⁷. Random typologies have inconsistent land usage, which leads to higher congestion times. Thirdly, randomness interferes with the urban planning of green spaces, which leads to unpredictable outcomes for green spaces per kilometer squared. For example, the lack of regulatory guidelines for green spaces in Ethiopia has inhibited the provision of high-quality green spaces²⁸.

The second main first-level disadvantage comprises all factors related to the ease of accessing basic amenities. For that reason, the second-level disadvantages include difficulties in accessing public transportation, water supply, electricity, and healthcare services. Accessibility to public transportation is closely related to the quality of public transport, which is a necessity for minimizing car dependence and reducing emissions²⁹. However, many developing cities with random typologies lack public transport infrastructure. Moreover, random cities struggle to build infrastructure due to their chaotic urban underground space, which requires planning for its efficient development³⁰. The same problem extends to internet and electricity wiring, which is often done above ground due to the intricacies of the underground infrastructure. The accessibility to water is also challenging in random typologies because of unconventional building spots. For instance, cities like Quito, Lima, and Istanbul have expanded to mountainous areas with meager water sources. Additionally, the poor street connectivity of random typologies acts as a barrier for suburban communities to access public health services³¹. Furthermore, the problem of urban sprawl in random cities increases the demand for health services, which exerts pressure on vulnerable health systems. Coupled with the increased transmission of infectious diseases, the high density of random cities poses a threat to urban healthcare services³².

Another first-level disadvantage is related to security issues in random cities. Poor safety measures lead to second-level disadvantages such as reduced walkability, increased theft, organized crime, and drugs. Academic literature on walkability scores indicates that urban design factors such as street lights, well-designed intersections, and speed limits are necessary

²⁵ Cobbinah, Erdiaw-Kwasie, and Amoateng, "Africa's Urbanisation."

²⁶ Ebekeozien et al., "Sustainable Cities through Household Waste Management."

²⁷ Li et al., "Analysis of Urban Congestion Traceability."

²⁸ Eshetu, Yeshitela, and Sieber, "Urban Green Space Planning, Policy Implementation, and Challenges."

²⁹ Genç et al., "Commuters Opinion on Public Transport Services in Mega Cities."

³⁰ Zhao et al., "Advances in Master Planning of Urban Underground Space (UUS) in China."

³¹ Genovese et al., "Urban Sprawl and Health."

³² Chen et al., "Effect of Modelling Slum Populations on Influenza Spread in Delhi."

to create a feeling of security among pedestrians^{33 34}. The issue with random typologies is the prevalence of informal settlements, which are not properly equipped with security elements. As a result, these areas are more vulnerable to theft and general insecurity³⁵. The literature supports the fact that organized crime is more recurrent in densely populated slums, which often have random street layouts³⁶. In general, there is a consensus that illegal activities have a higher incidence in informal urban areas. These activities include the commerce of drugs, prostitution, gambling, etc. Therefore, the informal characteristics of random cities significantly contribute to worsening their perception of security.

Finally, the last first-level disadvantage is the inefficient spatial distribution of land. Random city typologies suffer from uncontrolled metropolitan expansion, which leads to the problem of urban sprawl. As residents sprawl to undeveloped land, the commuting time of residents increases³⁷. Urban sprawl is also accompanied by suburbanization³⁸, which leads to the creation of unplanned suburbs with random typologies. Another spatial issue of random cities is centralization, as the most developed information and communication technology (ICT) is condensed at the city center³⁹. By extension, a large portion of employment occurs at the city center, which deepens the transportation issues of the suburban population. However, the largest spatial issue of developing cities is overpopulation, which causes the collapse of basic services such as water supply or electricity⁴⁰. At the same time, overpopulation is a key driver for an irregular urban design, as the city layout is modified to accommodate the increasing population⁴¹. As the population increases uncontrollably, the city typology is also transformed uncontrollably. Consequently, cities that receive an excessive influx of migrants end up with random typologies.

4. Problem: Path Dependence of random city typologies

The previous section has set the premise that random city typologies have a series of inherent disadvantages that hinder urban development. The cumulative presence of these disadvantages creates a state of inefficiency⁴² that requires correction. For example, a correction strategy is to switch to a fractal city typology, which is found to be positively correlated to urban performance⁴³. The need for correcting random cities is well-documented knowledge that is readily

³³ Debnath et al., "An Investigation of Urban Pedestrian Behaviour in Bangladesh Using the Perceptual Cycle Model."

³⁴ Ortega et al., "Evaluating the Impact of Urban Design Scenarios on Walking Accessibility."

³⁵ Kamalipour and Peimani, "Informal Urbanism in the State of Uncertainty."

³⁶ Monday, Ilesanmi, and Ali, "Security and Safety Planning in Slum Areas of Jimeta, Adamawa State, Nigeria."

³⁷ Oueslati, Alvanides, and Garrod, "Determinants of Urban Sprawl in European Cities."

³⁸ Kovács et al., "Urban Sprawl and Land Conversion in Post-Socialist Cities."

³⁹ Dadashpoor and Yousefi, "Centralization or Decentralization?"

⁴⁰ Melchert, "The Dutch Sustainable Building Policy."

⁴¹ Ribeiro et al., "The Adoption of Strategies for Sustainable Cities."

⁴² North, "Structure and Change in Economic History."

⁴³ Burke et al., "Geospatial Analysis Framework for Evaluating Urban Design Typologies in Relation with the 15-Minute City Standards."

available to urban economists and designers⁴⁴. Therefore, cities have an incentive to escape randomness to improve their performance, which should lead to an equilibrium where there are no random cities. Contrary to expectations, random cities flourish in number within the developing world. This paradox raises the question of whether there is a force that makes cities gravitate to randomness. The mentioned gravity effect also impedes random cities from escaping the status quo and adopting efficient urban forms. Therefore, the main problem of random cities is not any individual disadvantage, but rather the lock-in that tethers them into their typology. This paper explains gravitation to random cities using path dependency theory.

Path dependence is defined as a self-reinforcing, self-sustaining, and autocatalytic process of historical inertia that determines future outcomes⁴⁵. It is a probabilistic phenomenon, which restricts the available future trajectories based on past events and initial conditions⁴⁶. Path dependence does not close the door to specific trajectories but rather shapes structural patterns in decision-making through past decisions⁴⁷. Initially, the literature introduced path dependence to explain the historical evolution of technological change, which was bound to a lock-in state⁴⁸. Later on, path dependence was related to institutional economics, as institutional persistence stems from self-reinforcing mechanisms and initial chance events such as colonization⁴⁹ ⁵⁰. The concept of path dependency has also been applied to urban economics to explain the persistence of urban sprawl⁵¹ and the innovation systems of city regions⁵². Jedwab et al. (2015) introduce the concept of urban path dependence, which illustrates how historical shocks have an indelible impact on the spatial layout, which leads to multiple spatial equilibria⁵³.

Urban path dependence is relevant for random cities because informality and urban sprawl follow positive feedback loops (i.e., self-reinforcing mechanisms)⁵⁴. On one side, informal environments are subject to socially reinforced noncompliance due to the absence of enforcement mechanisms from the competent authorities. When individuals observe that the expected punishment for engaging in informal activities is low, it incentivizes them to turn to informality. An initial condition of generalized informality sets a particular dynamic path that further amplifies the spatial improvisation and irregularities in random cities. For instance, informal housing follows network effects, as more informal self-built houses are built when informality is prevalent in the neighborhood. Similarly, more informal

⁴⁴ Liebowitz and Margolis, "Path Dependence, Lock-In, and History."

⁴⁵ Martin and Simmie, "Path Dependence and Local Innovation Systems in City-Regions."

⁴⁶ Martin and Sunley, "Path Dependence and Regional Economic Evolution."

⁴⁷ Sorensen, "Uneven Processes of Institutional Change."

⁴⁸ Arthur, "Competing Technologies, Increasing Returns, and Lock-In by Historical Events."

⁴⁹ North, "Structure and Change in Economic History."

⁵⁰ Acemoglu, Johnson, and Robinson, "The Colonial Origins of Comparative Development."

⁵¹ Atkinson and Oleson, "Urban Sprawl as a Path Dependent Process."

⁵² Martin and Simmie, "Path Dependence and Local Innovation Systems in City-Regions."

⁵³ Jedwab, Kerby, and Moradi, "History, Path Dependence and Development."

⁵⁴ Atkinson and Oleson, "Urban Sprawl as a Path Dependent Process."

businesses open in spaces where formal businesses are not commonplace. Both informal housing and businesses pick up momentum once initial conditions are propitious. Once path dependence is set in motion, the social norms transform and change the perception of informality. In the long run, social norms become embedded, which leads cities to a lock-in situation in which individuals have warmed up to informality. The cumulative nature of feedback loops⁵⁵ then reaches a point of no return, where the structural change becomes entrenched in the culture of the city. Although path dependence is characterized by its dynamic nature, a structural lock-in blocks potential paths that require different structures.

On the other side, urban sprawl is another feature of random cities that is influenced by path dependence. The breakthrough of the automobile was a major structural break for many cities, which have configured their spatial layout to facilitate automobile transportation⁵⁶. This initial condition coupled with increasing rent prices has given an adequate incentive structure for individuals to locate in the peripheries of the cities. Consequently, a first generation of individuals relocated to the periphery of the city, thus initiating urban sprawl. This first generation generates knowledge spillovers, which makes the rest of the population realize the advantages of moving to low-density land (e.g., lower cost of living). In this way, the self-reinforcing mechanism starts to loop, which leads to a second wave of urban sprawl. In theory, the real state markets should act as an opposing force to the positive feedback loop of urban sprawl. As more residents move to the peripheries, the price mechanism would raise the property price of peripheral land due to higher demand. Therefore, the real state market is a self-correcting mechanism that clashes directly with the compounding urban sprawl. However, the self-reinforcement forces overcome the self-correcting forces⁵⁷, as the real state market is bound to time lags and reacts to urban sprawl movements ex-post.

Both informality and urban sprawl are critical path-dependent dimensions of random cities, but the baseline for path dependency stems from sunk investments in infrastructure⁵⁸. The construction of schools, hospitals, public services, paved roads, residential houses, and other urban design factors incur sunk investments that are site-specific⁵⁹. These investments are static in the short term and require more investment for relocation efforts. In other words, random cities are difficult to reverse or transform into other typologies because it would imply restructuring the city and rebuilding existing infrastructure. Even if the government could cover the costs of rebuilding, it would have to obtain property rights from private owners. These owners may oppose yielding their property for a common purpose, which would entail more transaction costs (e.g., coordination costs, and indemnizations). Martin & Simmie (2008) characterize sunk

⁵⁵ Martin, "Putting the Economy in Its Place."

⁵⁶ Atkinson and Oleson, "Urban Sprawl as a Path Dependent Process."

⁵⁷ Atkinson and Oleson.

⁵⁸ Li, "On the Path Dependence and Transcendence in the Environment Protection in China."

⁵⁹ Jedwab, Kerby, and Moradi, "History, Path Dependence and Development."

investments as quasi-irreversible due to the high switching costs involved. The existence of switching costs is a catalyst for inertia toward initial conditions⁶⁰, which perpetuates the spatial layout present in random cities. Knowing the irreversibility of location endowments⁶¹, it is mostly unfeasible to break away from a random city typology. Therefore, the remediability of random cities enters into question. Although superior alternatives exist to random cities, the issue of path dependency challenges the feasibility of those alternatives⁶². The following section explores potential solutions for remediating random cities despite the gravity of path dependence.

5. Solution: What is the future of random city typologies?

The irreversible and path-dependent nature of random cities impedes local governments from redesigning the city into a more advantageous typology. Therefore, solutions involving the reconstruction of a random city are mostly unfeasible⁶³, as it would involve displacing countless residents and businesses. Gradualist policy solutions are also inefficient because random cities become more entangled as urban-to-rural migration and informality advance (i.e., positive feedback loops). Random cities can be thought of as spider webs, which get incrementally intricate as more layers of silk are placed on top. Therefore, the application of a gradualist policy would be counterproductive, as the random city would relapse and converge to its chaotic structure as time goes by.

Given the progressive entanglement of random cities, this paper recommends implementing shock policy solutions to cut off the spider web in half. Despite the infeasibility of redesigning cities, there are alternative shock therapy solutions that do not involve changing the street layout of random cities. The solutions explored in this paper are [1] the Egyptian solution, and [2] the 15-minute city standard solution. The former follows a top-down approach to central planning, whereas the latter involves a bottom-up approach to adapting neighborhoods.

6.1 The Egyptian solution

The city of Cairo exemplifies the characteristics of a random city: a high degree of informality⁶⁴, densely populated areas⁶⁵, vehicular congestion⁶⁶, overcrowding⁶⁷, and overloaded transportation systems⁶⁸. From all of the listed issues, the government of Egypt is primarily concerned with the subject of overpopulation. Cairo has an estimated population of

⁶⁰ Liebowitz and Margolis, "Path Dependence, Lock-In, and History."

⁶¹ Jedwab, Kerby, and Moradi, "History, Path Dependence and Development."

⁶² Williamson, "Transaction Cost Economics and Organization Theory."

⁶³ Atkinson and Oleson, "Urban Sprawl as a Path Dependent Process."

⁶⁴ Kaye-Essien and Bhuiyan, "Capital City Boosterism as Policy Legitimation."

⁶⁵ Ali, "Smart City Policy in Developing Countries."

⁶⁶ Kaye-Essien and Bhuiyan, "Capital City Boosterism as Policy Legitimation."

⁶⁷ Goda, Foda, and Elsayyad, "Using Green Roofs for Social Housing to Improve Energy Consumption in New Cities. (An Applied Study of Social Housing in Egypt's New Cairo City)."

⁶⁸ Goda, Foda, and Elsayyad.

over 22 million people in 2024⁶⁹, and projections indicate that by 2030 the population will reach 25.5 million. The annual population growth of Egypt is situated at 1.6%⁷⁰ with a birth rate of 2.9 children per woman⁷¹. These statistics suggest that the increasing population will eventually collapse Cairo, as the city was not built to accommodate nor sustain such a large population. For that reason, the Egyptian government has designed a mitigation strategy to absorb a portion of Cairo's population away from the densely populated capital city.

The Egyptian solution consists of building a new city away from the geospatial location of the random city. This solution successfully circumvents the issue of path dependency, as the newly built city is not subject to any initial conditions. Instead, the government has total control over the morphology, street layout, and urban form of the city. The Egyptian solution gives complete freedom to urban designers, who can meticulously plan each area of the new city and decide upon the exact typological structure. Essentially, this alternative allows for top-down master planning of a city's urban design. In the case of Egypt, the government has decided to move its old capital city to the "*New Administrative Capital*" (NAC).

The NAC is a new city located in the Eastern Desert, which is found 45km away from Cairo and 60km away from Tahrir Square⁷². The project was first announced in March of 2015 during the Economic Development Conference⁷³. In its presentation, the NAC was revealed as the solution to the current congestion in Cairo. This new city is expected to host up to 6.5 million people⁷⁴ and accommodate all governmental buildings. Initially, the expected cost of the NAC ascended to 45 billion dollars, although it has recently been revised upwards to 58 billion dollars. Egypt has the second highest debt with the IMF—second only to Argentina —, which raises concerns about the fiscal health of Egypt whilst moving forward with the NAC. In total, the international debt reached \$164 billion back in September 2023, which caused soaring inflation up to 40%. Therefore, there are critics who point to the lavish and opulent constructions in the NAC as the root cause of fiscal irresponsibility. Building a new city from zero requires heavy upfront investments, which is the main downside of the Egyptian solution. As a result, economic agents often fall to the sunk cost fallacy (i.e., investing in path-dependent random cities) because it requires the least investment, whereas rebuilding (i.e., the Egyptian solution) needs vast financial resources.

Another important aspect to consider from the NAC is its urban form. Given the flexibility of master planning, the NAC does not follow any pure typology. Instead, the city is fragmented into Marshallian industrial clusters⁷⁵ focused on

⁶⁹ "World Urbanization Prospects 2018."

⁷⁰ Werr, "Egypt Plans Expansion of New Capital as First Residents Trickle In."

⁷¹ World Bank, "Urban Development Overview."

⁷² Rapacki, "Centre of Power."

⁷³ Loewert and Steiner, "The New Administrative Capital in Egypt."

⁷⁴ Loewert and Steiner.

⁷⁵ Zhao et al., "Environment, Network Interactions and Innovation Performance of Industrial Clusters."

specific trades. For instance, the NAC has a central business district with skyscrapers such as the Iconic Tower, where most of the corporate buildings are located⁷⁶. Moreover, the NAC has an Olympic City complex, a military area with the Octagon, a medical city, a banking district, an Arts & Culture City, and many more specialized districts. The city is also endowed with six different residential areas that contain 25,000 units per area⁷⁷. There are many more particularities related to the NAC, but the main point concerns the segmentation of purpose-driven areas. A critical typological characteristic of the NAC is the 23 squared-kilometer park complex that connects all districts together⁷⁸. This park is meant to mimic the Nile River and serves as a joining node that fosters green spaces and facilitates urban connectivity. The typology of the New Administrative Capital is illustrated in Fig.2.

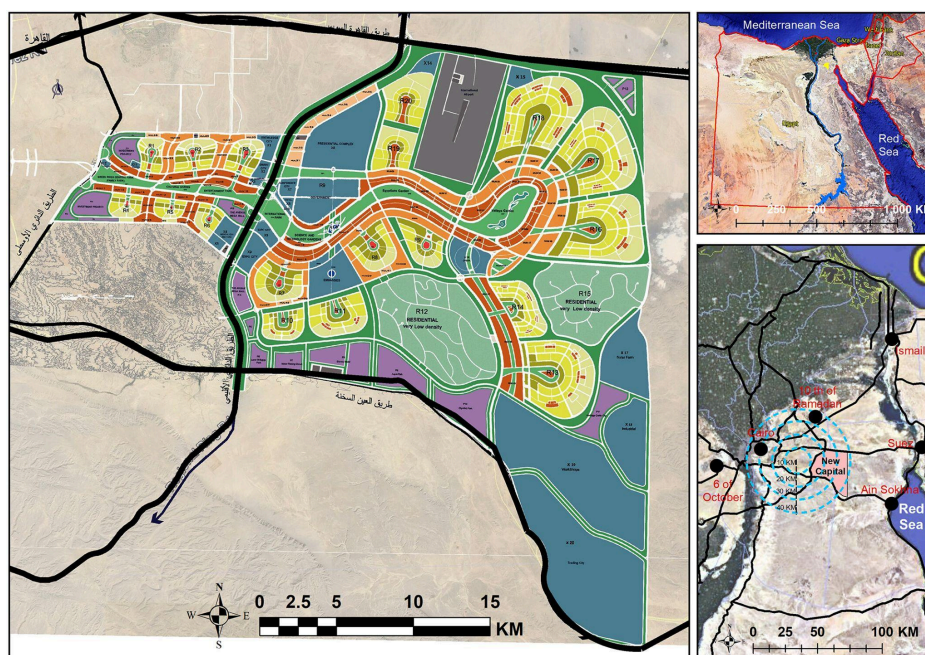


Fig.2. NAC City Typology
Source: Ali (2021)

The optimality of the Egyptian solution is evaluated utilizing sustainability and competitiveness criteria. Firstly, the sustainability of the Egyptian solution relies on the urban philosophy of its designers. Master planning allows for freedom in urban design, which delegates power to designers to prevent urban sprawl from spreading within the new city. Under the premise of rational urban designers, the Egyptian solution has the potential to create idyllic typological cities that do not sprawl and optimize urban performance. For example, many urban analysts believe that the NAC runs the risk of becoming a satellite city of Cairo due to its close proximity. The optimal distance between an old and new capital city is

⁷⁶ Ali, “Smart City Policy in Developing Countries.”

⁷⁷ Kaye-Essien and Bhuiyan, “Capital City Boosterism as Policy Legitimation.”

⁷⁸ Kaye-Essien and Bhuiyan.

at least 500 kilometers, which is more than ten times the Cairo-NAC distance⁷⁹. Also, experts recommend locating new capital cities in underdeveloped areas, which requires exogenous shocks to bridge regional inequalities. Although the NAC is a flawed example, the notion behind the Egyptian solution can be sustainable with proper urban planning.

Secondly, the competitiveness of the Egyptian solution depends on a trade-off between infrastructure and financial resources. Assuming there are no financial constraints, the Egyptian solution maximizes competitiveness because the city can build as many catalysts for economic development (e.g., libraries, and sports facilities). In the case of the NAC, the segmented urban form has the potential to breed innovation environments specialized in certain activities⁸⁰. By attracting international branches of universities and establishing knowledge hubs (e.g., knowledge cities), the NAC has the tools to become a regional hub for global investments in science and technology⁸¹. However, the opportunities for foreign direct investment are limited by the fiscal health and credibility of the nation. For that reason, the trade-off between infrastructure and finances must be adequately balanced to prevent chronic fiscal deficits or defaults.

6.2 The 15-minute city standard solution

This solution originates from a concept introduced by Carlos Moreno (2021) called the 15-minute city standard (FMC)⁸². The FMC is an urban planning model in which residents can access all of their essential needs within a walking/cycling distance of 15 minutes⁸³. Among those basic needs, residents must be able to access their homes, their workplaces, their educational institutions, fundamental amenities, grocery shopping, healthcare, banking, and even leisure activities. Under the FMC, cities are no longer centralized in specific areas, but rather units of 15-minute radiuses that are interconnected. The notion of the FMC model stems from chrono-urbanism, which states that the quality of life of a resident is inversely proportional to the time spent on transportation. Therefore, the main advantage of the FMC is that it drastically reduces the need for long journeys, which minimizes the time lost by residents in commuting. Other advantages of the FMC are that it reduces car dependence and promotes active modes of transportation⁸⁴. After the COVID-19 pandemic, the FMC gained popularity due to the mobility restrictions (curfews, quarantines) imposed during lockdown periods. These mobility restrictions made residents appreciate proximity-based urban designs, as it eased their ability to get essential amenities at close distances. As the FMC gained a reputation as an efficient urban policymaking paradigm, the model was adopted by main cities worldwide. For instance, Shanghai implemented 15-minute neighborhoods in 2016 intending to foster walking and thus reduce the risk of obesity⁸⁵. Later on, the mayor

⁷⁹ Serag, "The New Administrative Capital of Egypt a Critical Review from the Regional."

⁸⁰ Ali, "Smart City Policy in Developing Countries."

⁸¹ Khalil and Mousa, ACUD officials.

⁸² Moreno et al., "Introducing the '15-Minute City.'"

⁸³ Pozoukidou and Angelidou, "Urban Planning in the 15-Minute City."

⁸⁴ Gorrini et al., "Walkability for Children in Bologna."

⁸⁵ Weng et al., "The 15-Minute Walkable Neighborhoods."

of Paris declared the adherence of the city to the FMC standard⁸⁶. Moreover, multinational networks such as the C40 Cities have incorporated 15-minute planning into their agenda⁸⁷.

The overhaul of a random city has been previously framed as unfeasible, which remains true. However, embracing the FMC model does not entail any structural changes in the random city. The street layout and city order would remain untouched, while the morphology of the city is transformed. Rearranging the morphology of a random city would imply optimizing and diversifying the land-use mix. In this way, the city would ensure that residential, commercial, educational, and office areas are well distributed and dispersed within a 15-minute radius. To achieve the FMC standard, unused government buildings can be repurposed to fit the needs of the surrounding areas. For example, if the neighborhood lacks a closeby hospital, then the public areas can focus on building medical centers. This methodology should be repeated until all essential amenities are available in the 15-minute zone. In case public land is unavailable, the local authorities can give incentives to private agents for building specific establishments that are absent in the close vicinity. Using the previous example, local municipalities could grant tax breaks and exemptions to companies building medical centers. In summary, the FMC model serves as a feasible redesign solution for random cities to improve the quality of life of their residents without untangling its embedded randomness.

The paper uses two evaluation criteria to assess the urban design quality of the FMC solution: [1] sustainability, and [2] competitiveness. In terms of sustainability, the FMC model excels in promoting sustainable modes of transportation such as walking and cycling. At the same time, it removes the need for car usage, which is fundamental as cities become unable to accommodate more cars due to heavy traffic congestion⁸⁸. By disincentivizing car mobility, urban sprawl is mitigated, as residents would prefer to live within their 15-minute neighborhood over commuting from the periphery. However, it must be noted that the randomness factor of the city would persist, which could perpetuate the existing informality and unsafety. In competitiveness terms, the evolution of R&D and innovative activities under FMC models lacks comprehensive literature and requires further studies. Therefore, assessment based on benefits and design capacity remain unclear. Nonetheless, the design strategy of a city vastly improves with the FMC model, as there is a clear urban planning philosophy that can be enhanced through public policy. The decentralization attained through the FMC model also raises economic concerns, as it opposes the concept of economies of agglomeration. Economic literature argues that clustering certain economic activities in one place is a boon for specialization and innovation. Thus, the contrapositive implies that decentralization would hinder specialized activities. Adhering to the contrapositive without proper empirical studies would only lead to logical fallacies. Consequently, the paper recommends conducting further quantitative research on the FMC model to draw data-driven conclusions.

⁸⁶ Logan et al., "The X-Minute City."

⁸⁷ Sala et al., "C40 Mayors' Agenda for a Green and Just Recovery."

⁸⁸ Afrin and Yodo, "A Survey of Road Traffic Congestion Measures towards a Sustainable and Resilient Transportation System."

6. Conclusion

In conclusion, the concept of random city typologies by Burke et al. (2022) is expanded to fit the particularities of developing urban design. Namely, the proposed definition covers the high population density, overcrowding, improvised structure, generalized informality, and urban sprawl issues of developing cities. These characteristics are added to the basic features of random cities, consisting primarily of the irregular and unharmonious distribution of urban design factors. In this way, the paper formalizes a typology representative of developing cities and provides a framework to analyze the deficiencies of developing urban design.

Random cities are not exclusively detrimental, as the randomness factor contributes to the cultural identity and flexibility of the urban design. However, there are intrinsic disadvantages that outweigh the positive aspects brought by random cities. These disadvantages are categorized into first and second levels, with the second-level delving into specific aspects of the general first-level. The general first-level categories include [1] environmental issues, [2] scarce access to basic amenities, [3] lack of security, [4] and spatial asymmetries that require correction. Each of these disadvantages is associated with a decrease in the quality of life, which hinders the urban performance of random cities. The exploration of such negative aspects led to the conclusion that random cities share inherent flaws, which positions them as suboptimal typologies relative to fractal cities. Given the premise that random cities underperform, it does not follow that many developing cities adopt random typologies. The logic error becomes coherent once path dependency theory is accounted for.

Random cities are influenced by path dependence because the initial spatial endowments are relatively static and persist over time. The switching costs of restructuring existing infrastructure are high, and generate an invisible inertia towards the previous state of affairs. For that reason, random cities enter a lock-in phase that blocks previous equilibria and pushes the city to a path where randomness is perpetuated. Path dependency stems from self-reinforcing mechanisms that create positive feedback loops that preserve and accentuate the status quo. Positive feedback loops are present both in informality and urban sprawl. Firstly, informality generates environments of general noncompliance, which pushes more individuals to adopt informal behavior (e.g., self-built housing or settling informal businesses). The increasing acceptance of informal affairs turns into social norms that accumulate over time until an equilibrium of generalized informality is reached. Secondly, urban sprawl is subject to positive feedback loops, as rent prices and mobility options provide ideal conditions for sprawling. As residents and migrants recognized the advantages of sprawling to the peripheries, a self-reinforcing mechanism activated recurrent waves of urban sprawl. Furthermore, the sunk investments in spatial endowments prompted cities to maintain their initial urban forms. The efforts of rebuilding established infrastructure are costly, which makes spatial elements sensitive to path dependence.

Understanding the nature of urban path dependence allows for an objective analysis of the feasibility of policy solutions. Redesigning random cities and implementing gradualist policies is unfeasible due to the inertia exerted by path dependence. On one hand, redesigning the random city requires heavy investments and does not halt the self-reinforcing mechanisms. On the other hand, gradualist solutions are outpaced by the positive feedback loops, which cause the solution to only delay the inevitable. Therefore, the feasible area for path-dependence solutions rests upon shock policies such as [1] the Egyptian solution, and [2] the 15-minute city. The first solution involves the construction of a brand-new 'planned city. The master planning allows the new urban form to fit the desired typology and even incorporate the modern spatial layout of smart cities (e.g., IoT elements). The second solution consists of an endogenous adoption of the 15-minute standard, which dictates that essential services ought to be within a 15-minute radius of walking. Although the randomness factor is not removed, most of the first-level disadvantages of random cities are solved. The proposed solutions are still novel to urban economics and require further testing to gauge their effectiveness in terms of sustainability and competitiveness.

7. Bibliography

- Acemoglu, Daron, Simon Johnson, and James A Robinson. "The Colonial Origins of Comparative Development: An Empirical Investigation." *American Economic Review* 91, no. 5 (December 1, 2001): 1369–1401. <https://doi.org/10.1257/aer.91.5.1369>.
- Afrin, Tanzina, and Nita Yodo. "A Survey of Road Traffic Congestion Measures towards a Sustainable and Resilient Transportation System." *Sustainability* 12, no. 11 (June 7, 2020): 4660. <https://doi.org/10.3390/su12114660>.
- Ali, Mohamed Abouelhassan. "Smart City Policy in Developing Countries: Case Study of the New Administrative Capital in Egypt." *Journal of Public Affairs* 22, no. S1 (December 2022): e2774. <https://doi.org/10.1002/pa.2774>.
- Arthur, W. Brian. "Competing Technologies, Increasing Returns, and Lock-In by Historical Events." *The Economic Journal* 99, no. 394 (March 1989): 116. <https://doi.org/10.2307/2234208>.
- Atkinson, Glen, and Ted Oleson. "Urban Sprawl as a Path Dependent Process." *Journal of Economic Issues* 30, no. 2 (June 1996): 609–15. <https://doi.org/10.1080/00213624.1996.11505825>.
- Burke, Jeremy, Ramon Gras Alomà, Fernando Yu, and Jordan Kruguer. "Geospatial Analysis Framework for Evaluating Urban Design Typologies in Relation with the 15-Minute City Standards." *Journal of Business Research* 151 (November 2022): 651–67. <https://doi.org/10.1016/j.jbusres.2022.06.024>.
- Chen, Jiangzhuo, Shuyu Chu, Youngyun Chungbaek, Maleq Khan, Christopher Kuhlman, Achla Marathe, Henning Mortveit, Anil Vullikanti, and Dawen Xie. "Effect of Modelling Slum Populations on Influenza Spread in Delhi." *BMJ Open* 6, no. 9 (September 2016): e011699. <https://doi.org/10.1136/bmjopen-2016-011699>.
- Cobbinah, Patrick Brandful, Michael Odei Erdiaw-Kwasie, and Paul Amoateng. "Africa's Urbanisation: Implications for Sustainable Development." *Cities* 47 (September 2015): 62–72. <https://doi.org/10.1016/j.cities.2015.03.013>.
- Dadashpoor, Hashem, and Zahed Yousefi. "Centralization or Decentralization? A Review on the Effects of Information and Communication Technology on Urban Spatial Structure." *Cities* 78 (August 2018): 194–205. <https://doi.org/10.1016/j.cities.2018.02.013>.
- Debnath, Mithun, Shahnewaz Hasanat-E-Rabbi, Omar Faruqe Hamim, Md. Shamsul Hoque, Rich C. McIlroy, Katherine L. Plant, and Neville A. Stanton. "An Investigation of Urban Pedestrian Behaviour in Bangladesh Using the Perceptual Cycle Model." *Safety Science* 138 (June 2021): 105214.

- <https://doi.org/10.1016/j.ssci.2021.105214>.
- Ebekozien, Andrew, Clinton Aigbavboa, Angeline Ngozika Chibuike Nwaole, Ibeabuchi Lawrence Aginah, and Marvelous Aigbedion. "Sustainable Cities through Household Waste Management: An Unexplored Approach to Challenges Confronting Private Solid Waste Management." *Facilities* 40, no. 5/6 (February 21, 2022): 365–79. <https://doi.org/10.1108/F-09-2021-0078>.
- Eshetu, Shibire Bekele, Kumelachew Yeshitela, and Stefan Sieber. "Urban Green Space Planning, Policy Implementation, and Challenges: The Case of Addis Ababa." *Sustainability* 13, no. 20 (October 14, 2021): 11344. <https://doi.org/10.3390/su132011344>.
- García-Palomares, Juan Carlos. "Urban Sprawl and Travel to Work: The Case of the Metropolitan Area of Madrid." *Journal of Transport Geography* 18, no. 2 (March 2010): 197–213. <https://doi.org/10.1016/j.jtrangeo.2009.05.012>.
- Genç, Atakan, Khaled Alkhaledi, Sait Sağlam, and Salaheddine Bendak. "Commuters Opinion on Public Transport Services in Mega Cities: The Case of Istanbul Buses." *Frontiers in Sustainable Cities* 5 (November 27, 2023): 1291914. <https://doi.org/10.3389/frsc.2023.1291914>.
- Genovese, Dario, Stefania Candiloro, Antonio D'Anna, Marco Dettori, Vincenzo Restivo, Emanuele Amodio, and Alessandra Casuccio. "Urban Sprawl and Health: A Review of the Scientific Literature." *Environmental Research Letters* 18, no. 8 (August 1, 2023): 083004. <https://doi.org/10.1088/1748-9326/ace986>.
- Gilbert, Liette, and Feike De Jong. "Entanglements of Periphery and Informality in Mexico City." *International Journal of Urban and Regional Research* 39, no. 3 (May 2015): 518–32. <https://doi.org/10.1111/1468-2427.12249>.
- Glaeser, Edward, and J. Vernon Henderson. "Urban Economics for the Developing World: An Introduction." *Journal of Urban Economics* 98 (March 2017): 1–5. <https://doi.org/10.1016/j.jue.2017.01.003>.
- Goda, Zainab Mohamed Arafa, Mohanad Ali Mohamed Foda, and Nanees Abd Elhamid Elsayyad. "Using Green Roofs for Social Housing to Improve Energy Consumption in New Cities. (An Applied Study of Social Housing in Egypt's New Cairo City)." *Future Cities and Environment* 9, no. 1 (January 12, 2023): 2. <https://doi.org/10.5334/fce.165>.
- Gorrini, Andrea, Dante Presicce, Federico Messa, and Rawad Choubassi. "Walkability for Children in Bologna: Beyond the 15-Minute City Framework." *Journal of Urban Mobility* 3 (December 2023): 100052. <https://doi.org/10.1016/j.urbmob.2023.100052>.
- Harris, John R., and Michael P. Todaro. "Migration, Unemployment and Development: A Two-Sector Analysis." *The American Economic Review* 60, no. 1 (1970): 126–42.
- Heathcott, Joseph. "Architecture, Urban Form, and Assemblage Aesthetics in Mexico City's Street Markets." *Archnet-IJAR: International Journal of Architectural Research* 13, no. 1 (March 15, 2019): 72–92. <https://doi.org/10.1108/ARCH-12-2018-0027>.
- Hung, Li-Wen, and Shin-Kun Peng. "Rural-Urban Migration with Remittances and Welfare Analysis." *Regional Science and Urban Economics* 91 (November 2021): 103629. <https://doi.org/10.1016/j.regsciurbeco.2020.103629>.
- Jedwab, Remi, Edward Kerby, and Alexander Moradi. "History, Path Dependence and Development: Evidence from Colonial Railways, Settlers and Cities In Kenya." *The Economic Journal* 127, no. 603 (August 1, 2017): 1467–94. <https://doi.org/10.1111/eoj.12347>.
- Kamalipour, Hesam, and Nastaran Peimani. "Informal Urbanism in the State of Uncertainty: Forms of Informality and Urban Health Emergencies." *URBAN DESIGN International* 26, no. 2 (June 2021): 122–34. <https://doi.org/10.1057/s41289-020-00145-3>.
- Kaye-Essien, Charles Wharton, and Shahjahan Bhuiyan. "Capital City Boosterism as Policy Legitimation: A Discursive Perspective of Egypt's New Administrative Capital." *City, Culture and Society* 28 (March 2022): 100437. <https://doi.org/10.1016/j.ccs.2021.100437>.
- Khalil, M., and W. Mousa. ACUD officials. Online interview, 2021.
- Kovács, Zoltán, Zsolt Jenő Farkas, Tamás Egedy, Attila Csaba Kondor, Balázs Szabó, József Lennert, Dorián Baka, and

- Balázs Kohán. "Urban Sprawl and Land Conversion in Post-Socialist Cities: The Case of Metropolitan Budapest." *Cities* 92 (September 2019): 71–81. <https://doi.org/10.1016/j.cities.2019.03.018>.
- Li, Chenguang, Duo Wang, Hong Chen, and Enze Liu. "Analysis of Urban Congestion Traceability: The Role of the Built Environment." *Land* 13, no. 2 (February 19, 2024): 255. <https://doi.org/10.3390/land13020255>.
- Li, X. F. "On the Path Dependence and Transcendence in the Environment Protection in China." *Economic Survey* 6 (2007): 8–10.
- Liebowitz, S. J., and Stephen E. Margolis. "Path Dependence, Lock-In, and History." *The Journal of Law, Economics, and Organization* 11, no. 1 (April 1995): 205–26. <https://doi.org/10.1093/oxfordjournals.jleo.a036867>.
- Loewert, Patrick, and Christian Steiner. "The New Administrative Capital in Egypt: The Political Economy of the Production of Urban Spaces in Cairo." Application/pdf. *Middle East - Topics & Arguments* 12, no. 1 (June 25, 2019): 66–75. <https://doi.org/10.17192/META.2019.12.7933>.
- Logan, T.M., M.H. Hobbs, L.C. Conrow, N.L. Reid, R.A. Young, and M.J. Anderson. "The X-Minute City: Measuring the 10, 15, 20-Minute City and an Evaluation of Its Use for Sustainable Urban Design." *Cities* 131 (December 2022): 103924. <https://doi.org/10.1016/j.cities.2022.103924>.
- Mabin, Alan, Siân Butcher, and Robin Bloch. "Peripheries, Suburbanisms and Change in Sub-Saharan African Cities." *Social Dynamics* 39, no. 2 (June 2013): 167–90. <https://doi.org/10.1080/02533952.2013.796124>.
- Martin, Ron. "Putting the Economy in Its Place: On Economics, Geography and the Economic Landscape." *University of Utrecht* 24 (January 1, 2003).
- Martin, Ron, and James Simmie. "Path Dependence and Local Innovation Systems in City-Regions." *Innovation* 10, no. 2–3 (October 2008): 183–96. <https://doi.org/10.5172/impp.453.10.2-3.183>.
- Martin, Ron, and Peter Sunley. "Path Dependence and Regional Economic Evolution." *Journal of Economic Geography* 6, no. 4 (August 1, 2006): 395–437. <https://doi.org/10.1093/jeg/lbl012>.
- Melchert, Luciana. "The Dutch Sustainable Building Policy: A Model for Developing Countries?" *Building and Environment* 42, no. 2 (February 2007): 893–901. <https://doi.org/10.1016/j.buildenv.2005.10.007>.
- Metaxas, Theodore, Laura Juarez, and Gaby Gavrilidis. "Planning and Marketing the City for Sustainability: The Madrid Nuevo Norte Project." *Sustainability* 13, no. 4 (February 16, 2021): 2094. <https://doi.org/10.3390/su13042094>.
- Molaei, Asghar. "The Role of Urban Design Qualities in Metro Stations Approaching Indigenous Patterns." *Spatial Planning* 12, no. 1 (April 30, 2022): 1–4. <https://doi.org/10.22108/sppl.2022.125264.1539>.
- Monday, Ezenwa Ihedigbo, Felix Aromo Ilesanmi, and Haruna Ali. "Security and Safety Planning in Slum Areas of Jimeta, Adamawa State, Nigeria." *International Journal of Multidisciplinary and Current Research* 1 (January 11, 2013): 134–45.
- Moreno, Carlos, Zaheer Allam, Didier Chabaud, Catherine Gall, and Florent Pratlong. "Introducing the '15-Minute City': Sustainability, Resilience and Place Identity in Future Post-Pandemic Cities." *Smart Cities* 4, no. 1 (January 8, 2021): 93–111. <https://doi.org/10.3390/smartcities4010006>.
- Ning, Zou, Kejun Zhang, Shouqian Sun, and Xu. "Research on an Evaluation System for Urban Design Competitiveness." *Chinese Journal of Engineering Science* 19, no. 3 (2017): 111. <https://doi.org/10.15302/J-SSCAE-2017.03.016>.
- North, Douglass Cecil. "Structure and Change in Economic History." *Shanghai People Press*, 1997. <https://cir.nii.ac.jp/crid/1130000796341745536>.
- Ortega, Emilio, Belén Martín, María Eugenia López-Lambas, and Julio A. Soria-Lara. "Evaluating the Impact of Urban Design Scenarios on Walking Accessibility: The Case of the Madrid 'Centro' District." *Sustainable Cities and Society* 74 (November 2021): 103156. <https://doi.org/10.1016/j.scs.2021.103156>.
- Oueslati, Walid, Seraphim Alvanides, and Guy Garrod. "Determinants of Urban Sprawl in European Cities." *Urban Studies* 52, no. 9 (July 2015): 1594–1614. <https://doi.org/10.1177/0042098015577773>.
- Pozoukidou, Georgia, and Margarita Angelidou. "Urban Planning in the 15-Minute City: Revisited under Sustainable

- and Smart City Developments until 2030.” *Smart Cities* 5, no. 4 (October 13, 2022): 1356–75. <https://doi.org/10.3390/smartcities5040069>.
- Rapacki, Kristina. “Centre of Power: Egypt’s New Administrative Capital.” *The Architectural Review* (blog), May 16, 2024. <https://www.architectural-review.com/essays/centre-of-power-egypts-new-administrative-capital>.
- Ren, Feiran, Yuheng Zhang, and Qi Zhou. “Visualizing Urban Slum Population across the Globe.” *Environment and Planning B: Urban Analytics and City Science* 51, no. 3 (March 2024): 788–91. <https://doi.org/10.1177/23998083241228719>.
- Ribeiro, João Marcelo Pereira, Stephane Louise Bocasanta, Brisa Oliveira Ávila, Mica Magtoto, Ana Valquiria Jonck, George Matthew Gabriel, and José Baltazar Salgueirinho Osório De Andrade Guerra. “The Adoption of Strategies for Sustainable Cities: A Comparative Study between Seattle and Florianopolis Legislation for Energy and Water Efficiency in Buildings.” *Journal of Cleaner Production* 197 (October 2018): 366–78. <https://doi.org/10.1016/j.jclepro.2018.06.176>.
- Sala, Giuseppe, Ahmed Aboutaleb, Yvonne Aki-Sawyer, LaToya Cantrell, Sally Capp, Jenny Durkan, Wong Kam-sing, et al. “C40 Mayors’ Agenda for a Green and Just Recovery.” C40 Cities, 2020. https://www.c40.org/wp-content/uploads/2021/07/2093_C40_Cities_2020_Mayors_Agenda_for_a_Green_a_nd_Just_Recovery.original.pdf.
- Serag, Yehya. “The New Administrative Capital of Egypt a Critical Review from the Regional.” *SSRN Electronic Journal*, 2017. <https://doi.org/10.2139/ssrn.3162316>.
- Sorensen, André. “Uneven Processes of Institutional Change: Path Dependence, Scale and the Contested Regulation of Urban Development in Japan: Uneven Processes of Institutional Change in Japan.” *International Journal of Urban and Regional Research* 35, no. 4 (July 2011): 712–34. <https://doi.org/10.1111/j.1468-2427.2010.00975.x>.
- Streule, Monika, Ozan Karaman, Lindsay Sawyer, and Christian Schmid. “Popular Urbanization: Conceptualizing Urbanization Processes Beyond Informality.” *International Journal of Urban and Regional Research* 44, no. 4 (July 2020): 652–72. <https://doi.org/10.1111/1468-2427.12872>.
- Turgut, Hülya. “Istanbul: The City as an Urban Palimpsest.” *Cities* 112 (May 2021): 103131. <https://doi.org/10.1016/j.cities.2021.103131>.
- United Nations. “World Urbanization Prospects 2018.” Accessed August 28, 2024. <https://population.un.org/wup/>.
- Weerasekara, G.K.T., Archchana Shandraseharan, B.A.K.S. Perera, and Vijitha Disaratna. “The Impact of Building Morphology Factors on the Cost and Aesthetical Appearance of Urban Detached Residential Buildings in Sri Lanka.” *Journal of Engineering, Design and Technology* 21, no. 1 (January 19, 2023): 58–74. <https://doi.org/10.1108/JEDT-05-2021-0233>.
- Weng, Min, Ning Ding, Jing Li, Xianfeng Jin, He Xiao, Zhiming He, and Shiliang Su. “The 15-Minute Walkable Neighborhoods: Measurement, Social Inequalities and Implications for Building Healthy Communities in Urban China.” *Journal of Transport & Health* 13 (June 2019): 259–73. <https://doi.org/10.1016/j.jth.2019.05.005>.
- Werr, Patrick. “Egypt Plans Expansion of New Capital as First Residents Trickle In.” *Reuters*, January 4, 2024, sec. Africa. <https://www.reuters.com/world/africa/egypt-plans-expansion-new-capital-first-residents-trickle-2024-01-04/>.
- Williamson, Oliver E. “Transaction Cost Economics and Organization Theory.” *Industrial and Corporate Change* 2, no. 2 (1993): 107–56. <https://doi.org/10.1093/icc/2.2.107>.
- World Bank. “Urban Development Overview,” 2023. <https://www.worldbank.org/en/topic/urbandevelopment/overview>.
- Zhang, Xiaoling, and Huan Li. “Urban Resilience and Urban Sustainability: What We Know and What Do Not Know?” *Cities* 72 (February 2018): 141–48. <https://doi.org/10.1016/j.cities.2017.08.009>.
- Zhao, Jing-Wei, Fang-Le Peng, Tian-Qing Wang, Xiao-Yun Zhang, and Bing-Nan Jiang. “Advances in Master Planning of

Urban Underground Space (UUS) in China.” *Tunnelling and Underground Space Technology* 55 (May 2016): 290–307. <https://doi.org/10.1016/j.tust.2015.11.011>.

Zhao, Yan, Wen Zhou, Stefan Hüsigg, and Wim Vanhaverbeke. “Environment, Network Interactions and Innovation Performance of Industrial Clusters: Evidences from Germany, The Netherlands and China.” *Journal of Science and Technology Policy in China* 1, no. 3 (October 22, 2010): 210–33. <https://doi.org/10.1108/17585521011083111>.

Central Bank Transparency and Long-term Inflation Expectations: Evidence from the Czech National Bank

Aleksander Hycnar

Bachelor of Arts in Economics and Sociology, Sciences Po Paris, France
E-mail: aleksander.hycnar@sciencespo.fr

Published January, 2025

Abstract

This paper evaluates the impact of central bank transparency on the long-term inflation expectations of financial markets and the general public. It analyzes the data from the Czech Republic in the period 1999-2019. The study shows that the increased transparency of the Czech National Bank is a significant factor in anchoring inflation expectations among the financial market participants. Clear communication of policy objectives, methods and decisions limits uncertainty of future economic conditions financial markets face. That builds institutional trust in central banks and anchors inflation expectations around the inflation target. However, this effect is little reflected in the inflation expectations of businesses and households, as, contrary to the financial markets, they pay limited attention to the central bank's course of action.

Keywords: Central Banks, Inflation Expectations, Transparency

I. Introduction

Inflation expectations play an important role in economic decision-making. They impact actual future inflation by influencing capital investment flows, workers' wage demands, and firms' price-setting strategies¹. The existing literature points out that inflation targeting, central bank transparency, low public debt and trade integration can anchor the inflation expectations more firmly to the central bank target². Transparency is the factor of the highest interest as the central banks' strategies have been completely reversed. In the past, central bankers wrongly believed in total secrecy of their decisions. Nowadays, they tend to share a belief that greater transparency results in better accountability to the people and easier long-term interest rate adjustment.

¹Todd Clark and Troy Davig, "The Relationship between Inflation and Inflation Expectations," Federal Reserve Bank Working Paper (2009): 2.

²M. Ayhan Kose et al., "Inflation Expectations: Review and Evidence," World Bank Policy Research Working Paper 8785 (2019): 2.

In this paper, I show that the increased transparency of the central bank had a significant effect on anchoring the long-term inflation expectations in the Czech Republic between 1999 and 2019. The Czech National Bank has undertaken since the late 1990s a series of measures leading to an increase in transparency of its monetary policy. These pioneering measures strongly correlated with a decrease in long-term inflation expectations perceived by the financial markets. By implementing a linear regression and the Autoregressive Distributed Lag model analysis, I show that increased transparency results in lower inflation expectations over the time period studied. When central banks clearly communicate the policy objectives, publish policy rate forecasts and share their macroeconomic models, financial markets are faced with reduced uncertainty regarding future economic outcomes. Thus, they are more likely to believe central banks' price stability commitment to be credible, so they anticipate lower price level changes in the long-run. This is less true for inflation expectations of businesses and the general public. Central bank transparency is less significant because they often tend not to follow all the communication channels the central bank uses to interact with the markets. Hence, the long-run inflation expectations of businesses and households are often further detached from those of the market agents, more dispersed and show an upward bias due to past personal experiences with inflation³, prices of specific goods or a broad assessment of the state of the economy⁴.

This research sets out the following objectives:

- 1) Confirm or refute the scholars' viewpoints on the impact of transparency on inflation expectations of financial market participants - it evaluates whether transparency has a direct negative influence on expectations, and whether it interacts with the inflation lag to moderate the effect of previous inflation on inflation expectations,
- 2) Apply the findings to the case of the Czech Republic - most of previous studies have focused on well-established central banks from high-income countries. The Czech Republic is a country which started the process of major transparency reforms in the late 1990s and conducted them in a very short period of time. The evaluation of Czech policies can be a valuable source of information for other emerging market economies central banks, willing to adopt changes in their transparency,
- 3) Compare the effect of treatment on financial markets to the general public - measures of impact on transparency on household and business expectations have been generally overlooked by existing literature. However, they bear a significant importance from the policymaking point of view, potentially guiding central bankers in designing their strategies of communication with the general public.

³ Michael Ehrmann, Damjan Pfajfar, and Emiliano Santoro, "Consumer Attitudes and the Epidemiology of Inflation Expectations," *International Journal of Central Banking* 13, no. 1 (2014): 164.

⁴ Jeremy Rowe, "How Are Households' Inflation Expectations Formed?" *Bank of England Quarterly Bulletin* 56, no. 2 (2016): 84.

2. Literature review and historical analysis

The following subsections analyze the recent trends in economic research and policymaking on what it means for monetary policy and the central bank to be transparent. First, I will explain what a transparent monetary policy is, and why it is important. Then, I will review the existing literature on the impact of transparency on inflation expectations. Finally, I will present the history of the reforms the Czech National Bank has undertaken to create a transparent decision-making and policy analysis system.

2.1 Principle of transparency

The widely accepted definition of transparency in the context of central banking is the one summarized by Alan Blinder, the former Vice-Chairman of the Federal Reserve. He describes transparency as the process where the central banks' actions are "easily detected", policies "readily understood", and their pronouncements are "free from deceit"⁵. A transparent central bank discloses and clearly communicates the information on its decision-making processes⁶, leaving them to public scrutiny. Transparency of the central banks can be then measured by 3 factors: (1) the clear formulation of policy goals and objectives, (2) the transparency of their methods, their forecasts and their models, and (3) the provision of maximum information on the decisions and the decision-making process. These three components will be the basis for my analysis of whether the specific central bank could be classified as transparent in a given time period.

Once transparency is defined, Blinder then lays down two essential arguments for transparency: the political and the economic argument. On political grounds, transparency is the only way the central bank can be accountable to the general public⁷. In a democratic regime, the citizens of a country (or of the European Union, in case of the Eurozone), delegate power to the central banks through their representatives. The citizens can only assess the execution of powers they delegated if and only if the central banks report their work back to the people. Transparency can and should also be justified on economic grounds. If a central bank publishes its economic forecasts and provides forward guidance to the markets, the markets are better informed on the bank's likely actions and its strategy. Information they obtain translates then into the value of long-term interest rates, rates that influence the levels of consumption and investment in the economy. Therefore, by being more transparent, a central bank can better control the long term interest rates, and achieve its primary objective of price stability more efficiently. Another way in which increased transparency can help in containing inflation is by anchoring inflation expectations, the topic that will be explored in this article.

⁵ Alan Blinder, "Through the Looking Glass: Central Bank Transparency," Griswold Center Working Paper 86 (2002): 3.

⁶ Sylvester Eijffinger and Petra Geraats, "How Transparent Are Central Banks?" *European Journal of Political Economy* 22 (2006): 3.

⁷ Blinder, "Through the Looking Glass," 6.

2.2 Transparency and inflation expectations - Literature review

Many scholars in early studies on transparency did not support the hypothesis of its advantageous impact on maintaining price stability. Sørensen claimed that political instability (defined as uncertainty on central bank's position on inflation-output tradeoff) leads to lower inflation. Unions set lower nominal wages, Sørensen argued, when workers are not aware of the central bank's reaction to an increase in nominal wages⁸. Sibert shows that a central bank operating in secrecy would want to signal to the market to be more conservative to reduce the welfare loss coming from the time-inconsistency problem⁹. To be viewed as conservative, the central bank would need to conduct more restrictive monetary policy that favors the price stability objective. Cukierman argues that central banks that do not publish its economic models and objectives are perceived to be more credible¹⁰. Publications of the central bank's objectives might increase inflation expectations when a central bank has asymmetric preferences towards the inflation and output tradeoff, given agents are not fully rational.

However, these positions have been gradually abandoned by policymakers and academia for a more favorable viewpoint on the effects of transparency. Following the study undertaken by Blinder in 2000, central bankers and academic economists identified transparency as fourth in the ranking of factors that build a credible monetary policy, behind "history of honesty", "Central Bank Independence" and "history of fighting inflation"¹¹. This viewpoint was then matched by the majority of contemporary scholars. Eijffinger et al. argue that less transparent central banks are generally perceived to be less conservative with respect to their price stability objective, resulting in a higher expected inflation¹². Westelius demonstrates a short-term effect of transparency on a decrease in the persistence of inflation¹³. Once greater transparency is achieved, an equilibrium inflation rate falls because the markets do not need to account for the probability of the central bank exploiting the Short Run Phillips Curve tradeoff between inflation and unemployment.

The negative relationship between transparency and expected inflation has been confirmed by several key empirical studies. Cruijnsen and Demertzis in their article "The Impact of Central Bank Transparency on Inflation Expectations" from 2007 analyze this impact by drawing their findings from a sample of central banks from 8 industrialized economies: Australia, Canada, the Euro Area, the UK, Canada, Switzerland, New Zealand, and the US¹⁴. They show that the

⁸ Jan Rose Sørensen, "Uncertainty and Monetary Policy in a Wage Bargaining Model," *Scandinavian Journal of Economics* 94 (1992): 443.

⁹ Anne Sibert, "Monetary Policy with Uncertain Central Bank Preferences," *European Economic Review* 46 (2002): 1093

¹⁰ Alex Cukierman, "Are Contemporary Central Banks Transparent?" *Federal Reserve Bank of St. Louis Review* 84, no. 4 (2002): 15.

¹¹ Alan S. Blinder, "How Do Central Banks Talk?" (Centre for Economic Policy Research, 2001), 28.

¹² Sylvester C. W. Eijffinger and Marco M. Hoeberichts, "Central Bank Accountability and Transparency," *Economic Research Centre Discussion Paper* 2000-06 (2000): 1.

¹³ Niklas J. Westelius, "Discretionary Monetary Policy and Inflation Persistence," *Journal of Monetary Economics* 52 (2005): 477.

¹⁴ Carin van der Cruijnsen and Maria Demertzis, "The Impact of Central Bank Transparency on Inflation Expectations," *European Journal of Political Economy* 23 (2007): 51.

relation between inflation and inflation expectations is weaker in a high transparency group, compared with a low transparency group. Authors assign the particularly strong effect transparency on the inflation targets, defined by Geraats as “political transparency”¹⁵. Inflation also turns out to be less persistent when the transparency of the central bank is higher, results later confirmed by Oikonomou et al. in their analysis of panel data from OECD countries¹⁶. More recent studies tend to confirm these findings. Cournède and Minegishi use fixed methods estimation in panel data of 11 countries and they find that interaction term between transparency and actual inflation negatively influences the inflation expectations¹⁷. On the other hand, Weber shows that less than influencing expectations through inflation, high central bank transparency has a direct effect on anchoring long-term inflation expectations of financial markets¹⁸. The higher the inflation is, the larger the effect found.

While the academic body has extensively analyzed the impact of transparency on expected inflation among market participants, it has not been the case for the general public. Blinder emphasizes that central banks have in recent years made significant efforts to convey their agenda to the general public through instruments such as conventional media platforms, social media, public events and podcasts¹⁹. The aim of these actions is to enhance accountability and trust in the institution, ensure its democratic legitimacy, and also to influence the general public’s perceptions of inflation. Although the authors deem the goal to be important, the extent central banks’ action reaches the general public (defined as households, businesses, and all non-market participants) is very limited. The public often rests inattentive to central banks announcements, and despite the recent improvements its knowledge on monetary policy remains limited. Coibon, Gorodnichenko, and Kumar find that managers in companies in New Zealand tend on average to overestimate the future headline inflation. However, there is a significant level of heterogeneity across respondents: firms are more attentive to central bank actions if they face higher competition, or if their prices adjust more flexibly²⁰. Similarly, households will be more attentive if they understand basic economic concepts, processes how central banks affect the broad economy, or them personally²¹. Finally, as Blinder and co-authors point out, effective monetary policy means people stop paying

¹⁵ Petra M. Geraats, “Why Adopt Transparency?” European Central Bank Working Paper 41 (2001): 8.

¹⁶ Georgios Oikonomou, Stephanos Papadamou, and Eleftherios Spyromitros, “The Effect of Central Bank Transparency on Inflation Persistence,” *Economics and Business Letters* 10, no. 1 (2021): 58.

¹⁷ Boris Cournède and Makoto Minegishi, “The Role of Transparency in the Conduct of Monetary Policy,” OECD Economics Department Working Papers 724 (2009): 29.

¹⁸ Christoph S. Weber, “Central Bank Transparency and Inflation (Volatility),” *International Economics and Economic Policy* 15 (2018): 21.

¹⁹ Alan S. Blinder et al., “Central Bank Communication with the General Public,” *Journal of Economic Literature* 62, no. 2 (2024): 425.

²⁰ Olivier Coibon, Yuriy Gorodnichenko, and Saten Kumar, “How Do Firms Form Their Expectations?” *American Economic Review* 108, no. 9 (2018): 2671.

²¹ Carin van der Crujssen, Jakob Haan, and David-Jan Jansen, “Trust and Financial Crisis Experiences,” *Social Indicators Research* 127, no. 2 (2016): 577.

attention to central bank announcements. If inflation is low for a long time, an average person does not like to listen to what central bankers say, because that has minimal impact on their life after all²².

In another study, Melina and Schmidt find that higher trust in the central bank lowers inflation expectations in the population²³. Yet, the effect of transparency on trust is complex and uncertain. Horvath and Katuscakova in their article "Transparency and Trust: The Case of the European Central Bank" analyze the responses from the European Commission's Eurobarometer survey to estimate this impact²⁴. They find that the effect on trust is non-linear: transparency improves trust only up to a certain point. Above that, transparency tends to harm trust. Hence, the estimation of the effects of transparency on inflation expectations is much more ambiguous and more difficult to estimate when it comes to the general public.

2.3 History of monetary policy in the Czech Republic

The Czech National Bank (CNB), is as of 2019 ranked as one of the most transparent central banks in the world²⁵. Credible monetary policy and efficient economic risk management by the CNB keep the long-term inflation expectations anchored around the 2% medium term point target. The last thirty years of the history of Czech monetary policy is a story of economic success, and emerged as a result of a clear decision-making and policy analysis framework. The spectacular transformation the Czech National Bank has gone through is a strong reason behind the choice of the Czech Republic as a case study of this article. By analyzing the relationships between variables from the last twenty-five years, we can isolate the impact of increased transparency on inflation expectations steadily being anchored around the CNB's 2% target.

In the years following the Velvet Revolution of 1989 and a subsequent dissolution of Czechoslovakia in 1992, the newly created Czech Republic has been facing subsequently high levels of inflation, situated each year above 8% in the period 1992-1998²⁶. In 1997, a currency crisis and a rapid depreciation of Czech Koruna led to further deanchoring of inflation expectations. Holub and Hurnik demonstrated that the crisis forced the Czech National Bank to abandon its previous policy of exchange rate targeting²⁷. In 1998, the Czech Republic became the first transition economy to adopt inflation targeting by targeting net inflation. Subsequently, in 1998 the CNB started to monitor key macroeconomic

²² Blinder et al., "Central Bank Communication," 425.

²³ Sathya Mellina and Tobias Schmidt, "The Role of Central Bank Knowledge and Trust," Deutsche Bundesbank Discussion Paper 32 (2018): 1.

²⁴ Roman Horvath and Dominika Katuscakova, "Transparency and Trust: The Case of the European Central Bank," *Applied Economics* 48, no. 57 (2016): 5625.

²⁵ Rania Al-Mashat et al., "An Index for Transparency for Inflation-Targeting Central Banks," *IMF Working Papers* 18, no. 210 (2018): 3.

²⁶ "Czech Republic Inflation Rate 1992-2024," *Macrotrends.net*, accessed March 15, 2024

²⁷ Tomáš Holub and Jaromír Hurník, "Ten Years of Czech Inflation Targeting," *Emerging Markets Finance and Trade* 44, no. 6 (2008): 67.

variables such as net inflation, Consumer Price Index (CPI) etc²⁸. It was the first step toward achieving greater transparency in the methods the central bank uses, following Blinder's methodology.

An increase in the transparency on central bank objectives followed shortly. From 1997, the Czech National Bank has been setting on a regular basis the desired band ranges for the net inflation. However, the frequent changes in the tolerance bands and their imminent focus on short-term inflation forecasting meant that these range targets did not give the markets precise information on CNB's long-run objective. In 1999, the bank launched "The CNB Monetary Strategy", a document which stated a clear long-term objective of price stability, meaning the CPI between 1 and 3%, to be achieved by 2005²⁹. In 2002, the CNB switched to targeting headline inflation, a more transparent measure as it is simpler and therefore more intelligible to the general public³⁰. In 2006, the CNB abandoned its practice of setting a range target and moved to a specific point target, a measure further reducing the uncertainty about the CNB's objectives. This point target, initially set to 3%, has been lowered to 2% in 2010, and has remained unchanged ever since.

These measures laid the ground for achieving a profound degree of transparency of the CNB, not only regarding its objectives, but also its methods. As Laxton et al. argue in their paper "The Czech National Bank's Forecasting and Policy Analysis System", under the old regime of exchange rate targeting, the role of monetary policy was limited to short-term interventions on foreign exchange markets, and did not require an adaptation of a medium term perspective³¹. Under the new inflation targeting regime however, the key in monetary policy effectiveness was to ensure that any shocks and changes in the inflation rate are only temporary and inflation will always return to the central bank target. Central banks must then monitor all the economic variables and shocks to be able to construct a narrative about the economic outlook and undertake appropriate actions based on that narrative. The CNB started conducting this process by building appropriate forecasting tools and models. The whole ecosystem of these tools and processes, known as the Forecasting Policy and Analysis System (FPAS)³², was set up in the Czech Republic as the first country in Europe in 2002.

The principles of FPAS in the Czech Republic included elements such as: constructing a quarterly projection model, integrating their short and medium term forecasts or introducing the risk analysis and confidence bands into the forecast³³. The implementation of FPAS was closely followed by the increase in CNB's transparency, as the forecasts and models became publicly available. In 2002, the CNB started to publish their detailed quarterly model projection. In 2008, it started to publish its policy rate forecast as a form of fan charts, with confidence bands suggesting uncertainty

²⁸ Oldrich Dedek, "The Experience of the Czech National Bank," in *Statistical Implications of Inflation Targeting*, ed. Carol Carson et al. (International Monetary Fund, 2002), 189.

²⁹ Warren L. Coats, Douglas Laxton, and David Rose, eds., "The Czech National Bank's Forecasting and Policy Analysis System" (Czech National Bank, 2003), 12.

³⁰ Czech National Bank, "History of the CNB's Inflation Targets."

³¹ Coats, Laxton, and Rose, "Czech National Bank's Forecasting," 13.

³² Czech National Bank, "CNB's Forecasting and Policy Analyses System: Forecasting Tools" (2024), 1.

³³ Ali Alichì et al., "Frontiers of Monetary Policymaking," *IMF Working Papers* 15, no. 74 (2015): 1.

and flexibility of monetary policy decisions³⁴. This constitutes a final step in a process of creation of a new transparent central bank framework, and concludes a process of changes in the methods the CNB uses. Although there is still a space for further improvement, the Czech National Bank has gained an opinion among monetary policymakers of a credible and transparent central bank.

In the attachment to the Inflation Report of the CNB from January 2008, the CNB staff provide a rationale behind the publication of the fan charts with the expected policy rate path:

By releasing its interest rate forecast, the CNB is continuing to enhance its monetary policy transparency. If the public can better comprehend the central bank's actions and assess the quality of its analyses and forecasts, its trust in the bank's ability to keep inflation on target increases³⁵.

As we can see, the main goal of improving central bank transparency according to the CNB policymakers is to anchor the long-term inflation expectations of the public. In the quantitative analysis section, I am going to evaluate how these actions precisely translate to the public perception.

3. Linear regression

The goal of the next two sections is to present the findings from the empirical data research. I conduct two different econometric analyses: preliminary Ordinary Least Squares (OLS) analysis with two transparency shocks as dummy variables and time-series analysis based on the Autoregressive Distributed Lag (ARDL) model. The models mentioned above are applied to estimate the effect of transparency on expectations on both financial markets and the public.

The OLS analysis allows us to observe the immediate direct effect of two separate transparency shocks on inflation expectations. The model takes the following form:

$$\text{Three-Year Inflation Expectations}_t = \beta_0 + \beta_1 \cdot \text{Shock_2002}_t + \beta_2 \cdot \text{Shock_2008}_t + \beta_3 \cdot \text{GDP Growth}_t + \beta_4 \cdot \text{Repo Avg}_t + \beta_5 \cdot \text{Inflation Actual}_t + \epsilon_t$$

It captures the impact of transparency shocks on inflation expectations, controlling for the current values of inflation, growth of real GDP, and the current policy rate. Reverse causality should not occur in the dataset, as the transparency reforms are unlikely to be influenced by the expected values of inflation.

³⁴ Alichí et al., "Frontiers of Monetary Policymaking," 1.

³⁵ Czech National Bank, "Publication of the Forecast-Consistent Interest Rate Path."

3.1 *Dependent variable*

This subsection describes the dependent variable, that is long-term inflation expectations of financial markets and businesses. The data presented come from the ARAD System, a public database of the Czech National Bank³⁶. They come in the form of monthly (for financial markets) or quarterly (for corporate participants) surveys, where the financial market participants or corporate agents are asked about their perception of the average inflation rate over the 3-year horizon. The choice of three years has been chosen as it is the longest time period the participants are asked about. The arithmetic mean has been taken to obtain the average of the result in a given calendar year.

The aim of this research is to distinguish the impact of central bank transparency between the financial market participants and non-participants, otherwise called the general public. Regarding the former, the respondent sample is composed from analysts from large banks and brokerage companies, active on capital and money markets³⁷. For the latter, the CNB surveys the corporate agents and households³⁸. However, the data for households is only available in a numerical form from 2015 onwards, which does not allow to conduct a meaningful analysis. Therefore, I take long-term inflation expectations of corporate agents as a proxy for expectations of the public in general. In the article, I argue that there is less effect of transparency on inflation expectations of the general public because the public does not follow the central bank's actions closely. We might however assume that the corporate agents are more interested on average in economic outlook than the average household, so they would be more likely to follow the central bank's communications. So if the findings suggest the lack or only marginally statistically significant correlation between the independent and dependent variables for corporate households, it will be even weaker for households. The use of corporate expectations as a proxy for the expectations of the public hence seems justified under these circumstances. Nevertheless, it is not ideal and its reliability could depend on other factors, not captured by the model. We should consider the proxy as an indicator of the likely difference in responsiveness of expected inflation to central bank actions between market and non-market participants, and not as a variable that allows us to precisely quantify this difference.

³⁶ Czech National Bank, "Financial Market Inflation Expectations."

³⁷ Czech National Bank, "Inflation Expectations at Three-Year Horizon - Financial Market," ARAD Database.

³⁸ Czech National Bank, "Inflation Expectations at Three-Year Horizon - Corporations," ARAD Database.

Year	Financial Markets Expectations	Corporate Expectations
1999	4.23	3.10
2000	4.03	4.10
2001	3.57	4.60
2002	3.06	2.30
2003	2.74	4.20
2004	2.80	1.50
2005	2.55	2.89
2006	2.53	2.90
2007	2.53	3.83
2008	2.60	3.03
2009	2.50	2.61
2010	2.56	2.54
2011	2.42	3.20
2012	2.17	2.74
2013	2.02	2.58
2014	2.06	2.43
2015	1.97	2.25
2016	1.98	2.17
2017	1.98	2.59
2018	1.99	2.75
2019	1.98	2.60

Table 1. Expected inflation in the Czech Republic
Source: Czech National Bank

Table 1 presents the values of the financial market and corporate values of 3-year ahead average expected inflation. The expected inflation of businesses tends to be higher than of the financial markets (mean values 2.9 and 2.58). Corporate expectations also tend to vary slightly more within the sample (standard deviation 0.73 compared to 0.64 for financial markets), aligning with our hypothesis and the previous academic research.

3.2 Independent variables

Transparency - the main explanatory variable - is taken as a dummy variable changing its value in the moment of policy shocks - improvements in transparency made by the CNB. I identify two main points of policy improvements:

- 1) 2002 - implementation of the Forecasting and Policy Analysis System and headline inflation target, and publication of the first detailed quarterly model projection,
- 2) 2008 - publication of fan charts with a forecast of a future likely policy rate path.

Therefore, I constructed two dummies: one representing the policy shock of 2002, taking values 1 for the years 2002-2007 and 0 for the other values in the dataset, and the second one representing the shock of 2008, taking values 1 for all the years 2008 onwards. This approach ensures that the effect of each shock is evaluated separately for a better causal attribution.

GDP growth, inflation rate and policy rate at time t are taken as control variables. Other variables, such as exchange rate or level of public debt, were excluded from the analysis as they impact transparency only through the impact on the controls listed above.

3.3 Results for financial markets

	<i>Dependent variable:</i>
	three_year_inflation_expectations
Shock_2002_only	−0.679*** (0.206)
Shock_2008_onwards	−0.994*** (0.306)
GDP_growth	−0.034 (0.021)
Repo_avg	0.169** (0.061)
Inflation_actual	−0.017 (0.036)
Constant	3.135*** (0.345)
Observations	21
R ²	0.937
Adjusted R ²	0.917
Residual Std. Error (df = 15)	0.190
F Statistic (df = 5; 15)	44.967***

Table 2. OLS for Financial Markets
Source: Own elaboration

Table 2 presents the results on the impact of expected inflation among the financial markets. The effects of the transparency shocks remain significant after controlling for real GDP growth, inflation, and the policy rate. This suggests that the imminent increase in transparency in the Czech Republic has a direct negative effect on markets' long-term inflation expectations. Results are in line with Blinder's hypothesis on political effects of transparency - a transparent central bank enhances markets' trust and improves its own credibility³⁹. The introduction of headline inflation targets and the clear framework in 2002 reduced uncertainty about the CNB's goals and methods, so markets gained evidence that the bank possesses tools and knowledge to maintain the price stability objective. Quantifying the headline target could also play a major role as the bank announced its gradual movement toward the 2% target - an ambitious goal for the developing country that the Czech Republic was in 2002. For the 2008 shock, the economic case for transparency might have played a more significant role. Publication of fan charts with a policy rate forecast meant that market participants take into account the rates while buying and selling long-term liabilities. Hence, the short-term interest rate better

³⁹ Blinder, "Through the Looking Glass," 8

influences the real long-run variables in the economy, anchoring inflation expectations⁴⁰. In summary, the impact of both 2002 and 2008 shocks on expected inflation is direct (it does not interact with the relation between current and expected inflation). It also occurs in the short-run, immediately in the aftermath of policy changes.

The policy rate has a significant positive effect on inflation expectations. Although counterintuitive at first, this result might be associated with the fact that higher policy rates tend to generally be implemented in a period of high uncertainty, risks of demand and supply shocks, unstable geopolitical prospects or tumultuous periods in the financial markets. In this environment, investors might fear worsening economic prospects, and expect higher inflation in the long-run. These risks can play a significant role in the economic developments in emerging market economies in Central and Eastern Europe, such as the Czech Republic. This relationship is complex and could be further explored by future empirical research. Other variables, such as actual headline CPI inflation or the real GDP growth do not carry a statistically significant effect in this model. The large values of R^2 and R^2 adjusted (0.937 and 0.917 respectively) show that the independent variables almost entirely explain the variation in expected inflation, portraying a good fit of the model.

3.4 Results for businesses

	<i>Dependent variable:</i>	
	Corporate_expectations (1)	Corporate_expectations (2)
Shock_2002_only	-0.997** (0.440)	-1.080 (0.723)
Shock_2008_onwards	-1.309*** (0.401)	-1.566 (1.073)
GDP_growth		-0.008 (0.073)
Repo_avg		-0.082 (0.215)
Inflation_actual		0.096 (0.128)
Constant	3.933*** (0.359)	4.082*** (1.210)
Observations	21	21
R ²	0.372	0.396
Adjusted R ²	0.303	0.194
Residual Std. Error (df)	0.622 (18)	0.668 (15)
F Statistic	5.338** (df = 2; 18)	1.966 (df = 5; 15)

Table 3. OLS for Businesses
Source: Own elaboration

Table 3 depicts the regression results for the impact on inflation expectations of businesses. The statistical significance of the negative impact of the policy shock on expected inflation does not exist after controlling for GDP growth, inflation,

⁴⁰ Blinder, "Through the Looking Glass," 9

and the policy rate. A lower fit of the model (R^2 values 0.396 and Adjusted R^2 0.194) signifies that there might be other factors responsible for influencing expected inflation, such as media exposure or political opinions, not included in the model. Data on businesses also tends to show higher variability within the dataset (see Table 1). Generally, the model suggests that transparency has no significant impact on business inflation expectations. Recalling the argument of Blinder and coauthors, businesses and households do not closely follow central banks announcements, hence their presence does not matter for their perceived inflation⁴¹.

3.5 Limitations

The OLS model shows that transparency-improving policy shocks have a direct negative effect on financial market expected inflation, but not on the corporate inflation expectations. However, the OLS model does not include certain factors crucial in our analysis. Firstly, it does not capture the possible autoregressive component between the inflation expectations at time t and their lag at $t-1$. Secondly, certain variables, such as CPI inflation, could also influence expectations with a time lag. Secondly, the model only captures the direct effects of each of the variables on the expected inflation. It does not take into account the possible impact transparency might have through interaction with another term, such as inflation. Thirdly, the OLS estimates only the immediate effect of the shock, without serious consideration of any long-term impact. Transparency changes often occur gradually, and are not always fully captured with specific shocks. The shocks themselves might also not always be fully attributed to the changes in transparency, but also to other, external factors (such as the Global Financial Crisis in 2008). I will address these concerns by estimating the effect with the usage of the Autoregressive Distributed Lag (ARDL) model.

4. Autoregressive Distributed Lag Model

The ARDL model consists of the following form:

$$\begin{aligned} \text{three_year_inflation_expectations}_t = & \alpha + \phi_1 \cdot \text{three_year_inflation_expectations}_{t-1} \\ & + \beta_1 \cdot \text{Dincer_transparency}_t \\ & + \beta_2 \cdot \text{Inflation_actual}_{t-1} \\ & + \beta_3 \cdot \left(\text{Dincer_transparency}_t \cdot \text{Inflation_actual}_{t-1} \right) \\ & + \beta_4 \cdot \text{GDP_growth}_t \\ & + \beta_5 \cdot \text{Inflation_actual}_t \\ & + \beta_6 \cdot \text{Repo_avg}_t + \epsilon_t \end{aligned}$$

The model captures the inflation expectations as a function of its previous value (autoregressive component), central bank transparency, lag of inflation, interaction term between the transparency of the central bank and the lagged inflation

⁴¹ Blinder et al., "Central Bank Communication," 425.

variable, GDP growth, policy rate, where α is the intercept and ε is the error term. Given the data for inflation expectations is not available prior to 1999, and 1 lag that has been used, the model evaluates the data from years 2000-2019.

4.1 Variables - transparency

The measures of the dependent variable and of the controls are the same as in case of OLS analysis. As a measure of the central bank transparency, I will be using the Dincer and Eichengreen (DE) Transparency Index⁴². Constructed in 2007 by N. Nergiz Dincer and Barry Eichengreen and updated multiple times since then, the DE Transparency Index evaluates central bank transparency in 5 key areas:

- 1) Political transparency - openness about policy objectives,
- 2) Economic transparency - information on the economic data, models and forecasts the central bank relies on,
- 3) Procedural transparency - procedure on how the monetary policy decisions are taken,
- 4) Policy transparency - prompt disclosure and detailed explanation of policy decision, guidance on future likely policy actions
- 5) Operational transparency - implementation and evaluation of policy actions⁴³.

Table 4 shows the scores for the transparency of the CNB in the years 1999-2019, presented on the scale from 0 to 15⁴⁴:

⁴²N. Nergiz Dincer and Barry Eichengreen, "Central Bank Transparency: Where, Why, and with What Effects?" NBER Working Paper 13003 (2007): 1.

⁴³N. Nergiz Dincer and Barry Eichengreen, "Central Bank Transparency and Independence," *International Journal of Central Banking* 10, no. 1 (2013): 189.

⁴⁴ Nergiz Dincer, Barry Eichengreen, and Petra Geraats, "Trends in Monetary Policy Transparency: Further Updates," *International Journal of Central Banking* 18, no. 1 (March 2022): 331–348.

Year	Transparency score
1998	7.5
1999	8.5
2000	9
2001	9
2002	9.5
2003	10.5
2004	11
2005	11
2006	11
2007	12.5
2008	14
2009	14
2010	14
2011	14
2012	14
2013	14
2014	14
2015	14
2016	14
2017	14
2018	14
2019	14

Table 4. DE transparency scores for the Czech National Bank
Source: Dincer, Eichengreen, and Geraats (2022)

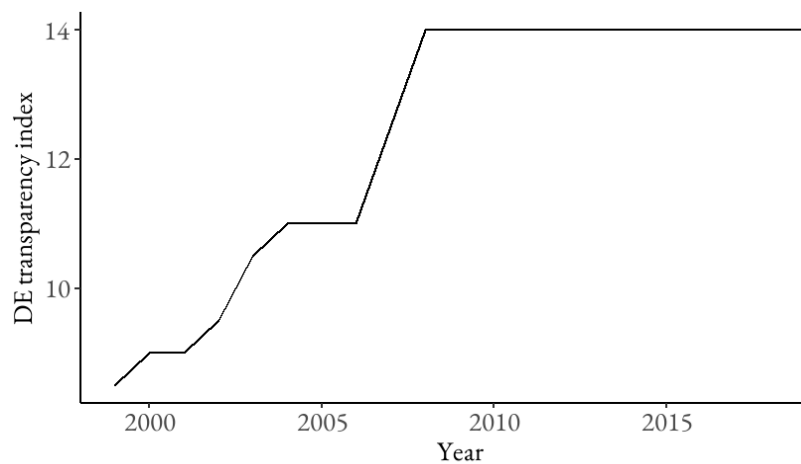


Fig. 1. Values of the DE transparency index for the Czech National Bank (1998-2019)
Source: Dincer, Eichengreen, and Geraats (2022)

As shown on Figure 1, the major improvements in the value of the index coincide with the most significant transparency improvements discussed in the previous chapter. The implementation of the inflation targeting regime in 1998 resulted in a score improvement of 1 point in the following year (from 7.5 to 8.5). Similarly, the score substantially improved in 2003 (by 1 point, from 9.5 to 10.5) after the introduction of FPAS. Finally, the last change in transparency according to the DE index occurred in 2008 (from 12.5 to 14 points), as the CNB started to publish the policy rate forecast in January that year. The closer look at the subcomponents of the index confirms these findings. For instance, in 2008 an increase of transparency was found in 2 subcategories: 1) whether the central bank provides explanations for

announcing policy decisions and 2) whether it discloses an explicit indication of likely future policy actions. This evidence shows that the DE index could be used as a reliable numerical estimate of the central bank transparency for this paper, as its values coincide with the theoretical historical analysis I provided in the section above.

Nevertheless, the DE index has a few shortcomings. For instance, Al-Mashat and co-authors argue that many countries, including the Czech Republic, already have almost a maximum score according to the DE index, although their transparency is not perfect⁴⁵. Then they propose their own Central Bank Transparency - Inflation Targeting Index, and they apply it to the Czech National Bank. Although this critique is valid when looking for future assessment of CNB's transparency, it does not prevent me from using the DE index in the analysis as the index changed visibly in the past as a result of policy shocks. Hence, the choice of the DE index is more optimal because of more detailed data available.

Figures 2 and 3 visualize the past values of DE index and the inflation expectations of markets and businesses, respectively. Transparency negatively correlates with expected inflation in both cases, however, the deviations from the line of the best fit are significantly higher for expected inflation of corporate participants.

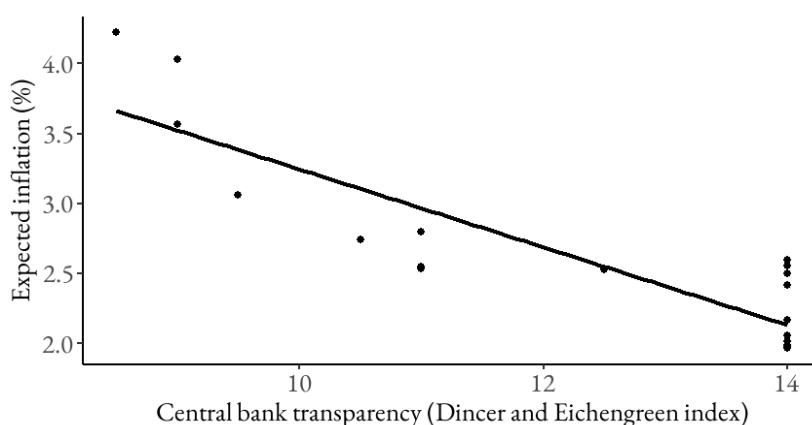


Fig.2. DE transparency index and expected inflation - Financial markets
Source: Dincer, Eichengreen, and Geraats (2022) and the Czech National Bank

⁴⁵ Al-Mashat et al., "Index for Transparency," 2.

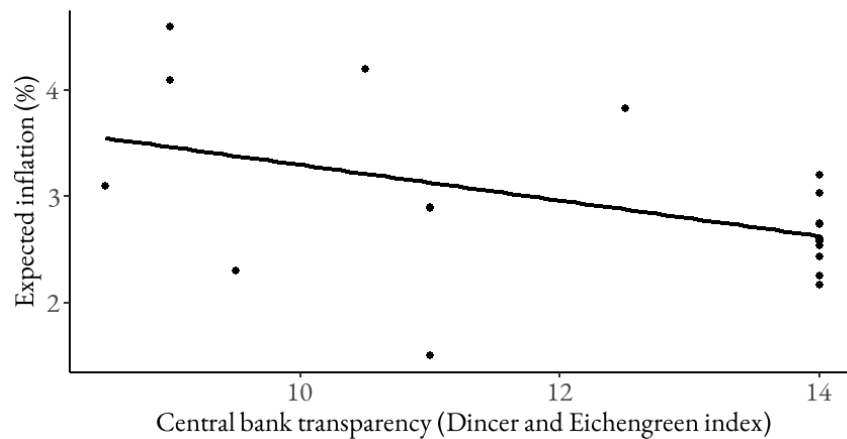


Fig.3. DE transparency index and expected inflation - Businesses
Source: Dincer, Eichengreen, and Geraats (2022) and the Czech National Bank

4.2 Results for financial markets

	<i>Dependent variable:</i> three_year_inflation_expectations
L(three_year_inflation_expectations, 1)	0.850*** (0.112)
Dincer_transparency	0.003 (0.033)
L(Inflation_actual, 1)	-0.325*** (0.092)
GDP_growth	0.005 (0.016)
Repo_avg	0.080** (0.033)
Dincer_transparency:L(Inflation_actual, 1)	0.022** (0.007)
Constant	0.204 (0.667)
Observations	20
R ²	0.985
Adjusted R ²	0.978
Residual Std. Error (df = 13)	0.083
F Statistic (df = 6; 13)	140.832***

Table 5. ARDL Model for Financial Markets
Source: Own elaboration

Table 5 presents the value of the parameters and their statistical significance in the ARDL model for financial markets expectations. The values of R^2 and Adjusted R^2 tend to be exceptionally high (0.985 and 0.978), providing evidence to a high extent to which the model explains the phenomenon studied. As stated in my hypothesis, inflation expectations have a high and statistically significant autoregressive component, meaning that present expected inflation depends on its own past values. Similarly as in the OLS analysis, the current policy rate is positively correlated with the expected inflation, while the coefficient of the real level of output does not carry any statistical significance.

It is worth noting that the value of the transparency index itself does not carry any direct effect on the expected inflation. However, it does influence them through an interaction with a lagged inflation. It moderates the effect of the past inflation on the current expected inflation, in line with previous empirical research, such as an article published by Cruijnsen and Demertzis⁴⁶. What is worth noting, is although the lagged inflation does discriminate for the current expected inflation, the relationship is negative. The reasons for this result are uncertain and different explanations for this phenomenon could be provided. For instance, Daniels and co-authors argue that higher inflation expectations lower the sacrifice ratio in the economy⁴⁷. When expected inflation in the economy is high, the losses in output associated with bringing inflation back to the target will be lower. Therefore, we could here face an example of a simultaneity issue, where actual and expected inflation interact with each other in multiple ways to produce a complex effect. Given the specificity of the Czech case, other studies could be conducted to address this phenomenon.

Nevertheless, the empirical data tends to support the findings from previous scholars, claiming that higher transparency weakens the link between the past inflation and the present inflation expectations. As the coefficient of the interaction term is positive, the negative effect of inflation on inflation expectations is mitigated. The effect of the changes is gradual and long-lasting, the impact of increased transparency persists throughout the whole time frame of the study, despite the fact that policy shocks do not occur anymore and the DE Transparency Index stabilizes at the value 14/15 in the years 2008-2019. Cruijnsen and Demertzis argue that this helps to anchor inflation expectations around the central bank target, that is 2% in the Czech Republic⁴⁸. To conclude, while in the long-run the direct effect of the policy shock disappears, highly transparent central banks might still benefit from lower inflation expectations through their moderating effect through an interaction with inflation.

⁴⁶van der Cruijnsen and Demertzis, "Impact of Central Bank Transparency," 51.

⁴⁷Joseph P. Daniels, Sandeep Mazumder, and David D. VanHoose, "Expected Inflation and the Sacrifice Ratio," *International Finance* 22, no. 3 (2019): 307.

⁴⁸van der Cruijnsen and Demertzis, "Impact of Central Bank Transparency," 51.

4.3 Results for businesses

	<i>Dependent variable:</i>
	Corporate_expectations
L(Corporate_expectations, 1)	−0.727*** (0.241)
Dincer_transparency	0.147 (0.185)
L(Inflation_actual, 1)	0.471 (0.612)
GDP_growth	−0.111 (0.084)
Repo_avg	0.594*** (0.187)
Dincer_transparency:L(Inflation_actual, 1)	−0.044 (0.048)
Constant	2.565 (2.559)
Observations	20
R ²	0.638
Adjusted R ²	0.471
Residual Std. Error (df = 13)	0.555
F Statistic (df = 6; 13)	3.814**

Table 6. ARDL Model for Businesses
Source: Own elaboration

Table 6 presents the outcome of the model for inflation expectations of the business actors. Similarly to the OLS regression, the impact of transparency is not statistically significant: neither directly, nor through its interaction with inflation. Lower fit of the model suggests that business inflation expectations could be explained by other systemic or individual factors not included in a model.

5. Conclusion

Transparency of the Czech National Bank was an important factor anchoring inflation expectations of the financial markets, but not for the general public.

Two policy shocks - changes in CNB's practices - had an immediate short-run effect on lowering inflation expected by financial markets. The Czech National Bank undertook reforms at two moments, in 2002 and 2008, implementing a policy analysis system, beginning to target headline inflation, and publishing fan charts with the most likely interest rate path. These reforms immediately reduced inflation expectations. They strengthened trust and credibility in an institution as the CNB has made itself available to the public scrutiny.

In the long-run, however, transparency does not affect market inflation expectations directly, but rather through its interaction with the value of lagged inflation. When the Czech Republic achieved higher transparency, predictions of future expected inflation became less correlated with the current CPI inflation values. The markets did not need to rely on current inflation levels in their forecasts because they were provided with a new, more credible variable - the central

bank inflation target. The target has been supported by credible pieces of evidence such as public central bank macroeconomic models and core indicators forecasts. In the Czech Republic, the greater central bank transparency had a mitigating effect of variations in the rate of inflation on the inflation expected by the financial markets in the long-run.

At the same time, this study unveils the pattern that central bank transparency does not impact the perceptions of future inflation of the non-market participants: businesses, households and other members of the general public. Information released by the central bankers very frequently does not reach the average population. The public in Czechia does not tend to internalize the CNB's communication in their predictions of the future price level. A further study across multiple countries would be useful to estimate the effect of central bank transparency on inflation expectations among businesses and households to confirm and elaborate on this pattern. Moreover, future studies could also analyze in detail the extent information from the central banks reach the general public, and what are the reasons citizens tend to follow or not the central bank agenda. These studies could serve as an important indicator for the central banks to understand whether an intensification of their efforts to reach the average citizen can anchor their perceptions of expected inflation.

The main limitation of this study is its narrow scope of analysis. The Czech Republic has been an example of a country where the transparency improvements were particularly substantial, and occurred in a very short time period. Czech experiences are not representative to the whole population of central banks in the world, and they should not be analyzed as such. Deriving causal relations is then limited, as is the generalizability of this study. Nevertheless, this study is successful in unveiling the pattern that policy reforms aimed at increasing transparency can be successful in emerging market economies and countries in the transition from authoritarian rule. To overcome this limitation, further studies can be conducted to estimate the effects that reforms aimed at increased transparency could bring to other developing nations. Of particular interest could be the ones where changes occurred slower, or followed a different approach. One could also compare central banks from countries with different income levels, forecasting and policy analysis frameworks, or geographical locations to assess the variance in the impact of transparency on expected inflation between those countries.

6. Bibliography

- Al-Mashat, Rania, Ales Bulir, N. Nergiz Dinçer, Tibor Hlédik, Tomáš Holub, Asya Kostanyan, Douglas Laxton, Armen Nurbekyan, Rafael Portillo, and Hou Wang. "An Index for Transparency for Inflation-Targeting Central Banks: Application to the Czech National Bank." *IMF Working Papers* 18, no. 210 (September 2018): 1-58. <https://doi.org/10.5089/9781484374832.001>.
- Alichi, Ali, Jaromir Benes, Joshua Felman, Irene Feng, Charles Freedman, Douglas Laxton, Evan Tanner, David Vavra, and Hou Wang. "Frontiers of Monetary Policymaking: Adding the Exchange Rate as a Tool to Combat Deflationary Risks in the Czech Republic." *IMF Working Papers* 15, no. 74 (March 2015): 1-42. <https://doi.org/10.5089/9781475532371.001>.

- Blinder, Alan S. "How Do Central Banks Talk?" In Centre for Economic Policy Research Annual Report. London: Centre for Economic Policy Research, 2001.
- Blinder, Alan S. "Through the Looking Glass: Central Bank Transparency." The Griswold Center for Economic Policy Studies Working Paper, no. 86 (December 2002): 1-25.
- Blinder, Alan S., Michael Ehrmann, Jakob de Haan, and David-Jan Jansen. "Central Bank Communication with the General Public: Promise or False Hope?" *Journal of Economic Literature* 62, no. 2 (June 2024): 425-457. <https://doi.org/10.1257/jel.20231683>.
- Carson, Carol S., Claudia H. Dziobek, and Charles Enoch. "Statistical Implications of Inflation Targeting: Getting the Right Numbers and Getting the Numbers Right." Washington, D.C.: International Monetary Fund, 2002. <https://doi.org/10.5089/9781589061323.071>.
- Clark, Todd, and Troy Davig. "The Relationship between Inflation and Inflation Expectations." Federal Reserve Bank Working Paper (December 2009): 1-35.
- Clinton, Kevin, Tibor Hlédik, Tomáš Holub, Douglas Laxton, and Hou Wang. "Czech Magic: Implementing Inflation-Forecast Targeting at the CNB." IMF Working Paper 17, no. 21 (January 2017): 1-47. <https://doi.org/10.2139/ssrn.2938322>.
- Coats, Warren L., Douglas Laxton, and David Rose, eds. "The Czech National Bank's Forecasting and Policy Analysis System." Prague: Czech National Bank, 2003.
- Coibion, Olivier, Yuriy Gorodnichenko, and Saten Kumar. "How Do Firms Form Their Expectations? New Survey Evidence." *American Economic Review* 108, no. 9 (September 2018): 2671-2713. <https://doi.org/10.1257/aer.20151299>.
- Cournède, Boris, and Makoto Minegishi. "The Role of Transparency in the Conduct of Monetary Policy." OECD Economics Department Working Papers, no. 724 (October 2009): 1-32.
- van der Cruijssen, Carin, Jakob Haan, and David-Jan Jansen. "Trust and Financial Crisis Experiences." *Social Indicators Research* 127, no. 2 (June 2016): 577-600.
- van der Cruijssen, Carin, and Maria Demertzis. "The Impact of Central Bank Transparency on Inflation Expectations." *European Journal of Political Economy* 23, no. 1 (March 2007): 51-66. <https://doi.org/10.1016/j.ejpoleco.2006.09.009>.
- Cukierman, Alex. "Are Contemporary Central Banks Transparent about Economic Models and Objectives and What Difference Does It Make?" *Federal Reserve Bank of St. Louis Review* 84, no. 4 (July 2002): 15-36. <https://doi.org/10.20955/r.84.15-36>.
- Czech National Bank. "Inflation Expectations at Three-Year Horizon - Corporations." Czech National Bank ARAD Database. Accessed March 15, 2024. https://www.cnb.cz/arad/#/en/display_link/single__MIEXIECTXNAJPECQ_.
- Czech National Bank. "Inflation Expectations at Three-Year Horizon - Financial Market." Czech National Bank ARAD Database. Accessed March 15, 2024. https://www.cnb.cz/arad/#/en/display_link/single__MIEXIEFTXNAJPECM_.
- Czech National Bank. "Financial Market Inflation Expectations." Accessed March 15, 2024. <https://www.cnb.cz/en/financial-markets/inflation-expectations-ft/>.
- Czech National Bank. "History of the CNB's Inflation Targets." Accessed March 15, 2024. <https://www.cnb.cz/en/monetary-policy/inflation-target/history-of-cnbs-inflation-targets/>.
- Czech National Bank. "Publication of the Forecast-Consistent Interest Rate Path and the Use of Fan Charts." Accessed March 15, 2024. <https://www.cnb.cz/en/monetary-policy/inflation-reports/boxes-and-annexes-contained-in-inflation-reports/Publication-of-the-forecast-consistent-interest-rate-path-and-the-use-of-fan-charts-00001>.
- Czech National Bank, Monetary Department. "CNB's Forecasting and Policy Analyses System: Forecasting Tools." Prague: Czech National Bank, October 2024.

- "Czech Republic Inflation Rate 1992-2024." *Macrotrends.net*. Accessed March 15, 2024.
<https://www.macrotrends.net/global-metrics/countries/CZE/czech-republic/inflation-rate-cpi>.
- Daniels, Joseph P., Sandeep Mazumder, and David D. VanHoose. "Expected Inflation and the Sacrifice Ratio." *International Finance* 22, no. 3 (February 2019): 307-322. <https://doi.org/10.1111/infi.12340>.
- Dedek, Oldrich. "The Experience of the Czech National Bank." In *Statistical Implications of Inflation Targeting: Getting the Right Numbers and Getting the Numbers Right*, edited by Carol Carson, Claudia Dziobek, and Charles Enoch, 189-198. Washington, D.C.: International Monetary Fund, 2002.
- Dincer, N. Nergiz, and Barry Eichengreen. "Central Bank Transparency and Independence: Updates and New Measures." *International Journal of Central Banking* 10, no. 1 (March 2013): 189-253.
- Dincer, N. Nergiz, and Barry Eichengreen. "Central Bank Transparency: Where, Why, and with What Effects?" NBER Working Paper, no. 13003 (March 2007): 1-45.
- Dincer, N. Nergiz, Barry Eichengreen, and Petra Geraats. "Trends in Monetary Policy Transparency: Further Updates." *International Journal of Central Banking* 18, no. 1 (March 2022): 331-348.
- Ehrmann, Michael, Damjan Pfajfar, and Emiliano Santoro. "Consumer Attitudes and the Epidemiology of Inflation Expectations." *International Journal of Central Banking* 13, no. 1 (February 2014): 163-189.
- Eijffinger, Sylvester C. W., and Marco M. Hoeberichts. "Central Bank Accountability and Transparency: Theory and Some Evidence." *Economic Research Centre Discussion Paper*, no. 2000-06 (January 2000): 1-24.
- Eijffinger, Sylvester, and Petra Geraats. "How Transparent Are Central Banks?" *European Journal of Political Economy* 22, no. 1 (March 2006): 1-21. <https://doi.org/10.1016/j.ejpoleco.2005.09.013>.
- Geraats, Petra M. "Why Adopt Transparency? The Publication of Central Bank Forecasts." *European Central Bank Working Paper Series*, no. 41 (January 2001): 1-37.
- Holub, Tomáš, and Jaromír Hurník. "Ten Years of Czech Inflation Targeting: Missed Targets and Anchored Expectations." *Emerging Markets Finance and Trade* 44, no. 6 (November 2008): 67-86.
- Horvath, Roman, and Dominika Katuscakova. "Transparency and Trust: The Case of the European Central Bank." *Applied Economics* 48, no. 57 (May 2016): 5625-5638. <https://doi.org/10.1080/00036846.2016.1181833>.
- Kose, M. Ayhan, Hideaki Matsuoka, Ugo Panizza, and Dana Vorisek. "Inflation Expectations: Review and Evidence." *World Bank Policy Research Working Paper*, no. 8785 (March 2019): 1-42.
- Mellina, Sathya, and Tobias Schmidt. "The Role of Central Bank Knowledge and Trust for the Public's Inflation Expectations." *Deutsche Bundesbank Discussion Paper*, no. 32/2018 (September 2018): 1-39.
- Oikonomou, Georgios, Stephanos Papadamou, and Eleftherios Spyromitros. "The Effect of Central Bank Transparency on Inflation Persistence." *Economics and Business Letters* 10, no. 1 (February 2021): 58-68. <https://doi.org/10.17811/ebl.10.1.2021.58-68>.
- Rowe, Jeremy. "How Are Households' Inflation Expectations Formed?" *Bank of England Quarterly Bulletin* 56, no. 2 (June 2016): 82-86.
- Sibert, Anne. "Monetary Policy with Uncertain Central Bank Preferences." *European Economic Review* 46, no. 6 (June 2002): 1093-1109.
- Sørensen, Jan Rose. "Uncertainty and Monetary Policy in a Wage Bargaining Model." *The Scandinavian Journal of Economics* 94, no. 3 (September 1992): 443-455.
- Weber, Christoph S. "Central Bank Transparency and Inflation (Volatility): New Evidence." *International Economics and Economic Policy* 15, no. 1 (January 2018): 21-67.
- Westelius, Niklas J. "Discretionary Monetary Policy and Inflation Persistence." *Journal of Monetary Economics* 52, no. 2 (March 2005): 477-496.

The macroeconomic effects of climate change on human capital development in Africa

Bill Ivans

IE School of Economics, Politics & Global Affairs, IE University, Madrid, Spain
E-mail: billivans.gbafore@student.ie.edu

Published January, 2025

Abstract

The growing impacts of climate change in Africa pose a significant threat to sustainable development in the region - compounded by the challenge many African countries face with resource allocation, balancing long-term investment in climate-smart practices with meeting short-term compelling human needs. This paper investigates the macroeconomic effects of climate change on human capital development in Africa, a region profoundly affected by climatic disruptions. Using an Autoregressive Distributed Lag (ARDL) model, the research assesses how persistent climate variability impacts key human development sectors such as education, healthcare, and agriculture, influencing economic growth, human welfare, and sustainability. The findings reveal a significant long-run relationship between climate variables and the Human Development Index (HDI), with temperature changes and precipitation patterns playing crucial roles, highlighting the need for resilient infrastructure and adaptive policy frameworks to mitigate these impacts. The policy implications emphasize the need for economic diversification across Africa to build resilience, considering its heavy reliance on agriculture. It also suggests that enhancing adaptive capacity through strategic investments in education and healthcare systems against climate-induced stress and climate-smart agricultural practices is crucial for stabilizing African human capital development.

Keywords: Climate change, Human capital development, Africa, ARDL model, Economic growth, Policy adaptation.

I. Introduction

Recent studies show that the climate crisis of the 21st century is growing enduringly urgent in all regions of the world: concentrations of carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O) in the troposphere have reached record levels, and the world is getting warmer, sea levels are rising, and precipitation patterns are changing. According to the Intergovernmental Panel on Climate Change (IPCC), the current rate of greenhouse gas emissions is likely to cause average temperatures to rise by 0.2°C per decade, reaching by 2050 the threshold of 2°C above pre-industrial levels¹.

¹ *Climate change widespread, rapid, and intensifying – IPCC – IPCC.* (2021, August 9). IPCC.
<https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

Evidence from the World Bank suggests that rising global temperatures increase the atmosphere's moisture, resulting in more storms and heavy rains. Still, paradoxically, there are also more intense dry spells as more water evaporates from the land and global weather patterns change².

In this century, human capital development faces numerous challenges, including the need for biodiversity, food security, education, safe drinking water, renewable energy, and access to economic opportunities - all met with stiff resistance by climatic conditions. The IPCC reports that climate change intensifies the water cycle, leading to more intense rainfall, associated flooding, and drought in many regions. Given such a phenomenon, coastal areas will see continued sea level rise throughout the 21st century, contributing to more frequent and severe coastal flooding in low-lying areas and coastal erosion. Extreme sea level events that previously occurred once in 100 years could happen every year by the end of this century³. People who depend upon freshwater food, land for agricultural activities, or rivers for drinking may have no alternative for livelihoods and need help to cope. Just 0.5 per cent of Earth's water is usable and available as freshwater, and these conditions pose a significant threat to this crucial resource. About two billion people worldwide don't have access to safe drinking water today⁴, and climate conditions will exacerbate this crisis as water is a crucial element for sustainable livelihood.

In terms of education, many children will experience fewer schooling days with learning infrastructures at risk due to flooding or classrooms inhabitable given humidity levels. The quality of education in many countries across Africa already begs for more. Yet, the education sector is heavily affected by climate-related disruptions, with 25 out of 33 countries where children face *extreme* climate vulnerability located on the continent⁵. Health situations will worsen across many parts of the continent, threatening sustainable economic and human development. These excruciating effects will be felt across all areas of human livelihood and will be more severe for those in Africa. Beyond its long-term threats to globalization, climate change is a serious risk to poverty reduction and could undo decades of development efforts.

These alarming needs require urgency to save humanity's present and future. If unaddressed, populations may be wiped out sooner than expected, environments may no longer be able to serve human and animal needs, and the long-term macroeconomic effects may linger for years unsolved. African countries rely heavily on agriculture as the

² World Bank Group. (2021, June 30). Floods and Droughts: An EPIC response to these hazards in the era of climate change. World Bank.

<https://www.worldbank.org/en/news/feature/2021/06/17/floods-and-droughts-an-epic-response-to-these-hazards-in-the-era-of-climate-change>

³ Climate change widespread, rapid, and intensifying – IPCC — IPCC. (2021, August 9). IPCC.

<https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>

⁴ United Nations Statistics Division. (n.d.). — SDG indicators.

⁵ Global Center on Adaptation (GCA). (2022). State and Trends in Adaptation 2022: Education. Retrieved from https://gca.org/wp-content/uploads/2023/01/GCA_State-and-Trends-in-Adaptation-2022_Education.pdf

mainstay of their economy and employment, accounting for more than half of their labour force. For context, multiple studies have found the engines of economic growth, development, and poverty reduction in Liberia, in sectors such as agriculture, fisheries, and forestry⁶. However, the climate crisis has recently challenged these prospects across many regions. More than 110 million people on the continent were directly affected by weather, climate, and water-related hazards in 2022, causing more than US\$ 8.5 billion in economic damages⁷, and it may grow worse at an increasing rate over the years.

However, the Organization for Economic Cooperation and Development (OECD) analysis suggests that if we act now, we have 10 to 15 years of “*breathing space*” during which action is possible at a relatively modest cost. But every year of delay reduces this breathing space, requiring ever more stringent measures to make a difference. The OECD’s analysis informs us that “current financial turmoil is not a reason to delay. Indeed, its macroeconomic consequences will be resolved relatively quickly, after which growth will resume. In contrast, the consequences of inaction on global warming will continue to grow more and more costly over time”⁸.

Human influence on the past and future is apparent in what our world looks like now, and in the context of climate change, it is no different. “It has been clear for decades that the Earth’s climate is changing, and the role of human influence on the climate system is undisputed,” says Valerie Masson-Delmotte, Co-Chair of Working Group I at IPCC. It is only essential, then, that these areas of human impacts on climatic conditions be urgently addressed and sustainable solutions reimaged.

Considering such critical needs, this paper will focus on investigating the macroeconomic effects of climate change on human capital development in SubSaharan Africa (SSA), a continent highly vulnerable to climate-induced disruptions yet highly dependent on climate-sensitive sectors for economic activities - agriculture (including fisheries and forestry) and the industrial sector (mining, water, oil and gas, construction, and electricity) which has jointly contributed more than 50 per cent of Gross Domestic Product (GDP) across years in countries like Liberia⁹. The study will examine how climate change impacts critical human development sectors such as education, healthcare, agriculture, and employment.

⁶ World Bank. (2018). Liberia: From growth to development: Priorities for sustainably reducing poverty and achieving middle-income status by 2030. World Bank.

<https://documents1.worldbank.org/curated/en/585371528125859387/pdf/Liberia-From-growth-to-development-priorities-for-sustainably-reducing-poverty-and-achieving-middle-income-status-by-2030.pdf>

⁷ Africa suffers disproportionately from climate change - World. (2023, September 4). ReliefWeb.

<https://reliefweb.int/report/world/africa-suffers-disproportionately-climate-change>

⁸ Adedeji, O., Reuben, O., & Olatoye, O. (2014). Global climate change. *Journal of Geoscience and Environment Protection*, 02(02), 114–122. <https://doi.org/10.4236/gep.2014.22016>

⁹ World Bank. (2018). Liberia: From growth to development: Priorities for sustainably reducing poverty and achieving middle-income status by 2030. World Bank.

<https://documents1.worldbank.org/curated/en/585371528125859387/pdf/Liberia-From-growth-to-development-priorities-for-sustainably-reducing-poverty-and-achieving-middle-income-status-by-2030.pdf>

By understanding these dynamics, the research will offer a critical understanding of how climate variability hinders economic growth and development in fragile economies, shedding insights into the broader implications for Africa.

2. Literature Review

2.1 Climate Change, Poverty, and Inequality in Africa

Multiple studies show that climatic conditions will severely impact Africa due to adverse direct effects such as high agricultural dependence and limited adaptation capacity, undercutting efforts at human capital development¹⁰. The climate crisis could exacerbate deeply entrenched inequality and poverty across the continent even as the population rises and income grows disproportionately. In 2024, Africa accounted for 16 percent of the world's population, but 67 percent live in extreme poverty. Two-thirds of the world's population in extreme poverty live in SubSaharan Africa (SSA) alone, rising to three-quarters when including all fragile and conflict-affected countries¹¹. Poverty remains high in comparison with other regions across the world, and even those who no longer fall below the World Bank's poverty line (\$2.15 daily) are still vulnerable and far from reasonable aspirations for human prosperity.

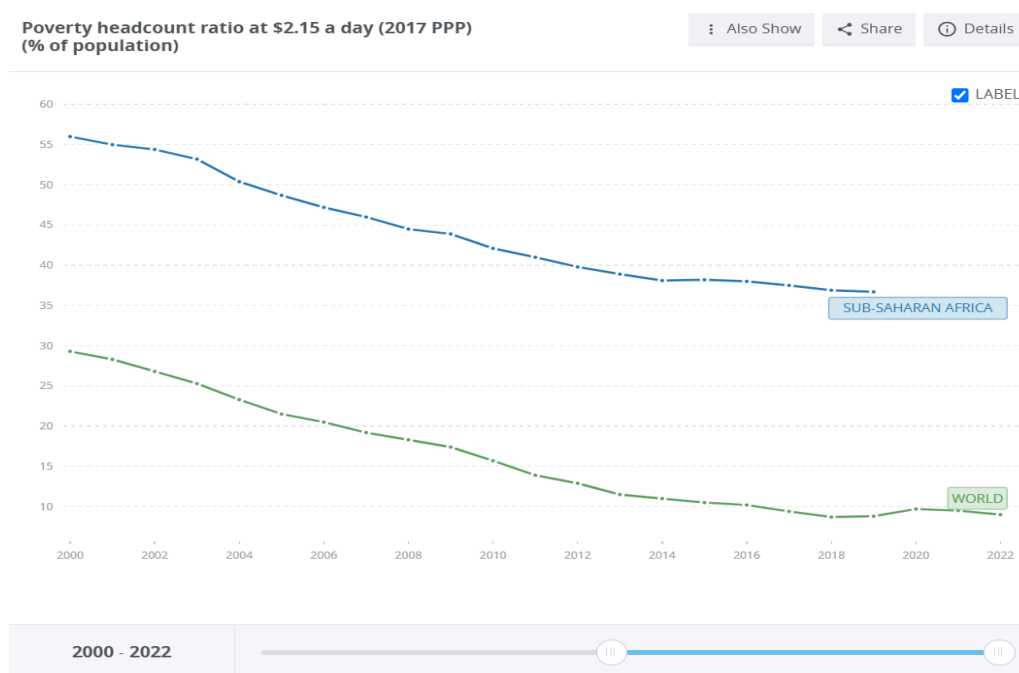


Fig.1. Poverty headcount ratio at \$2.15 a day (2017 PPP)
Source: World Bank Data (2022)¹²

¹⁰ Collier, P., Conway, G.R., & Venables, T. (2008). Climate Change and Africa. *Oxford Review of Economic Policy*, 24, 337-353.

¹¹ World Bank. (n.d.). Poverty. The World Bank. Retrieved November 19, 2024.

¹² World Bank. (n.d.). Poverty. The World Bank. Retrieved November 19, 2024.

Despite the climate challenges and the continent's failure to address its current human capital crisis, population growth continues to rise significantly, increasing demand for access to education, food security, healthcare, social services and welfare, and decent livelihoods. The World Bank estimates that by 2075, one-third of the world's population—and the working-age population—will be African. It is the only region where the workforce will grow continuously in the coming decades¹³. In light of all these, the climate crisis is threatening prosperity across the continent. Recent studies suggest that climate change means skyrocketing food prices, toxic air, and polluted water for people in developing countries. It leaves countries just one natural disaster away from poverty, forcing parents to pull children out of school and entire communities to migrate¹⁴. Given that learning infrastructures are not climate resilient and cities or communities cannot cope with shocks, the educational risks associated with climate change are profound.

2.2 Education, Employment, and Migration

Education is one of the most critical areas of human capital development, and climate change has been shown to disrupt educational systems and learning processes in multiple ways. Increased frequency of extreme weather events, such as floods and droughts, can damage schools and infrastructure, eroding the possibility of children attending school regularly. Climate-related disruptions to education are particularly pronounced in regions with high vulnerability, such as SSA, where many schools cannot withstand severe weather events. In countries with inadequate infrastructures, these disruptions can immediately affect retention and long-lasting effects on learning outcomes, affecting how African youth transition into employment and labour markets. A recent study in ten African countries found that cumulative exposure to climate anomalies significantly negatively impacts primary school completion rates, particularly affecting children from less-educated households¹⁵. School attainment is linked with higher earnings, with estimates suggesting a 9-10 per cent return for each additional year of schooling¹⁶.

A recent study on the persistent effects of natural disasters on human development (González, Santos, & London, 2021) revealed that natural disasters reduced 0.03 years of schooling on average for those who experienced them within their first year of life compared to those who did not¹⁷. For example, following Cyclone Idai in 2019 in Zimbabwe, over

¹³ World Bank. (2023, June 27). Investing in youth: Transforming AFE Africa. The World Bank. Retrieved November 7, 2024,

¹⁴ World Bank. (n.d.). Climate change overview. The World Bank. Retrieved November 7, 2024, from <https://www.worldbank.org/en/topic/climatechange/overview>

¹⁵ Sukie, C., & Kai, L. (2023). Mapping the cumulative effects of climate change on children's education in ten African countries. UNESCO Global Education Monitoring Report. Retrieved November 19, 2024, from

<https://www.unesco.org/gem-report/sites/default/files/medias/fichiers/2023/09/SukieandKai.pdf>

¹⁶ Venegas Marin, S., Schwarz, L., & Sabarwal, S. (2024). The impact of climate change on education and what to do about it. World Bank. Retrieved November 19, 2024, from

<https://documents1.worldbank.org/curated/en/099043024150036726/pdf/P180005171cc7c0c91a8b011d03080e9086.pdf>

¹⁷ González, F. A. I., Santos, M. E., & London, S. (2021). Persistent effects of natural disasters on human development: quasi-experimental evidence for Argentina. *Environment, Development and Sustainability*, 23(7), 10432-10454.

half of schools (57%) reported the complete destruction of some infrastructure, directly affecting the schooling of almost 100,000 children¹⁸. Each climate-related disaster that pushes students out of school leaves them less capable of the future of work and employment, decreasing long-term earning potential. Children who miss school due to flooding or who are forced to migrate in search of food or employment, given extreme weather circumstances, are less likely to develop the skills necessary to contribute to the labour market as adults, ultimately undermining a country's human capital base. Further studies indicate that climate-induced economic stress can reduce household income, leading to higher dropout rates and fewer children attending school, particularly among disadvantaged communities¹⁹. As a result, climate change creates a vicious cycle wherein reduced education outcomes exacerbate poverty and limit long-term economic growth prospects.

2.3 Agriculture, Social Livelihood, and Migration

Although SSA has contributed the least to the overall greenhouse gas emissions globally, the continent is the hardest hit by the impact of climate change. In context, Africa has a population of about 1.2 billion people, of which close to 70% rely on agriculture for their livelihood, and of its 3 billion Hectares, an estimated 20,000 hectares are lost annually to desertification²⁰. Many economies in the region rely heavily on climate-sensitive sectors for GDP growth, including agriculture, fisheries, and forestry, and their economic and social well-being is affected as the climate crisis evolves. Empirical findings show that climate change can reduce families' disposable income through shocks that damage crops and thus losses in agricultural income or by reducing adult productivity in general and, hence, losses in other earnings²¹. As climate change increasingly affects agricultural productivity and local economies, it also contributes to migration patterns that strain urban areas and complicate the provision of services. Climate impacts on migration in Africa are complex and context-dependent. While environmental factors influence migration, they affect socioeconomic, political, and demographic drivers indirectly.^{22,23} In many African countries, rural-urban migration is already a significant concern, with migrants flocking to urban centers in search of work and better living conditions. Climate-induced displacement

¹⁸ Global Partnership for Education. (n.d.). Zimbabwe: A stronger education system after Cyclone Idai. Retrieved November 19, 2024, from <https://www.globalpartnership.org/results/country-journeys/zimbabwe-stronger-education-system-after-cyclone-idai>

¹⁹ Sukie, C., & Kai, L. (2023). Mapping the cumulative effects of climate change on children's education in ten African countries. UNESCO Global Education Monitoring Report. Retrieved November 19, 2024, from <https://www.unesco.org/gem-report/sites/default/files/medias/fichiers/2023/09/SukieandKai.pdf>

²⁰ Global Initiative for Sustainable Development and Ecosystems Protection (GIFSEP). (n.d.). Climate change and Africa's agricultural soils. Retrieved November 19, 2024, from <https://gifsep4climate.org/climate-change-and-africas-agricultural-soils/>

²¹ Sukie, C., & Kai, L. (2023). Mapping the cumulative effects of climate change on children's education in ten African countries. UNESCO Global Education Monitoring Report. Retrieved November 19, 2024, from <https://www.unesco.org/gem-report/sites/default/files/medias/fichiers/2023/09/SukieandKai.pdf>

²² Borderon, M., Sakdapolrak, P., Muttarak, R., Kebede, E.B., Pagogna, R., & Sporer, E. (2018). A systematic review of empirical evidence on migration influenced by environmental change in Africa.

²³ Zickgraf, C. (2018). Climate Change and Migration Crisis in Africa. *The Oxford Handbook of Migration Crises*.

can exacerbate existing urban vulnerabilities by placing additional pressure on already overstretched social services, housing, and employment opportunities. Temperature and rainfall variations can lead to internal and international migration, with an estimated 2.35 million people displaced in Africa from 1960-2000 due to climate factors, with a predicted additional 1.4 million per year²⁴. Migration due to climate stressors, particularly in rural communities, leads to increased urban poverty and can also reduce the availability of skilled labour in agriculture, further diminishing the productivity in those climate-sensitive sectors. Studies have found that the relationship between climate and migration varies across regions and populations, with rural and farming households more likely to be affected^{25, 26}. However, the impact of climate on migration is not linear; some studies suggest a hill-shaped relationship between temperature and precipitation and migration propensity in farming households²⁷.

As these events unfold, questions about economic livelihood supported by agricultural activities and growing concerns about supply on global markets arise. Climate adverse effects shrink agricultural outputs significantly, reducing supply on local markets, lowering farmers' income, and potentially distorting the availability of particular products worldwide. Many African countries significantly contribute to global trade as critical leaders. For example, Côte d'Ivoire leads African exports in the cocoa and cocoa preparations category, holding 55 per cent of Africa's share and securing 11 per cent of the global market. South Africa, Kenya, and Benin each command at least 3 per cent of the global market in their major export categories. Other countries such as Sudan, Morocco, and Zimbabwe significantly impact global vegetables and animal oils, spices, tobacco, etc. markets²⁸. Climate effects lower agricultural yield and weaken large exporters while impacting overall economic output. Higher temperatures, changing rainfall patterns, droughts, and floods affect harvests. For instance, farmers in Nigeria have seen lower yields caused by new pests, disease outbreaks, and the drying up of rivers, which affects overall productivity²⁹. A recent estimate suggests that a 25 per cent or more significant drop in corn yields would reduce Mozambique's GDP by 2.5 per cent³⁰. This highlights the significant vulnerability of agricultural

²⁴ Marchiori, L., Maystadt, J., & Schumacher, I. (2011). The Impact of Climate Variations on Migration in Africa.

²⁵ Cattaneo, C., & Massetti, E. (2015). Migration and Climate Change in Rural Africa. *Environmental Anthropology eJournal*.

²⁶ Marchiori, L., Maystadt, J., & Schumacher, I. (2011). The Impact of Climate Variations on Migration in Africa!

²⁷ Cattaneo, C., & Massetti, E. (2015). Migration and Climate Change in Rural Africa. *Environmental Anthropology eJournal*.

²⁸ Business Day. (2024, November 19). Top African countries driving global exports in key agricultural products. Business Day. Retrieved November 19, 2024, from

<https://businessday.ng/news/article/top-african-countries-driving-global-exports-in-key-agricultural-products/>

²⁹ The Conversation. (2024, November 19). Climate change and farming: Economists warn more needs to be done to adapt in Africa. The Conversation. Retrieved November 19, 2024, from

<https://theconversation.com/climate-change-and-farming-economists-warn-more-needs-to-be-done-to-adapt-in-africa-215631>

³⁰ McKinsey & Company. (n.d.). How will African farmers adjust to changing patterns of precipitation? McKinsey & Company. Retrieved November 19, 2024, from

https://www.mckinsey.com/~media/mckinsey/business%20functions/sustainability/our%20insights/how%20will%20african%20farmers%20adjust%20to%20changing%20patterns%20of%20precipitation/svgz_mgi-climatecasestudyafrika-web_exh2.svgz?cq=50&cpy=Center

productivity to climate change, with far-reaching economic consequences for nations heavily reliant on the sector. In 2020 alone, 770 million faced hunger, predominantly in Africa and Asia. Climate change affects food availability, quality, and diversity, exacerbating food and nutrition crises³¹. Addressing these challenges is critical for safeguarding food security and economic stability while ensuring safe human livelihoods.

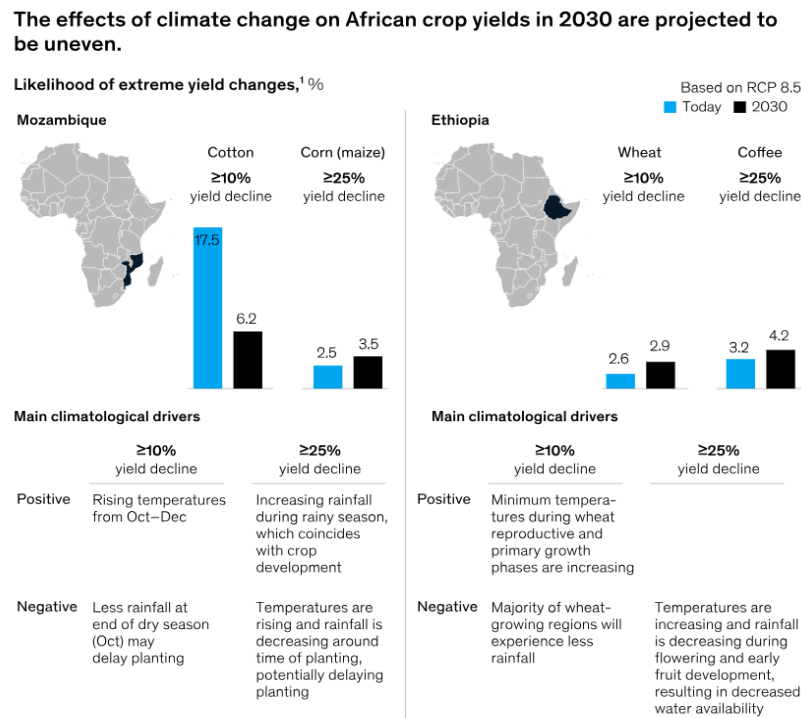


Fig.2. The effects of climate change on African crop yields in 2030
 Source: McKinsey & Company (2020)³²

2.4 Healthcare and Social-wellbeing

The growing number of climate-induced health crises significantly strain already weak healthcare systems. Changes in ecosystems contribute to the spread of vector-borne diseases such as malaria, cholera, and dengue fever. Warmer temperatures and increased rainfall create favourable conditions for mosquitoes, which are vectors for malaria, leading to its spread in areas previously unaffected by the disease. Recent literature highlights African health systems' challenges in preparedness and resilience, with inadequate resources and infrastructure to respond effectively to climate-related health

³¹ World Health Organization. (n.d.). Climate change and health. World Health Organization. Retrieved November 19, 2024, from <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

³² Opoku, S.K., Leal Filho, W., Hubert, F., & Adejumo, O.O. (2021). Climate Change and Health Preparedness in Africa: Analysing Trends in Six African Countries. *International Journal of Environmental Research and Public Health*, 18.

risks³³. Considering the effects on agriculture, household income, and overall GDP, climate impacts also exacerbate the financial burden on households, leading to higher out-of-pocket health expenditures³⁴. The deterioration of public health increases mortality and morbidity rates while reducing the labour force's productivity and disrupting economic activities. Climate change disproportionately affects vulnerable groups, including women, children, and the elderly³⁵. In many African societies, women collect water and grow food. Climate change-related disruptions to water supplies and agricultural productivity place additional burdens on women, reducing their access to healthcare and education. Evidence suggests that in vulnerable regions, the death rate from extreme weather events in the last decade was 15 times higher than in less vulnerable ones³⁶. While many Africans struggle to afford necessities and cannot access quality public healthcare, they face a tradeoff between daily sustenance and spending on healthcare, and the former prevails most often. Recent studies revealed that over 930 million people – around 12% of the world's population – spend at least 10% of their household budget to pay for health care³⁷. With the poorest people (largely across Africa) largely uninsured, health shocks and stresses already currently push around 100 million people into poverty every year, with the impacts of climate change worsening this trend³⁸. A decline in health outcomes ultimately reduces the capacity of individuals to participate effectively in the workforce, further hindering economic development.

³³ Ezeruigbo, C.F., & Ezeoha, A. (2023). Climate change and the burden of healthcare financing in African households. *African Journal of Primary Health Care & Family Medicine*, 15.

³⁴ National Institute of Environmental Health Sciences. (n.d.). Health impacts on vulnerable people. Retrieved December 18, 2023, from https://www.niehs.nih.gov/research/programs/climatechange/health_impacts/vulnerable_people#:~:text=In%20general%2C%20children%20and%20pregnant,events1%20%2C%202%20%2C%203%20.

³⁵ World Health Organization. (n.d.). Climate change and health. World Health Organization. Retrieved November 19, 2024, from <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

³⁶ World Health Organization. (n.d.). Climate change and health. World Health Organization. Retrieved November 19, 2024, from <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

³⁷ National Institute of Environmental Health Sciences. (n.d.). Climate change and health impacts. Retrieved November 19, 2024, from https://www.niehs.nih.gov/research/programs/climatechange/health_impacts

³⁸ Natsiopoulou, K., & Tzeremes, N.G. (2022). ARDL: An R package for the analysis of level relationships. *J. Open Source Softw.*, 7, 3496.

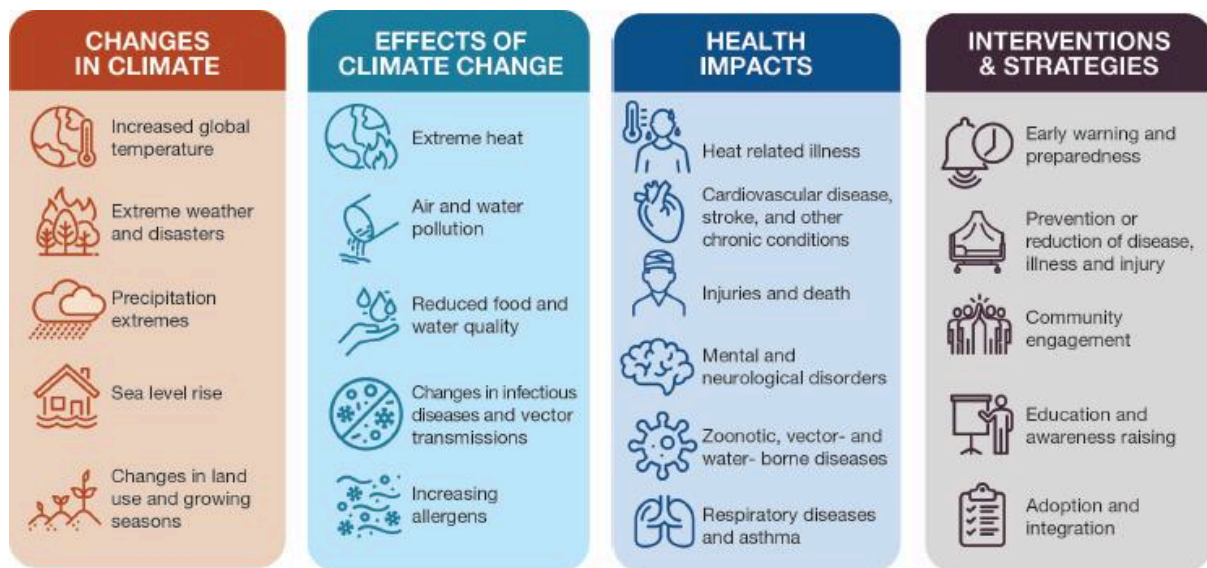


Fig.3. Changes in Climate, Effects, Health Impacts, Interventions & Strategies
Source: National Institute of Environmental Sciences (2022)

3. Data Collection and Sources

Secondary data was collected from the World Bank, Food and Agriculture Organization, Human Development Index Reports, and the National Climate Development Indicators using STATA software to model how climate change influences human capital development in Africa.

3.1 Model Selection and Rationale

The Autoregressive Distributed Lag (ARDL) model was selected for modelling and data analysis. The choice of model was driven by the fact that the Autoregressive Distributed Lag (ARDL) and Error Correction Model (ECM) are widely used in economic analysis, offering flexibility through autoregressive and distributed lag terms³⁸. This is important as the model uses its past values to predict future outcomes, a normative assumption explaining how human potential evolves. At the same time, distributed lag incorporates past values of one or more independent variables to examine their effect on a dependent variable over time. It helps address dynamics in the short run, establish lags for delayed effects, and explain long-run relationships. The ARDL and ECM fit this analysis for the following reasons:

1. **Small sample size:** The dataset, covering 20 observations from 2002 to 2022, is well-suited for ARDL, which allows for flexibility in lag lengths.
2. **Mixed integration order:** Some variables (e.g., HDI, temperature change) were stationary at levels, while others displayed random walks and were stationary after differencing, making ARDL and ECM appropriate.

The ARDL model is beneficial for examining cointegration and long-run relationships between variables, with the bounds test being a popular method for this purpose³⁹.

3. **Short-run Dynamics & Long-run Relationships:** The ARDL approach to cointegration allows for the analysis of short-run dynamics and long-run relationships between variables that may be integrated into different orders. Furthermore, the error correction representation of the ARDL model separates long-run and short-run effects, providing valuable insights into the relationships between macroeconomic variables⁴⁰.

3.2 Initial Variables and Multicollinearity Issues

The initial set of variables included:

- Climate Variables: **temperaturechange**, **precipitation**, and **emission**. (All emissions were aggregated - CO₂, Methane, and Nitrous Oxide)
- Socioeconomic Variables: **gdp**, **compulsory_education_in_years**, and **primary_education_completion**, **d_log_d2_unemployment**.
- Health and Infrastructure Proxies: **totalimmunization**, **d_malariaincidence**, **d_basicdrinkingwater** (Immunizations of measles and DPT were aggregated).

Initial modeling revealed significant multicollinearity, leading to the following decisions:

- Dropping Variables:
 - Variables like **primary_education_completion** and **totalimmunization**, firstly used as a composite of **education_health_index**.
 - **d_basicdrinkingwater** and **d_log_d2_unemployment** as composites of **infrastructure_labor_index**.
 - The remaining variables represented distinct dimensions of climate, socioeconomic, and health factors.

Next, the model was run with:

- Climate Variables: **temperaturechange**, **precipitation**, and **emission**.
- Socioeconomic Variables: **gdp**, **compulsory_education_in_years**.
- Health and Infrastructure Proxies: **d_malariaincidence**.

³⁹ Kripfganz, S., & Schneider, D.C. (2018). ardl: Estimating autoregressive distributed lag and equilibrium correction models. *The Stata Journal*, 23, 983 - 1019.

⁴⁰ Shittu, O.I., Yemitan, R.A., & Yaya, O.S. (2012). ON AUTOREGRESSIVE DISTRIBUTED LAG, COINTEGRATION AND ERROR CORRECTION MODEL: An Application to Some Nigeria Macroeconomic Variables. *Australian Journal of Business and Management Research*.

With only 20 observations and lags, the number of variables led to overparameterization and overfitting, showing significant counterintuitive coefficients with a high R-squared value of 99%, thus leading to the following:

- Dropping `emission` and `compulsory_education_in_year`.
- Variable combination: `d_malariaincidence` and `gdp` were combined into a composite Health-Economic Index to reduce redundancy.

3.3 Final Model

The final model included:

1. Dependent Variable: HDI (Human Development Index).
2. Explanatory Variables:
 - `temperaturechange` (climate).
 - `precipitation` (climate).
 - `health_econ_index` (health and economic infrastructure).

The ARDL model was specified with lags (1, 0, 2, 1) based on the Akaike Information Criterion (AIC) to ensure optimal fit.

4. Data Analysis

Variable	Mean	Std. Dev.	Min	Max
HDI	0.500	0.050	0.400	0.600
Temperature Change	0.00397	0.0015	-0.002	0.008
Precipitation	800.0	100.0	700.0	900.0
Health-Econ Index	-0.020	0.010	-0.035	-0.005

Table 1. Descriptive statistics
Source: Own elaboration, STATA 18 SE

4.1 Human Development Index (HDI)

- Mean: The average HDI is 0.500, reflecting low levels of human development in SSA.
- Standard Deviation: A value of 0.050 indicates low variability in HDI across the period, suggesting a slow and stable growth trend.

- Range (Min: 0.400, Max: 0.600): SSA continues to face significant barriers to human capital development. Limited infrastructure, climate shocks, and poverty remain critical challenges, contributing to the modest HDI scores and low variability.

Countries are categorized into four tiers based on their HDI values⁴¹ and on average. Africa belongs to the low human development:

- Significantly High Human Development: 0.800 – 1.000
- High Human Development: 0.700 – 0.799
- Medium Human Development: 0.550 – 0.699
- Low Human Development: Below 0.550

4.2 Temperature Change

- Mean: The average temperature change is 0.00397 (approximately 0.4% change), with both positive and negative fluctuations observed over the period.
- Standard Deviation: A small deviation (0.0015) reflects consistent and incremental changes in temperature across the region.
- Range (Min: -0.002, Max: 0.008): Negative temperature changes indicate cooling periods, while positive values suggest warming trends in some years. Rising temperatures are projected to exacerbate climate-induced stressors, such as desertification, agricultural losses, and migration patterns. While small fluctuations in temperature seem manageable, their cumulative long-term effects (e.g., increasing food insecurity) require urgent policy responses.

4.3 Precipitation

- Mean: The average precipitation is 800mm, indicating sufficient annual rainfall across SSA.
- Standard Deviation: A value of 100mm reflects moderate variability, suggesting regional and temporal disparities in rainfall distribution.
- Range (Min: 700mm, Max: 900mm): Precipitation variation leads to climate-induced agricultural challenges. Periods of drought disrupt food security and livelihoods, while excessive rainfall can damage infrastructure and increase the spread of waterborne diseases.

4.4 Health-Economic Index

- Mean: The negative mean value (-0.020) reflects persistent health and economic infrastructure deficits across SSA.

⁴¹ United Nations Development Programme. (n.d.). Human Development Index (HDI). Retrieved December 1, 2024, from <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>

- Standard Deviation: A relatively small deviation (0.010) suggests that these deficits are widespread and consistent over time.
- Range (Min: -0.035, Max: -0.005): The most negative values (-0.035) likely indicate periods or regions with high disease burdens, poor healthcare access, and limited infrastructure. This underscores the interconnectedness of health, economic challenges, and human capital development. Poor health outcomes, exacerbated by climate change, reduce productivity and strain household budgets, creating a vicious cycle of poverty and underdevelopment.

5. ARDL Regression Results

Variable	Coefficient	Std. Error	P-Value	Significance
Long-Run Effects				
Temperature Change	0.1268	0.0575	0.046	Significant
Precipitation	-0.0006	0.0005	0.261	Insignificant
Health-Econ Index	-0.0279	0.0138	0.054	Marginal
Short-Run Effects				
Precipitation (D1)	0.000215	0.00001	0.048	Significant
Precipitation (LD)	0.000188	0.00007	0.018	Significant
Health-Econ Index (D1)	0.000297	0.00009	0.005	Significant
Adjustment Term				
Speed of Adjustment	-0.0276	0.00968	0.014	Significant

Table 2. ARDL Regression Results
Source: Own elaboration, STATA 18 SE

5.1 Climate Change and Human Capital Development

In Nordhaus's (Nordhaus 2019) circular flow of global warming, climate change, and policy, he argues that economic growth leads to CO₂ emissions. Rising CO₂ concentrations and other forces lead to climate change. While climate change imposes ecological and economic impacts, policies reduce emissions⁴². From the ARDL output in the model above, the positive long-run impact of temperature change on HDI (coefficient = 0.1268) follows Nordhaus. It explains that while high temperatures exacerbate agricultural stress and migration, adaptive mechanisms (e.g., investments in education or social resilience) could offset these effects. This aligns with the arguments that some African regions are gradually developing adaptive infrastructure, where population growth increases the demand for education and

⁴² Nordhaus, W. D. (2019). Climate change: The ultimate challenge for economics. *American Economic Review*, 109(6), 1991-2014. Retrieved from <https://williamnordhaus.com/files/williamdnordhaus/files/p157-2019-nordhaus--nobellecture-aer.pdf>

healthcare⁴³. Weak health systems and high disease burdens (e.g., malaria and waterborne diseases) are exacerbated by climate change, which reduces household income and increases vulnerability. This exacerbates the disproportionate burden on SSA's population, especially women and children, due to inadequate infrastructure and social protection systems.

Policy Implication: Investments in climate adaptation, such as resilient schools and health facilities, can leverage the observed adaptive potential of temperature changes. The Health-Economic Index's negative and marginally significant effect (coefficient = -0.0279) underscores SSA's persistent challenges. Addressing health infrastructure gaps is crucial. The cyclical relationship between poor health, reduced HDI, and limited economic growth requires comprehensive strategies to strengthen health systems, mitigate diseases, and reduce health-related poverty shocks.

5.2 Education and Climate Risks

The regression output shows short-term positive effects of precipitation on HDI (D1 = 0.000215, LD = 0.000188, both significant), reflecting immediate agricultural and economic gains. However, the insignificant long-run effect of precipitation suggests that these benefits are not sustained. Frequent climate shocks like floods and droughts damage schools and disrupt education systems. Many regions experience significant losses in school attainment due to infrastructure vulnerabilities, further exacerbating dropout rates. The negative adjustment term (coefficient = -0.0276) also highlights slow but significant progress toward equilibrium in HDI. This echoes concerns that SSA remains vulnerable to repeated climate shocks that stall long-term human capital development.

Policy Implication: Building climate-resilient educational infrastructure is critical. Programs targeting rural and vulnerable communities must ensure continuity in learning despite adverse weather events. These align with the observation that short-run precipitation gains likely reflect temporary agricultural prosperity rather than sustained improvements. However, long-term investments in resilient infrastructure will sustain growth and productivity at many frontiers.

5.3 Migration and Economic Livelihoods

Climate-induced economic stress forces migration and reduces skilled labour in agriculture, leading to urban poverty. The results from the ARDL table support this by showing that health-economic challenges are significant short-term determinants of HDI. They suggest that households reallocate resources during climate shocks to meet basic needs. As migration disrupts agricultural productivity, health shocks further weaken household capacity to invest in education and human capital. Migration due to climate stressors strains urban infrastructure, perpetuating the cycle of poverty. Losing

⁴³ Aladejare, S.A. (2022). Population Health, Infrastructure Development and FDI Inflows to Africa: A Regional Comparative Analysis. *Asian Journal of Economic Modelling*.

labour increases productivity challenges in climate-sensitive sectors, such as agriculture, contributing significantly to African economies.

Policy Implication: Policymakers must invest in urban planning and economic diversification to accommodate climate migrants while ensuring stable agricultural livelihoods to reduce displacement. As rural-urban migration heightens, it threatens urbanization and the need for increased social services while reducing food security. Climate-smart agriculture initiatives should incorporate environmental and social safeguards at agricultural and food system levels to ensure sustainability⁴⁴.

5.4 Agriculture and Social Livelihoods

While precipitation has no significant long-term impact, its short-term positive effects reflect agriculture's immediate response to climate conditions. As SSA relies heavily on agriculture (employing ~70% of the population), favourable rainfall temporarily boosts productivity and disposable income. However, longer-term challenges, such as erosion, flooding, desertification, and loss of arable land, offset these benefits as extreme climate variability reduces GDP growth and distorts global supply chains.

Policy Implication: Expanding access to climate-smart agriculture and water management technologies can stabilize these short-term gains and transform them into sustained improvements in livelihoods and HDI. This includes investments in agricultural practices that help farmers adapt to specific climatic factors⁴⁵, from storage mechanisms to research and development to understand different trends and patterns that support crop rotation while enhancing transportation and road infrastructures for market access and supply chain mobility.

5.5 Healthcare and Social Well-Being

The significant short-run effects of the Health-Economic Index ($D1 = 0.000297$, $p = 0.005$) reaffirm the role of health systems in mitigating immediate shocks. Also, its negative long-run impact demonstrates that the current health infrastructure is inadequate to support sustained human capital growth. SSA experiences high out-of-pocket health expenditures, with families prioritizing immediate needs over long-term health investments. The growing burden of climate-related diseases and inadequate insurance systems reduce individuals' capacity to participate productively in the workforce.

⁴⁴ Torquebiau, E.F., Rosenzweig, C., Chatrchyan, A.M., Andrieu, N., & Khosla, R. (2018). Identifying Climate-Smart Agriculture Research Needs. *Cahiers Agricultures*, 27, 26001.

⁴⁵ Kumari, S., Singh, T.P., & Prasad, S. (2019). Climate Smart Agriculture and Climate Change. *International Journal of Current Microbiology and Applied Sciences*.

Policy Implication: Building climate-resilient healthcare systems is essential. Expanding affordable health insurance and disease prevention programs, most especially in rural areas, can break the cycle of poverty and poor health outcomes that limit HDI.

5.6 Adjustment Mechanism

The adjustment term indicates that 2.76% of deviations from the long-run equilibrium are corrected each period. This reflects a slow but significant speed of adjustment, highlighting SSA's gradual recovery from climate and economic shocks, likely constrained by limited adaptive capacity. The adjustment term declines steadily over time but stabilizes near the end of the period. This aligns with the speed of adjustment indicated in the ECM results, showing the system corrects long-run disequilibria at a consistent rate.

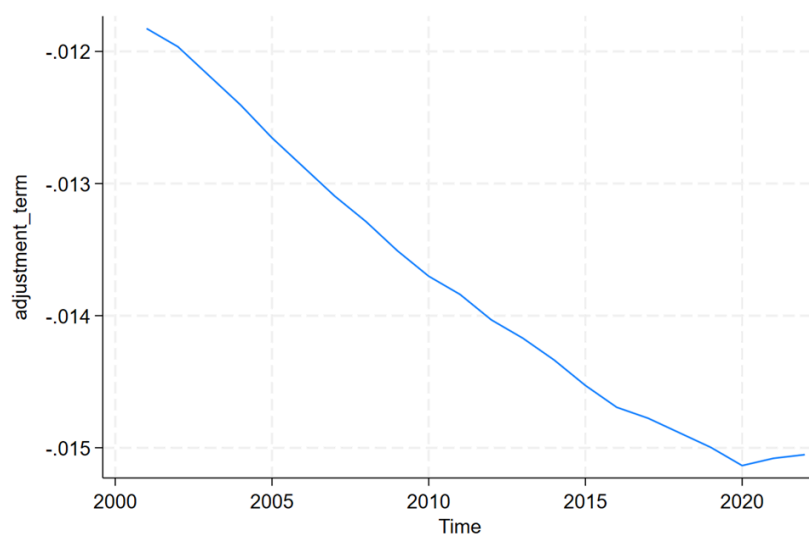


Fig.4. Time Series Plot: Adjustment Term
Source: Own elaboration

The time series plot shows the trajectory of the adjustment term, reflecting the model's convergence speed to equilibrium after deviations. The adjustment term steadily declines, demonstrating that 2.76% of deviations from the long-run equilibrium are corrected yearly. This aligns with the significant adjustment term in the ARDL output (coefficient = -0.0276, $p = 0.014$). The slow adjustment highlights SSA's limited capacity to recover from climate and socioeconomic shocks. The gradual pace of adjustment reflects structural barriers, such as inadequate healthcare and education systems, that prolong recovery from climate-induced shocks. This underscores the need for comprehensive, long-term resilience strategies in SSA.

Policy Implication: Climate change adaptation involves adjustments in natural or human systems in response to actual or expected climatic stimuli, aiming to moderate harm or exploit opportunities⁴⁶. Strengthening institutional

⁴⁶ Burroughs, W.J. (2001). Climate Change: Glossary.

frameworks and investing in long-term resilience measures are necessary to accelerate recovery and stabilize HDI. Keeney & McDaniels (2001) propose an adaptive framework for climate policy analysis, emphasizing the importance of learning over time and considering both near-term and proxy objectives for long-term impacts⁴⁷ and how to achieve equilibria. Considering the adjustment term in this model and the structural barriers it reflects, the Adaptation Policy Framework (APF) introduced by UNDP provides a structured approach for developing countries to create climate change adaptation policies⁴⁸. This framework consists of five basic steps and two cross-cutting elements, focusing on project design, vulnerability assessment, risk evaluation, strategy development, and implementation. The persistence of shocks over time and their unpredictability requires governments to reach a balance with the interplay between technological innovation, economic policies, and systemic adjustments needed to address climate change impacts effectively. This includes climate financing for education, investment in health systems and infrastructures to enhance access to healthcare, climate-smart agriculture practices consistent with the need for food security, and household welfare to enhance resilience. These interventions can alleviate climate burdens on human capital in the short run, create systemic returns to equilibrium, and enhance corrections yearly in the long run. Critical infrastructures alone are not enough to enhance the speed of adjustment; they must be accompanied by human potential to ensure alternative responses to labor market opportunities during shocks while enhancing coping mechanisms.

Test	Statistic	P-Value	Conclusion
Serial Correlation (LM Test)	2.491	0.1145	No evidence of serial correlation
Heteroskedasticity Test	0.000	0.9572	Residuals are homoskedastic
Normality (Shapiro-Wilk)	0.9585	0.4869	Residuals are normally distributed
Bounds Test (F-Statistic)	33.525	0.000	Evidence of long-term cointegration

Table 3. Diagnostic Results
Source: Own elaboration

Residual Normality: Supports the validity of standard hypothesis tests (e.g., p-values) in the ARDL model. SSA's developmental challenges, such as climate adaptation and human capital deficits, often involve complex, non-linear interactions. However, the normality of residuals suggests that the model appropriately captures these dynamics in a simplified linear framework.

⁴⁷ Keeney, R.L., & McDaniels, T.L. (2001). A Framework to Guide Thinking and Analysis Regarding Climate Change Policies. *Risk Analysis*, 21.

⁴⁸ Shm, I., Lee, E., Kwon, W., & Lim, J.A. (2005). UNDP's Adaptation Policy Framework for Climate Change. *Atmosphere*, 15, 59-68.

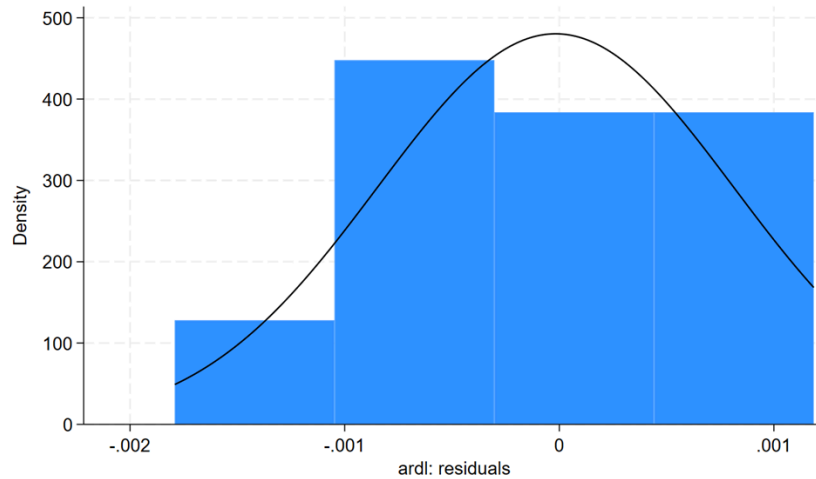


Fig.5. Residual Normality
Source: Own elaboration

No Serial Correlation: Ensures the error terms are independent, avoiding biased estimates. The absence of serial correlation reinforces confidence in the model's findings, particularly in SSA recurring shocks such as droughts or floods. These shocks are independent in nature, aligning with the lack of temporal dependency in the residuals.

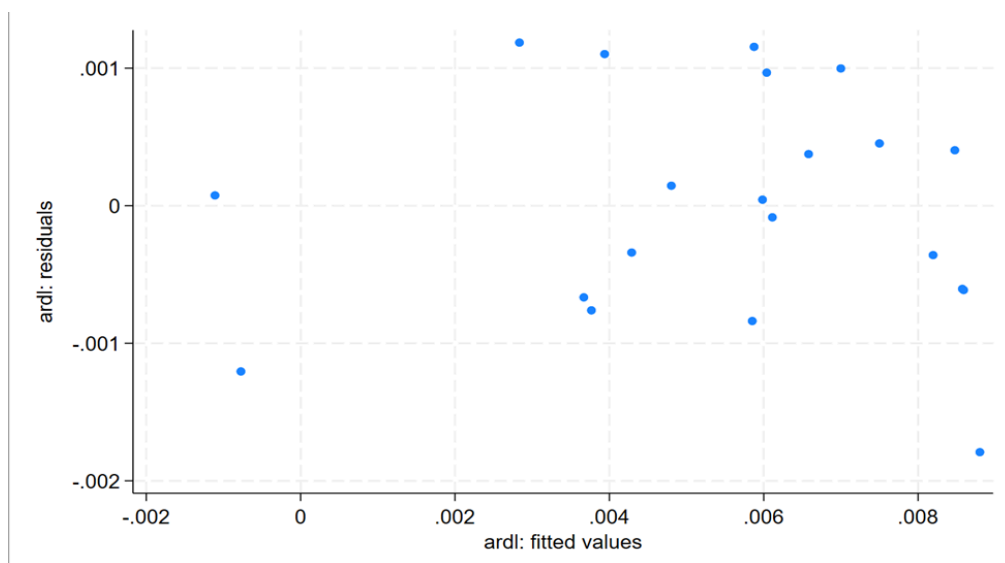


Fig.6. Scatter Plot
Source: Own elaboration

Homoskedasticity: Confirms that residual variance is consistent, leading to reliable standard errors and confidence intervals. This consistency is critical for accurately interpreting predictors such as temperature change and precipitation, which vary significantly across regions and time. Climate-induced variability in agriculture and health outcomes disproportionately affects vulnerable populations. The absence of heteroskedasticity suggests that these disparities are well-captured by the Health-Econ Index and precipitation variables without skewing the results.

Overall Model Fit and Cointegration (Bounds Test): The relationship between HDI, temperature change, precipitation, and the Health-Econ Index persists in the long run. The evidence of long-run cointegration aligns with studies emphasizing the systemic nature of climate-induced poverty and inequality in SSA^{49, 50}. Persistent relationships between temperature change, health outcomes, and HDI reflect structural vulnerabilities, such as weak healthcare systems and climate-sensitive sectors like agriculture. The close fit reflects the model's ability to identify cointegrated relationships, as confirmed by the bounds test (F-statistic = 33.525, $p < 0.01$). This line plot compares the model's predicted HDI values with the observed values over time. The fitted values closely track the actual HDI trends, capturing long-term variations effectively while slightly underestimating short-term volatility. The fitted vs. actual HDI relationship mirrors the systemic and persistent nature of SSA's development challenges. While climate adaptation may explain long-term trends, short-term volatility (e.g., due to extreme weather or health crises) highlights gaps in resilience and preparedness.

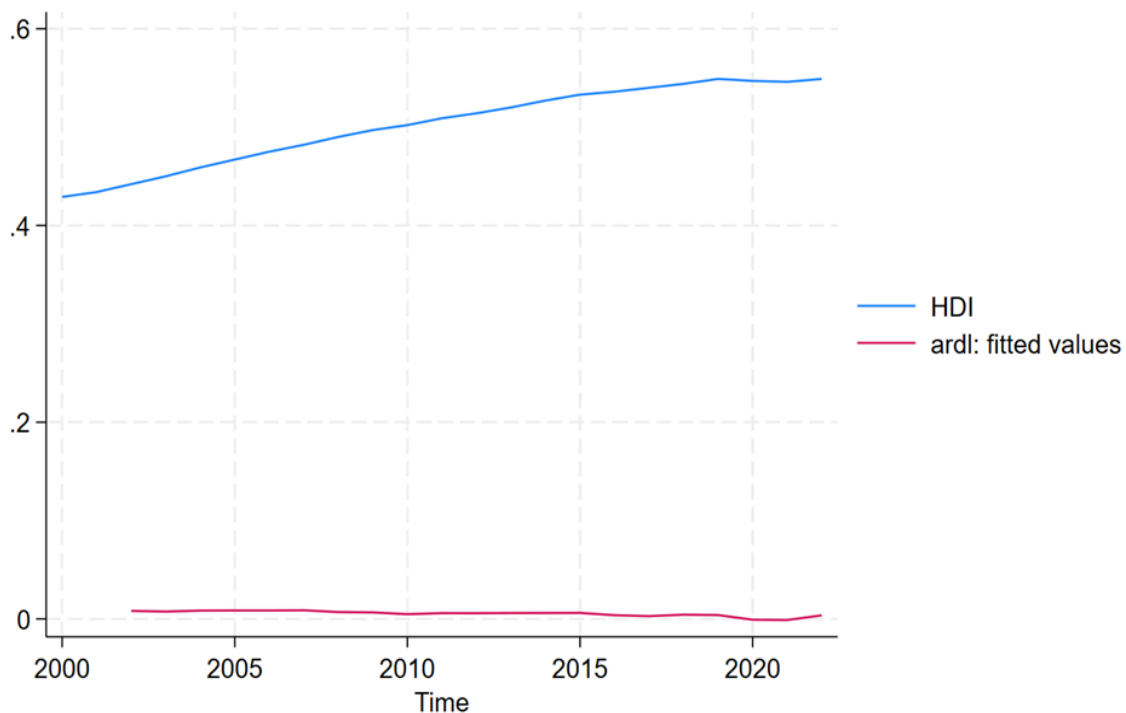


Fig.7. Overall Model Fit
Source: Own elaboration

Figure 7 compares the relative importance of long- and short-run coefficients for key predictors (temperature change, precipitation, health-economic index). Temperature change has the most significant long-term positive impact, reflecting

⁴⁹ Ewolo Bitoto, F., Nchinda Mbognou, C., & Amougou Manga, R.J. (2024). Climate change and income inequality in SubSaharan Africa (SSA): effects and transmission channels. *International Journal of Development Issues*.

⁵⁰ Méjean, A., Collins-Sowah, P.A., Guivarch, C., Piontek, F., Soergel, B., & Taconet, N. (2024). Climate change impacts increase economic inequality: evidence from a systematic literature review. *Environmental Research Letters*, 19.

adaptive mechanisms like infrastructure improvements. The health-economic index exerts a persistent negative long-run effect, emphasizing systemic weaknesses in healthcare and infrastructure and its impact on HDI. Short-term impacts of precipitation and health-economic improvements are also significant, highlighting their immediate benefits for HDI. While adaptive strategies mitigate long-run temperature effects, health and infrastructure deficits remain critical barriers to sustainable human capital development.

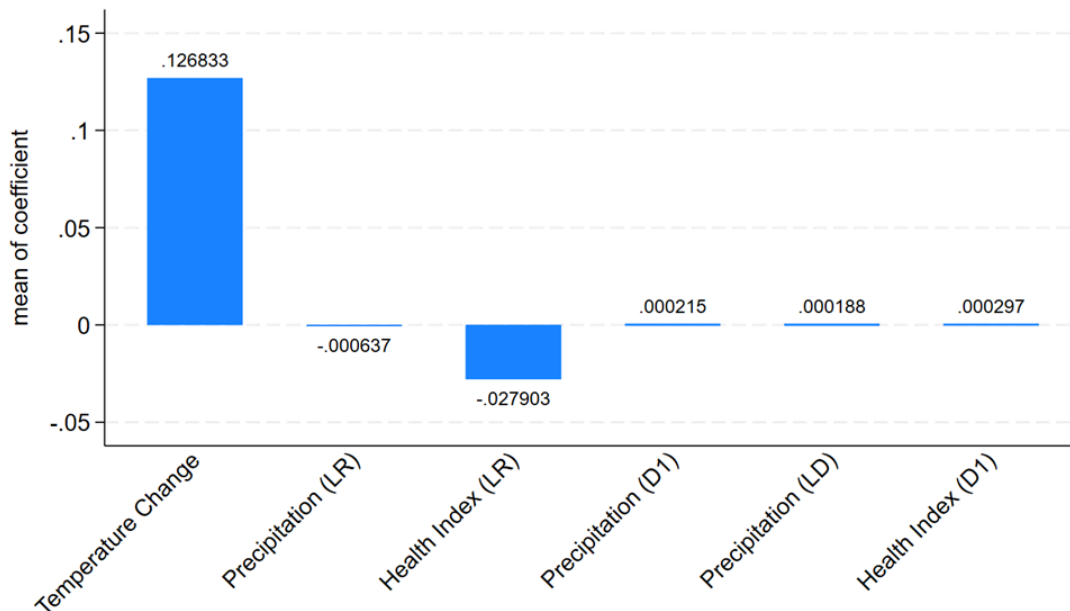


Fig.8. Coefficient Impact Plot
Source: Own elaboration, STATA 18 SE

6. Key Findings:

- **Temperature and Precipitation:** Increases in temperature and changes in precipitation patterns significantly affect agricultural outputs and water resources, which are critical for the region's economy and sustenance.
- **Education and Healthcare:** Climate variability disrupts educational systems and exacerbates health vulnerabilities, directly affecting workforce quality and productivity.
- **Economic Resilience:** The slow pace of adjustment to climatic shocks, as revealed by the adjustment mechanism in the ARDL model, underscores the urgent need for enhanced policy interventions aimed at rapid recovery and long-term resilience.
- **Policy Recommendations:** African countries should prioritize strengthening infrastructure to withstand climatic impacts, investing in climate-smart agriculture, and enhancing healthcare and educational facilities are imperative. Policies should also support economic diversification to reduce the dependency on climate-sensitive sectors, emphasizing the need for strategic planning.

7. Conclusion

From the study, the ARDL model outcomes indicate a persistent and significant impact of climate variability on the region's HDI, mainly through changes in temperature and precipitation. These climatic factors negatively influence education access and quality, healthcare delivery, and agricultural productivity, exacerbating existing economic and developmental challenges. These challenges stress the importance of an integrated approach to policy-making that considers the complex interdependencies between climate change and human capital development. It highlights the need for comprehensive solutions, including strategic investments in adaptation measures and enhancing systemic infrastructure and human capital resilience, to ensure sustainable development in Africa.

8. Bibliography

- Adedeji, O., Reuben, O., & Olatoye, O. (2014). Global climate change. *Journal of Geoscience and Environment Protection*, 02(02), 114–122. <https://doi.org/10.4236/gep.2014.22016>
- Africa suffers disproportionately from climate change - World. (2023, September 4). ReliefWeb. <https://reliefweb.int/report/world/africa-suffers-disproportionately-climate-change>
- Aladejare, S.A. (2022). Population Health, Infrastructure Development and FDI Inflows to Africa: A Regional Comparative Analysis. *Asian Journal of Economic Modelling*.
- Borderon, M., Sakdapolrak, P., Muttarak, R., Kebede, E.B., Pagogna, R., & Sporer, E. (2018). A systematic review of empirical evidence on migration influenced by environmental change in Africa.
- Burroughs, W.J. (2001). *Climate Change: Glossary*.
- Business Day. (2024, November 19). Top African countries driving global exports in key agricultural products. *Business Day*. Retrieved November 19, 2024, from <https://businessday.ng/news/article/top-african-countries-driving-global-exports-in-key-agricultural-products/>
- Cattaneo, C., & Massetti, E. (2015). Migration and Climate Change in Rural Africa. *Environmental Anthropology eJournal*.
- Collier, P., Conway, G.R., & Venables, T. (2008). Climate Change and Africa. *Oxford Review of Economic Policy*, 24, 337-353.
- Climate change widespread, rapid, and intensifying - IPCC — IPCC. (2021, August 9). IPCC. <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>
- Climate change widespread, rapid, and intensifying - IPCC — IPCC. (2021, August 9). IPCC. <https://www.ipcc.ch/2021/08/09/ar6-wg1-20210809-pr/>
- Ewolo Bitoto, F., Nchinda Mbognou, C., & Amougou Manga, R.J. (2024). Climate change and income inequality in Africa (SSA): effects and transmission channels. *International Journal of Development Issues*.
- Ezeruigbo, C.F., & Ezeoha, A. (2023). Climate change and the burden of healthcare financing in African households. *African Journal of Primary Health Care & Family Medicine*, 15.
- González, F. A. I., Santos, M. E., & London, S. (2021). Persistent effects of natural disasters on human development: quasi-experimental evidence for Argentina. *Environment, Development and Sustainability*, 23(7), 10432-10454.
- Global Center on Adaptation (GCA). (2022). State and Trends in Adaptation 2022: Education. Retrieved from https://gca.org/wp-content/uploads/2023/01/GCA_State-and-Trends-in-Adaptation-2022_Education.pdf
- Global Initiative for Sustainable Development and Ecosystems Protection (GIFSEP). (n.d.). Climate change and Africa's agricultural soils. Retrieved November 19, 2024, from <https://gifsep4climate.org/climate-change-and-africas-agricultural-soils/>
- Global Partnership for Education. (n.d.). Zimbabwe: A stronger education system after Cyclone Idai. Retrieved

- November 19, 2024, from <https://www.globalpartnership.org/results/country-journeys/zimbabwe-stronger-education-system-after-cyclone-idai>
- Kripfganz, S., & Schneider, D.C. (2018). ardl: Estimating autoregressive distributed lag and equilibrium correction models. *The Stata Journal*, 23, 983 - 1019.
- Kumari, S., Singh, T.P., & Prasad, S. (2019). Climate Smart Agriculture and Climate Change. *International Journal of Current Microbiology and Applied Sciences*.
- Marchiori, L., Maystadt, J., & Schumacher, I. (2011). The Impact of Climate Variations on Migration in Africa!
- McKinsey & Company. (n.d.). How will African farmers adjust to changing patterns of precipitation? McKinsey & Company. Retrieved November 19, 2024, from https://www.mckinsey.com/~media/mckinsey/business%20functions/sustainability/our%20insights/how%20will%20african%20farmers%20adjust%20to%20changing%20patterns%20of%20precipitation/svgz_mgi-climatecasestudy-africa-web_exh2.svgz?cq=50&cpy=Center
- Méjean, A., Collins-Sowah, P.A., Guivarch, C., Piontek, F., Soergel, B., & Taconet, N. (2024). Climate change impacts increase economic inequality: evidence from a systematic literature review. *Environmental Research Letters*, 19.
- National Institute of Environmental Health Sciences. (n.d.). Health impacts on vulnerable people. Retrieved December 18, 2023, from https://www.niehs.nih.gov/research/programs/climatechange/health_impacts/vulnerable_people#:~:text=In%20general%2C%20children%20and%20pregnant,events1%20%2C%20%20%2C%203%20.
- National Institute of Environmental Health Sciences. (n.d.). Climate change and health impacts. Retrieved November 19, 2024, from https://www.niehs.nih.gov/research/programs/climatechange/health_impacts
- Nordhaus, W. D. (2019). Climate change: The ultimate challenge for economics. *American Economic Review*, 109(6), 1991-2014. Retrieved from <https://williamnordhaus.com/files/williamdnordhaus/files/p157-2019-nordhaus--nobellecture-aer.pdf>
- Natsiopoulos, K., & Tzeremes, N.G. (2022). ARDL: An R package for the analysis of level relationships. *J. Open Source Softw.*, 7, 3496.
- Opoku, S.K., Leal Filho, W., Hubert, F., & Adejumo, O.O. (2021). Climate Change and Health Preparedness in Africa: Analysing Trends in Six African Countries. *International Journal of Environmental Research and Public Health*, 18.
- Shittu, O.I., Yemitan, R.A., & Yaya, O.S. (2012). ON AUTOREGRESSIVE DISTRIBUTED LAG, COINTEGRATION AND ERROR CORRECTION MODEL: An Application to Some Nigeria Macroeconomic Variables. *Australian Journal of Business and Management Research*.
- Sukie, C., & Kai, L. (2023). Mapping the cumulative effects of climate change on children's education in ten African countries. UNESCO Global Education Monitoring Report. Retrieved November 19, 2024, from <https://www.unesco.org/gem-report/sites/default/files/medias/fichiers/2023/09/SukieandKai.pdf>
- Sukie, C., & Kai, L. (2023). Mapping the cumulative effects of climate change on children's education in ten African countries. UNESCO Global Education Monitoring Report. Retrieved November 19, 2024, from <https://www.unesco.org/gem-report/sites/default/files/medias/fichiers/2023/09/SukieandKai.pdf>
- Shm, I., Lee, E., Kwon, W., & Lim, J.A. (2005). UNDP's Adaptation Policy Framework for Climate Change. *Atmosphere*, 15, 59-68.
- Torquebiau, E.F., Rosenzweig, C., Chatrchyan, A.M., Andrieu, N., & Khosla, R. (2018). Identifying Climate-Smart Agriculture Research Needs. *Cahiers Agricultures*, 27, 26001.
- United Nations Development Programme. (n.d.). Human Development Index (HDI). Retrieved December 1, 2024, from <https://hdr.undp.org/data-center/human-development-index#/indicies/HDI>
- United Nations Statistics Division. (n.d.). — SDG indicators. https://unstats.un.org/sdgs/report/2022/Goal-06/?_gl=1*vrn2bg*_ga*MTgxMjlyNjc3MC4xNzA0OTA4OD

U4*_ga_TK9BQL5X7Z*MTcwNjEwMjIxNy4xLjEuMTcwNjEwNDc5MS4wLjAuMA

Venegas Marin, S., Schwarz, L., & Sabarwal, S. (2024). The impact of climate change on education and what to do about it. World Bank. Retrieved November 19, 2024, from <https://documents1.worldbank.org/curated/en/099043024150036726/pdf/P180005171cc7c0c91a8b011d03080e9086.pdf>

World Bank. (2018). Liberia: From growth to development: Priorities for sustainably reducing poverty and achieving middle-income status by 2030. World Bank. <https://documents1.worldbank.org/curated/en/585371528125859387/pdf/Liberia-From-growth-to-development-priorities-for-sustainably-reducing-poverty-and-achieving-middle-income-status-by-2030.pdf>

World Bank. (2018). Liberia: From growth to development: Priorities for sustainably reducing poverty and achieving middle-income status by 2030. World Bank. <https://documents1.worldbank.org/curated/en/585371528125859387/pdf/Liberia-From-growth-to-development-priorities-for-sustainably-reducing-poverty-and-achieving-middle-income-status-by-2030.pdf>

World Bank. (2023, June 27). Investing in youth: Transforming AFE Africa. The World Bank. Retrieved November 7, 2024, from <https://www.worldbank.org/en/news/feature/2023/06/27/investing-in-youth-transforming-afe-africa>

World Bank. (n.d.). Climate change overview. The World Bank. Retrieved November 7, 2024, from <https://www.worldbank.org/en/topic/climatechange/overview>

World Bank. (n.d.). Poverty. The World Bank. Retrieved November 19, 2024, from <https://data.worldbank.org/topic/poverty?end=2022&locations=ZG-1W&start=2000>

World Health Organization. (n.d.). Climate change and health. World Health Organization. Retrieved November 19, 2024, from <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>

Zickgraf, C. (2018). Climate Change and Migration Crisis in Africa. The Oxford Handbook of Migration Crises.

9. Appendix

Correlation matrix from initial modelling:

	Temperature	Precipitation	Emission	GDP	Compulsory Education	Primary Completion	Total Immunization	Malaria Incidence	Basic Drinking Water	Log Unemployment
Temperature	1.000	0.1221	0.1298	-0.6252	-0.3352	0.5427	0.5169	0.6039	0.2015	0.0363
Precipitation	0.1221	1.000	1.000	-0.3858	0.0918	0.2347	0.2985	0.3335	0.0703	0.4505
Emission	0.1298	1.000	1.000	-0.3380	-0.0715	0.8551	0.8671	0.2609	0.3655	0.0500
GDP	-0.6252	-0.3858	-0.3380	1.000	0.4166	-0.5765	-0.5297	-0.7918	0.0053	-0.0760
Compulsory Ed.	-0.3352	0.0918	-0.0715	0.4166	1.000	-0.2088	-0.2032	-0.3788	0.0309	0.0105
Primary Comp.	0.5427	0.2347	0.8551	-0.5765	-0.2088	1.000	0.9435	0.4920	0.1210	-0.1959
Total Immun.	0.5169	0.2985	0.8671	-0.5297	-0.2032	0.9435	1.000	0.4207	0.2579	-0.0327
Malaria Inc.	0.6039	0.3335	0.2609	-0.7918	-0.3788	0.4920	0.4207	1.000	-0.4207	0.1088
Basic Drinking	0.2015	0.0703	0.3655	0.0053	0.0309	0.1210	0.2579	-0.4207	1.000	0.5957
Log Unemploy.	0.0363	0.4505	0.0500	-0.0760	0.0105	-0.1959	-0.0327	0.1088	0.5957	1.000

Optimizing Post-Conflict Recovery and Stability: What are the factors that lead to the Economic Success of Regimes Post Long-Term Cross-National Conflicts in the 21st Century?

Nathan Fernandez

IE School of Economics, Politics & Global Affairs, IE University, Segovia, Spain
E-mail: nfernandez.ieu2023@student.ie.edu

Published January, 2025

Abstract

Cross-national conflicts that occur within a single nation through occupation-style operations often lead to a complicated web of concerns in terms of optimizing future recovery for the region in humanitarian and economic terms. The case of the American invasion of Iraq shows that the initiator of the conflict must begin crafting a recovery plan well in advance with regard to short and long-run goals. In the short run, aid must be adequately supplied whilst collaborating with expert humanitarian bodies in the field with pre-existing mechanisms to deliver said relief. From a more long-run view, knowledge of the conflict nation's key resources and socioeconomic conditions (often with an added historical dimension) is necessary to allow optimal resource management and state-building efforts. Without securing key resources, national borders and competent human resources in key institutions, instability is very likely to persist in the region. This could lead to draining conflict for both the high-income initiator and the relatively weaker occupied state, further weakened by conflict.

Keywords: Post-conflict Reconstruction, Peacebuilding, Foreign Aid, Governance

I. Introduction

Wars place a significant strain on human livelihoods, infrastructure and institutions. There have been at least 22 major conflicts that have at least partly or completely transpired during the 21st century¹. Although many of these conflicts were civil wars, a sizable portion includes cross-country conflict, which has, up until now, had a lasting effect on all parties involved – most significantly on the nation that was the main battleground during the conflict. Once a conflict culminates, these impacts are amplified, as fragile post-war states must find their footing quickly. Part of this

¹ “21st Century Conflicts | Military History Books | Helion & Company,” accessed November 7, 2024, <https://www.helion.co.uk/periods/21st-century.php>.

responsibility may fall on the more domineering world power involved, especially in the case of developed nations' military operations in developing countries. The hurried US departure from Afghanistan most recently left a power vacuum that allowed the oppressive by Western democratic standards Taliban regime to emerge². Additionally, much criticism can be attributed to France's role in Central Africa, which has led to several undemocratic regimes budding as French influence in the region diminishes³

It is important to study successful cases of post-war economic and political planning to replicate elements of these policies that hold constant in different regions and contexts. Although particular cases may vary due to unique country-specific conditions and the nature of the conflict, updated studies on post-war conflict will continue to help interpolate future post-war crisis management. The relevance of this topic is even more urgent when one considers the ongoing conflicts like the Israel-Palestine war, which began on October 7th, 2023 and has now seen Iran and Lebanon enter the fray, threatening to destabilize the whole region. The Russia-Ukraine conflict, which began in February of 2022, is another key example of a conflict that interacts on a deeper level with region-wide security but with its unique underlying causes. These issues will require some form of policy guidance in the short to medium run. Research into the topic that this paper hopes to tackle will add some insight into best practices and how the timing of these best practices is important to their implementation.

A thorough study of cross-border conflicts may also yield potential deviations from measures associated with internal conflicts, given possibly large inequalities between the conflict participants, complications with withdrawal and matters of international diplomacy that may dictate the conflict's direction. More focus on relationships with neighbouring states is a strong area of discussion here that debates over civil wars may not address as strongly, with this study having a lot stronger implications for region-wide prosperity.

2. Literature Review

The issue of post-conflict reconstruction has been widely studied by international organizations and political theorists with frequent amendments, given the evolving nature of the topic across periods and regions.

A bulk of the studies in this field center around civil wars, which, although separate from our topic of cross-country conflicts, still draws some parallels to the general ideas of economic reconstruction and peacebuilding that both situations are trying to address. The work of David et al. in an IMF working paper details the factors that cause cross-country differentials in the growth performance of post-conflict economies⁴. Their quantitative study of 30 Sub-Saharan African

² Saira Akram and Muqarrab Akbar, "US Withdrawal from Afghanistan: Emerging Challenges and Future Prospects," *Global Foreign Policies Review* VI, no. I (March 30, 2023): 97–111, [https://doi.org/10.31703/gfpr.2023\(VI-I\).09](https://doi.org/10.31703/gfpr.2023(VI-I).09).

³ Panira Ali, "FRENCH COLONIALISM TO NEO-COLONIALISM IN MALI: : AN ANALYTICAL STUDY," *Journal of European Studies (JES)* 34, no. 2 (July 2, 2018): 112–29.

⁴ Antonio C David, Fabiano Rodrigues Bastos, and Marshall Mills, "Post-Conflict Recovery: Institutions, Aid, or Luck?," June 2011.

countries indicates that terms of trade have the strongest impact on economic performance amongst recovering countries, which may indicate that trade with neighbours and other external states may in fact be more helpful than aid for recovery purposes when economic growth is the measure under consideration. Terms of trade are followed by institutional quality and exogenous shocks in the study, with exogenous shocks being more impactful when there is a high degree of social division or very weak institutions.

David et al. also highlight a point that Paul Collier and Anke Hoeffler echo - the period right after the termination of conflict produces supra-normal growth⁵. In David et al, this is explained using the Solow growth model and how the destruction of capital stock during conflict leads to the catch-up effect, which produces a rapid growth rate to get back to the steady state, whilst Total Factor Productivity also increases simultaneously. However, this “supranatural” growth window is contingent on several institutional factors being present in the state in question. State governments must be competent in their core functions in order to take adaptive advantage of supranatural growth windows and make the most out of any foreign aid they receive, as per Ndikumana⁶. This same paper delves into the concept of “state-building” to best put into motion sustained growth and tackle government failure that hampers the effectiveness of aid.

One such core function, as per Ndikumana, is “revenue mobilization”, i.e. the ability of the state to generate revenues from domestic resources⁷. This ties into a significant concept often overlooked during the planning of post-conflict transitions, but one that Brown emphasizes heavily - the importance of natural resources. Brown introduces the concept of “lootable” natural resources that open the door to all kinds of illicit activities way past the termination of conflict. These activities may allow combatants to continue acting as “spoilers” or create illegal trade links that could spread across borders. Unjustly exploiting these resources could halt reconstruction and further weaken any institutions left behind⁸. As per Brown, the United Nations has begun using language that acknowledges the role of natural resources in its policy documentation. However, a lack of complementary measures to prosecute or punish offenders adequately could allow resource exploitation to continue. The timber industry in Cambodia and diamonds in Angola are two such examples of unchecked natural resource exploitation that creates a shadow economy, which undermines the institutional stability post-war states require for recovery⁹.

Lastly, the goals of post-conflict economies are a key talking point that the literature covers in different ways. Most of the papers mentioned above consider economic growth as an indicator of success for post-conflict states in their

⁵ Paul Collier and Anke Hoeffler, “Aid, Policy and Growth in Post-Conflict Societies,” *European Economic Review* 48, no. 5 (October 1, 2004): 1125–45, <https://doi.org/10.1016/j.euroecorev.2003.11.005>.

⁶ Léonce Ndikumana, “The Role of Foreign Aid in Post-Conflict Countries,” in *Building Sustainable Peace*, ed. Arnim Langer and Graham K. Brown (Oxford University Press, 2016), 1–3, <https://doi.org/10.1093/acprof:oso/9780198757276.003.0009>.

⁷ Ndikumana, 11–13.

⁸ Kaysie Brown, “War Economies and Post-Conflict Peacebuilding: Identifying a Weak Link,” 1–10, accessed November 7, 2024, <https://journals-sagepub-com.ie.idm.oclc.org/doi/epdf/10.1080/15423166.2006.260470878529>.

⁹ Brown, 11–13.

respective studies. However, additional factors like preventing the re-occurrence of conflict and state-building are some other objectives that nations may apply instead, especially in the short run immediately after the termination of conflict. There are some links between all three of the aforementioned factors. Still, as per Ndikumana, nations could look to pursue aims like state-building early on to ensure political stability without the possibility of conflict. This then leads to growth acceleration in the future, allowing aims to work adjacently. However, distinctive policies at different times reflect the process of prioritizing objectives during post-conflict reconstruction¹⁰.

3. Methodology

This paper will follow a descriptive approach that analyzes the factors surrounding post-conflict reconstruction in Iraq following the withdrawal of American forces in 2011, following their initial entry in 2003. This case has been chosen, as it highlights a long-term conflict in the 21st century, whose post-war reconstruction efforts have been allowed to unfold in a way that has been closely documented. Additionally, the difference in wealth between the two parties and the heavy investment of the United States in efforts to stabilize the Iraqi state captures the essence of this paper's research question. Lastly, given the continued instability in the Middle Eastern region, the policy implications drawn from this case have the potential for near-term application.

Some of the key features of this case study are summarized below:

Criteria	Expected Value
Duration of Conflict	March 2003 to December 2011
Long-Term Effects of Conflict	Regime change
Time Period	21st Century
GDP per Capita Difference between Combatants in 2002	USD 36 743.44 (In 2024 US Dollars)

Table 1. Key Features
Source: Own elaboration

This case will be explored using a similar set of key concepts. Based on the literature review conducted, this would include: foreign aid, state of natural resources, internal policy interventions and external policy interventions from actors like opposing parties or international organizations like the United Nations. These concepts form an outline for dealing with a case study. Still, country-specific conditions may require looking at relevant factors that do not apply to other conflicts or further surveying nuances within the aforementioned key concepts. Summary statistics and graphical data will be paired with the descriptive analysis to give a numerical representation of recovery efforts. Then, a section will be

¹⁰ Ndikumana, "The Role of Foreign Aid in Post-Conflict Countries," 9–11.

dedicated to generalizing the policy implications of the case and discussing different recovery tools along with whether the region or any other factor may have caused varied efficacy of tool performance.

4. Case Study: Second Gulf War

Second Gulf War - (March 2003 - December 2011) - Major Participants: Iraq, United States of America, United Kingdom, Australia

As a part of the United States of America's 'War on Terror' following the 9/11 attacks, US President George W. Bush initiated 'Operation Iraqi Freedom' in March 2003 under the assumptions that Iraq possessed Weapons of Mass Destruction (WMD) and that the state had ties to terrorist group Al-Qaeda. Following the toppling of Saddam Hussein's government, the American government spent a long period of time attempting to stabilize the Iraqi state, following which it began to transition control to Iraqi forces and withdraw between 2009 and 2011. The last American forces withdrew in December 2011, marking a controversial end to direct American involvement in Iraq.

The main basis for this case study is the US's pre-war reconstruction plan and the efforts of the Coalition Provisional Authority (CPA) led by American administrator Paul Bremer from May 2003 to June 2004. Given that the US began detailed post-war reconstruction planning in September of 2002, months before hostilities began, it is clear that they were aware of the significant challenges they would have to overcome to achieve their aim of consolidating a stable Iraqi state following the removal of Saddam Hussein¹¹.

4.1 Short-Term Relief & Security

Several US departments, namely the National Security Council, the Office of Management and Budget, the Department of Defense, and the United States Agency for International Development (USAID), collaborated to implement the early stages of American involvement in Iraq. A key part of this process was collaboration with NGOs and humanitarian bodies like the United Nations (UN) that worked to provide relief to distressed Iraqi regions, partly helped by existing platforms like 'Oil for Food' established by the UN in 1995 and other UNICEF and UNDP agencies that were already operating in Iraq¹². A key part of administering this aid was placed in the hands of the Department of Defense training as reconstruction was attempted to be integrated into military strategy with programs like the training of a 60-man Disaster Assistance Response Team (DART) that played a key role in managing civil-military relations¹³.

¹¹ Roger Mac Ginty, "The Pre-War Reconstruction of Post-War Iraq," *Third World Quarterly* 24, no. 4 (August 2003): 605, <https://doi.org/10.1080/0143659032000105777>.

¹² Tom Coipuram, "Iraq: United Nations and Humanitarian Aid Organizations," March 1, 2003.

¹³ "Briefing on Humanitarian Reconstruction Issues," accessed December 19, 2024, <https://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030224-11.html>.

By 2003, Congress had already approved \$2.3 billion in funds through the Iraq Relief and Reconstruction Fund (IRRF), which aimed to provide immediate relief in regards to essentials like medicines, sustenance and water. The IIRF projects incorporated some of the aforementioned elements of recovery being built into the military, as it also contributed to civilian-military programs like the Sadr city sewage project, one of multiple projects meant to equip post-conflict areas with basic infrastructure along with the fiscal stimulus of employment¹⁴. This dimension, however, was overshadowed by the corruption of institutions set up to deliver it, the misallocation of sources and the lack of security in the region, indicating it was only a short-term measure that was superseded by other long-run factors. Although the immediate positive impacts of foreign aid cannot be underplayed, the literature shows that people need complex economic systems to thrive on a societal level and without the necessary foundations in terms of resource management and state-building, any humanitarian relief will be restricted to being a temporary source of solace.

Additionally, it is hard to discuss this aspect of recovery since a part of the American justification for entry into Iraq was to replace Saddam Hussein's allegedly oppressive regime that had reportedly committed genocide against the Kurds and several other political dissidents¹⁵. Given that, this goal was achieved but at the cost of indefinite violence in the region, it is hard to gauge the success of humanitarian goals fully due to their normative nature.

4.2 Resource Management

Oil is Iraq's key natural resource in terms of domestic use and export revenue generated. In this case, oil serves as a lootable resource that could be easily manipulated to serve the private interests of spoilers instead of the state's betterment. The first and biggest issue in regard to resource management for the US was securing the safety of oil reserves, given the constant attacks on oil sites by rebel parties. In 2004, the northern pipeline was blown up around 37 times, whilst the southern pipelines faced around 10 attacks that year¹⁶. In fact, between 2003 and 2007, there were almost 400 attacks on Iraqi oil infrastructure, indicating the US did not offer adequate protection to these key resource centres with almost \$1.4 billion in damages due to combat and looting in the early stages of the invasion¹⁷.

Aside from the safety aspect of oil management, the Energy Infrastructure Planning Group (EIPG) was established under the Department of Defense to carry out institutional reform in order to restore and maintain Iraqi oil production capabilities. With US support and the presence of capable human capital in the Iraqi oil industry, Iraqi oil production

¹⁴ Bureau of Public Affairs Department Of State. The Office of Electronic Information, "Rebuilding Iraq: U.S. Achievements Through the Iraq Relief and Reconstruction Fund" (Department Of State. The Office of Electronic Information, Bureau of Public Affairs., February 8, 2006), <https://2001-2009.state.gov/p/nea/rls/rpt/60857.htm>.

¹⁵ Thomas Cushman, *A Matter of Principle: Humanitarian Arguments for War in Iraq* (Univ of California Press, 2005), 78.

¹⁶ Dag Harald Claes, "The United States and Iraq: Making Sense of the Oil Factor," *Middle East Policy* 12, no. 4 (2005): 52, <https://doi.org/10.1111/j.1475-4967.2005.00223.x>.

¹⁷ Hideki Matsunaga, *The Reconstruction of Iraq after 2003: Learning from Its Successes and Failures* (World Bank, Washington, DC, 2019), 63–64, <https://doi.org/10.1596/978-1-4648-1390-0>.

soon recovered in terms of volumes whilst still facing internal challenges. The CPA lost faith amongst Iraqi oil officials due to its unpopular decision-making, like the implementation of a “dysfunctional payroll system” and the appointment of an inexperienced minister in September 2003¹⁸. This stopped the CPA from instilling deep seeded change and led to the oil industry, like many others, becoming a field afflicted by corruption. The large oil revenues and capital inflows, in conjunction with poor state-building on the justice front, allowed many officials to engage in corruption with little to no fear of the consequences. The CPA’s various anti-corruption initiatives- The Commission of Integrity (COI) and Offices of inspectors general in 2004, followed by the Joint Anti-Corruption Council in 2007- were all extremely vulnerable to political interference and the lack of autonomy for COI and Offices of inspectors general to conduct independent investigations^{19 20}.

CPA governance did not put into place adequate anti-corruption measures and despite its successes in allowing lucrative private players to enter the Iraqi oil market when they transferred control to the new Iraqi government, the existence of corruption was extremely discouraging for private investment in Iraqi businesses as a whole. In fact, a July 2010 audit found USD 8.7 billion of Development Fund of Iraq (DFI) funds unaccounted for, showing that the problem was not close to being solved even a year before American withdrawal²¹.

4.3 State-Building

Firstly, a key part of the CPA’s was the de-Baathification of Iraq - essentially removing the influence of Saddam Hussein’s Ba’ath party following his overthrow in April 2003. A key criticism of this initiative was the rise in sectarian and ethnic divisions that this campaign created and the “severe human resource constraints” that rendered several key institutions ineffective²². A key example of this is how Interim Governing Council members were elected with “*ethno-sectarian quotas*” that fueled candidates to take strong sectarian stances to appeal to their electorate of focus²³. This not only amplified the existing divisions within Iraqi society but also cemented them in an institutional setting, creating long-term ripple effects.

Part of this ethno-sectarian framework has spread outside of Iraq to its neighbours, given the existence of similar groups in other Middle Eastern nations. Shi’ia groups have found themselves turning to Iran, Kurds have bolstered ties

¹⁸ Matsunaga, 65.

¹⁹ Matsunaga, 86–87.

²⁰ Ali Abbas Kareem, Safa Mahdi Raji, and Basim Abdullah Kadhim, “THE WEAKNESS OF THE ROLE PLAYED BY THE INTEGRITY COMMISSION IN REDUCING THE ADMINISTRATIVE AND FINANCIAL CORRUPTION IN IRAQ AN ANALYTICAL STUDY FOR THE PERIOD OF 2005-2020 (RESEARCH SERIES)” 20, no. 6 (2021): 13–18.

²¹ “U.S. Can’t Account for \$8.7 Billion of Iraq’s Money: Audit,” *Reuters*, July 27, 2010, sec. World, <https://www.reuters.com/article/world/us-cant-account-for-87-billion-of-iraqs-money-audit-idUSTRE66Q556/>.

²² Sansom Aran Milton, “THE NEGLECTED PILLAR OF RECOVERY: A STUDY OF HIGHER EDUCATION IN POST--WAR IRAQ AND LIBYA,” n.d., 194.

²³ Milton, 215–16.

with Turkiye, and Sunnis have found support in Arab nations like Saudi Arabia, Qatar and Jordan. This has allowed the emergence of several militant groups and non-state actors, militias and non-state actors such as ISIS, Ansar al-Sunna, the Mahdi Army and others that destabilize internal politics and also lead to increased polarization in the Middle Eastern region as a whole, as seen through events like the Syrian crisis in 2011, which spilt over into Iraqi political discourse given parts of the Sunni populous's deep connection with the Syrian state²⁴.

Lastly, this division also reflected in key areas of development such as higher education, wherein the CPA was tasked with rebuilding a system where nearly 84% of Higher Education Institutions were destroyed with projected initial Emergency reconstruction costs of \$100 million for tertiary education in 2004, as per the Ministry of Higher Education in Iraq and the UN/World Bank Joint Needs Assessment with an estimated \$1.2 billion spend to fully restore the Iraqi higher education system²⁵. American funding for reconstruction was criticised as it failed to allocate funds on the basis of university-specific needs and failed to invest adequately in physical infrastructure as per university representatives that were interviewed²⁶. A bigger issue was that the US government was using non-competitive contracts to carry out reconstruction, which led to several months of delays due to bureaucratic inefficiency²⁷. In regards to political undercurrents that went into educational reform, the aforementioned de-Baathification process led to several human resource constraints as many qualified academics were dismissed from their positions due to their affiliation with the Ba'ath party. Given that many of these educators held party membership on a nominal basis, the decision to place such a large crunch on the labour force of a restarting economy in education and other fields like the justice system led to the absence of a large proportion of a competent workforce that was left with negative sentiments towards the American project.

5. Generalizing Results

It is clear from the Iraqi case that the involvement of humanitarian organizations in the reconstruction efforts starting from a pre-war position is necessary. The US government did well in beginning to plan reconstruction efforts pre-war in conjunction with integrating reconstruction into military objectives; however, poor liaison with NGOs can seriously stifle positive shifts. It is important for the nation in a position to plan reconstruction to collaborate with specialised

²⁴ "Rebuilding the Iraqi State: The Regional Dimension of Ethno-Sectarian Conflict (2003-2016) - ProQuest," 1–8, accessed December 19, 2024,

<https://www.proquest.com/docview/2189020106/53785F8FAC8041F5PQ/3?accountid=27285&sourcetype=Dissertations%20&%20Theses>.

²⁵ "UN/World Bank Iraq Joint Needs Assessment: Education Sector," 12–16, accessed December 19, 2024,

<https://documents1.worldbank.org/curated/en/898741468262742934/pdf/315360IQ0Educa11Assessment01public1.pdf>.

²⁶ Milton, "THE NEGLECTED PILLAR OF RECOVERY: A STUDY OF HIGHER EDUCATION IN POST-WAR IRAQ AND LIBYA," 214–15.

²⁷ John Agresto, *Mugged By Reality: The Liberation of Iraq and the Failure of Good Intentions* (Encounter Books, 2007), 147.

humanitarian agencies and also take their expert opinions into account on a timely basis. Better aid distribution only improves the chances of allowing long-term institutions to set up by easing the harsh perceptions that inhabitants may have towards foreign powers in the short run. Certain pre-existing mechanisms for aid deployment, if available, should be fully exploited and possibly improved over time due to time constraints and the large administrative burden of starting from scratch.

Another key issue that is extremely relevant to the Middle Eastern case is to be extremely mindful of existing ethnic and religious identity politics in the region in focus. It is important to create a unified identity for the recovering nation and put in place institutions that reflect a shared identity that pervades ethno-sectarian divisions as much as possible. In the case of Iraq, the use of sectarian quotas and decentralization from the central authority gave rise to independent groups that represented partisan interests rather than ambitions for a unified state. A key part of this is prior research on the ethnic and religious composition of a country and its neighbours. Given the literature on crime increasing through cross-border mechanisms during internal conflict and the ethnic leanings towards certain favourable neighbours, securing the borders is essential to creating a vacuum within which stability can be nurtured and shaped with policy. Outside interests serve to dilute intended policy impacts (or reverse them unfavourably) whilst diluting a common identity that is characteristic of building the foundations of stability.

Competent and adequate human capital is a must for the reconstruction and revival of people-centric institutions, especially in developing regions. Implementing a fair justice system is a key part of this process, which enables several other institutions to grow in turn. This idea rests on the economic principle of secure property rights allowing economic growth, as people put in the effort to fully maximise their ownership of resources. However, to power this dynamic high high-quality labour and faith in the system are required. For this reason, any external force must be extremely careful when dealing with supporters of the displaced regime, aiming to avoid political persecution as much as possible. Especially in the context of previously autocratic systems, ground-level members often have no choice but to lend nominal support to the incumbent. The regime must attempt to villainise the ideas they are attempting to replace with their own, but not at the expense of angering the general populace. Early political persecution could further isolate disapproving citizens and also lead to labour constraints in key areas.

6. Conclusion

Therefore, the case study of American intervention in Iraq showcases the need for well-administered aid that is planned in advance and makes use of the expertise of relevant agencies in the humanitarian field. However, to satisfy the long-run concerns of resource management and state building in the literature, there is a strong need for prioritizing the security of resources, securing key labour for foundational institutions and creating a vacuum free from the impacts of

third parties. To optimally execute policies that work towards these goals, the advantaged power must have a comprehensive understanding of regional geopolitics and socioeconomic structures within the nation. It must be emphasised that these findings only stem from one case study and although it captures certain key aspects of conflict in the Middle East that remain common across many cases, a more extensive comparative study would be required to garner findings that more closely resemble the ideal policy in similar scenarios for the region.

7. References

- “21st Century Conflicts | Military History Books | Helion & Company.” Accessed November 7, 2024. <https://www.helion.co.uk/periods/21st-century.php>.
- Agresto, John. *Mugged By Reality: The Liberation of Iraq and the Failure of Good Intentions*. Encounter Books, 2007.
- Akram, Saira, and Muqarrab Akbar. “US Withdrawal from Afghanistan: Emerging Challenges and Future Prospects.” *Global Foreign Policies Review* VI, no. I (March 30, 2023): 97–111. [https://doi.org/10.31703/gfpr.2023\(VI-I\).09](https://doi.org/10.31703/gfpr.2023(VI-I).09).
- Ali, Panira. “FRENCH COLONIALISM TO NEO-COLONIALISM IN MALI: : AN ANALYTICAL STUDY.” *Journal of European Studies (JES)* 34, no. 2 (July 2, 2018): 112–29.
- “Briefing on Humanitarian Reconstruction Issues.” Accessed December 19, 2024. <https://georgewbush-whitehouse.archives.gov/news/releases/2003/02/20030224-11.html>.
- Brown, Kaysie. “War Economies and Post-Conflict Peacebuilding: Identifying a Weak Link.” Accessed November 7, 2024. <https://journals-sagepub-com.ie.idm.oclc.org/doi/epdf/10.1080/15423166.2006.260470878529>.
- Claes, Dag Harald. “The United States and Iraq: Making Sense of the Oil Factor.” *Middle East Policy* 12, no. 4 (2005): 48–57. <https://doi.org/10.1111/j.1475-4967.2005.00223.x>.
- Coipuram, Tom. “Iraq: United Nations and Humanitarian Aid Organizations,” March 1, 2003.
- Collier, Paul, and Anke Hoefler. “Aid, Policy and Growth in Post-Conflict Societies.” *European Economic Review* 48, no. 5 (October 1, 2004): 1125–45. <https://doi.org/10.1016/j.euroecorev.2003.11.005>.
- Cushman, Thomas. *A Matter of Principle: Humanitarian Arguments for War in Iraq*. Univ of California Press, 2005.
- David, Antonio C, Fabiano Rodrigues Bastos, and Marshall Mills. “Post-Conflict Recovery: Institutions, Aid, or Luck?,” June 2011.
- Department Of State. The Office of Electronic Information, Bureau of Public Affairs. “Rebuilding Iraq: U.S. Achievements Through the Iraq Relief and Reconstruction Fund.” Department Of State. The Office of Electronic Information, Bureau of Public Affairs., February 8, 2006. <https://2001-2009.state.gov/p/nea/rls/rpt/60857.htm>.
- Ginty, Roger Mac. “The Pre-War Reconstruction of Post-War Iraq.” *Third World Quarterly* 24, no. 4 (August 2003): 601–17. <https://doi.org/10.1080/0143659032000105777>.
- Kareem, Ali Abbas, Safa Mahdi Raji, and Basim Abdullah Kadhim. “THE WEAKNESS OF THE ROLE PLAYED BY THE INTEGRITY COMMISSION IN REDUCING THE ADMINISTRATIVE AND FINANCIAL CORRUPTION IN IRAQ AN ANALYTICAL STUDY FOR THE PERIOD OF 2005-2020 (RESEARCH SERIES)” 20, no. 6 (2021).
- Matsunaga, Hideki. *The Reconstruction of Iraq after 2003: Learning from Its Successes and Failures*. World Bank, Washington, DC, 2019. <https://doi.org/10.1596/978-1-4648-1390-0>.
- Milton, Sansom Aran. “THE NEGLECTED PILLAR OF RECOVERY: A STUDY OF HIGHER EDUCATION IN POST--WAR IRAQ AND LIBYA,” n.d.
- Ndikumana, Léonce. “The Role of Foreign Aid in Post-Conflict Countries.” In *Building Sustainable Peace*, edited by Arnim Langer and Graham K. Brown, 141–59. Oxford University Press, 2016.

<https://doi.org/10.1093/acprof:oso/9780198757276.003.0009>.

“Rebuilding the Iraqi State: The Regional Dimension of Ethno-Sectarian Conflict (2003-2016) - ProQuest.” Accessed December 19, 2024.

<https://www.proquest.com/docview/2189020106/53785F8FAC8041F5PQ/3?accountid=27285&sourcetype=Dissertations%20&%20Theses>.

Reuters. “U.S. Can’t Account for \$8.7 Billion of Iraq’s Money: Audit.” July 27, 2010, sec. World.

<https://www.reuters.com/article/world/us-cant-account-for-87-billion-of-iraqs-money-audit-idUSTRE66Q556/>.

“UN/World Bank Iraq Joint Needs Assessment: Education Sector.” Accessed December 19, 2024.

<https://documents1.worldbank.org/curated/en/898741468262742934/pdf/315360IQ0Educa11Assessment01public1.pdf>.

Immigrant Integration Policies and Their Impact on Labour Market Dynamics: The Netherlands and The Civil Integration Act

Kees Meijers

IE School of Politics, Economics and Global Affairs, IE University, Madrid, Spain

E-mail: kmeijers.ieu2023@student.ie.edu

Published January, 2025

Abstract

The migration of humans across borders has been a historical and natural phenomenon. However, with the current influx of African and Middle-Eastern immigrants into the European Union (EU) being put at the heart of political discourse, it would seem that this is a 'new' and pressing issue. This research focuses on the history of migration in the Netherlands, the development of its integration policies, and its main current immigrant integration policy; the Civil Integration Act. In this paper, I will conduct a qualitative analysis, discussing the various impacts immigration and integration policies have had on labour market performances through peer-reviewed works and government reports. I find that, while immigrant performance in the labour market improved after the introduction of the Civil Integration Act, they rarely hindered the performance of natives in terms of employment and wage levels. Immigrants are still underperforming natives in the labour market and face structural barriers to integration due to the increasing restrictiveness of the Civil Integration Act. With these results in mind, a policy implication is that the rules for immigrant integration should be lenient, offering a smooth transition into Dutch life, to ensure that immigrants can effectively compete in the labour market. I find that there is no need to restrict immigration and integration on the basis that natives are being negatively affected in terms of labour market outcomes. However, this could be subject to change if immigrants close the gap to natives in the labour market, and compete better as imperfect substitutes.

Keywords: The Netherlands, Immigration, Integration, Labour market, Policy

I. Introduction

Immigration is and has been a prominent aspect of societies and economies. A historically prominent example was the discovery of the New World, which sparked a large outflow of European immigrants to move to what is now, for instance, the United States of America. In a modern context, individuals and families migrate in hopes of greater economic prosperity or to seek asylum abroad due to the threat of prosecution and danger in their own country.

Although migration has been a consistently present aspect of societies, we currently find a surge in anti-immigrant sentiment within Western countries that is closely related to the rise of far-right party movements in the European Union. These right-wing movements play into these sentiments and promise harsh policies to tackle the perceived issues regarding immigration. The country that will be of particular interest to this paper is the Netherlands and their main immigrant integration policy: the Civil Integration Act. A disagreement about immigration policies in the Dutch government within the fourth Rutte cabinet coalition in 2023 led to its collapse in July of that year, prompting an earlier-than-expected 2023 general election (which was expected to take place in 2025). The result of that election was a win for the far-right led by the PVV (Party for Freedom), and consequently, the current right-wing coalition was formed, which as of 2024, comprises three other centre-right and right-wing parties. Since a significant amount of the political discourse during this period was rooted in beliefs such as that immigrants ‘steal’ jobs and ‘leech’ off of welfare systems¹, this paper will discuss the impacts of different integration-centred immigration policies on the Dutch labour market.

2. Literature Review

This paper is motivated by the current discourse around a ‘mass migration’ crisis which motivated the general public to vote for right-wing political parties who take a harsh stance on this political issue. However, we should not take this notion of a ‘mass migration’ crisis as a fact. Dutch sociologist Hein de Haas examines and challenges this misconception on a global level by arguing that, regardless of short-term surges due to unprecedented circumstances such as war, migration at a global scale has been static at ~3% - 4%². In the same work, it is discussed that an estimated 80% of migrants are internal migrants, who do not cross state borders³. So what do the statistics say concerning immigration in The Netherlands? Although global migration has stayed consistent, The Netherlands began experiencing large increases in migration since 2019, with the highest level of immigration being 403,108 people in 2022, a nearly 150,000-person, or 60%, increase from the year before⁴. Furthermore, the immigrants are primarily made up of individuals from Eastern European countries (Such as Ukraine and Poland), as well as Syria, Turkey, and Morocco, who mainly come for labour, asylum, and familial motivations⁵.

We can gain useful insight into the impacts of immigrant integration through studies conducted on other countries in the European Union, which may present parallel insights to the situation in the Netherlands. Literature finds that there is generally a positive impact of integration on immigrant performance in the labour market, however, this impact is

¹ Brian Burgoon and Matthijs Rooduijn, “‘Immigrationization’ of Welfare Politics? Anti-Immigration and Welfare Attitudes in Context,” *West European Politics* 44, no. 2 (February 23, 2021): 177–203.

² Hein de Haas, *How Migration Really Works: 22 Things You Need to Know about the Most Divisive Issue in Politics* (London: Penguin UK, 2024).

³ Haas.

⁴ Statistics Netherlands, “Asylum, Migration and Integration,” 2023.

⁵ Statistics Netherlands.

conditional on other external factors such as labour market mobility⁶. While integration policies are beneficial as they in themselves improve the capacity of immigrants to perform efficiently in the society where they are settling, naturalisation is also a relevant factor. These integration policies, if they can facilitate the naturalisation of immigrants, are even more effective⁷. Furthermore, the more immigrant naturalisation is delayed, the more the usefulness of obtaining their citizenship decreases over time⁸. Naturalisation offers immigrants a stable status within a country, thus the longer they must stay in a state of ‘instability’ the longer they must suffer inefficiencies and consequences. For example, processes of home ownership and applying for benefits are streamlined by obtaining citizenship, but the effectiveness of citizenship in these regards seems to reduce as naturalisation is delayed. This not only foregrounds the importance of integration policies, and streamlining naturalisation processes, but it also highlights the urgency of these policies.

We must also discuss the common talking point in the political side of the discourse that asserts that immigrants steal or hinder access to jobs. Haas discusses this point by using a 2017 report by the US National Academy of Science which argues against these statements. It is found that there is virtually no impact on general employment in the labour market. However, if any impacts were to occur, they would statistically impact low-skilled jobs more. This is what would be expected given the origin of the immigration influx to the Netherlands. The countries of origin of immigrants mentioned previously, are typically those with lower levels of human capital. Therefore, we would expect immigrants coming from these countries to be competing for lower-skilled jobs. Interestingly, for Western European countries, the influx of immigration was found to have a positive impact on the wages of native workers⁹. Similar results are also found in research conducted in Europe regarding impacts on employment levels¹⁰. The primary reason for this result in these cases was that immigrants tended to complement the inefficiencies and vacancies of the domestic labour market¹¹. In other cases, however, some studies did find that low-income worker wages were impacted by immigration, although this impact is also mixed as there were small increases in the wages of high-income earners¹².

3. Methodology

Having outlined the pertinent arguments and literature surrounding the topic, I will describe the methodology this paper will use to discuss the topic at hand. This paper will conduct a descriptive analysis of the Civil Integration Act, a Dutch immigration integration policy, which will be explained further in the research. To properly understand the context of

⁶ Dr Özge Bilgili, Thomas Huddleston, and Anne-Linde Joki, “The Dynamics between Integration Policies and Outcomes: A Synthesis of the Literature,” 2015.

⁷ Bilgili, Huddleston, and Joki.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Haas.

this policy, however, we will also outline the history of Dutch migrant integration policies. This will give us the baseline knowledge of the history of immigration and policymaking in The Netherlands, to properly understand the policy which will be discussed. This research aims to see how labour market dynamics were impacted as a result of this policy. This entails looking at literature and analyses conducted on the Dutch labour market, and not only understanding how immigrants have performed in the labour market, but how the performance of 'locals' has also been affected. As a result, I wish to provide a detailed and bipartisan view on this controversial policy and topic of political discourse, in hopes of potentially synthesising possible policy recommendations.

4. The History of Dutch Integration Policies

While this section does not provide a detailed analysis of the development of Dutch immigrant integration policies over time, it should provide sufficient context to understand the current state of immigration policy.

In the 1970's the Netherlands did not regard itself as a country which attracted a lot of immigrants, and consequently, no structured policies were put in place to provide integration routes for immigrants which the Dutch government expected only to keep on a short-term basis. Nevertheless, A growing fear that this would permanently marginalise immigrants that remained put pressure on the Dutch government to initiate their Ethnic Minority (EM) policies in 1980¹³. These EM policies tackled three main issues: unemployment, housing, and education. For example, legislation was changed to allow residing immigrants access to social housing, which made up the largest proportion of housing in The Netherlands at the time. However, these initial policies still received heavy criticism because they produced little amount of progress for immigrants in the domains of education and labour market opportunities/performance¹⁴.

It was in the 1990s that amendments were made to this first attempt at immigrant integration policies. Ideologies that had anti-immigration policies as a part of their political stance began gaining traction at the same time, which led to greater restrictions on refugee entrance and immigration¹⁵. Simultaneously, integration policies were now aimed less at groups of people and were now more area-focused¹⁶. Although these amendments improved the efficiency and performance of the integration policies, there were still flaws specifically on paths to citizenship. This is where the introduction of the Civil Integration Act came in.

¹³ María Bruquetas-Callejo et al., "Policymaking Related to Immigration and Integration. The Dutch Case.," *IMISCOE*, 2007.

¹⁴ Bruquetas-Callejo et al.

¹⁵ Joop Hartog and Aslan Zorlu, "Migration and Immigrants," 2001.

¹⁶ Bruquetas-Callejo et al.

5. The Civil Integration Act

Although integration procedures and policies did exist prior, it was only in 2007 when the Civil Integration Act (or *Wet Imburgering* in Dutch) was introduced. This is the current law in The Netherlands which requires permanently residing immigrants to pass the *imburgering* or integration test, to obtain citizenship. Within three years of their arrival to The Netherlands, immigrants must pass this integration program which consists of a Dutch language test, understanding Dutch society, and actively partaking in civic life. In this case, understanding Dutch society pertains to understanding certain aspects such as culture, laws and history. By understanding these aspects of Dutch life, this difficult and structured process theoretically integrates immigrants into Dutch society easily, ensuring they can perform efficiently in society and the Dutch economy. However, when it comes to the implementation of strict integration rules and requirements, the Integration Act faces some shortcomings.

5.1 Amendments and Controversies

Since its introduction in 2007, the policy has undergone many revisions and has been subject to political and social scrutiny. The most recent and significant amendments were made in 2022, however as of 2024, it is too early to truly understand the impacts of these reforms. One controversial amendment is the language requirement being raised from only needing an A2 level of Dutch, to now needing a B1 level¹⁷. The controversy surrounding this amendment will be discussed in section 6, where we see the potential negative consequences of the stricting of integration policies within the country.

Furthermore, while asylum seekers are offered financial support for their integration process, migrant families do not. Since these migrant families are most likely at a low socioeconomic status, they are disproportionately impacted by the financial burden of having to integrate. This makes it more difficult for these families to comfortably integrate to qualify for citizenship, while still maintaining a quality standard of living. Not only is the test difficult to pass, which hinders the capability of immigrants to enter the labour market, but the financial sanctions (a fine of up to €1000) for not passing further destabilise their lives. As such, immigrants are disproportionately at risk of losing housing and suffering from a loss of productivity. Therefore, their unstable socioeconomic status could be undesirable for employers, thus hindering the labour market opportunities of immigrants.

6. Changing Labour Market Dynamics

The current literature studying the impact integration has on labour market dynamics, naturally, focuses on the performance of immigrants and other minorities. This is because integration policies and their efficacy solely depend on

¹⁷ Lot Roodenburg, “Bridging the Gap in Integration: A Qualitative Study of the Municipal Integration Management of the Dutch Integration Act of 2021 and the Integration Experiences of Newly Arrived Migrants” (Tilburg University, 2024).

how they impact the labour market performance of the social constituencies they are targeted towards. However, in this paper, we wish to also evaluate if and to what extent natives are impacted by the introduction of integration policies. Is the integration of immigrants a threat to the locals?

6.1 Immigration and Labour Market Dynamics before the Civil Integration Act

To utilise the understanding developed in section 4, we will first introduce findings to answer the aforementioned question preceding the Civil Integration Act. One report finds that only low-skilled Dutch labour was adversely impacted by the influx of immigration¹⁸. However, an extremely important caveat is that this impact was largely attributed to Western immigrants rather than Turkish and Moroccan immigrants¹⁹, who in contemporary political discourse in the Netherlands are the main targets of anti-immigrant sentiment. Our analysis of how integration policies and immigration impact labour market dynamics is rooted in the common anti-immigrant sentiment that they are replacing natives in the workforce. However, this finding presents a new potential scope of analysis of why anti-immigrant sentiment has flourished, and the answer is cultural nativism. It is not the threat of all immigrants but rather an “intense opposition to an internal minority that is seen as a threat to the nation due to its ‘foreignness’”²⁰ which is why Turkish and Moroccan immigrants are targeted in political discourse. In a 2004 study published in the *European Review*, Roodenburg et al. studied how immigration impacts the income levels and overall performance of natives in the Dutch labour market. The influx of immigration did not seem to have much of an effect on the income levels of locals, in any case, and the statistically significant impact on income seen was a positive one²¹. Furthermore, a 2006 meta-analysis conducted on 23 European countries found that the “decline in native-born employment following a 1 per cent increase in the number of immigrants is a mere 0.024 per cent”²². This seems to be consistent with the findings reported in the literature review previously, which appears to be antithetical to the rhetoric of anti-immigrant parties in the Netherlands and Western Europe generally. However, this precedes the introduction of the Civil Integration Act as we see it in contemporary Dutch society. Moreover, since the publication of these studies, immigration has grown in aggregate in Europe and the Netherlands, potentially making these findings outdated and less applicable. Therefore, we should consider more recent reports to discuss whether introducing structural integration policies changes this outcome.

¹⁸ Aslan Zorlu, “Absorption of Immigrants in European Labour Markets. The Netherlands, United Kingdom and Norway,” January 1, 2002.

¹⁹ Zorlu.

²⁰ Josip Kešić and Jan Willem Duyvendak, “The nation under threat: secularist, racial and populist nativism in the Netherlands,” *Patterns of Prejudice* 53, no. 5 (October 20, 2019): 441–63.

²¹ Hans Roodenburg, Rob Euwals, and Harry Terrele, “Effects of Immigration on Labour Markets and Government Budgets: The Case of the Netherlands,” *European Review* 12, no. 3 (July 2004): 377–98.

²² S. Longhi, P. Nijkamp, and J. Poot, “The Impact of Immigration on the Employment of Natives in Regional Labour Markets: A Meta-Analysis,” *IZA Institute of Labor Economics Discussion Paper Series*, March 1, 2006.

6.2 Immigration and Labour Market Dynamics after the Civil Integration Act

A 2023 study published by the Journal of Ethnic and Migration Studies finds pertinent results concerning the whole of the EU. Less restrictive migration and integration policies are associated with reducing labour market disadvantages for immigrants²³. Although a general finding for the EU, this does support an assertion made in the previous section concerning the strictening of the Civil Integration Act policies. In making the requirements of integration through the Civil Integration Act stricter (for example, by increasing the minimum language level requirement) immigrants will find it more difficult to integrate and compete in the labour market effectively against natives. Thus, less restrictive integration will allow immigrants on average to compete more effectively in the labour market. However, we should ask if this has any bearing on how natives perform. The same 2023 study from the Journal of Ethnic and Migration Studies finds that, as the competitiveness of immigrants in the labour market increases, there is some hindrance to incumbent natives²⁴. When consulting more studies on the overall impact of immigration on wages across the US and EU, we find mixed results, sometimes positive, negative and no influence²⁵. Overall, the mixed results in the literature we have discussed thus far concerning the US and EU generally point to the fact that the influx of immigrants does not concretely hinder native workers for the most part. There exist some situations where they impact low-skilled native workers. These situations align with the literature review, as immigrants would act as imperfect substitutes for low-skilled work due to the fact that they come from countries with lower levels of human capital. However, the true extent of this impact warranting restrictive reforms on immigration and their integration is questionable. Nevertheless, regardless of whether we consider earlier reports or more recent ones, we find that immigration and integration do not hinder natives in the labour market. Following a cohort since 2007, a report finds that only 40% of individuals following the Civil Integration Act track were employed as of 2022, and most are struggling to complete the track due to the increasing restrictiveness of the rules²⁶. It is reasonable to assume that immigrants are not effectively acting as imperfect substitutes to native workers and thus hindering them, as they are still underperforming compared to those without an immigrant background in the labour market²⁷. Although we find that employment levels for immigrants in the Netherlands are rising as of the introduction of the Civil Integration Act as a means of structural integration, until they close the gap to natives in the labour market,

²³ Martin Guzi, Martin Kahanec, and Lucia Mýtna Kureková, "The Impact of Immigration and Integration Policies on Immigrant-Native Labour Market Hierarchies," *Journal of Ethnic and Migration Studies* 49, no. 16 (October 2, 2023): 4169–87.

²⁴ Guzi, Kahanec, and Mýtna Kureková.

²⁵ Christian Dustmann, Uta Schönberg, and Jan Stuhler, "The Impact of Immigration: Why Do Studies Reach Such Different Results?," *Journal of Economic Perspectives* 30, no. 4 (November 2016): 31–56; "The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market*," *The Quarterly Journal of Economics* 118, no. 4 (November 1, 2003): 1335–74; Card, "Immigration and Inequality," *American Economic Review* 99, no. 2 (May 2009): 1–21.

²⁶ Annemieke Mack et al., "Inburgeraars Onder de Wi 2007," *Regioplan*, December 22, 2022.

²⁷ Martine de Mooij, Dion Dieleman, and Sabrina de Regt, "Jaarrapport Integratie" (The Netherlands: Centraal Bureau voor de Statistiek, 2020).

immigrants will most likely not be able to compete at a level which hinders natives. Quantitative research focusing solely on the Netherlands seems to be lacking, thus we must review studies conducted on other countries in the EU to infer and suggest policy implications accordingly. As discussed in the literature review, broader studies on the EU support the idea that immigrants are not effectively acting as direct competitors to native workers in the labour market. Instead, they fill in vacancies which seems to have a slight positive effect on the wages of native workers.

7. Conclusion

This paper comes at a time when anti-immigrant sentiment is flourishing in political discourse and has successfully secured a majority of seats and thus a great deal of power in the Dutch parliament. We initially discussed the history of immigration and integration policies in the Netherlands, which provided us with a contextual framework to understand how the current influx of immigration could influence the labour market. Preceding the introduction of the Civil Integration Act, we find that the influx of immigration in the Netherlands had no major influence on the labour market. Theory and literature suggest that a structural integration program would allow immigrants to perform more efficiently in the country's labour market, possibly posing themselves as imperfect substitutes for native workers. However, when conducting a qualitative review of the existing literature concerning the Netherlands, the EU, and the USA, we find limited evidence that the integration of immigrants is currently posing a threat to natives in the labour market..

Related to this, an important finding suggests that the more restrictive integration into a country, the worse immigrants following the integration plan perform economically. Therefore, I would suggest that as long as immigrants are still underperforming in comparison to natives in the labour market, we should continue to focus on their integration. Therefore, the Dutch government should foster smoother and more efficient integration, through an easing of the Civil Integration Act to have immigrants perform as effectively as possible in Dutch society. Furthermore, the success of the act in question still needs to be investigated due to the underperformance of immigrants. Therefore the government should potentially pair the Integration Act with appropriate financial benefits or educational aid. This ensures that immigrants are following the integration policy effectively, without being hindered financially. However, further research should be maintained focusing on the performance of natives in European countries, to see if they would be negatively impacted if immigrants were to close the gap to them in the labour market. Moreover, quantitative analysis of the labour market performance of natives at a country-specific level could yield insightful results on policy-specific impacts on labour market dynamics.

8. Bibliography

- Bilgili, Dr Özge, Thomas Huddleston, and Anne-Linde Joki. “The Dynamics between Integration Policies and Outcomes: A Synthesis of the Literature,” 2015.
- Borjas, George J. “The Labor Demand Curve Is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market*.” *The Quarterly Journal of Economics* 118, no. 4 (November 1, 2003): 1335–74. <https://doi.org/10.1162/003355303322552810>.
- Bruquetas-Callejo, María, Blanca Garcés-Mascareñas, Rinus Penninx, and Peter Scholten. “Policymaking Related to Immigration and Integration. The Dutch Case.” IMISCOE, 2007.
- Burgoon, Brian, and Matthijs Rooduijn. “‘Immigrationization’ of Welfare Politics? Anti-Immigration and Welfare Attitudes in Context.” *West European Politics* 44, no. 2 (February 23, 2021): 177–203. <https://doi.org/10.1080/01402382.2019.1702297>.
- Card, David. “Immigration and Inequality.” *American Economic Review* 99, no. 2 (May 2009): 1–21. <https://doi.org/10.1257/aer.99.2.1>.
- Dustmann, Christian, Uta Schönberg, and Jan Stuhler. “The Impact of Immigration: Why Do Studies Reach Such Different Results?” *Journal of Economic Perspectives* 30, no. 4 (November 2016): 31–56. <https://doi.org/10.1257/jep.30.4.31>.
- Guzi, Martin, Martin Kahanec, and Lucia Mýtna Kureková. “The Impact of Immigration and Integration Policies on Immigrant-Native Labour Market Hierarchies.” *Journal of Ethnic and Migration Studies* 49, no. 16 (October 2, 2023): 4169–87. <https://doi.org/10.1080/1369183X.2023.2207339>.
- Haas, Hein d. *How Migration Really Works: 22 Things You Need to Know about the Most Divisive Issue in Politics*. London: Penguin UK, 2024.
- Hartog, Joop, and Aslan Zorlu. “Migration and Immigrants,” 2001.
- Kešić, Josip, and Jan Willem Duyvendak. “The Nation under Threat: Secularist, Racial and Populist Nativism in the Netherlands.” *Patterns of Prejudice* 53, no. 5 (October 20, 2019): 441–63. <https://doi.org/10.1080/0031322X.2019.1656886>.
- Longhi, S., P. Nijkamp, and J. Poot. “The Impact of Immigration on the Employment of Natives in Regional Labour Markets: A Meta-Analysis.” IZA Institute of Labor Economics Discussion Paper Series, March 1, 2006. https://www.semanticscholar.org/paper/The-Impact-of-Immigration-on-the-Employment-of-in-A-Longhi-Nijkamp/065ffd79670594376531183d2e9b8ecf6fb184d1?utm_source=consensus.
- Mack, Annemieke, Gianni van den Braak, Job Velseboer, Johanneke Rog, and Miranda Witvliet. “Inburgeraars Onder de Wi 2007.” Regioplan, December 22, 2022.
- Mooij, Martine de, Dion Dieleman, and Sabrina de Regt. “Jaarrapport Integratie.” The Netherlands: Centraal Bureau voor de Statistiek, 2020.
- Roodenburg, Hans, Rob Euwals, and Harry Terrele. “Effects of Immigration on Labour Markets and Government Budgets: The Case of the Netherlands.” *European Review* 12, no. 3 (July 2004): 377–98. <https://doi.org/10.1017/S1062798704000328>.
- . “Effects of Immigration on Labour Markets and Government Budgets: The Case of the Netherlands.” *European Review* 12, no. 3 (July 2004): 377–98. <https://doi.org/10.1017/S1062798704000328>.
- Roodenburg, Lot. “Bridging the Gap in Integration: A Qualitative Study of the Municipal Integration Management of the Dutch Integration Act of 2021 and the Integration Experiences of Newly Arrived Migrants.” Tilburg University, 2024.
- Statistics Netherlands. “Asylum, Migration and Integration,” 2023. <https://www.cbs.nl/en-gb/dossier/asylum-migration-and-integration/how-many-people-immigrate-to-the-netherlands->
- Zorlu, Aslan. “Absorption of Immigrants in European Labour Markets. The Netherlands, United Kingdom and Norway,” January 1, 2002.

https://www.academia.edu/22326844/Absorption_of_immigrants_in_European_labour_markets_The_Netherlands_United_Kingdom_and_Norway.

From Overdependence to Independence: European Policy Frameworks for Semiconductor Supply Chain Resilience

Richard Glatter

IE School of Politics, Economics & Global Affairs, IE University, Segovia, Spain

E-mail: rglatter.ieu2023@student.ie.edu

Published January, 2025

Abstract

This paper explores the European Union's ongoing journey towards greater semiconductor independence in times of supply chain vulnerabilities and rising geopolitical tensions. With a focus on key initiatives such as the European Chips Act or the Critical Raw Materials Act, this paper explores how such policy frameworks can aid in strengthening Europe's position in the global semiconductor industry. This paper's analysis highlights the importance of diversifying the sources for critical raw materials in the semiconductor production, investing in modern manufacturing technologies and fostering a skilled labour force which meet the ever rising standard of the industry. It also identifies the need for closer cooperation & coordination between EU member states and industry partners for the successful implementation of these measures.

The findings suggest that, while complete self-sufficiency and independence remains a distant hope due to the increasingly globalised nature of the industry, the EU's far reaching strategies can significantly reduce the reliance on foreign suppliers. Overall, by balancing policy frameworks, taking into account raw materials, and technological innovation, Europe can move towards a more competitive, resilient and independent semiconductor industry.

Keywords: Semiconductor sovereignty, EU supply chain resilience, European Chips Act, Raw material dependencies

I. Introduction

Semiconductors are the heart and brain of our current technology, they are of utmost importance for a plethora of global industries and are the most crucial component used in powering the devices and various systems we use in our daily life. From smartphones, computers or headphones to military machinery, medical equipment and even rockets these tiny chips, whose physical size often remains within a few millimetres, with gates and transistors even being measured and produced on the nanometer scale, are at the heart of innovation and act as the scaffold for many current and future innovations¹.

Before diving deeper into the economic and geopolitical aspects of the semiconductor industry it is important to understand what these semiconductors are. Semiconductors are essentially materials with conductive properties making them essential for the production of more advanced circuits or chips². The primary component of modern semiconductors is silicon which is one of the most common resources within the Earth's crust and often derived from sands or smaller rocks. Although Silicon is the most important resource the production process further relies on rare metals such as Cobalt, Germanium or Gallium as well as certain gases such as nitrogen, helium and argon³.

The production of such Semiconductors is highly complex and based on several production steps such as wafer fabrication, lithography and etching. The machines required for the production are not only vastly expensive but also scarce, being produced by only a few firms across the globe, with the most advanced machines being built by ASML, a Dutch company, whose latest machine costs around €350 million and weighs as much as two Airbus A320s⁴. The technological ability of producers in the semiconductor industry is often measured in their ability to minimise the size gate length of transistors on the wafer, with a smaller size allowing for increased density of transistors in a chip. Current production by TSMC and Samsung reaches sizes between 5 nm and 3 nm placing them ahead of the vast majority of the industry which lies at around 20 nm. Overall the complexity of this production process makes this industry into one of the most challenging and resource intensive industries in the world⁵.

¹ Katarina Nikolic, Matthew J Forshaw, and Ramon Compañó, "The Current Status of Nanoelectronic Devices," World Scientific, February 1, 2003, <https://doi.org/10.1142/s0219581x03001048>.

² Hwaiyu Geng and Lin Zhou, "How Semiconductor Chips Are Made," 2005, <http://arantxa.ii.uam.es/~die/%5BLectura%20ASICs%5D%20How%20semiconductor%20and%20chips%20are%20made.pdf>.

³ Gunnar Halvorsen and Gunnar Schüssler, "Sustainable Silicon Production," September 26, 2003, 495–508, <https://doi.org/10.1002/9783527619924.ch80>.

⁴ Cagan Koc, "ASML Shows off Chipmaking Machine behind AI Shift," Bloomberg.com (Bloomberg, February 9, 2024), <https://www.bloomberg.com/news/articles/2024-02-09/asml-shows-off-380-million-165-ton-machine-behind-ai-shift>.

⁵ Jordan Lorence, "Understanding Semiconductor Technology Nodes: From 10nm to 3nm and Beyond," Mrlcg.com (MRL Recruitment, October 31, 2024), <https://www.mrlcg.com/resources/blog/understanding-semiconductor-technology-nodes--from-10nm-to-3nm-and-beyond/>.

The Covid-19 pandemic highlighted the vulnerability and fragility of the semiconductor industry, with the rapidly arising distribution issues in its global supply chain⁶. While these disruptions faded into obscurity in tandem with the Covid-10 Pandemic they had the long lasting effect of highlighting the shocking reliance of many nations, especially in Europe, on only a small collection of major producers, most of which operate in East Asia, with Taiwan, South Korea, Japan and China being the predominant producers⁷. While the disruptions of the Covid-19 pandemic faded into obscurity others moved into the spotlight, particularly the rising tensions between China and Taiwan, with Taiwan currently being the world's largest supplier of semiconductors producing well over 50% of the global supply while also being the primary supplier for major western companies like Apple or Qualcomm⁸. The repeated threat of major supply chain disruptions which may even exceed the extends of the Covid-19 Pandemic highlighted the vulnerability of many nations to sustain their domestic demand for semiconductors and sparked various movements within individuals nations and even supranational organisation like the European Union (EU) to strive for improved semiconductor independence, with the goal of enhancing their own economic resilience to such supply shocks⁹.

The European Union, currently produces roughly 10% of the world's semiconductors, a significant decline compared to the previous decades in which European Companies like Infineon, NXP and STMicroelectronics were significant players in this global market¹⁰. In response to this rapid decline in market share and with the recognition of the strategic importance of such Semiconductors the EU and its member countries have launched several initiatives such as the Alliance on Processors and Semiconductor Technologies, the IPCEI on microelectronics and communication technologies and most importantly the European Chips Act. While there are various initiatives the European Chips Act stands out in particular with a clear commitment to “reinforce the semiconductor ecosystem in the EU” with the goal of more resilient supply chains and a reduction of foreign dependencies¹¹. However the overshadowing and aspirational goal of a 20% global market share by the end of the decade stands out in particular and marks a key step for the EU in reaching their technological sovereignty. These efforts will presumably also have far reaching effects beyond the

⁶ Antonio Varas et al., “Strengthening the Global Semiconductor Supply Chain in an Uncertain Era,” BCG Global, March 28, 2021, <https://www.bcg.com/publications/2021/strengthening-the-global-semiconductor-supply-chain>.

⁷ Cryille Schweltnus et al., “Global Value Chain Dependencies under the Magnifying Glass,” OECD, 2024, https://www.oecd.org/en/publications/global-value-chain-dependencies-under-the-magnifying-glass_b2489065-en.html.

⁸ Bradley Martin et al., Supply Chain Interdependence and Geopolitical Vulnerability: The Case of Taiwan and High-End Semiconductors, Rand.org (RAND Corporation, 2023), https://www.rand.org/pubs/research_reports/RRA2354-1.html?utm_campaign=&utm_content=1678728781&utm_medium=rand_social&utm_source=twitter.

⁹ Jordan Bish, “A New Dawn for European Chips,” Deloitte Insights, n.d., <https://www2.deloitte.com/us/en/insights/industry/technology/semiconductor-chip-shortage-supply-chain.html>.

¹⁰ European Commission, “European Chips Survey | Shaping Europe’s Digital Future,” digital-strategy.ec.europa.eu, August 4, 2022, <https://digital-strategy.ec.europa.eu/en/library/european-chips-survey>.

¹¹ European Commission, “European Chips Act | Shaping Europe’s Digital Future,” digital-strategy.ec.europa.eu, 2023, <https://digital-strategy.ec.europa.eu/en/policies/european-chips-act>.

semiconductor industry, with a more technologically advanced EU economy and industry ensuring competitiveness in rising technologies such as Artificial Intelligence (AI), autonomous vehicles or 5G technology¹².

As the vanguard for this push for technological sovereignty, Germany as the current largest economy in Europe, has taken a somewhat exemplary position in this endeavour. The German government has provided significant subsidies in the industry to attract investments from major semiconductor manufacturers. The largest of these investments facilitated through government subsidies is done by Intel. In exchange for a substantial subsidy of roughly €10 billion Intel announced the construction of a “mega-fab” in Magdeburg, Saxony Anhalt, which would see a total investment of about €30 billion into the country, marking the single largest foreign direct investment in the country's history¹³. And while as of recently this construction has been postponed by 2 years, its completion would significantly contribute to the country's and the EU's independence. Intel's investment in Germany would also not be the only one, with Global Foundries, Infineon, Bosch, ESMC and even TSMC announcing plans and investments in the country. Other countries such as France and the Netherlands have also increased their efforts in bolstering domestic production, with the Dutch company ASML, which leads in the production of lithography machines, in particular receiving several subsidies for research and development purposes given its vital role in the industry¹⁴.

In spite of the various efforts by the EU and its member states, achieving complete independence in semiconductor production remains a daunting task given the globalised and specialised nature of the industry. For instance Silicon, the primary component of wafers and semiconductors, is to large parts produced by China with Europe being one of its main buyers¹⁵. The EU has several projects underway which aim increase its production capacity of silicon as part of the Critical Raw Materials Act, from raw extraction like with the Silicium de Provence project (SilPro) in France or the expansion of mines in Spain through ERIMSA and Sibelco to Silicon recovery efforts through circular economy frameworks¹⁶. With estimates indicating that the European demand will rise to 2 million tonnes of silicon (99.99%) by 2030 such efforts would not suffice in significantly lowering the reliance on foreign imports which in return would weaken extended semiconductor independence despite improvements in the production facilities in the EU¹⁷. This

¹² European Commission, “European Industrial Strategy,” [commission.europa.eu](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en), 2022,

https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en.

¹³ Mathis Richtmann and Aline Spantig, “US Intel's Factory Delay Adds to Germany's Economic Woes,” [dw.com](https://www.dw.com/en/us-intels-factory-delay-adds-to-germanys-economic-woes/a-70241739) (Deutsche Welle, September 17, 2024), <https://www.dw.com/en/us-intels-factory-delay-adds-to-germanys-economic-woes/a-70241739>.

¹⁴ Jerome Hull, “Semiconductor Industry in Germany,” www.gtai.de, 2023,

<https://www.gtai.de/en/invest/industries/industrial-production/semiconductors>.

¹⁵ Arthur Little, “Strategizing for Growth While Building Resilience in the Rapidly Evolving Industry 2024,” 2024,

https://www.adlittle.com/sites/default/files/reports/ADL_Localizing_global_semiconductor_2024_0.pdf.

¹⁶ SilPro, Sibelco.com, 2022, <https://www.sibelco.com/en/news/sibelco-expands-silica-sand-reserves-in-the-north-of-spain>.

¹⁷ European Institute of Innovation and Technology, “EIT RawMaterials Invests in German Silicon Recycling Start Up,” EIT

RawMaterials - Developing raw materials into a major strength for Europe, September 19, 2023,

<https://eitrawmaterials.eu/press-releases/eit-rawmaterials-accelerates-green-transition-strategic-investment-silicon-recycling>.

pattern repeats itself for other rare metals such as gallium or germanium, required in the production process of advanced semiconductors which are also subject to similar vulnerabilities in terms of supply.

Europe's strive for independence might have other ulterior motives beyond minimising risks in the supply chain and overdependence. As hinted towards earlier such efforts as outlined above would also have the potential to secure Europe's position in the global technological race, with semiconductors being the foundation of many emerging technologies such as AI, robotics and even quantum computing¹⁸. Through investments in domestic semiconductor production Europe ensures that it remains on par with the technological innovation and does not fall behind other major powers.

Increasingly Semiconductors have moved into the frame of national security concerns. From radar systems or military vehicles to missile guidance systems such as the Javelin system currently in use in Ukraine, semiconductors have become increasingly important if not essential for modern warfare. With recent geopolitical uncertainties the access to semiconductors for use in defence systems has become imperative for nations, akin to a strategic resource which requires secure and reliable access¹⁹.

Overall, Europe's efforts towards semiconductor independence is a crucial economic and strategic move for the European Union and its member states. While complete independence may be unattainable due to the intertwined nature of the global supply chain, significant progress towards a reduction of reliance on foreign suppliers can be made, improving economic resilience. By investing in domestic production capabilities, promoting technological innovation and implementing supporting policies Europe can position itself as an increasingly self-sufficient and competitive player in the global semiconductor industry. The goal of this research is to explore the various strategies employed by the EU and individual countries and evaluate their potential impact on semiconductor independence in both a theoretical and empirical context.

2. Thesis

Achieving greater semiconductor independence is an essential and strategic goal for the European Union and its member states, particularly in light of increasing geopolitical tensions, supply chain disruptions as seen during the COVID-19 pandemic, and the growing significance of semiconductors in modern economies and national security. This paper argues that strengthening supply chain resilience is crucial for the EU to achieve this independence. By enhancing domestic production capabilities, fostering technological innovation, diversifying supply sources, and implementing appropriate policy frameworks, the EU can significantly reduce its dependence on major foreign suppliers, thereby promoting

¹⁸ Kearney, "Europe's Urgent Need to Invest in a Leading-Edge Semiconductor Ecosystem - Article," Kearney, February 2022, <https://www.kearney.com/industry/technology/article/-/insights/europes-urgent-need-to-invest-in-a-leading-edge-semiconductor-ecosystem>.

¹⁹ Sujai Shivakumar and Charles Wessner, "Semiconductors and National Defense: What Are the Stakes?," www.csis.org, June 8, 2022, <https://www.csis.org/analysis/semiconductors-and-national-defense-what-are-stakes>.

economic resilience and bolstering both economic and national security. Furthermore, this paper will show how reinforcing supply chain resilience and economic independence is not only a matter of resilience and competitiveness but also a measure to keep Europe at the forefront of technological innovation in emerging technology markets.

3. Literature Review

The semiconductor industry is one of the most important industries of the present and the foreseeable future, being the driving force behind technological advancements and many global industries. The following literature review will aim to provide a comprehensive review of the existing literature on this topic and will point out several key topics and themes that are relevant for deeper understanding on how the EU can achieve greater semiconductor independence.

The paper by Poli (2023) explores the importance of the EU achieving semiconductor sovereignty, highlighting the need for a higher degree of independence from foreign nations. The paper highlights the EU's dependency on foreign semiconductors and how Covid-19 and the rise of geopolitical tensions exposed the vulnerabilities faced on such an overreliance on foreign suppliers. Particularly the paper underscores how the overreliance on East Asia, particularly Taiwan, limits Europe's capacity to sustain and supply its strategic industries, ranging from telecommunications or energy to the defence industry. The paper emphasises that becoming more independent within the semiconductor industry is not only a matter of economic resilience or becoming more technologically sovereign, but also a matter of geopolitical security in an ever more uncertain world²⁰.

The issue brief by Khan et al. (2021) takes an in depth look at the complex supply chains of the semiconductor industry, pointing out the current global interdependence at each and every step of the supply chain, from research and development to production and manufacturing. The paper points out the duality of the situation, with nations being highly specialised in certain areas. For instance, the US heavily specialises in research and development, the Dutch company ASML virtually has a monopoly on the most advanced lithography machinery while Germany is a key producer for the required chemicals and gases like helium and argon. Taiwan through its prominent Taiwan Semiconductor Manufacturing Company (TSMC) leads global semiconductor production, predominantly through its advanced fabrication facilities and its logic foundry industry. This stands in contrast to rapid expansion of its production capacity by China which still falls short in the production of more advanced semiconductors, lacking more advanced equipment for the production of more modern and advanced chips. Overall this piece of literature highlights specialities of certain

²⁰ Sara Poli, "Reinforcing Europe's Technological Sovereignty through Trade Measures: The EU and Member States' Shared Sovereignty," 2023, https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2023_I_013_Sara_Poli_00665.pdf?utm_source.

stages in the production process of advanced semiconductors and highlights how this industry clusters around only a relatively few countries²¹.

The paper by Mönch et al. (2018) highlights the complexity of supply chain management pointing out the importance of coordination between different stages of production, extending from the extraction of raw silicon up to the complex packaging processes necessary for secure shipment. The paper stresses the uniqueness of certain aspects of the semiconductor supply chain, which includes the long production process which can extend to several weeks at times, the extraordinarily high capital investments as seen earlier with the ASML lithography machines, and the overall advanced technological processes which require highly skilled personnel. The paper argues that in order to achieve efficiency simply optimizing individual production units would not suffice, rather they emphasise the need for a comprehensive approach, which includes both up- and downstream elements of the supply chain. Additionally the paper points to the significance of semiconductor supply chain management, looking to Europe and showing its need to not only develop production, but also develop expertise and experience in managing the extensive supply chains involved in semiconductor manufacturing. As a tool for this the paper mentions the use of simulation and optimization tools to assist in this management and the decision making process, which according to the authors is an essential aspect in the construction of resilient supply chains²².

The paper by Wei Xiong et al. (2024) adds further detail to the issues faced by the semiconductor industry, particularly the issues of supply chain shocks as seen during the Covid-19 pandemic. The authors emphasise the necessity of more resilient supply chains and the need for a decentralised network to mitigate such disruptions. The paper explores the high degree of vulnerability exhibited by the semiconductor supply chain and points out its vulnerability and how this vulnerability has been underscored by the Covid-19 pandemic and the Russian-Ukraine crisis. The paper then proceeds to explore previously mentioned strategies which aim to promote resilience and names examples such as a more diversified manufacturing base, increased international collaboration and the use of advanced technologies like AI and advanced data analytics to enhance the “visibility” of the supply chain with the goal of predicting future shocks and disruptions. The authors point out the need of such strategies to ensure long-term stability in the semiconductor industry, especially in Europe where nations attempt to distance themselves from East-Asian partners and build more resilient and independent supply chains²³.

²¹ Saif Khan, “The Semiconductor Supply Chain,” Center for Security and Emerging Technology, January 2021, <https://cset.georgetown.edu/publication/the-semiconductor-supply-chain/>.

²² Lars Mönch et al., “Modelling and Analysis of Semiconductor Supply Chains,” *International Journal of Production Research* 56, no. 13 (April 25, 2018): 4521–23, <https://doi.org/10.1080/00207543.2018.1464680>.

²³ Wei Xiong, David D Wu, and Jeff, “Semiconductor Supply Chain Resilience and Disruption: Insights, Mitigation, and Future Directions,” *International Journal of Production Research*, August 13, 2024, 1–24, <https://doi.org/10.1080/00207543.2024.2387074>.

The European Chips Act (ECA) Analysis by Villoslada Camps and Saz-Carranza (2023) looks at Europe's strategy of trying to strengthen its semiconductor industry through several different lenses, including the fundamental motivation, structure and challenges its current strategy might entail. The ECA act, which was introduced in response to the Covid-19 pandemic and rising geopolitical tensions, aims to bring Europe's semiconductor market share from 10% to 20% by 2030. The Authors specifically highlight the reliance on East Asia and the US for the production of advanced semiconductors, while also pointing out the EU's strength in Semiconductor design and the production of advanced semiconductor machinery, specifically through ASML in the Netherlands. However the paper points out several challenges which the EU might face in its quest for a self-reliant semiconductor industry such as high costs, a limited suitable workforce, and most notably a lack of established semiconductor foundries able to produce the latest semiconductor designs. The authors conclude that while the ECA is certainly an ambitious project, it must still be seen as the first step and major step in its drive towards reducing semiconductor reliance²⁴.

Figura (2023) explores the potential of Europe within the global semiconductor industry by pointing out its specialization in research, design and the production of advanced machinery / equipment. Key to the paper is the idea that Europe should strike a balance between its ambitious production targets and leveraging its existing, aforementioned strengths. Figura critiques the current efforts of creating and supporting new and more advanced fabrication facilities, instead suggesting a broader approach which spans the wider semiconductor supply chain including R&D, Raw materials and the production of machinery. Hence Figure builds upon existing frameworks of the EU by providing a different approach, which leverages existing strengths of the EU within the semiconductor industry²⁵.

While the existing research provides valuable insight into the complexity of the semiconductor industry some gaps can be identified. Research exploring this topic predominantly explores the dynamics of the industry's supply chain, specifically the evident overreliance on foreign suppliers and the related vulnerabilities. While other research like Mönch et al (2018) focuses on other related topics like achieving efficiency in this supply chain, while failing to look at other factors influencing the EU's ability to achieve its aspirational goals. The general trend appears to be that the literature does not address how this extensive knowledge can be applied within the specific environment present in the EU, with reference to its current capabilities and other geopolitical and economic context. This paper aims to address the gaps in this research by focusing on the existing policy frameworks already implemented or in the process of being implemented by the EU, such as the ECA Act or the Raw Materials Act, and how such policies are able to increase production capacity while also fostering deeper collaboration between members and ultimately enhancing the EU's resilience. By utilizing

²⁴ Joan Camps and Angel Saz-Carranza, "The European Chips Act: Europe's Quest for Semiconductor Autonomy," 2023, https://www.esade.edu/faculty-research/sites/default/files/publicacion/pdf/2023-09/Chips_Act_ESADE.pdf.

²⁵ Jannis Figura, "An Assessment of the European Microchip Industry and Its Expansion Strategy," *Horizon Insights* 6, no. 1 (March 1, 2023), <https://doi.org/10.31175/hi.2023.01>.

insights gained from previous research in combination with an analysis of the EU's policy frameworks this paper aims to contribute to the overall understanding of how Europe will be able to reduce its reliance on foreign suppliers, working towards a more self-sufficient and independent semiconductor industry.

4. Policy Review

In its quest to achieve semiconductor independence Europe has already implemented many frameworks and policies which contribute towards that goal. Many of these policies have been relatively recently implemented with their effectiveness still being unclear and only open to estimation and predictions at this point in time. This section will aim to make such estimations and predictions based on current information.

5.1 *European Chips Act (ECA)*

One of the most significant policy frameworks which has been mentioned earlier on is the European Chips act. This policy framework sets €43 billion into motion with the goal of not only bringing the EU's semiconductor landscape up to date, but also increasing its overall volume. The ultimate goal is a 20% market share of the global semiconductor market, marking an increase of roughly 10%, by 2030 with the additional focus on making EU supply chains more resilient and less receptive to external shocks and disruptions. The European Chips act essentially consists of 3 Pillars, making up an extensive framework which aims to foster innovation and increase production²⁶.

First of these pillars, referred to as the "Chips for Europe Initiative", focuses on the transfer of knowledge "from lab to fab" essentially trying to close the gap between theoretical innovation and practical manufacturing and production by combining funds from private and public investors. As part of this pillar just short of €10bn are mobilised for the creation of new information networks and competence centres where innovative technologies can be tested and improved through support structures with the additional goal of attracting new talent through easier access to the required facilities. Overall this first pillar, which aims for complete introduction by 2027, appears to be an effective policy aiming to establish a foundation for future research and innovation within the semiconductor industry and although its effects might only be found in the future given the complexity of the industry, its product and general time-intensivity of research and development, it still is a solid start²⁷. However, given that the EU is already trailing behind countries like South Korea and Taiwan who similarly invest large sums in such frameworks, the question must be asked if this is not only enough for the EU to bridge the technological gap, but also if 2027 is a realistic timeframe.

²⁶ European Commission, "European Chips Act," [commission.europa.eu](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act_en), 2022, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act_en.

²⁷ European Commission, "European Chips Act: The Chips for Europe Initiative | Shaping Europe's Digital Future," [digital-strategy.ec.europa.eu](https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-chips-europe-initiative), 2023, <https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-chips-europe-initiative>.

The second pillar, which goes unnamed, aims to create a framework which fosters investments and increases production capacity within the EU, with the goal of ultimately improving supply chain resilience. In order to achieve this the EU aims to introduce two kinds of facilities, first of which being Integrated Production Facilities (IPF's). These IPF's are vertically integrated production facilities, essentially these manufacturing facilities are partially self-sufficient in their production process by including every major step from lithography to etching and packaging. These facilities would produce essential equipment and components used in semiconductor manufacturing within the European Union to improve supply chain resilience due to increased control over it. An example of such a vertically integrated facility would be STMicroelectronics which actively attempts to make its supply chain more resilient through vertical integration as seen in their latest Silicon Substrate manufacturing facility in Italy²⁸.

The second type of facility the EU plans to introduce are Open EU Foundries (OEF's), such foundries would allocate large parts of their production capacity to the production of chips from other companies or third parties in general, in particular companies which do not have access to their own fabrication facilities. The underlying goal of such, "first of its kind", facilities is to enhance the semiconductor ecosystem of the EU, lowering the barriers of entry of fabless firms into the semiconductor market, attracting more investments into the industry. The addition of a priority component in such facilities for new innovative chip designs adds to the EU's goal of fostering innovation. While the EU does not specifically plan its own construction of such facilities, existing facilities may offer their services under this scheme by complying with certain criteria such as: Promoting Innovative designs, dedicating parts of their capacity to other firms and by ensuring functional separation by guaranteeing confidentiality²⁹. As of writing this paper only a select few manufacturers' facilities have been recognized as OEF's, including X-Fab Silicon Foundries and GlobalFoundries, both of which located in Germany and STMicroelectronics located in Italy³⁰.

The IPF's and OEF's included in the second pillar stand out as "first of their kind" within the EU and facilities or manufactures which meet the specifications of these two frameworks are granted simplified administrative processes within the EU and early access to pilot lines. Additionally during supply chain disruptions such facilities may be required to produce products underproduced during disruptions to enhance resilience. Overall the second pillar of the European Chips Act (ECA) stands as an exemplary policy which aims to open the doors for many smaller manufacturers who might have innovative designs, but may not have the vast funds associated with the production of semiconductors. One

²⁸ European Commission, "European Chips Act: Security of Supply and Resilience | Shaping Europe's Digital Future," digital-strategy.ec.europa.eu, 2023, <https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-security-supply-and-resilience>.

²⁹ Belga, "The Brussels Times," [Brusselstimes.com](https://www.brusselstimes.com), 2024, <https://www.brusselstimes.com/1189264/eu-microchips-commission-approves-an-open-foundry-in-germany>.

³⁰ SiliconSaxony, "European Chips Act: Germany Is Leading the Way. Now It Is up to Europe. - Silicon Saxony," [Silicon Saxony](https://silicon-saxony.de/en/european-chips-act-germany-is-leading-the-way-now-it-is-up-to-europe/), November 13, 2023, <https://silicon-saxony.de/en/european-chips-act-germany-is-leading-the-way-now-it-is-up-to-europe/>.

concern with OEF's may be the existence of some degree of inequality between nations, as such facilities tend to cluster around more economically prosperous member nations and could still opt to produce for the highest bidder making it harder for very small innovative design firms to produce their chips.

The third pillar of the ECA aims to establish a coordination mechanism between the EU member states and the EU Commission. This pillar aims to foster collaboration between members, monitoring the supply chain for the industry, predict shortages within this supply chain and aims to provide a framework for crisis response. Additionally this pillar introduces the establishment of the European Semiconductor Board (ESB) which consists of representatives of each member state and the commission, overseeing the implementation of the ECA while also advising and monitoring other related initiatives. While this pillar and its policies are smaller than the previous two it is by no means less important. The policies under this pillar highlight the EU's willingness to learn from its mistakes in the past as seen during the chip shortages during the Covid-19 Pandemic and at the start of the Russia-Ukraine war and improve upon them. However it is quite unfortunate to see that current drafts of this pillar do not specifically mention more extensive collaboration with industry specialists and companies or the establishment of private advisory channels of communication, although this pillar is still in its early stages and may have omitted certain specifics³¹.

5.2 The Second Important Project of Common European Interest in Microelectronics (IPCEI)

Another major initiative launched by the European Union is the IPCEI which carries the motto "Safety, Security, Sustainability and Sovereignty". This initiative is similar in nature to the ECA in that it attempts to catch up to foreign semiconductor companies on which the EU has become reliant on. The second IPCEI built upon its predecessor which was able to raise €8bn in public funding, and aims to support existing projects, from research and development up to the introduction of new semiconductor technologies in the manufacturing part of the supply chain. The initiative focuses on 4 main components of the semiconductor value chain which complement each other: AI-enabled processors, sensors, high frequency electronics and power electronics. These chips are an essential resource for other rapidly advancing industries like the Artificial Intelligence, Automotive and telecommunication industry and serve a vital role in the defence industry³².

Essentially the project aims to fund these four areas of semiconductor manufacturing, with Germany and its existing and growing semiconductor industry being the main target for this initiative for the time being, although other countries

³¹ European Commission, "European Chips Act: Monitoring and Crisis Response | Shaping Europe's Digital Future," digital-strategy.ec.europa.eu, 2023,

<https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-monitoring-and-crisis-response>.

³² European Commission, "Press Corner," European Commission - European Commission, 2023, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3087.

like France, Italy and the Netherlands are included just on a smaller scale given the relatively smaller but growing semiconductor industries³³.

Overall this policy framework adds to the comprehensive approach implemented by the European Union with the objective of making the EU a semiconductor leader in terms of innovation, production and most importantly resilience. However the scope of this initiative could be considered limited, given that it focuses on Germany, something that has been observed earlier in parts of the ECA, leading to further disparities between member states in the semiconductor industry

5.3 Critical Raw Materials Act

The CRM Act, which has been superficially explored earlier in this paper, differs from the previous policy frameworks which heavily focused on the Research and Development and production components of the semiconductor industry and instead looks towards the start of the industry supply chain, the raw resources³⁴. The essential inputs for semiconductor manufacturing are first and foremost silicon and some precious metals like Gallium and Germanium as well as certain gases like Nitrogen, Argon and carbon tetrachloride. The essential gases are to large parts produced in Germany in its vast chemical industry and the required metals are sourced from relatively secure sources with shocks in these resources not being the main concern of EU policy makers. However the main issue lies with Silicon, which is mainly sourced from China, which currently produces around 70% of the world's supply raising concerns given the potential for geopolitical tensions or export limitations³⁵.

The CRM act aims to bring more of this production to its own shores to meet and secure the growing European demand which is expected to reach 2 million tonnes by 2030. In order to achieve this several projects are underway like in Spain and France as well as the implementation of a more closed circular economy approach given the ability to recycle Silicon.

Some of these projects include Spain's investments in collaboration with private partners into silicon processing facilities in the Asturias region, aiming to produce 300,000 tonnes of silicon annually by 2028 through a €500 million investment, significantly contributing to the EU's future demand. Similarly in France under the CRM several companies

³³ European Semiconductor Industry Association, "European Semiconductor Industry Association ESIA Welcomes the Approval of the Second IPCEI on Microelectronics" 2023,

https://www.eusemiconductors.eu/sites/default/files/uploads/ESIA_PR_IPCEI-Approval_2023.pdf.

³⁴ European Commission, "Critical Raw Materials Act," single-market-economy.ec.europa.eu, 2023,

https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en.

³⁵ Statista, "Major Countries in Silicon Production 2019," Statista, 2023,

<https://www.statista.com/statistics/268108/world-silicon-production-by-country/>.

have come together to establish new processing plants near Bordeaux with an EU supported investment of €350 million and a projected annual output of 200,000 tonnes by 2027³⁶.

Additionally the act also involves the introduction of partnerships with Non-EU members in an effort to diversify the supply of this integral component. For instance there are negotiations with Norway and Canada with the aim of establishing long-term silicon supply agreements, referencing the countries stable economies and green mining practices³⁷.

By combining all of these efforts the CRM act and the EU aim to contribute to stable and resilient supply chains which aim to reduce reliance on uncertain non-EU sources of silicon fostering resilience and self-reliance.

5. Determining Factors

So far this paper has explored various investments into the semiconductor industry, of both public and private origin, however the success of such investments may depend on a variety of factors like skilled labour availability, average energy costs and regulatory concessions / support. For instance the high energy costs in Europe which still linger around since the Covid-19 pandemic are a significant concern for semiconductor manufacturers. Drawing the comparison, the average price for electricity for industrial use in the EU is around €0.14 per kWh while in China the average lies around \$0.089 kWh and in the US around \$0.07 kWh, highlighting a significant competitive disadvantage³⁸.

Additionally many EU member nations are just now experiencing a growing interest in STEM fields in their labour force, with the last 5 years seeing increases in STEM degrees obtained in several member nations, however this still falls short to the US or many Asian nations which have supported such career prospects for close to a decade now, resulting in a comparatively lower skilled labour work force as off now which needs to grow together with the EU's semiconductor ambitions³⁹.

These are certainly not the only determining factors for the effectiveness of investments in the semiconductor industry, however they highlight the fact that pure investments may not be sufficient in addressing the EU's overdependence on other foreign semiconductor producers indicating that the EU needs to act on other related issues like the electricity prices to add to their competitiveness and independence.

³⁶ Florent Allais, Honorine Lescieux-Katir, and Jean-Marie Chauvet, "The Continuous Evolution of the Bazancourt–Pomacle Site Rooted in the Commitment and Vision of Pioneering Farmers. When Reality Shapes the Biorefinery Concept," *EFB Bioeconomy Journal* 1 (November 2021): 100007, <https://doi.org/10.1016/j.bioeco.2021.100007>.

³⁷ NorSun, "Silfab Solar and NorSun Set Agreement for Supply of Solar Silicon Wafers from NorSun's Planned USA Factory," *Norsun.no*, 2023, <https://www.norsun.no/artikler/norsun-and-silfab>.

³⁸ Statista, "Industrial Electricity Prices by Country 2024 | Statista," Statista, 2024, https://www.statista.com/statistics/1369634/business-electricity-price-worldwide-in-selected-countries/?utm_source.

³⁹ Brendan Oliss, Cole McFaul, and Jaret Riddick, "The Global Distribution of STEM Graduates: Which Countries Lead the Way?," Center for Security and Emerging Technology, November 27, 2023, <https://cset.georgetown.edu/article/the-global-distribution-of-stem>

6. Case Study

7.1 Germany

Throughout this paper Germany has stood out as somewhat of a figurehead in the EU's quest to achieve semiconductor independence by increasing its production capabilities. A major part of its seemingly correct trajectory towards this goal is Intel's substantial investment in the country, supported by the German government with a subsidy of roughly €10bn. Although recently delayed by 2 years given internal financing issues faced by Intel the plans are not off the table and construction of the new mega-fab complex in Magdeburg is to continue as planned, bringing with it an investment of €30bn into the country and the semiconductor industry. The facility will not only produce chips of the latest designs with chips up 3nm currently being planned, but will also add 3,000 jobs to the German semiconductor industry as well as 10,000 indirect jobs⁴⁰. Additionally the facility is expected to attract more talent towards the industry, being placed between several of Germany's states which produce the highest number of STEM graduates as well as the general centrality of Germany relative to the rest of the EU. The completion of this factory would mark a major milestone in the process of achieving independence and building up supply chain resilience by favouring domestic production within member states⁴¹.

However Intel is not the only manufacturer, others include GlobalFoundries, Infineon, Bosch, ESMC and even TSMC. The Taiwanese company TSMC stands out in particular as its \$3.5bn investment into the country highlights a growing interest in the European Semiconductor industry even for a company which currently is the world's largest manufacturer of semiconductors⁴². Therefore, by offering subsidies, strategic locations and regulatory support Germany stands as an example of how other member nations attract investments into the country in order to increase production capacity and semiconductor sovereignty.

Germany's approach which included financial incentives, simplified bureaucratic processes and increased collaboration between the private industry and the government, stands out as an effective approach in attracting semiconductor players and investors. Such an approach which favours incentives and investments to attract major companies could be implemented in other member states, allowing them to benefit economically and contribute to the overall resilience of the EU's semiconductor industry.

⁴⁰ Intel, "FactSheet Germany Overview of the Planned EU Semiconductor Manufacturing Facility in Magdeburg," 2022, https://download.intel.com/newsroom/2023/manufacturing/20230110_Factsheet_1_Magdeburg_EN.pdf.

⁴¹ MDR, "Intel-Ansiedlung: Subventionen Wichtig Für Europas Halbleiterindustrie | MDR.DE," www.mdr.de, June 18, 2024, <https://www.mdr.de/nachrichten/deutschland/intel-ansiedlung-eu-chips-act-100.html>.

⁴² GTAI, "TSMC Breaks Ground, Secures Subsidy for German Plant," [Gtai.de](https://www.gtai.de) (GTAI, August 20, 2024), <https://www.gtai.de/en/meta/press/tsmc-breaks-ground-secures-subsidy-for-german-plant-1813224>.

Nevertheless, the country still faces some significant hurdles which it has to overcome in its path towards semiconductor independence, from high labor costs, rising energy prices and the country's notorious bureaucracy, these challenges have to be overcome to foster continuous investments and maintain current investments.

7.2 Netherlands

The Netherlands are a peculiar case within the semiconductor industry through its domestic company ASML who is the world's most advanced producer of lithography machines and the world's sole producer of advanced extreme ultraviolet (EUV) lithography machines. These machines are the backbone of the industry, being essential for the manufacturing of advanced chips produced by leading manufacturers like TSMC, Samsung or Intel⁴³. ASML's strategically superior position in this field gives the EU a significant advantage due to easier access to the machinery.

The Dutch government has continuously provided financial support to the company in the past few years as well as favourable regulatory conditions in order to assist ASML in maintaining its cutting edge leadership in its somewhat niche market segment, enabling the company to become a foundation of large parts of the greater semiconductor industry⁴⁴.

However, relying only on a single company like ASML for such an integral component of the production process brings with it some risks which can be mitigated as any hindrance in the production process of ASML could have far reaching effects. Additionally ASML is only able to produce a small amount of machines with varying degrees of complexity, with the company producing just over 400 machines in 2023 for the global market, with only a few of those machines being the most advanced (EUV's)⁴⁵. Overall the EU should most likely look to promote other similar manufacturers of machinery within the EU and could adopt a similar approach to the Dutch government by offering financial incentives and regulatory favours to new market entrants in an effort to promote diversity across several member states and companies.

Overall the Dutch model which includes specific R&D funding, supporting regulatory frameworks and a clear focus on keeping up with the most advanced technologies, shows a successful strategy which other countries could try to imitate. By protecting and supporting existing companies like ASML while also promoting market entry with favourable policies, the Netherlands show how such policies can be used to bolster the EU's overall semiconductor capabilities.

7. Policy Recommendations

⁴³ Katie Tarasov, "ASML Is the Only Company Making the \$200 Million Machines Needed to Print Every Advanced Microchip. Here's an inside Look," CNBC, March 23, 2022, <https://www.cnbc.com/2022/03/23/inside-asml-the-company-advanced-chipmakers-use-for-euv-lithography.htm>

⁴⁴ Toby Sterling, "Dutch Will Spend \$2.7 Billion on Improving Infrastructure to Keep ASML," Reuters, March 28, 2024, <https://www.reuters.com/world/europe/dutch-government-launch-plan-keep-asml-netherlands-2024-03-28/>.

⁴⁵ Peter Westberg, "Quartr," Quartr.com, 2024, <https://quartr.com/insights/company-research/asml-architecting-earths-most-complex-machines>.

Building on the previous analysis of the EU policy frameworks which have been discussed above, this paper will offer several policy recommendations which not only address the production capacity of semiconductors but also the industry's broader environment, including skilled labour, infrastructure and raw materials.

8.1 Upstream Supply Chain for Raw Materials

While the EU's Critical Raw Materials initiatives have been a good start for the EU in diversifying their supply and promoting domestic extraction further efforts will be necessary to meet the rapidly growing demand for semiconductor related raw materials.

Policymakers should consider expanding on existing long-term supply contracts with other countries with high ESG standards, as seen previously with Norway and Canada, to ensure reliable access to raw resources like silicon and other production critical resources.

Additionally further support and investment in recycling or circular economy initiatives may prove fruitful in not only adding an additional channel of supply, but may also support environmental initiatives by recovering silicon and rare metals from end of life electronics and industrial by-products. Certain tax-incentives or standardized guidelines for recycling may prove helpful in fostering such initiatives and ultimately improving the circular nature of the semiconductor raw materials supply chain.

Furthermore, based on lessons learnt during the Covid-19 pandemic, this paper recommends the stockpiling of production critical resources by private companies to create a buffer against short-term supply chain disruptions.

8.2 Domestic Production Capabilities & Infrastructure

While there is an array of incentives to expand EU-based semiconductor foundries there is still room for policies to complement such incentives. For instance, this paper would recommend that policymakers further support the formation of semiconductor clusters where research facilities, foundries, raw material suppliers and logistics are located in close proximity to another to benefit from shared infrastructure such as larger energy networks as well as having a generally larger talent pool.

Furthermore this paper recommends a general shift in focus to more advanced technologies through a focus in investments in 3nm and below production nodes or similar advanced technologies like compound semiconductors, in an effort to avoid falling behind in terms of technological capabilities.

Additionally policymakers should create incentives for small to medium sized foundries and R&D centres to avoid having only a handful large ones in wealthy member states. This would aid in reducing the risk of over-concentration while also promoting balanced development across member states.

8.3 Skills and Talent

A significant determinant for the EU's endeavours is the availability of skilled labour. In order to address this, member states and the EU as a whole should create incentives for STEM education or similar associated programs. This may include specific scholarships, apprenticeships, internships or fostering collaborations between universities and the industry which could ensure that the educational curricula remain up to date with the ever developing industry standards.

In addition EU policymakers should consider streamlining visa processes for experienced professionals in order to expand the talent pool within the EU. Such a policy could potentially lead to an acceleration in growth of both the talent pool, and the industry as a whole.

8.4 Risk Management

Having observed the effects of the Covid-19 pandemic and the rising political tensions around the world, the EU should consider implementing some sort of warning system which would not only actively gather data but also attempt to monitor the supply chain in real time with the goal of identifying potential vulnerabilities. This would allow for early detection of shocks which may adversely affect production, allowing for proactive measures to be taken.

Furthermore, as the EU expands its domestic production capabilities efforts should be made to continuously attempt to diversify the supply of critical resources which may not be as available in Europe. Some degree of interdependence with reliable partners may even aid in mitigating the impact of potential future supply shocks.

8.5 Policy Recommendation Conclusion

The policy recommendations above provide a broad approach to improving the resilience and competitiveness of the EU semiconductor industry. By providing stable access to raw materials, improving domestic production, increasing the talent pool and improving risk management, the EU can reduce its vulnerability and dependence on other nations while also strengthening its position in the global semiconductor industry. As a whole these measures support self-sufficiency, innovation and even sustainability which can protect the EU's economic, technological and strategic interests.

8. Conclusion

This paper has explored the EU's journey towards greater semiconductor independence, highlighting the many and interconnected challenges on this journey such as raw materials, production capacity, talent and risk management. While the current overreliance of the EU on foreign suppliers, specifically in East Asia, cannot be overcome within a year or so, the combination of various strategies and policy frameworks such as the ECA or CRM Act show commitment towards this aspirational goal.

Efforts such as fostering research and innovation, integrating production facilities and developing the workforce demonstrate that the EU has shifted towards a broader approach which covers the extensive semiconductor industry. However, the success of such initiatives requires addressing other challenges such as the high energy costs, uneven distribution of investments across members and outdated technologies.

By refining its policies, forging international partnerships and shifting towards advanced and sustainable technologies and practices, the EU will be able to move closer towards its goal of a self-sufficient, resilient and competitive semiconductor industry.

9. Bibliography

- Allais, Florent, Honorine Lescieux-Katir, and Jean-Marie Chauvet. "The Continuous Evolution of the Bazancourt–Pomacle Site Rooted in the Commitment and Vision of Pioneering Farmers. When Reality Shapes the Biorefinery Concept." *EFB Bioeconomy Journal* 1 (November 2021): 100007. <https://doi.org/10.1016/j.bioeco.2021.100007>.
- Arthur Little. "Strategizing for Growth While Building Resilience in the Rapidly Evolving Industry 2024," 2024. https://www.adlittle.com/sites/default/files/reports/ADL_Localizing_global_semiconductor_2024_0.pdf.
- Belga. "The Brussels Times." *Brusselstimes.com*, 2024. <https://www.brusselstimes.com/1189264/eu-microchips-commission-approves-an-open-foundry-in-germany>.
- Bish, Jordan. "A New Dawn for European Chips." *Deloitte Insights*, n.d. <https://www2.deloitte.com/us/en/insights/industry/technology/semiconductor-chip-shortage-supply-chain.html>.
- Camps, Joan, and Angel Saz-Carranza. "The European Chips Act: Europe's Quest for Semiconductor Autonomy," 2023. https://www.esade.edu/faculty-research/sites/default/files/publicacion/pdf/2023-09/Chips_Act_ESADE.pdf.
- European Commission. "Critical Raw Materials Act." *single-market-economy.ec.europa.eu*, 2023. https://single-market-economy.ec.europa.eu/sectors/raw-materials/areas-specific-interest/critical-raw-materials/critical-raw-materials-act_en.
- "European Chips Act." *commission.europa.eu*, 2022. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-chips-act_en.
- "European Chips Act: Monitoring and Crisis Response | Shaping Europe's Digital Future." *digital-strategy.ec.europa.eu*, 2023. <https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-monitoring-and-crisis-response>.
- "European Chips Act: Security of Supply and Resilience | Shaping Europe's Digital Future." *digital-strategy.ec.europa.eu*, 2023. <https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-security-supply-and-resilience>.
- "European Chips Act: The Chips for Europe Initiative | Shaping Europe's Digital Future." *digital-strategy.ec.europa.eu*, 2023. <https://digital-strategy.ec.europa.eu/en/factpages/european-chips-act-chips-europe-initiative>.
- "European Chips Survey | Shaping Europe's Digital Future." *digital-strategy.ec.europa.eu*, August 4, 2022. <https://digital-strategy.ec.europa.eu/en/library/european-chips-survey>.
- "European Industrial Strategy." *commission.europa.eu*, 2022. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy_en.
- "Press Corner." *European Commission - European Commission*, 2023. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3087.
- European Commission. "European Chips Act | Shaping Europe's Digital Future." *digital-strategy.ec.europa.eu*, 2023. <https://digital-strategy.ec.europa.eu/en/policies/european-chips-act>.
- European Institute of Innovation and Technology. "EIT RawMaterials Invests in German Silicon Recycling Start Up." *EIT RawMaterials - Developing raw materials into a major strength for Europe*, September 19, 2023. <https://eitrawmaterials.eu/press-releases/eit-rawmaterials-accelerates-green-transition-strategic-investment-silicon-recycling>.
- European Semiconductor Industry Association. "European Semiconductor Industry Association ESIA Welcomes the Approval of the Second IPCEI on Microelectronics Today, European Commissioner Executive Vice-President Margrethe Vestager Has Approved the Important Project of Common European Interest on Microelectronics and Communications Technologies (IPCEI ME/CT). The European Semiconductor Industry Association

- (ESIA) Welcomes the Approval, as Participants Can Now Formally Launch Their Innovative Projects,” 2023. https://www.eusemiconductors.eu/sites/default/files/uploads/ESIA_PR_IPCEI-Approval_2023.pdf.
- Figura, Jannis. “An Assessment of the European Microchip Industry and Its Expansion Strategy.” *Horizon Insights* 6, no. 1 (March 1, 2023). <https://doi.org/10.31175/hi.2023.01>.
- Geng, Hwaiyu, and Lin Zhou. “How Semiconductor Chips Are Made,” 2005. <http://arantxa.ii.uam.es/~die/%5BLectura%20ASICs%5D%20How%20semiconductor%20and%20chips%20are%20made.pdf>.
- GTAI. “TSMC Breaks Ground, Secures Subsidy for German Plant.” *Gtai.de*. GTAI, August 20, 2024. <https://www.gtai.de/en/meta/press/tsmc-breaks-ground-secures-subsidy-for-german-plant-1813224>.
- Halvorsen, Gunnar, and Gunnar Schüssler. “Sustainable Silicon Production,” September 26, 2003, 495–508. <https://doi.org/10.1002/9783527619924.ch80>.
- Hull, Jerome . “Semiconductor Industry in Germany.” *www.gtai.de*, 2023. <https://www.gtai.de/en/invest/industries/industrial-production/semiconductors>.
- Intel. “FactSheet Germany Overview of the Planned EU Semiconductor Manufacturing Facility in Magdeburg,” 2022. https://download.intel.com/newsroom/2023/manufacturing/20230110_Factsheet_1_Magdeburg_EN.pdf.
- Kearney. “Europe’s Urgent Need to Invest in a Leading-Edge Semiconductor Ecosystem - Article.” Kearney, February 2022. <https://www.kearney.com/industry/technology/article/-/insights/europes-urgent-need-to-invest-in-a-leading-edge-semiconductor-ecosystem>.
- Khan, Saif. “The Semiconductor Supply Chain.” Center for Security and Emerging Technology, January 2021. <https://cset.georgetown.edu/publication/the-semiconductor-supply-chain/>.
- Koc, Cagan. “ASML Shows off Chipmaking Machine behind AI Shift.” *Bloomberg.com*. Bloomberg, February 9, 2024. <https://www.bloomberg.com/news/articles/2024-02-09/asml-shows-off-380-million-165-ton-machine-behind-a-i-shift>.
- Lorence, Jordan. “Understanding Semiconductor Technology Nodes: From 10nm to 3nm and Beyond.” *Mrlcg.com*. MRL Recruitment, October 31, 2024. <https://www.mrlcg.com/resources/blog/understanding-semiconductor-technology-nodes--from-10nm-to-3nm-and-beyond/>.
- Martin, Bradley, Laura H Baldwin, Paul DeLuca, Natalia Henriquez Sanchez, Mark Hvizda, Colin D Smith, and N Peter Whitehead. *Supply Chain Interdependence and Geopolitical Vulnerability: The Case of Taiwan and High-End Semiconductors*. RAND Corporation, 2023. https://www.rand.org/pubs/research_reports/RRA2354-1.html?utm_campaign=&utm_content=1678728781&utm_medium=rand_social&utm_source=twitter.
- Mathis Richtmann, and Aline Spantig. “US Intel’s Factory Delay Adds to Germany’s Economic Woes.” *dw.com*. Deutsche Welle, September 17, 2024. <https://www.dw.com/en/us-intels-factory-delay-adds-to-germanys-economic-woes/a-70241739>.
- MDR. “Intel-Ansiedlung: Subventionen Wichtig Für Europas Halbleiterindustrie | MDR.DE.” *Www.mdr.de*, June 18, 2024. <https://www.mdr.de/nachrichten/deutschland/intel-ansiedlung-eu-chips-act-100.html>.
- Mönch, Lars, Chen-Fu Chien, Stéphane Dauzère-Pérès, Hans Ehm, and John W. Fowler. “Modelling and Analysis of Semiconductor Supply Chains.” *International Journal of Production Research* 56, no. 13 (April 25, 2018): 4521–23. <https://doi.org/10.1080/00207543.2018.1464680>.
- Nikolic, Katarina, Matthew J Forshaw, and Ramon Compañó. “The Current Status of Nanoelectronic Devices.” *World Scientific*, February 1, 2003. <https://doi.org/10.1142/s0219581x03001048>.
- NorSun. “Silfab Solar and NorSun Set Agreement for Supply of Solar Silicon Wafers from NorSun’s Planned USA Factory.” *Norsun.no*, 2023. <https://www.norsun.no/artikler/norsun-and-silfab>.

- Oliss, Brendan, Cole McFaul, and Jaret Riddick. "The Global Distribution of STEM Graduates: Which Countries Lead the Way?" Center for Security and Emerging Technology, November 27, 2023. <https://cset.georgetown.edu/article/the-global-distribution-of-stem-graduates-which-countries-lead-the-way/>.
- Poli, Sara. "Reinforcing Europe's Technological Sovereignty through Trade Measures: The EU and Member States' Shared Sovereignty," 2023. https://www.europeanpapers.eu/en/system/files/pdf_version/EP_EF_2023_I_013_Sara_Poli_00665.pdf?utm_source=publisher2silisax.
- publizer2silisax. "European Chips Act: Germany Is Leading the Way. Now It Is up to Europe. - Silicon Saxony." Silicon Saxony, November 13, 2023. <https://silicon-saxony.de/en/european-chips-act-germany-is-leading-the-way-now-it-is-up-to-europe/>.
- Schwellnus, Cryille, Antton Haramboure, Lea Samek, Ricardo Rechansky, and Charles Cadestein. "Global Value Chain Dependencies under the Magnifying Glass." OECD, 2024. https://www.oecd.org/en/publications/global-value-chain-dependencies-under-the-magnifying-glass_b2489065-en.html.
- Shivakumar, Sujai, and Charles Wessner. "Semiconductors and National Defense: What Are the Stakes?" www.csis.org, June 8, 2022. <https://www.csis.org/analysis/semiconductors-and-national-defense-what-are-stakes>.
- SilPro. Sibelco.com, 2022. <https://www.sibelco.com/en/news/sibelco-expands-silica-sand-reserves-in-the-north-of-spain>.
- Statista. "Industrial Electricity Prices by Country 2024 | Statista." Statista, 2024. https://www.statista.com/statistics/1369634/business-electricity-price-worldwide-in-selected-countries/?utm_source=---.
- . "Major Countries in Silicon Production 2019." Statista, 2023. <https://www.statista.com/statistics/268108/world-silicon-production-by-country/>.
- Sterling, Toby. "Dutch Will Spend \$2.7 Billion on Improving Infrastructure to Keep ASML." *Reuters*, March 28, 2024. <https://www.reuters.com/world/europe/dutch-government-launch-plan-keep-asml-netherlands-2024-03-28/>.
- Tarasov, Katie. "ASML Is the Only Company Making the \$200 Million Machines Needed to Print Every Advanced Microchip. Here's an inside Look." CNBC, March 23, 2022. <https://www.cnbc.com/2022/03/23/inside-asml-the-company-advanced-chipmakers-use-for-euv-lithography.html>.
- Varas, Antonio, Raj Varadarajan, Ramiro Palma, Jimmy Goodrich, and Falan Yinug. "Strengthening the Global Semiconductor Supply Chain in an Uncertain Era." BCG Global, March 28, 2021. <https://www.bcg.com/publications/2021/strengthening-the-global-semiconductor-supply-chain>.
- Westberg, Peter. "Quartr." Quartr.com, 2024. <https://quartr.com/insights/company-research/asml-architecting-earths-most-complex-machines>.
- Xiong, Wei, David D Wu, and Jeff. "Semiconductor Supply Chain Resilience and Disruption: Insights, Mitigation, and Future Directions." *International Journal of Production Research*, August 13, 2024, 1–24. <https://doi.org/10.1080/00207543.2024.2387074>.

POLICY OF THE MONTH X IE MUN

Demilitarising the Arctic Ocean: The 66th Parallel Plan

Ian Charles Shepherd & Tjeerd Jan Hettema

IE International Policy Review

December 2024

I. Introduction

Serving as an Allied supply route since WWII, the Arctic has become a geopolitical hotspot. Revealing approximately 90 billion barrels of oil and 1,669 trillion cubic feet of gas¹ due to accelerated ice melt of 12.2% per decade². Projections suggest that by 2035, the Arctic might be ice-free during summer.³ A shift is taking place with dozens of Arctic military exercises conducted during the last five years⁴. This poses a risk to both security and the environment. The melting Arctic ice is making the centre of the ocean increasingly accessible, creating volatility and with rising geostrategic tensions, a powder keg. NATO Secretary General Mark Rutte recently stated “We are not at war, but we are certainly not at peace either”⁵, emphasising the need to prepare for escalating conflict.

History has shown that scaling militarisation alone cannot safeguard our planet and guarantee long-term security; rather, it leads to a “Treadmill of Destruction,” where militarisation exacerbates environmental degradation and societal harm⁶. Deterrence is critical, with the Arctic’s unique vulnerabilities, both ecological and geopolitical. A more proactive vision centred on collaboration and demilitarisation is needed, instead of increasing militarisation eventually causing escalation. However, the Overton Window for the Arctic demilitarisation policy is distant. Conflict should not create policy, but policy should prevent conflict. Strategic action is essential to mitigate the risks posed by climate change and escalating geopolitical competition, which threatens to induce irreversible consequences.

The 66th Parallel Plan is a new framework to demilitarise the Arctic Ocean by limiting physical military presence, opportunities for uncertainty, and fostering rapport between states. Geostrategic competition cannot escalate with limited space for it to thrive.

¹ U.S. Geological Survey, *The Water Cycle: U.S. Geological Survey Circular, FS 2008-3049* (Reston, VA: U.S. Geological Survey, 2008), 1, <https://pubs.usgs.gov/fs/2008/3049/fs2008-3049.pdf>

² Alexandra Jahn, Marika M. Holland, and Jennifer E. Kay, “Projections of an Ice-Free Arctic Ocean,” *Nature Reviews Earth & Environment* 5, no. 3 (2024): 164–176, <https://doi.org/10.1038/s43017-023-00515-9>.

³ Alexandra Jahn, Marika M. Holland, and Jennifer E. Kay, “Projections of an Ice-Free Arctic Ocean,” *Nature Reviews Earth & Environment* 5, no. 3 (2024): 164–176, <https://doi.org/10.1038/s43017-023-00515-9>.

⁴ Arctic Military Activity Tracker | CSIS Europe, Russia, Eurasia Program. (z.d.). <https://arcticmilitarytracker.csis.org/>

⁵ NATO, “‘To Prevent War, NATO Must Spend More’: Speech by NATO Secretary General Mark Rutte at the Concert Noble, Brussels,” NATO, December 12, 2024, https://www.nato.int/cps/en/natohq/opinions_231348.htm.

⁶ Gregory Hooks and Chad L. Smith, “The Treadmill of Destruction: National Sacrifice Areas and Native Americans,” *American Sociological Review* 69, no. 4 (2004): 558, <https://www.jstor.org/stable/3593065>.

II. Background

The concept of Arctic demilitarisation on a macro level is not new, in 1987 Mikhail Gorbachev gave a speech in Murmansk where he proposed the Arctic should become a “zone of peace.”⁷ He specifically mentioned creating a “nuclear-free zone in Northern Europe”⁸ and holding conferences “between the Warsaw Treaty Organization and NATO on restricting military activity and scaling down naval and airforce activities in the Baltic, Northern, Norwegian and Greenland Seas, and on the extension of confidence-building measures to these areas.”⁹ He even voiced a consideration to discuss “banning naval activity in mutually agreed upon zones of international straits and in intensive shipping lanes in general”.¹⁰ However, the initiative was not a success militarily because the West believed it gave more of an advantage to the Soviet Union¹¹ and the nuclear-free zone did not cover the entirety of the Arctic Ocean.¹² Additionally aided by the reality that the Soviet Union and the United States considered their nuclear submarines too important to restrict voluntarily.¹³ The Murmansk initiative is a source for international relations in Northern Europe and the Arctic. It demonstrates that a superpower can advocate for demilitarisation in the region though its acceptance is greatly contingent on who receives the most immediate benefits.

III. Analysis

The Arctic, once dominated by scientific and environmental concerns, has now become the domain for military and economic competition. Initiatives such as the International Polar Years, with the first held in 1882–1883, exemplify the longstanding emphasis on scientific exploration in the region¹⁴. Russia remains the most established Arctic power, with a monopoly on (emerging) trade routes, a significant icebreaker fleet¹⁵, and geographic proximity. This means an advantageous position in case of a conflict, especially in the

⁷ Mikhail Gorbachev, *Speech in Murmansk at the Ceremonial Meeting on the Occasion of the Presentation of the Order of Lenin and the Gold Star to the City of Murmansk*, October 1, 1987, 4, https://www.barentsinfo.fi/docs/gorbachev_speech.pdf.

⁸ Ibid., 4.

⁹ Ibid., 4–5.

¹⁰ Ibid., 5.

¹¹ Kristian Åtland, “Mikhail Gorbachev, the Murmansk Initiative, and the Desecuritization of Interstate Relations in the Arctic,” *Cooperation and Conflict* 43, no. 3 (2008): 299, citing Hayward, 1988, 11, <https://www.jstor.org/stable/45084526>.

¹² Kristian Åtland, “Mikhail Gorbachev, the Murmansk Initiative, and the Desecuritization of Interstate Relations in the Arctic,” *Cooperation and Conflict* 43, no. 3 (2008): 298, <https://www.jstor.org/stable/45084526>.

¹³ Ibid., 298

¹⁴ NOAA Pacific Marine Environmental Laboratory, Arctic Zone: International Polar Year, <https://www.pmel.noaa.gov/arctic-zone/ipy.html>.

¹⁵ U.S. Coast Guard, *Major Icebreaker Chart* (Washington, DC: Department of Homeland Security, 2017), <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Office%20of%20Waterways%20and%20Ocean%20Policy/20170501%20major%20icebreaker%20chart.pdf?ver=2017-06-08-091723-907>.

initial phase, being able to mobilise assets rapidly in the first 24 hours as supported by Zimmermann's analysis¹⁶. However, in the maturing phase of a conflict, this advantage is offset by NATO's superior logistical capabilities, which allows them to scale and sustain an upper hand over an extended period¹⁷. This imbalance proves to be a reason for discussion, as each side's defensive measures are threats to each other. The showing-off between NATO, Russia, and emerging influences like China underscores the need for a balanced, cooperative approach to the Arctic.

China's entry with a singular warship into the Arctic Ocean marks a new phase in international relations and increases tension¹⁸. Even though China is not an Arctic state, it has declared itself a "near-Arctic state"¹⁹ proven by its significant investments in the Polar Silk Road Initiative²⁰. This creates precedence for other geographically indirect states to claim justification for entry into the region as engagement is no longer isolated to geographic proximity. The cooperation between Russia and China, economically and militarily²¹ forms an increasing risk for NATO's long-term planning²² and potentially threatens their maturity phase overhand in case of conflict. China as of 2020 had a total navy battle force count of 360 to the United States 296 and by 2030 China is projected to increase to a total of 425 and the United States to 290.²³ This projected 135-ship difference, though across different classes and likely quality, changes the domain and aids in equalising Russo-Sino leverage in negotiations with NATO. It is becoming a multipolar balance of power defined by a lack of a singular state or alliance able to exert total authority.

The increasing (joint) exercises and asset developments increase the likelihood of accidents or miscalculations. As highlighted by Zimmerman, especially around the GIUK-N Gap and Northern Sea Route, even minor incidents can result in escalation²⁴. Near-misses in military manoeuvres, such as the 2019

¹⁶ Zachary N. Zimmermann, *Arctic Warfare: Modelling Conflict Scenarios in the High North*, (Bachelor's Thesis, IE University, 2024), 39.

¹⁷ *Ibid.*, 39.

¹⁸ Jessie Yeung, "China and Russia Coast Guard Ships Sailed Near Alaska in Arctic Ocean: Report," CNN, October 3, 2024, <https://edition.cnn.com/2024/10/03/china/china-russia-coast-guard-arctic-ocean-intl-hnk/index.html>.

¹⁹ Björn Jerdén, "The Ice Silk Road: Is China a Near-Arctic State?" Institute for Security & Development Policy, <https://www.isdp.eu/publication/the-ice-silk-road-is-china-a-near-artic-state/#::~:~:text=Factually%20speaking%2C%20China%20is%20not,its%20attention%20toward%20the%20region>.

²⁰ The Arctic Institute, "China's Polar Silk Road: A Long Game or a Failed Strategy?" The Arctic Institute, <https://www.thearcticinstitute.org/china-polar-silk-road-long-game-failed-strategy/>.

²¹ Junhua Zhang, "Russia Clears the Path for China in the Arctic," GIS Reports Online, December 9, 2024, <https://www.gisreportsonline.com/r/china-arctic-russia/>.

²² NATO Allied Command Transformation, *Regional Perspectives: 2021 Edition*, April 2021, 27, <https://www.act.nato.int/wp-content/uploads/2023/05/regional-perspectives-2021-04.pdf>.

²³ Ronald O'Rourke, *China Naval Modernization: Implications for U.S. Navy Capabilities*, RL33153 (Washington, DC: Congressional Research Service, updated November 2, 2024), 10, <https://crsreports.congress.gov/product/pdf/RL/RL33153/276>.

²⁴ Zachary N. Zimmermann, *Arctic Warfare: Modelling Conflict Scenarios in the High North*, (Bachelor's Thesis, IE University, 2024), 35.

near-collision between Russian and U.S. naval vessels in the Bering Sea²⁵, underscore the need to directly address tensions to prevent these outcomes.

IV. Policy Solutions

To properly account for limiting military presence, a source hierarchy should be introduced following the UNGA (A/71/259) 7+1 report²⁶ for arms as the primary definition source but applying UNCLOS Article 29 for warships to broaden the applicability away from tonnage and to being manned and commanded by an officer. The Wassenaar Arrangement²⁷ would apply to all other undisclosed definitions. Lastly, a new definition to be added to the list of defined weapons is “militarised animals,” defined as aquatic or terrestrial, equipped with but not limited to weapons, armaments, or reconnaissance items. Definitions should be reevaluated and updated regularly to prevent loopholes.

Every warship above the 66th parallel north is a force multiplier for uncertainty. That is why implementing a respected cap on the total number of warships above the 66th parallel north beyond the Contiguous zone to a total of fifteen²⁸ creates a ceiling. Of this total cap, all nations would be restricted to three warships²⁹ to prevent any single state from exerting asymmetrical military influence. Submersible vessels, specifically submarines, will be limited to two³⁰ per nation in these defined waters as well. Establishing a respected distance of 85 nautical miles between each warship³¹ creates predictability by slowing down movements at key points such as the Bering Strait, Davis Strait, and Barents Sea. Due to the range of modern platforms^{32,33}, the distance should not pose an individual security risk. If concern is raised about protecting commercial assets from pirates, states are encouraged to work together with the limited warship presence against the common threat. Predictability and channelling a funnel towards cooperation are the intended outcomes.

²⁵ Barbara Starr, Ryan Browne, and Nathan Hodge, “U.S. and Russian Warships Nearly Collide,” CNN, June 7, 2019, <https://edition.cnn.com/2019/06/07/politics/us-russia-navy-near-collision-intl/index.html>.

²⁶ United Nations Office for Disarmament Affairs, The United Nations Register of Conventional Arms, accessed December 19, 2024, <https://disarmament.unoda.org/convarms/register/>.

²⁷ Wassenaar Arrangement Secretariat, Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies: Founding Documents, December 2019, <https://www.wassenaar.org/app/uploads/2019/12/WA-DOC-19-Public-Docs-Vol-I-Founding-Documents.pdf>.

²⁸ Ian Shepherd, Tjeerd Hettema, “Arctic Imperative,” unpublished draft resolution for the Disarmament and International Security Council, 2024 IEUMUN Model United Nations, 2024.

²⁹ Ibid.

³⁰ Ibid.

³¹ Vincent Walther, “Arctic Imperative,” unpublished draft resolution for the Disarmament and International Security Council, 2024 IEUMUN Model United Nations, 2024.

³² Department of Defense, *Tomahawk Land Attack Missile Fact Sheet* (Washington, DC: U.S. Department of Defense, April 2017), 1, [PDF file](#).

³³ Rosoboronexport, *Yakhont Naval Anti-Ship Missile System* (Moscow: Rosoboronexport, [n.d.]), 1, [PDF file](#).

However, in isolation, this would constitute a repetition of what happened after the London Naval Treaty³⁴, where states faced with a warship cap would turn to Unmanned Underwater Vehicles (UUVs) or militarised animals. Additional measures must be implemented as UUVs do not meet the UNCLOS Article 29 definition of warships. To close this potential loophole, each UUV, Militarized Animal, and in good faith, any other non-described asset upon entering the 66th Parallel North or exiting the contiguous sea will be required to identify themselves and will be added to a live index. Upon reentering the contiguous sea or going below the 66th Parallel North they will be removed from the index and a vacancy will be opened. This index would be accessible to governments of all participating states and would foster transparency, accountability, and ensure collective awareness of Arctic movements. Constant collective tracking ensures states cannot abuse their assets, and they can solely be used for collective security. Violations by way of failure to disclose presence or deliberate connection flickering would result in diplomatic or economic consequences based on the nature of the case. Due to the flexible nature of the mission for UUVs and Militarised animals, imposing a total cap or time limit could be counterproductive to the point of general non-compliance.

Overt transparency while seemingly hyperbolic will be a key factor in incentivizing states to commit to the plan. This can be achieved by installing buoy transponders along key choke points and intensive shipping lanes. Warships above the 66th Parallel North should “ping” their location on open channels every 24 hours³⁵ to generate rapport and notify proximity.

From the moment of entry, each warship will be allotted a maximum duration of three months to facilitate an influx of new actors and prevent any single alliance from exerting asymmetrical military influence. Once a state has exhausted the duration of three warships, it must leave and allow another state the same duration before being eligible to re-enter itself. Warships in good faith will be immutable; if ownership is transferred to a separate state or its serial number changes, it cannot be deemed a new warship. The potential subsequent problem of “queuing” just below the 66th Parallel North would be mitigated by the need to resupply and refuel, if the warship is nonnuclear, and the diplomatic maintenance required. Simply put it would be economically and diplomatically expensive to loiter. If a warship were to overstay the three-month duration, guaranteeing successful expulsion is difficult, especially if it is a warship of a directly proximate nation or within their alliance. Ensuring compliance with this requires creativity as action is limited beyond directly requesting desistance over diplomatic channels however potential remedies include

³⁴ Matthew Wright, “What the Second London Naval Treaty ‘Escalator Clause’ Really Meant,” Navy General Board, October 9, 2018, <https://www.navygeneralboard.com/what-the-second-london-naval-treaty-escalator-clause-really-meant/>

³⁵ Ian Shepherd, Tjeerd Hetteema, “Neutralization.” Unpublished working paper for the Disarmament and International Security Council, 2024 IEUMUN Model United Nations, 2024.

disincentivising states from admitting unyielding warships above the 66th parallel North within their ports, applying sanctions, and leveraging the perpetrating state a deliberate delay in ongoing trade and services from other states. A regime of deniable and deliberate stalling would discretely pressure perpetrating states to fall in line and return below the 66th parallel.

Another obstacle to compliance and success is the probable presence of undisclosed military assets above the 66th parallel north. To generate assurance, a universal alignment agreement should be signed by all states, declaring that there will be no undisclosed assets beyond the contiguous sea above the 66th Parallel north on 1 January 2026 and each state with such assets is responsible for restoring them if refusing to disclose them below the 66th Parallel north or within the contiguous seas. This agreement gives states diplomatic flexibility to not disclose if there were any in the region prior and a commitment the rest of the world can hold each other to. This would be an opening for independent observers to monitor compliance from ratification onwards.

An additional potential approach to demilitarisation though not part of the main plan is grandfathering in current military assets. Current land-based weaponry, weapons platforms, machinery, or reconnaissance items could be eligible to remain in the 66th parallel north until they deteriorate or are destroyed from which point new military assets would be ineligible or be subject to another cap.

V. Greater-Scope

It would be in the United States' interest to follow the 66th Parallel Plan because of their lack of icebreakers compared to Russia³⁶ and the amount of time it would take to catch up³⁷. It puts them in a position to be eager for breathing room as they catch up alongside the ICE Pact. As icebreakers are specifically not mentioned to be limited or restricted, The United States can ramp up manufacturing without perceiving a potential threat of Russia sending a fleet of warships behind their icebreakers. Additionally, the incoming second administration of President Donald Trump could use the plan to signal broader de-escalation and leverage closer diplomatic ties with Vladimir Putin. And if NATO, as a defensive organisation, can defeat Russia's naval assets at least without China, it would be in their interest to comply as initial aggression would be more difficult to manifest.

³⁶ U.S. Coast Guard, *Major Icebreaker Chart* (Washington, DC: Department of Homeland Security, 2017), <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/Office%20of%20Waterways%20and%20Ocean%20Policy/20170501%20major%20icebreaker%20chart.pdf?ver=2017-06-08-091723-907>.

³⁷ "US, Canada, Finland Launch Effort to Build Ice-Breaking Ships as China and Russia Cooperate in Arctic," Reuters, July 11, 2024, <https://www.reuters.com/world/us-canada-finland-launch-effort-build-ice-breaking-ships-china-russia-cooperate-2024-07-11/>

To the rest of the world, if a conflict or limited war occurred between NATO and Russia in the Arctic Ocean, it would be relevant to them because the conflict would economically mirror the Red Sea Crisis³⁸. Future trade above the 66th Parallel North would be disrupted and markets would be impaired, whereas with the 66th Parallel Plan market volatility can be mitigated by limiting insecurities caused by potential (or accidentally induced) conflict. This potential conflict could include trade routes, resource-gathering, and other market-affecting activities.

Support for the plan ideally would immediately be found from member states of the non-aligned movement, the general public, and non-state actors who would pressure NATO and Russia to establish and adhere to this framework. It should be mentioned that direct acknowledgement by NATO or Russia of Arctic de-escalation would be an acknowledgement of present escalation and could also be construed by members of both sides as a sign of weakness on their part as seen in the 10th Arctic Circle Assembly in October 2023, where NATO emphasised the importance of peace and stability while Russia expressed concerns over NATO's activities potentially escalating tensions in the region.³⁹ Framing acceptance and implementation to constituents will require clever diplomatic tact from all sides to quell inner-party concerns or prevent war hawks from emerging. To help shift the framing, the 66th Parallel Plan, as long as it maintains the sum of its parts, can be a component of a greater framework, avoiding the central spotlight and making it more politically palatable. A role the general public could take on within Arctic demilitarisation efforts could include shifting analysis from the national level to the potential personal benefits of militarising the Arctic and from sabre-rattling. This could reveal the real drivers of fear that fuel the present escalation and as such scrutiny should be administered upon military officials, bureaucrats, and politicians responsible for the Arctic Ocean.

VI. Conclusion

Applying the central concept within *Essai sur la non-Bataille* to the Arctic Ocean, the decisive battle can now be avoided with "series of smaller, statistically effective actions...the non-battle."⁴⁰ These can be characterised by states or alliances posturing and expressing themselves in a predictable environment.

³⁸ "Red Sea Crisis: Economic Consequences of Escalating Maritime Tensions," Allianz Trade, https://www.allianz-trade.com/en_BE/news/latest-news/red-sea-crisis.html

³⁹ "NATO's Arctic Militarization Increases Risks of Escalation, Russian Diplomat Says," TASS, May 13, 2023, <https://tass.com/russia/1617105>

⁴⁰ Guy Brossollet, *Essai sur la Non-Bataille*, translated into English with AI (Paris: Éditions Robert Laffont, 1975), 99.

This proposed new domain of exhaustive transparency and accounting should be embraced because preemptive norms can be established before the ice melts. Channelling the 66th Parallel plan via the United Nations Security Council would be idealistic but could easily prove ineffective due to the potential for it to be vetoed or amended to lose its original purpose. Therefore focusing on a multilateral level aside from the United Nations could prove more realistic, effective, and timely. If the 66th Parallel Plan is widely adopted via treaty or *opinio juris* and complete non-compliance or special objection eventually occurs, it is certainly not ideal. However, the creation of sources and or a status quo within that timeframe would be a positive advancement for communication and strengthened international relations.

Ideally, a summit should be held in early 2025 with representatives of all interested states in attendance to chiefly discuss the future of the Arctic and the 66th Parallel Plan. In the summit, a joint declaration should be made and the 66th Parallel Plan put into operative clauses to be signed for immediate effect.

Bibliography

"Arctic Military Activity Tracker | CSIS Europe, Russia, Eurasia Program." Accessed December 20, 2024. <https://arcticmilitarytracker.csis.org/>.

Åtland, Kristian. "Mikhail Gorbachev, the Murmansk Initiative, and the Desecuritization of Interstate Relations in the Arctic." *Cooperation and Conflict* 43, no. 3 (2008): 299. <https://www.jstor.org/stable/45084526>.

Brossollet, Bernard. *Essai sur la Non-Bataille*. Translated into English with AI. Paris: Éditions Robert Laffont, 1975.

Barbara Starr, Ryan Browne, and Nathan Hodge. "U.S. and Russian Warships Nearly Collide." CNN, June 7, 2019. <https://edition.cnn.com/2019/06/07/politics/us-russia-navy-near-collision-intl/index.html>.

Department of Defense. *Tomahawk Land Attack Missile Fact Sheet*. Washington, DC: U.S. Department of Defense, April 2017.

Gorbachev, Mikhail. *Speech in Murmansk at the Ceremonial Meeting on the Occasion of the Presentation of the Order of Lenin and the Gold Star to the City of Murmansk*. October 1, 1987. https://www.barentsinfo.fi/docs/gorbachev_speech.pdf.

Hooks, Gregory, and Chad L. Smith. "The Treadmill of Destruction: National Sacrifice Areas and Native Americans." *American Sociological Review* 69, no. 4 (2004): 558. <https://www.jstor.org/stable/3593065>.

Ian Shepherd and Tjeerd Hetteema. "Arctic Imperative." Unpublished draft resolution for the Disarmament and International Security Council, 2024 IEUMUN Model United Nations, 2024.

Ian Shepherd and Tjeerd Hetteema. "Neutralization." Unpublished working paper for the Disarmament and International Security Council, 2024 IEUMUN Model United Nations, 2024.

Institute for Security & Development Policy. "The Ice Silk Road: Is China a Near-Arctic State?" Accessed December 17, 2024. <https://www.isdp.eu/publication/the-ice-silk-road-is-china-a-near-artic-state/>

Jessie Yeung. "China and Russia Coast Guard Ships Sailed Near Alaska in Arctic Ocean: Report." CNN, October 3, 2024. <https://edition.cnn.com/2024/10/03/china/china-russia-coast-guard-arctic-ocean-intl-hnk/index.html>.

Jahn, Alexandra, Marika M. Holland, and Jennifer E. Kay. "Projections of an Ice-Free Arctic Ocean." *Nature Reviews Earth & Environment* 5, no. 3 (2024): 164–176. <https://doi.org/10.1038/s43017-023-00515-9>.

Junhua Zhang. "Russia Clears the Path for China in the Arctic." GIS Reports Online, December 9, 2024. <https://www.gisreportsonline.com/r/china-arctic-russia/>.

Matthew Wright. "What the Second London Naval Treaty 'Escalator Clause' Really Meant." *Navy General Board*, October 9, 2018. <https://www.navygeneralboard.com/what-the-second-london-naval-treaty-escalator-clause-really-meant/>.

NATO Allied Command Transformation. *Regional Perspectives: 2021 Edition*. April 2021. <https://www.act.nato.int/wp-content/uploads/2023/05/regional-perspectives-2021-04.pdf>.

NATO. "'To Prevent War, NATO Must Spend More': Speech by NATO Secretary General Mark Rutte at the Concert Noble, Brussels." NATO, December 12, 2024. https://www.nato.int/cps/en/natohq/opinions_231348.htm.

NOAA Pacific Marine Environmental Laboratory. *Arctic Zone: International Polar Year*. Accessed December 20, 2024. <https://www.pmel.noaa.gov/arctic-zone/ipy.html>.

"NATO's Arctic Militarization Increases Risks of Escalation, Russian Diplomat Says." TASS, May 13, 2023. <https://tass.com/russia/1617105>.

Ronald O'Rourke. *China Naval Modernization: Implications for U.S. Navy Capabilities*. RL33153. Washington, DC: Congressional Research Service, updated November 2, 2024. <https://crsreports.congress.gov/product/pdf/RL/RL33153/276>.

Rosoboronexport. *Yakhont Naval Anti-Ship Missile System*. Moscow: Rosoboronexport, [n.d.].

"Red Sea Crisis: Economic Consequences of Escalating Maritime Tensions." *Allianz Trade*. Accessed December 20, 2024. https://www.allianz-trade.com/en_BE/news/latest-news/red-sea-crisis.html#

The Arctic Institute. "China's Polar Silk Road: A Long Game or a Failed Strategy?" Accessed December 20, 2024. <https://www.thearcticinstitute.org/china-polar-silk-road-long-game-failed-strategy/>.

U.S. Coast Guard. *Major Icebreaker Chart*. Washington, DC: Department of Homeland Security, 2017.

United Nations Office for Disarmament Affairs. *The United Nations Register of Conventional Arms*. Accessed December 20, 2024. <https://disarmament.unoda.org/convarms/register/>.

"US, Canada, Finland Launch Effort to Build Ice-Breaking Ships as China and Russia Cooperate in Arctic." Reuters, July 11, 2024. <https://www.reuters.com/world/us-canada-finland-launch-effort-build-ice-breaking-ships-china-russia-cooperate-2024-07-11/>.

Vincent Walther. "Arctic Imperative." Unpublished draft resolution for the Disarmament and International Security Council, 2024 IEUMUN Model United Nations, 2024.

Wassenaar Arrangement Secretariat. *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies: Founding Documents*. December 2019. <https://www.wassenaar.org/app/uploads/2019/12/WA-DOC-19-Public-Docs-Vol-I-Founding-Documents.pdf>.

Zachary N. Zimmermann. *Arctic Warfare: Modelling Conflict Scenarios in the High North*. Bachelor's Thesis, IE University, 2024.

A new UN approach to the Sahel

On the topic of The Situation in the Sahel Region for the Security Council of IEUMUN

Lorenzo Rosania

lrosania.ieu2023@student.ie.edu

Introduction

The situation in the Sahel is one of the fastest-developing crises on the planet. Since August 2020, the region has experienced 6 successful coup d'états and multiple more attempts. The wave of political instability has been paired with a wave of violence tied to multiple Non-State Armed Groups (NSAGs), including Jama'at Nasr al-Islam wal Muslimin, a part of Al-Qaeda and the world's fastest-growing terrorist organization. As a result, a quickly developing humanitarian crisis has ravaged the region, causing a mass movement of people. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), around 4 million people have been displaced in the region, with 3.8 being internally displaced persons. The Sahel now corresponds to the world's most unstable areas, suffering from stark political instability, rising violence, and democratic backsliding. As a result, the Sahel encompasses an epicenter for the biggest threats to global peace and security. The termination of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) as of 30 June 2023 has only exacerbated the situation and diminished the reputation of the United Nations in the region.

The United Nations Security Council has not passed a resolution on the topic since S/RES/2531 (29 June 2020). The Security Council, and by extension, the entire UN, has a responsibility to the people of the Sahel to guarantee the upholding of international law and the protection of civilians.

Background

The Sahel is a biogeographical region in northern Africa that encompasses all transitional territories between the Sahara Desert and the Central African Sahara. The region comprises the countries of Senegal, Gambia, Mauritania, Guinea, Mali, Burkina Faso, Niger, Chad, Cameroon and Nigeria. All member states are UN member states and all of them achieved independence and self-determination in the second half of the XXth Century. The region suffers from a plethora of issues stemming from historical grievances and exacerbated by modern developments. The harsh colonial past that most of these countries underwent during the majority of the 20th century led to fractured states and severe tribal and religious frictions that came as a result of the new international borders drawn during the independence processes. As a result, armed conflict, political instability, and particularly terrorism have seen fertile ground to grow in the Sahel. According to The Economist, around 35% of all deaths caused by terrorism occurred in the Sahel. A recent wave of violent regime changes and Coups has led to an escalation of violence and skepticism towards Western and international forces.

Analysis

Following the closing of the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), the United Nations' presence in the region should be re-considered and re-drafted into a humanitarian approach. Instability and violence in the Sahel have reached levels previously not thought possible, the United Nations cannot let down the people in the region, nor the larger international community.

The United Nations is not the only organization whose reputation has been tarnished in the region. The African Union, ECOWAS, and its standby force have also seen a drop in their presence. Mali, Niger, and Burkina Faso have all been suspended from ECOWAS and

the African Union. ECOWAS and its Standby Force have a limited capacity to act within these states. ECOWAS even economically sanctioned Mali following the 2022 Coup.

Policy Solutions

Following the large number of regime changes, attempted Coup d'Etats in the central and eastern Sahel, and the large migration rate, a UN-backed solution is necessary. First, considering that the Security Council has not addressed the Sahel since the 2020 resolution S/RES/2531, the Council must recognize a new and distinct threat to international peace in the region due to widespread political instability and active armed conflicts in Mali, Burkina Faso, and Chad. Keeping in mind that most of these states have been suspended from the African Union (AU), this has hampered international efforts to stabilize the region.

The Security Council should immediately draft Provisional Measures for all countries that underwent a regime change in the region as per Article 40, Chapter VII of the United Nations Charter. The Security Council has not addressed the Sahel since the 2020 resolution S/RES/2531, hence the implementation of Provisional Measures is not only necessary but long due. In the same spirit, it must not reject a possible implementation of Article 45 if the Council considers it necessary. Despite the catastrophic failure of MINUSMA, the United Nations still can reinstate that a new threat to peace exists in the Sahel following Article 39, and implement new Measures under 40. These measures could instate the governments of the Region to:

1. Reinstate their Commitments to International Law and the Protection of Civilians.
2. Establish Humanitarian Corridors to allow for the free movement of internal refugees and humanitarian aid.

3. Recognize the importance of regional cooperation to strengthen the participation of regional players such as ECOWAS and the African Union.
4. The Dispatch of a UN Special Envoy to the Sahel to mediate amongst States, regional and international organizations, and NSAGs.
5. Amongst other possible measures to be debated by the Council.

We must understand the urgency to address the topic, yet also bear the past missteps of the organization in mind. Suppose the Provisional Measures are to be drafted by the Council. In that case, these main aspects should revolve around humanitarian aid, consolidating the region's armed forces, and establishing relief corridors. This should be paired with calls for strong regional cooperation and collaboration with humanitarian and relief organizations operating in the regions. Was Article 45 to be activated, The Council should immediately enter talks with the governments of the Republic of Chad and the Republic of Niger to coordinate efforts for possible deployments. Considering the current developments and sudden changes in the administration of both nations.

Conclusions

The current crisis in the Sahel is and will continue to be one of the most pressing threats to international peace, as long as the international community does not intervene. Not with the intent to reinstate military stability, but to guarantee the well-being of noncombatants, civilians, and refugees. A conflict so rooted in historical grievances and exacerbated by modern complexities must be addressed with all of the complications it entails.

The United Nations Security can implement quick decisions that can serve as temporary measures to keep stability, prevent spill-outs, and protect civilians. These measures must be implemented, not only in the name of regional security but of global peace.

Sources

Nations, United. 2015. *Charter of the United Nations and Statute of the International Court of Justice*. UN.

Rushing, Elizabeth. 2023. "The NSAG handbook: helping non-State armed groups reduce civilian harm during urban warfare." *Humanitarian Law & Policy Blog*. March 30, 2023.

<https://blogs.icrc.org/law-and-policy/2023/03/30/nsag-handbook-non-state-armed-groups-civilian-harm-urban-warfare/>.

Reuters. 2022. "West African Regional Leaders Impose New Sanctions on Mali." *Voice of America*, January 9, 2022.

<https://www.voanews.com/a/west-african-leaders-to-discuss-mali-crisis-in-key-summit-6388915.html>.

"Security Council Terminates Mandate of United Nations Multidimensional Integrated Stabilization Mission in Mali, Unanimously Adopting Resolution 2690 (2023) | Meetings Coverage and Press Releases." 2023. June 30, 2023.

<https://press.un.org/en/2023/sc15341.doc.htm#:~:text=The%20Security%20Council%20decided%20today,personnel%20by%2031%20December%202023>.

The Economist. 2024. "Mauritania Is a Beacon of Stability in the Coup-prone Sahel." *The Economist*, June 27, 2024.

<https://www.economist.com/middle-east-and-africa/2024/06/27/mauritania-is-a-beacon-of-stability-in-the-coup-prone-sahel>.

UNHCR - The UN Refugee Agency. n.d. "Sahel Emergency | UNHCR." UNHCR.

<https://www.unhcr.org/emergencies/sahel-emergency>.

Voice of America (VOA News). (2022, January 9). *West African regional leaders impose new sanctions on Mali*. Voice of America.

<https://www.voanews.com/a/west-african-leaders-to-discuss-mali-crisis-in-key-summit-6388915.html>