Australian Institute of International Affairs

Emerging Scholars
2013

Emerging Scholars is an initiative of the
Australian Institute of International Affairs to enable
young researchers to publish their work and to raise awareness
of international issues within the Australian community.

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AUSTRALIAN INSTITUTE OF INTERNATIONAL AFFAIRS

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Edited by Mhairi Cowden, Eva Entenmann and Alix Kearney
Supervising Editor: Melissa H. Conley Tyler

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Christopher Lever.

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FOREWORD

The Australian Institute of International Affairs (AIIA) was established in 1924 with to promote public understanding and interest in international affairs.

The AIIA works actively to engage younger people in the community in its work by coordinating events such as careers fairs, school events, mentoring, internships and the Young Diplomats Program. For more information, visit www.aiia.asn.au.

As part of the AIIA's commitment to engage youth in international affairs, AIIA National Office launched an internship program in 2006. Since the commencement of the program, National Office has hosted more than 100 interns from Australia and overseas. Internship and volunteering opportunities also exist in the State and Territory branches.

Anyone who interns at one of the AIIA branches or the National Office is eligible to submit a paper for publication in *Emerging Scholars.*

For the first time this year, not only are the contributing authors former AIIA interns, but the Editorial team are also from the AIIA family. My sincere thanks go to Mhairi Cowden, Eva Entenmann and Alix Kearney for their efforts editing and coordinating this volume. Their achievements since their time as AIIA interns and their willingness to continue to contribute to the organisation is a testament to the AIIA's engagement with young people in international affairs.

This year saw a particularly high standard of submissions. Submissions are subject to an academic review system prior to publication. This volume of *Emerging Scholars* presents the reader with a variety of topics in international affairs including foreign policy, diplomacy, security and finance.

This volume begins with an insightful analysis of next year's Scottish Independence referendum. There is a focus on Australia's region with articles examining the Australia-China relationship, security in the Indo-Pacific, nationalism in the Philippines and the Indian-Pakistan dynamic.

Along with this there are also articles that examine topics as diverse as minerals and aid in the Democratic Republic of Congo, the role of discourse in diplomacy, private military firms and illegal immigration.

All of these papers deserve an audience. Please note that the opinions contained in this volume are those of the authors alone and do not represent the views of the AIIA.

I sincerely thank Dr Chad Mitcham for acting as a reviewer for this volume. I also thank interns Sophie Gammage, Chelsea Jacka and Christopher Lever for their assistance.

We congratulate the authors on their work and hope this further stimulates their interest in careers in international affairs.

Melissa H. Conley Tyler
National Executive Director, Australian Institute of International Affairs

November 2013

ABOUT THE EDITORS

Publishing is a difficult business and the three editors of this edition of 'Emerging Scholars' believe that this publication presents an important opportunity for early career researchers to experience the publishing process. The editors hoped to not only provide this opportunity through the AIIA, but to also give useful feedback for young authors on how to improve in future. The editors thoroughly enjoyed working with the authors and would like to thank Melissa Conley Tyler and Chad Mitcham for their invaluable help and support.

Mhairi Cowden

Mhairi Cowden was an intern at the AIIA National Office in 2009. Following her internship, she worked as the Executive Officer for the AIIA ACT Branch and then served on its Council until the end of 2012.

She completed her PhD at the School of Politics and International Relations at the Australian National University in 2012. During her candidature Mhairi published a number of peer review papers and is currently working on a book proposal arising from her thesis.

Since graduating Mhairi has moved back to her hometown of Perth to a policy position at the Department of Premier and Cabinet, Government of Western Australia. Although moving out of academia in the formal sense, she wants to keep publishing and continue her involvement with the academic community. Currently she is on the National Committee of Defence for Children International (DCI) Australia and editor of the DCI publication 'Australian Children's Rights News' (ACRN).

Eva Entenmann

Eva was born in Germany and moved to Adelaide in 2002 to complete highschool. After graduating from Adelaide University with a double-Bachelor degree in media and international relations, she undertook an internship at the AIIA National Office in Canberra in 2009.

Eva returned to Europe one year later, studying a Master of Laws in Amsterdam, where she also worked for the Public International Law and Policy Group and completed an internship at the International Bar Association's International Criminal Court Programme in The Hague.

Following her studies, she conducted research at the Vrije Universiteit Amsterdam. Currently, Eva is working at the International Centre for Counter-Terrorism in The Hague.

Alix Kearney

Alix Kearney completed a Bachelor of Arts (global) at Monash University with a double major in Politics and International Studies. During her undergraduate degree, she spent a semester abroad at Simon Fraser University in Vancouver.

Alix then completed a Masters of International Relations with a focus on counter-terrorism studies. She wrote a Politics Research Dissertation in 2011 which was titled 'Terrorism, Violence and Animal Rights: Case Studies of the Animal Liberation Front and the Sea Shepherd Conservation Society'.

She moved to Canberra in July 2012 to begin her internship with the AIIA National Office. Her main interest is animal protection and she has been involved with Animal Liberation ACT since she arrived in Canberra. In 2013 Alix presented her dissertation at the Institute for Critical Animal Studies (ICAS) Oceania conference held in Canberra.

ACRONYMS AND ABBREVIATIONS

ACYD	Australia China Youth Dialogue
ADF	Australian Defence Force
AFP	Australian Federal Police
AGD	Attorney General's Department
AIIA	Australian Institute of International Affairs
ANU	Australian National University
ANZUS	Australia New Zealand United States Security Treaty
APEC	Asia Pacific Economic Cooperation Forum
APT	Association of East Asian Nations + 3
ARF	Association of East Asian Nations Regional Forum
ARMM	Autonomous Region of Muslim Mindanao
ASEAN	Association of East Asian Nations
ASG	Abu Sayyaf Group
AU	African Union
AUSTRAC	Australian Transaction Reports and Analysis Centre
AusAID	Australian Agency for International Aid and Development
CACI	California Analysis Center Incorporated
CEJA	Civilian Extraterritorial Jurisdiction Act
CFR	Council on Foreign Relations
CNDP	Congres Nationale pour la Defense du Peuple
CSCAP	Council for Security Cooperation in the Asia Pacific
DAC	Development Assistance Committee
DIAC	Department of Immigration and Citizenship
DDR	Disarmament, Demobilisation and Reintegration
DHS	Department of Homeland Security
DOD	United States Department of Defence
DRC	Democratic Republic of Congo
ED	Executive Director
ESDP	European Security and Development Policy
EU	European Union
FARDC	Forces Armee de la Republique Democratique du Congo
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GFC	Global Financial Crisis
Hutu FDLR	Forces Democratiques de Liberation du Rwanda
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda

IMF	International Monetary Fund
IO	International Organisation
IPOA	International Peace Operations Association
IR	International Relations
ISAF	International Security Assistance Force
ISOA	International Stability Operations Association
MAD	Mutually-Assured Destruction
MAGTF	Marine Air-Ground Task Force
MEJA	Military Extraterritorial Jurisdiction Act
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MONUC	United Nations Organisation Mission in the Democratic Republic of the Congo
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
NAM	Non-Aligned Movement
OAD	Official Development Assistance
OECD	Organisation of Economic Cooperation and Development
PECC	Pacific Economic Cooperation Council
PLA	Chinese People's Liberation Army
PMF	Private Military Firm
PRC, China	People's Republic of China
SALT	Strategic Arms Limitations Treaty
SIP	Stability-Instability Paradox
SNP	Scottish National Party
SSR	Security Sector Reform
TPV	Temporary Protection Visa
UAV	Unmanned Aerial Vehicle
UCMJ	Uniform Code of Military Justice
UK	United Kingdom
UKBA	United Kingdom Border Agency
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
UNHCR	United Nations High Commission for Refugees
US	United States of America
USPACOM	United States Pacific Command
USSR	Union of Soviet Socialist Republics
WOW	War on Want
WTO	World Trade Organisation
WWII	Second World War

Scot Free: The Implications of Scotland's 2014 Independence Referendum

Katherine Elizabeth Gordon[*]

Scottish Nationalism is by no means a new concept; it has existed within sections of the Scottish population since the 1707 Act of Union first bound Scotland together with England, Ireland and Wales. While support for independence has waxed and waned over the centuries, the landslide victory of the Scottish National Party in the 2011 Scottish Parliamentary elections has brought the question of independence back to the fore. The Scottish public have been promised an independence referendum in the second half of 2014, the result of which will have consequences for both the newly independent nation and what remains of the United Kingdom. The ramifications of secession will be felt in the spheres of currency, national debt and natural resources, as well as security and defence. An independent Scotland's continued membership of international institutions will necessarily be re-assessed. Moreover, the independence referendum is significant not just for Britain, but also for aspiring separatist movements Europe-wide. In addition to these considerations, the Scottish population's vacillating desire for independence indicates that Scotland's unique brand of nationalism may be less a grassroots movement than a calculated effort by political elites to fulfil their own nationalistic agenda.

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[*] Katherine Gordon completed her Bachelor's degree in International Relations at the Australian National University in 2009, and recently completed her Master's degree through the University of Sydney's Centre for International Security Studies. She now works for the Australian Public Service in Canberra. Katherine is a dual Australian/British citizen, and has a particular interest in Scottish politics owing to her Scottish heritage and years spent living north of the England/Scotland border.

Introduction

In the May 2011 Scottish Parliamentary elections, the Scottish National Party became the first party to form a majority government in the Parliament since its resumption, running on a campaign ticket that included a pledge to hold an independence referendum. As such, in autumn of 2014, Scotland will hold a public referendum on independence from the United Kingdom (UK).[1] If the majority of the population votes 'yes', then there will be serious ramifications for both Scotland and what remains of the UK. Disagreements have already emerged over who is entitled to the lion's share of North Sea oil, and fiscal concerns persist over the joint currency and British national debt. An independent Scotland would face questions regarding its membership of institutions such as the North Atlantic Treaty Organisation (NATO) and the European Union (EU), as well as its plans for new foreign and defence policies. In addition to these concerns, Scotland's upcoming referendum highlights a changing climate for Europe's numerous separatist and independence movements. In an era of unpopular austerity programs and rising voter dissatisfaction with central government policies, a successful breakaway by Scotland may influence other aspiring European separatist movements. Furthermore, the unprecedentedly rapid rise of the Scottish National Party and their swift action in organising a referendum demonstrates the way in which political elites can influence and inspire a whole nation to unintentionally back their party goals.

Background

Scottish nationalism and support for independence has existed for almost as long as Scotland has been a part of the UK. From its foundation in 843 until the Treaty of Union and subsequent Acts of

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[1] M. Golovnina, 'Scotland seals terms of historic independence vote', *Reuters* (15 October 2012), available online: http://uk.reuters.com/article/2012/10/15/uk-britain-scotland-signing-idUKBRE89E0PO20121015 (accessed 16 October 2012).

Union in 1707, Scotland had been an independent nation.[2] However, while support for full independence remained limited for the first few generations following the union, calls for the devolution of control over Scottish affairs increased from the mid-nineteenth century onward. The official 'home rule' push for a Scottish Assembly began in 1853; supported by the Conservative and Liberal Parties, complaining about the fact that Ireland received more support from the British Government than Scotland. While 1885 saw the Post of Secretary for Scotland and the Scottish Office re-established to promote Scotland's interests and voice its grievances to the British Parliament, the early twentieth century left Scottish nationalism interrupted by World War I, and subsequently overshadowed by the Easter Rising and Irish War of Independence.[3]

Following the First World War, the Scots National League - influenced significantly by Ireland's Sinn Féin – was formed in 1921 as a body primarily based in London seeking Scottish independence. In 1926 the League established the *Scots Independent* newspaper, and in 1928 helped transform the Glasgow University Scottish Nationalist Association into the National Party of Scotland, which sought a separate Scottish state. It cooperated closely with the Scottish Party, a home-rule organisation formed in 1932 by former members of the Conservative Party. In 1934 the two merged to form today's Scottish National Party (SNP).[4]

The first few years of its existence proved a difficult time for the SNP, due in large part to the rise of autocratic nationalist forces in continental Europe. The apparent similarity between the SNP and the fascist nationalists of Italy and Spain and the xenophobic National Socialism in Germany, combined with other factors such as a lack of profile in

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[2] BBC, 'Scotland Referendum: Early Scottish History and the Union', *BBC*, available online:http://www.bbc.co.uk/news/special/politics97/devolution/scotland/briefing/history.shtml (accessed 12 November 2012).
[3] Ibid.
[4] BBC, 'Scotland Referendum: The Devolution Debate This Century', *BBC*, available online:
http://www.bbc.co.uk/news/special/politics97/devolution/scotland/briefing/history.shtml (accessed 12 November 2012).

mainstream media made it difficult for the SNP to develop and gain support.[5] Despite the alleged similarities however, Scottish Nationalism was, and still is, based on civic nationalism rather than ethnic patriotism.[6]

Following the difficult interwar years, the concept of full independence from Britain did not re-enter the Scottish mainstream until 1960, when then British Prime Minister Harold Macmillan gave his provocative 'Wind of Change' speech to the South African Parliament, signifying the beginning of the process of decolonisation, and the resultant decline of the British Empire.[7] For many Scots, this served to undermine one of the principal purposes of the UK. Furthermore, it symbolised the end of the popular imperialism and imperial unity, which had united the prominent Scottish Unionist Party. The party consequently suffered a significant decline in popularity and support, allowing the SNP to win a Parliamentary seat in 1967 and rise to national prominence.[8]

The discovery of oil in the North Sea off the east coast of Scotland in 1971 further fuelled the argument for Scottish independence. In the early 1970s, the SNP ran an extremely successful *It's Scotland's Oil* campaign, aimed at informing the Scottish public of the ways in which the discovery of oil could benefit their struggling de-industrialised economy and improve their standard of living.[9] In 1974, the British Government commissioned a leading government economist, Gavin

[5] Ibid.

[6] T. M. Devine, *The Scottish Nation: A Modern History* (London: Penguin Books, 2012).

[7] BBC, '1960: Macmillan speaks of "wind of change" in Africa', *BBC* (3 February 2005), available online:
http://news.bbc.co.uk/onthisday/hi/dates/stories/february/3/newsid_2714000/2714525.stm (accessed 25 November 2012).

[8] BBC, 'Scotland Referendum: Early Scottish History and the Union', *BBC*, available online:
http://www.bbc.co.uk/news/special/politics97/devolution/scotland/briefing/history.shtml (accessed 25 November 2012).

[9] B. Russell and P. Kelbie, 'How black gold was hijacked: North Sea oil and the betrayal of Scotland', *The Independent* (09 December 2005), available online:
http://www.independent.co.uk/news/uk/this-britain/how-black-gold-was-hijacked-north-sea-oil-and-the-betrayal-of-scotland-518697.html (accessed 5 December 2012).

McCrone, to produce a dossier on the viability of an independent Scotland. His report predicted that North Sea oil revenue would give an independent Scotland 'the hardest currency in Europe, with the exception perhaps of the Norwegian Kroner' as well as 'embarrassingly big 'tax surpluses. The report further predicted that 'the Scottish banks could expect to find themselves inundated with a speculative inflow of foreign funds'.[10]

The report, officially titled *The Economics of Nationalism Re-examined*, goes on to detail British government officials advising ministers on how to discourage Scottish nationalism by taking 'the wind out of the SNP sails'.[11] The British Government, afraid that the findings of the report would encourage a surge in Scottish nationalism, classified the McCrone report as 'secret'.[12] As a result, the SNP did not see the McCrone report until 2005, when they obtained the paper under the freedom of information legislation. Upon its surfacing in 2005, the SNP described the report as 'proof of 30 years of official lies, cover-ups and betrayal'.[13]

The Rise of the SNP

1974 also saw the SNP win eleven Members of Parliament in the general parliamentary elections, and gain over 30% of the total vote in Scotland.[14] Following their election to parliament, the SNP's MPs pressed for the creation of a Scottish Assembly. Opponents within the British government, however, insisted that a referendum be held before

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[10] G. McCrone, *The Economics of Nationalism Re-examined* (British Government, 1974), available online:
http://www.oilofscotland.org/MccronereportScottishOffice.pdf (accessed 7 December 2012).
[11] Ibid.
[12] BBC, 'Papers reveal oil fears over SNP', *BBC* (12 September 2005), available online: http://news.bbc.co.uk/2/hi/uk_news/scotland/4238744.stm (accessed 5 December 2012).
[13] Ibid.
[14] BBC, 'Scotland Referendum: The Devolution Debate This Century', *BBC*, available online:
http://www.bbc.co.uk/news/special/politics97/devolution/scotland/briefing/c20scot.shtml (accessed 25 November 2012).

agreeing to offer Scotland a devolved deliberative assembly. Consequently, in 1979 a referendum was held, resulting in a 52% majority in favour of devolution. One of the conditions of the referendum however, was that 40% of the total electorate must vote in favour of devolution for it to go ahead. As the total turnout for the referendum was just 63.6%, only 32.9% of the total electorate had in fact voted in favour, and the assembly was not granted.[15]

The next three decades saw a decline in SNP popularity and consequently in interest over independence. However, in 2011 following the SNP's unprecedented landslide electoral victory, the party achieved an overall majority in the Scottish Parliament for the first time in its history. Subsequently, Nationalist First Minister Alexander Salmond declared his intention to hold a referendum 'in the second half of the parliament', which has since been set for autumn 2014.[16]

Ramifications of a Successful Independence Referendum

Oil

If the 2014 referendum results in a majority favouring independence, there will be serious ramifications to consider for both Scotland, and what remains of the UK. Oil will remain a contentious issue, as Scotland's feasibility as an independent state would be heavily dependent on its ability to monopolise revenues from Britain's North Sea oil fields. The SNP predicts that an independent Scotland would be a social democratic welfare state, like Norway. But this vision is based on the assumption that its claims to 90% of North Sea oil and gas would not be contested, when in fact many English observers believe they would retain up to a third of the fields.[17] The legal process to determine

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[15] Ibid.

[16] M. Gardham, 'Holyrood election 2011: Alex Salmond: Referendum on Scottish independence by 2015', *The Daily Record* (2 May 2011), available online: http://www.dailyrecord.co.uk/news/politics/holyrood-election-2011-alex-salmond-1101868 (accessed 31 August 2012).

[17] Washington Post Editorial Board, 'Scottish independence vote is part of worrying trend', *Washington Post* (30 October 2012), available online: http://articles.washingtonpost.com/2012-10-30/opinions/35501357_1_scottish-

who will retain possession of the fields may take years to reach a conclusion. Moreover, Salmond, himself a former oil economist, believes that an independent Scotland would be significantly more prosperous with a majority share of the North Sea oil revenues, claiming that if more money flowed directly to Edinburgh, Scotland could better address some of its basic development challenges such as a weak industrial sector and deep-rooted urban poverty.[18]

British Prime Minister David Cameron, however, disagrees. He argues that an independent Scotland with a population of only 5 million (8% of the UK total) would in fact suffer economically, as the bulk of its current funding comes from a 30-billion-pound grant from the British government.[19] While the 1974 McCrone report predicted an immensely wealthy independent Scotland, more recent predictions have been less optimistic. A recent article in *The Economist* explains that today, an independent Scotland would depend on oil for some 18% of its GDP, making it subject to shifts in global commodity prices.[20] Although high oil and gas prices have recently pushed up tax revenues, production and receipts will both plummet if they drop. Moreover, the richest reserves have already been exploited; leaving inaccessible oil that will become unprofitable when prices fall. North Sea production has been falling by about 6% a year for the past decade, and, eventually, the oil will run out entirely.[21]

Additional Fiscal Considerations

A small country is also more vulnerable to other economic shocks. In 2008, for example, the British government had to bail out Scotland's two biggest banks, the Royal Bank of Scotland and HBOS. At its

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independence-scottish-national-party-scottish-separatism (accessed 1 November 2012).

[18] C. King, 'The Scottish Play: Edinburgh's Quest for Independence and the Future of Separatism', *Foreign Affairs,* vol. 91, no. 5 (September/October 2012).

[19] M. Golovnina, op. cit. (2012).

[20] The Economist, 'Scottish Independence: It'll cost you', *The Economist* (14 April 2012), available online: http://www.economist.com/node/21552564 (accessed 30 November 2012).

[21] Ibid.

height, the Royal Bank of Scotland's balance sheet was thirteen times higher than the Scottish national GDP. Edinburgh, once a prosperous financial centre has been in economic decline since 2008, and its past prosperity may prove difficult to restore. Moreover, as a new and small economy, some British economists argue that there is a limit to how large a financial sector an independent Scotland could even support. [22]

Cameron has suggested that an independent Scotland should 'take a share of RBS's £187 billion of toxic assets', which Salmond has vehemently rejected. An independent Scotland's borrowing costs would almost certainly be higher as well, due to its small size, and its bond market being 'small and illiquid'. [23] The question of Scotland's currency would also be problematic, as the SNP no longer wants an independent Scotland to switch to the Euro, but stick with the pound instead. Entering into monetary union without fiscal union has proved difficult in continental Europe, and there is no reason to suggest it would work any better for an independent Scotland.

Membership of International Institutions and Organisations

The question of Scotland's membership of international institutions such as the EU and NATO also remains unanswered. Alexander Salmond has made the SNP's desire for an independent Scotland to remain a part of the EU abundantly clear. Its continued membership, however, is not that simple. Salmond and deputy first minister Nicola Sturgeon argue that an independent Scotland should not be regarded as a new state, as Scotland was an independent nation before its union with England in 1707. They insist that both Scotland and the remainder of the UK should be regarded as 'successor states' rather than new members, and therefore the population of Scotland would have as much right to remain citizens of the EU as their counterparts in England, Wales and Northern Ireland.[24]

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[22] Ibid.

[23] Ibid.

[24] J. Cook, 'Scottish Independence: In or out of Europe. A simple question?', *BBC* (6 December 2012), available online: http://www.bbc.co.uk/news/uk-scotland-scotland-politics-20629600 (accessed 7 November 2012).

Nicola Sturgeon further argues that there is in fact no provision within EU law for any existing part of the EU to be removed from the union's treaties or for its people to stop becoming EU citizens, insisting that:

> [n]o serious person can argue that it is anything other than in the interests of the EU to keep Scotland in continuous membership, given this country's huge natural resources in energy and other aspects which make us such a valuable European partner.[25]

The SNP also argues that the deal signed by Salmond and Cameron in October to stage the independence referendum in 2014 gives an independent Scotland protected status within the EU.

Cameron, meanwhile, argues that Salmond's interpretation misunderstands the legal purpose of the Edinburgh agreement of 2012,[26] stating: 'it simply establishes the legal framework of the referendum within UK law and makes no comment about Scotland's membership of international bodies'.[27] Furthermore, president of the European Commission, José Manuel Barroso, insists that any new state would have to apply to become a member of the 27-country union, claiming that 'for EU purposes, from a legal point of view, it is certainly a new state. If a country becomes independent it is a new state and has to negotiate with the EU'.[28]

Salmond has also confirmed his intention to reverse the SNP's historic opposition to joining NATO, and wants an independent Scotland to remain a member of the Organisation. The SNP's reluctance to embrace

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[25] S. Carrell, 'Scotland calls for urgent talks over EU membership', *The Guardian* (11 December 2012), available online:
http://www.guardian.co.uk/politics/2012/dec/10/scotland-urgent-talks-eu-membership
(accessed 29 June 2013).
[26] The Edinburgh Agreement, officially titled 'The agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland', is the agreement between the Scottish Government and the United Kingdom Government, signed on 15 October 2012 at St. Andrew's House in Edinburgh, setting the terms for the Scottish independence referendum of 2014.
[27] Ibid.
[28] Ibid.

the NATO in the past is based on their staunch opposition to nuclear weapons. Salmond now believes, however, that this stance has severely undermined the credibility of their defence policy in the debate over separation, and believes that the SNP can safely join NATO without compromising their anti-nuclear credentials. However, as Salmond has also stated that an independent Scotland would have a written constitution banning nuclear weapons, not all defence experts agree that the desire for membership will be fulfilled. Former NATO Secretary General Lord Robertson of Port Ellen has spoken out about the contradiction, stating that all members must sign up to NATO's Strategic Concept, which confirms they remain a nuclear alliance, and acknowledge that the 'supreme guarantee of the security are the nuclear deterrents of the US, Britain and France'.[29]

Defence and Security Policies

Also problematic would be Scotland's standing in the area of national defence and security policies. One of the most pressing concerns for the British government is whether an independent Scotland would remain part of the British military forces, or instead develop its own military capabilities, and implement independent defence and security policies. Simon Johnson of the *Telegraph* has written that the withdrawal of Scottish forces from the UK's military capabilities would 'substantially weaken the status of a smaller Union consisting only of England, Wales and Northern Ireland in the EU's defence and security pillar'.[30] Moreover, Britain currently bases its entire Trident-missile carrying nuclear submarine fleet at Faslane Naval Base in Western Scotland. The SNP has already announced that the fleet would have to be removed if Scotland becomes independent.[31]

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[29] S. Johnson, 'Independent Scotland would ban nuclear weapons but join NATO', *The Telegraph* (7 October 2012), available online:
http://www.telegraph.co.uk/news/politics/SNP/9592522/Independent-Scotland-would-ban-nuclear-weapons-but-join-Nato.html (accessed 5 December 2012).
[30] Ibid.
[31] Ibid.

Effects on Separatist Movements in Europe

In addition to the effects Scottish independence would have for Britain, its ripples may also be felt more widely. Within Europe today there are over fifty active separatist movements, each claiming the right to self-determination based on a perceived fundamental difference between themselves and the nation they are part of.[32] While independence movements persist in Wales and Northern Ireland, the question of Scotland's future is not just about the durability of Britain. Foreign Correspondent Paul Ames who has written widely on the subject of separatism believes that 'separatists around Europe will be looking at the Scottish example and wondering if they can add the likes of Italy, Spain and Belgium to the list of Europe's forgotten nations'.[33]

Among Europe's many separatist movements is the New Flemish Alliance, who want independence for the prosperous, Dutch-speaking north of Belgium and emerged as the country's biggest party in 2010. Further south, the Northern League, which once campaigned to divide Italy, is currently the third largest party in Rome's Chamber of Deputies. Nationalist parties already dominate the parliaments in the Catalonia and Basque regions of Spain, and unrest in the two regions continues to grow. The regional president of Madeira Island threatened last year to break away from Portugal, and tensions have grown between the Danish government and independence-minded authorities in the north Atlantic Faroe Islands.[34]

While many of these groups stake their claim on ancient heritage or minority rights, modern Scottish nationalists offer a novel argument for independence: that the people of Scotland embrace political and social values that set them apart from the inhabitants of England, Wales, and

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[32] F. Daftary and S. Troebst, *Radical Ethnic Movements in Contemporary Europe* (Washington D.C: Berghahan Books, 2003), p. 192.

[33] P. Ames, 'Scottish referendum raises questions about Europe's future', *Global Post* (12 January 2012), available online: http://www.globalpost.com/dispatch/news/regions/europe/120112/scottish-referendum-raises-questions-about-europes-future (accessed 7 August 2012).

[34] Ibid.

Northern Ireland.[35] Since the Act of Union in 1707, there have been no serious acts of violence or aggression between Scotland and the rest of Britain, and for all intents and purposes the UK has been a shining example of a nation that has 'held up its own identity as that of a people united not just by language, history, and geography, but by high ideals of civic life'.[36]

Herein lies one of the most significant concerns that international observers have with the possibility of Scottish independence; if Scotland, an unrepressed and politically included minority, can achieve independence with relative ease, which other separatist movements may also prove successful in the near future? In an age of unpopular austerity programs and rising voter dissatisfaction with central government policies, the Scottish push for independence is one that Belgium's Flemings, Italy's Piedmontese, Spain's Catalans, Portugal's Medeira Islanders and Denmark's Faroe Islanders may try to replicate.[37]

Shaping of the Referendum by the SNP

Aside from its potential domino effect, Scotland's quest for independence highlights another interesting feature of nationalism. The rapid rise to power of the SNP and their relentless push for an independence referendum has shown that independence movements do not always come from below, but are sometimes encouraged from above. As Georgetown University International Affairs Professor Charles King wrote in a 2012 *Foreign Affairs* article, independence movements do not always come about because 'every member of an ethnic minority wakes up one day and decides to wave a flag or, worse,

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[35] BBC, 'Scotland Referendum: The Devolution Debate This Century', *BBC*, available online: http://www.bbc.co.uk/news/special/politics97/devolution/scotland/briefing/history.shtml (accessed 12 November 2012).

[36] The Christian Science Monitor Editorial Board, 'Independence for Scotland: Nothing brave about it', *Christian Science Monitor* (25 January 2012), available online: http://www.csmonitor.com/Commentary/the-monitors-view/2012/0125/Independence-for-Scotland-Nothing-brave-about-it?nav=572411-csm_article-leftColRelated (accessed 25 October 2012).

[37] C. King, op. cit. (2012).

shoulder a rifle; they are instead the product of calculated moves by political elites within existing institutions'.[38] Over the long term, it is the rise of the SNP and their nationalist agenda, rather than a grassroots movement that has made the end of the UK a thinkable proposition.[39] King further points out the fundamental difference between a nationalist *movement;* that seeks its own country, and a nationalist *party;* that seeks a country that will keep electing it.[40] The SNP has structured the debate over Scottish independence in ways that make it difficult for voters to distinguish between the two.

In fact, within weeks of the SNP's 2010 landslide election victory, support for independence within Scotland dropped to just 34%, with 55% of the population believing that Scotland's economy would suffer as an independent country.[41] To convince the increasing number of doubters, the SNP is banking on charismatic First Minister Salmond's skill as an inspirational public speaker to 'tap into a centuries-old rivalry with England'.[42] In a 2012 article, British newspaper *The Guardian* accused Salmond's actions of sending the message that 'if you don't want to be run by Etonian snobs set on dismantling the NHS or politicising policing, vote for independence. '[43]

Moreover, in order to harness the Scots' famous national pride, the SNP has timed the 2014 referendum to coincide with the 700th anniversary of the Battle of Bannockburn, a famous battle where Scottish forces led by Robert the Bruce defeated English invaders.[44] Recently, the SNP has also won a major concession from London to allow Scotland to lower the voting age to 16 from Britain's countrywide 18, as the SNP believes

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[38] Ibid.

[39] The Christian Science Monitor Editorial Board, op. cit. (2012).

[40] Ibid.

[41] M. Golovnina, op. cit. (2012).

[42] Ibid.

[43] A. Trench, 'NATO membership for an independent Scotland? The SNP's nuclear headache', *The Guardian* (22 October 2012), available online: http://www.guardian.co.uk/commentisfree/2012/oct/22/scotland-independence-nuclear-weapons-nato (accessed 1 December 2012).

[44] Ibid.

that young people are more likely to vote in favour of independence.[45] According to recent media surveys, the Scottish people themselves are evenly divided on the prospect of independence, with many favouring increased devolution from London, while remaining part of the Union.[46] In an effort to circumvent this option, the SNP has struck a deal with Whitehall that will allow only a single 'yes' or 'no' question on the independence ballot, with no option for enhanced devolution as was initially discussed.[47]

Salmond has also himself talked up the wider meaning of the Scottish case. 'An independent Scotland could be a beacon for progressive opinion south of the border and further afield'[48], he announced in January 2012. He went on to argue that progressives should make policy 'according to the specific circumstances and wishes within the other jurisdictions of these islands and beyond'.[49] Even beyond the outcome of the referendum, the chief source of interest in Scotland's most recent push for independence has been the example it may set for other would-be independent mini-states. Salmond's skill as an orator makes his rousing message an exceptionally alluring one for all for regional parties dissatisfied with the policies of their central governments.[50] The message this referendum sends is that 'short-term policy differences provide sufficient cause for politicians to lead their regions out of existing states'.[51] Many other countries in the region battling separatist movements themselves are right to be worried that this sentiment may spread.

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[45] M. Golovnina, op. cit. (2012).

[46] Ibid.

[47] A. Stevenson, 'Independence referendum: SNP and Westminster avoid all-out war', *Politics.co.uk* (4 October 2012), available online: http://www.politics.co.uk/blogs/2012/10/04/independence-referendum-snp-ready-to-give-up-on-devo-max (accessed 30 October 2012).

[48] A. Salmond, 'An independent Scotland will be a beacon of fairness', *The Guardian* (24 January 2012), available online: http://www.theguardian.com/commentisfree/2012/jan/23/scottish-independence-social-union (accessed 2 December 2012).

[49] A. Stevenson, op. cit. (2012).

[50] Ibid.

[51] C. King, op. cit. (2012).

Conclusion

Scottish nationalism is not a new phenomenon, nor is separatism a new sentiment within Europe. However, Scotland's upcoming independence referendum highlights a changing climate for Europe's numerous separatist movements. The outcome of Scotland's vote will reverberate throughout the continent, setting a precedent for dealing with fundamental questions of governance and sovereignty. For England, Northern Ireland, Wales and Scotland, this moment in history marks the very possible end to a 300-year-old union. A successful independence bid will have serious ramifications and considerations for Scotland and what remains of the UK. Oil has always been a point of contention within the union, and will persist as a key battle point. Additional fiscal concerns include the joint currency and national debt. Foreign, defence and security policies will have to be worked out, and stand to affect countries outside the UK, particularly given the contentious status of an independent Scotland's memberships in institutions such as the EU and NATO. The question of Scotland's future is therefore not just about the durability of the UK. In a time of tough austerity measures and unpopular bailouts, the SNP's message, that disagreements over central government policies offer sufficient reason to break away, is one that many European secessionist movements will take to heart. Moreover, by demonstrating the way in which political elites can influence and inspire a whole nation to back its goals, the rise of the SNP and the upcoming referendum offer both a novel philosophy of modern nationalism, and a window into the possible future of separatism in Europe.

A Clarification of Uncertainty: The International Monetary Fund and the World Trade Organisation

Eloise Johnston[*]

Uncertainty has been a pervasive characteristic of the modern international financial system since its inception.[1] In 1948 Morgenthau recognised uncertainty as a central factor underlying the fragile international system,[2] and in 1950 Hertz referred to uncertainty when developing the security dilemma.[3] A plethora of international financial organisations began to emerge from the rubble of World War Two from global negotiations to reduce the uncertainty of states. Indeed, uncertainty remains a major issue of debate within contemporary global financial relations; but the possibility that uncertainty may actually be an advantage for both wealthy and poorer states has received little consideration. According to Haas: 'The hallmark of interdependence is uncertainty [yet] the understanding of causes is subject to ideological disputation'.[4] By contrasting the International Relations lenses of realism and rationalism through the case studies of the International Monetary Fund and the World Trade Organisation, respectively, this article demonstrates that uncertainty is not necessarily a weakness within international financial relations, but that it can actually enable greater flexibility and autonomy, and increase prospects for cooperation. The intention of this paper is to challenge assumptions surrounding a force that is widely held to be the greatest deficiency of the modern international system.

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Uncertainty, the International Monetary Fund and the World Trade Organisation

The International Monetary Fund (IMF) and the World Trade Organisation (WTO) were conceived to provide clear policy, reduce ignorance and increase cooperation within the international financial system – in other words – to reduce uncertainty.[5] In addition to transparent practice, Weber explains that the authority of such international organisations (IOs) is dependent upon stringent, clear and concise rules and regulations.[6] Despite extensive global debate on how to overcome the problem of uncertainty the exact role that uncertainty plays and whether it may actually be an advantage for states within IOs has received minimal attention. Through the International Relations (IR) theories of realism and rationalism, this paper seeks to establish how uncertainty has functioned differently within the IMF and the WTO, respectively, to argue that uncertainty has been, and can continue to be, used constructively by both powerful and less-powerful governments worldwide. First, the IR lens of realism will be used to demonstrate the ways in which uncertainty has been a *disadvantage* to less powerful member states within the IMF. Two IMF Debates on the IMF's 'conditionality policy' in 1968 and in 2001-2002 will be examined. Second, to juxtapose this argument the IR lens of rationalism will be drawn upon to argue that uncertainty can actually be an *advantage* for both wealthy and poorer member states in IOs by evaluating the 'escape clauses' within WTO trade policy. This section will show that states

[1] M. Barnett and R. Duvall, 'Power in Global Governance', in M. Barnett and R. Duvall (eds), *Power and Governance* (Cambridge: Cambridge University Press, 2005), p. 56.

[2] H. Morgenthau, *Politics among Nations: The Struggle for Power and Peace* (New York: Knopf, 1948), p. 233.

[3] J. Herz, 'Idealist Internationalism and the Security Dilemma', *World Politics*, vol. 2 no. 2 (1950), pp. 157-80.

[4] E. B. Haas, 'Why Collaborate? Issue-linkage and International Regimes', *World Politics*, vol. 32, no. 3 (1980), p. 113.

[5] J. Best, 'Ambiguity and Uncertainty in International Relations: A History of Debating IMF Conditionality', *International Studies Quarterly*, vol. 56, no. 4 (2012), p. 2.

[6] M. Weber, *Economy and Society: An Outcome of Interpretive Sociology*, vol. 1 (Berkeley: University of California Press, 1976), p. 223.

with greater domestic uncertainty actually favoured uncertainty in international trade relations, and that uncertainty also made deals easier to establish at the outset. IR paradigms are often regarded with scepticism and suspicion by policy makers and the wider community.[7] However, comparing these IR paradigms adds new perspective to the ways in which member states acting within global financial organisations have responded to the uncertainties of a complex and dynamic environment.[8]

Being Realistic: The International Monetary Fund and Uncertainty

According to realists governments worldwide are uncertain of their counterparts' true intentions and that consequently any meaningful cooperation is prevented, even through international organisations.[9] Realists maintain that the anarchical international system of states is a 'self-help' system in which governments must constantly accrue power through alliance formation to guard against potential opponents. As Mearsheimer explains: '…no state can be certain another state will not use its offensive capabilities against the first'.[10] Fearon agrees that the efficiency of IOs is affected by member states' fear of relative gains by other states, as states are uncertain of another's true intentions and this consequentially prevents cooperation.[11] Furthermore, Mearsheimer adds that IOs cannot reduce the uncertainty that other states may act as short-term gain maximisers, with more powerful states taking advantage over the less powerful states in terms of benefits gained from the IO.[12] In this line of argument, international organisations are vehicles for great powers to achieve their own interests, as was the case when the United

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[7] J. Lepgold and M. Nincic, as quoted in K. Waltz, 'The Relationship between Theory and Policy in International Relations', *Annual Review of Political Science*, vol. 8 (June 2005), p. 23, available online: http://www.ic.ucsc.edu/~rlipsch/Pol272/Walt.theory.pdf (accessed 21 May 2012).

[8] Best, op. cit. (2012), p. 7.

[9] K. Waltz, *Theory of International Politics* (Boston: McGraw Hill, 1979), p.105.

[10] J. J. Mearsheimer, 'The False Promise of International Institutions', *International Security*, vol. 19, no. 3 (1994), p. 10.

[11] J. D. Fearon, 'Bargaining, Enforcement and International Cooperation', *International Organization*, vol. 52, no. 2 (1988), p. 271.

[12] J. J. Mearsheimer, 'A Realist Reply', *International Security*, vol. 20, no. 1 (1995), p. 82.

States (US) employed the North Atlantic Treaty Organisation (NATO), rather than an informal treaty, to check the power of the Soviet Union during the Cold War.[13] The slightest hint of hostile intentions may ignite a major conflict despite the fact that states may actually share similar goals. Moreover, realism argues that states should not even trust their own judgement with complete conviction. Therefore with regards to the IMF, realists argue that the organisation is incapable of reducing the uncertainty of governments worldwide and unable to stimulate true and enduring cooperation. By examining the IMF's 1968 and 2001-2002 Debates on conditionality policy the realist lens demonstrates how uncertainty appears to have been a disadvantage to poorer member states.

Realism: The IMF Debates on Conditionality Policy and Uncertainty

From the early days of the IMF its member states have continuously debated how to manage uncertainty within institutional practice, specifically regarding conditionality policy.[14] The IMF developed conditionality policy to reduce uncertainty by ensuring compliance, providing information and fostering expectations.[15] Conditionality policy is applied to a loan when a member state borrows money. In theory the government receiving a loan agrees to certain financial policies to ensure that they can overcome the problems that led them to seek financial assistance in the first place, and then repay the money within a certain time frame. This system is vital to the IMF as the repaid funds ensure that resources will then be available for future loans.[16] But instead of responding to uncertainty within conditionality policy by encouraging transparency through clear and specific rules, for over three decades the IMF responded by *maintaining* uncertainty through

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[13] Ibid.

[14] B. P. Rosendorff and H. V Milner, 'The Optimal Design of International Trade Institutions: Uncertainty and Escape', *International Organization*, vol. 55, no. 4 (2001), p. 14.

[15] R. O. Keohane and L. L. Martin, 'The Promise of Institutionalist Theory', *International Security*, vol. 20 (1995), p. 40.

[16] Ibid.

ambiguous policies and practices.[17] Interestingly, official documents from the 1968 and the 2001-2001 Debates reveal that it was largely staff and Executive Directors (EDs) from wealthier states who favoured maintaining certain ambiguities within conditionality policy.[18] These states argued that whilst rules made the IMF functional to a certain extent, the areas that they did not quite encompass –the uncertainties– might be interpreted to enable flexibility within conditionality policy, thus making it more functional.[19] Conversely, Barnett and Finnemore point out the limits of this contention, as the IMF's organisational legitimacy depends upon its ability to communicate clear rule-based administration and its reputation as the major IO providing impartial financial policy.[20] Additionally, ambiguities are only useful to those states with the power to interpret the rules before their implementation, and hence power-over dynamics were created within the IMF. By reflecting upon both the cultural and strategic aspects of organisational custom within the IMF, the power dynamics operative become apparent. It is therefore valuable to evaluate the responses of IMF member states during the 1968 Debate on how to manage uncertainty in the implementation of conditionality policy.

The IMF 1968 Debate: Uncertainty in the Implementation of Conditionality Policy

The problem of uncertainty was a prominent issue within the IMF 1968 Debate on conditionality policy, particularly with regards to the level of discretion acceptable when implementing the policy. In the 1960s, several IMF member states had complained of uncertainty within the organisation due to the IMF staff's capacity to unilaterally refuse loans.[21] IMF staff and EDs had acknowledged that certain conditions were needed to remedy 'this feeling of uncertainty' for some member

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[17] Best, op. cit. (2012), p. 2.
[18] Ibid.
[19] Ibid.
[20] M. Barnett and M. Finnemore, 'The politics, power, and pathologies of international organisations', *International Organization*, vol. 53 (1999), p. 707.
[21] Best, op. cit. (2012), p. 8.

states.[22] Whilst the IMF's staff and EDs were answerable to the IMF and not to the authorities of their countries of origin, differences in opinion were largely reflective of national background. Pertinently, conflict emerged when staff and EDs from wealthy and poorer states expressed their views on how uncertainty should be managed. EDs from industrialised countries such as France and the United States favoured greater discretion.[23] The US ED, William Dale, argued that it 'would be wise to avoid undue rigidity in setting any policy for stand-by arrangements…because unforeseen circumstances might arise'.[24]

In contrast, several EDs from 'developing' countries, such as the Guatemalan Executive Director, expressed discomfort with multiple proposals that were highly subjective, instead arguing for more precise and clear rules which would offer greater certainty.[25] This pattern appears to have been similar in the discussions regarding one of the other main areas of discussion in the 1968 Debate, which was the extent to which objectivity was permissible in the compliance monitoring of conditionality policy.[26]

The IMF 1968 Debate: Uncertainty in Compliance Monitoring of Conditionality Policy

Another major area of controversy within the 1968 Debate on conditionality policy was how uncertainty should be dealt with in the compliance monitoring of conditionality policy. Once more opinions were divided between the wealthier and poorer states on how uncertainty should be handled. Wealthy states maintained that subjective processes were superior, whilst poorer states pushed for objective and quantitative assessments in determining performance and

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[22] IMF Archives, *IMF policy with respect to the use of its resources and stand-by arrangements July 22* (1968a) SM/68/128, p. 2.
[23] Ibid.
[24] IMF Archives, *Minutes of Executive Board Meeting 68/128 September 6* (1968g), EBM/68/128, p. 4.
[25] IMF Archives, *Minutes of Executive Board Meeting 68/122 August 14* (1968d), EBM/68/122, p. 18.
[26] Ibid., p. 18.

compliance by members within the conditionality policy.[27] Exceptionally, the German representative Gunther Schleimenger was in favour of the former approach, explaining that strict quantitative measures would indicate when policies were erroneous.[28] Significant energy was invested within the Debate into the interpretation of key terms such as 'flexibility' and 'equity'.[29] Yet records indicate that whilst staff, EDs and member states from wealthy nations acknowledged the lingering uncertainties around the compliance monitoring of conditionality policy, they persistently pointed to the benefits of using ambiguity to manage a variety of actors and handle unique and unforeseen circumstances. IMF staff members and EDs agreed, explaining that they were cautious of any rigid implementation of compliance monitoring which would inhibit their ability to manage various contexts.[30] In this case, again, realists would argue that the wishes of the wealthier powerful states were driving the agenda within the IMF. Ultimately, whilst minor advances were made in gaining more clarity within the organisation, it was concluded that no general rule on conditionality policy was to be adopted 'in view of the diversity of problems and institutional arrangements of members'.[31] Uncertainty within the IMF's conditionality policy continued to be a divisive issue for at least three decades until it was once again reconsidered in the IMF 2001-2002 Debate.

The IMF 2001-2002 Debate: Similarities

At the turn of the millennium in the IMF 2001-2002 Debate, IMF member states, staff and EDs once again debated how uncertainty should be managed within conditionality policy. Notably, the perspectives by wealthy and poorer countries remained consistent with the 1968 Debate. A report for the Department of International Development observed that there was '[a] lack of clarity about what constitutes IMF conditionality and what does not, with particular

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[27] Best, op. cit. (2012), p. 8.
[28] IMF Archives, *Minutes of Executive Board Meeting 68/122 August 14* (1968d), EBM/68/122, p. 20.
[29] Ibid., p. 21.
[30] Best, op. cit. (2012), p. 9.
[31] Ibid.

uncertainty about the status of measures included as structural benchmarks'.[32]

Documents showed that staff reviews of member states' conditionality policy had extended to include not only assessments of past behaviour but also predictions about states' future financial development. Representatives from developing countries argued that IMF conditionality policies had extended beyond their original mandates and were impinging upon the integrity of national economic policies. Speakers from states such as Egypt and Indonesia argued that, '[t]here is a widespread conviction, with which we are by and large in agreement, that IMF conditionality has generally become too broad… and too intrusive'.[33] Other states challenged that the IMF was, 'using its financial leverage to promote an extensive policy agenda and short-circuiting national decision-making processes'.[34]

However, as in the 1968 Debate EDs from wealthier states such as the United States and Canada claimed that making policies more stringent would amount to 'a tight jacket indeed'.[35] From this Debate, IMF staff concluded that the diversity of member states' requirements necessitated flexibility.[36] It was argued that before 2001 rising levels of uncertainty had inhibited the usefulness of strict quantitative criteria, which had created the need for greater subjectivity in policy.[37] Ultimately, it is clear that within both the 1968 and 2001-2002 Debates uncertainty was favoured by more powerful member states and challenged by poorer developing countries with less influence. Accordingly, a realist analysis would argue that the two IMF Debates indicate that IOs have little impact on the reduction of uncertainty and that they are merely vehicles of powerful states seeking relative gains

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[32] T. Killick, *The streamlining of IMF conditionality: aspirations, reality and repercussions. A report for the Department for International Development* (London: Overseas Development Institute, 2002), p. 5, available online: http://www.odi.org.uk/resources/docs/4805.pdf (accessed 10 October 2012).

[33] IMF Archives, op. cit. (2001c), p. 3.

[34] IMF Archives, op. cit. (2001b), p. 9.

[35] IMF Archives, op. cit. (2001c), p. 101.

[36] Best, op. cit. (2012), p. 12.

[37] IMF Archives, op. cit. (2001b), p. 14.

over their counterparts. Yet by scrutinising the practices of the World Trade Organisation through the IR lens of rationalism, a sharp contrast regarding the ways in which uncertainty impacts states within international organisations emerges. Counter-intuitively, uncertainty may actually be an *advantage* for both the powerful and the powerless.

Being Rational: The World Trade Organisation and Uncertainty

Rationalists perceive the international system to be comprised of states that are gain-maximisers responding to uncertainty, which is defined as an ignorance of information. Rationalists believe that states have the ability to determine the type of environment in which they operate, and through a consistent accumulation of information about their environment decision-making capabilities are enhanced.[38] By establishing common issues states are compelled to consider more than just their own interests. As a result uncertainty is decreased for all actors as the inducement of short-term advantage-seeking behaviour declines.[39] One of the central concerns for states is the conflict between advantages gained from unilateral pursuits and the common good resulting from collaboration.[40] From this perspective, IOs such as the WTO can help to expose potential cheaters and defectors and provides a context in which states and actors may trade and increase transparency whereby mutual feelings of goodwill and certainty about intentions are fostered. Most importantly, rationalists explain that within international organisations such as the WTO, the 'shadow of the future', or the uncertainty of future defection, is acknowledged by both sides and hence actually encourages cooperative behaviour because of a rational judgment that both parties may defect and cause mutual disadvantage.[41]

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[38] B. C. Rathbun, 'Uncertain about uncertainty: understanding the multiple meanings of a crucial concept in International Relations theory', *International Studies Quarterly,* vol. 41, no. 3 (2007), p. 541.

[39] Ibid., p. 545.

[40] Weber, op. cit. (1976), p. 224.

[41] P. Dal Bo, 'Cooperation Under the Shadow of the Future: Experimental Evidence from Infinitely Repeated Games', *The American Economic Review*, vol. 95, no. 5 (2005), p. 1591, available online: http://www.econ.brown.edu/fac/Pedro_Dal_Bo/theshadow.pdf. (accessed 13 September 2012).

The rationalist perspective of uncertainty within IOs offers a valuable insight into how the WTO managed uncertainty within its institutional practise. Importantly, this IR lens can be used to demonstrate how uncertainty in the WTO's escape clauses was actually an advantage to both the wealthier and the poorer member states.

Rationalism, WTO Escape Clauses and Uncertainty

Uncertainty has been a constant feature of the WTO since its launch in 1948 (then known as the General Agreement on Tariffs and Trade - GATT).[42] Yet in sharp contrast to the response to uncertainty in the IMF, member states of the WTO reacted to uncertainty within international trade relations not by seeking clearer and more transparent rules and commitments, but by collectively maintaining a degree of uncertainty through the implementation of precaution mechanisms, which include so-called 'escape clauses'. According to Handley, nearly every global trade agreement contains a type of precaution mechanism, which permits states to deviate from the conditions of the institution when deemed necessary.[43] Escape clauses allow states to suspend their obligations within a trade deal without rescinding the terms of the institution.[44] As Rosendorff and Milner explain, '[i]n the choice between rules and discretion, therefore, rules with costly discretion may be better than no discretion when the future holds unexpected, unpleasant surprises'.[45]

Thus, as rationalism explains, the WTO provides a safe environment for information sharing and decision making in areas where states lack confidence in others (and even themselves) to honour particular trade agreements.[46] Keohane suggests that this way states may be more self-

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[42] K. Handley, 'Exporting under Trade Policy Uncertainty: Theory and Evidence', *WTO Staff Working Paper* (2011), ERSD-2011-20, p. 2, available online: http://www.wto.org/english/res_e/reser_e/ersd201120_e.pdf (accessed 9 August 2012).

[43] Ibid., p. 3.

[44] Rosendorff and Milner, op. cit. (2001), p. 830.

[45] Ibid., p. 834.

[46] K. W. Abbott and D. Snidal, 'Why States Act through Formal International Organisations', *Journal of Conflict Resolution*, vol. 42, no. 1 (1998), p. 4.

assured, cooperation will be mutual and thus uncertainty and deviation prevented.[47] Essentially, the uncertainty of states within global trade relations is combated through allowing the flexibility for states to maintain a degree of autonomy within otherwise binding agreements. This hypothesis that uncertainty can be advantageous to both wealthy and poorer states within international trade relations will be explained in more depth through two subsequent hypotheses. First, states that are subject to high domestic uncertainty can significantly benefit from escape clauses (and uncertainty) within international trade relations; and second, escape clauses enable governments to more easily enter into trade agreements at the outset.

High Domestic Uncertainty Leads to Higher Preference of Escape Clauses in the WTO

International trade relations are entrenched within uncertainty, and agreements are often difficult to negotiate due to the high levels of domestic uncertainty that many WTO member states must also manage. Governments are occasionally subject to unexpected changes within the international system, for example from technology, politics or supply, and these can influence domestic corporations that petition for protection of their markets. When governments are unable to determine the extent to which domestic corporations will claim protections in the future, protective measures such as escape clauses ensure a degree of autonomy for states. Article XIX of the WTO allows members to deviate from their duties to not erect trade barriers when one of its firms is experiencing a 'serious injury', which gives governments the confidence that future uncertainty is manageable.[48] Evidence also suggests that areas of international relations where pressures to comply with domestic demands are less, governments also appear to have been less inclined to utilise protection policies. Non-economic areas such as arms reduction talks, including the Strategic Arms Limitations Treaty (SALT), were not accompanied by organised domestic protest and consequentially escape clauses were determined by political leaders to

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[47] R. O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 1984), p. 9.
[48] Rosendorff and Milner, op. cit. (2001), p. 831.

be inapplicable.[49] Hence the uncertainty within both the domestic and international spheres establishes the viability of escape clauses. Interestingly, democracies appear to have been the most reliant upon escape clauses within global trade relations.

Democracies, Escape Clauses and Uncertainty

Whilst democracies are characterised by transparency, stability and accountability they are also highly uncertain regimes. Alexander explains that democracies 'intrinsically create ex ante uncertainty' because it is not possible to know in advance the results of a decision, be it domestic legislation or international trade policy.[50] Przeworski supports this argument, explaining that:

> [i]n an authoritarian system it is certain that political outcomes will not include those adverse to the will of the power apparatus, whereas in a democracy there is no group whose preferences and resources can predict outcomes with near certainty.[51]

The world's first escape clause was introduced by the United States in 1947, and it was the US and Canada that engineered the first countervailing duty laws.[52] This shows that escape clauses are most commonly operative within democracies, which is due the fact that political leaders in democracies are more accountable to their populace and more liable for unexpected shocks. Additionally, this clarifies why certain states have escape clauses within their domestic policy and why they are replicated within their international trade policy. The European Union, the US, Canada and Australia were the chief proponents of escape clauses in the WTO, and were also the first states to implement

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[49] Ibid., p. 845.

[50] G. Alexander, 'Institutions, Path Dependence, and Democratic Consolidation', *Journal of Theoretical Politics*, vol. 13 (2001), p. 1150, available online: http://people.virginia.edu/~ga8h/CPS.pdf (accessed 25 July 2013).

[51] A. Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), p. 47.

[52] M. Trebilcock and R. Howse, *The Regulation of International Trade,* no. 2 (London: Routledge, 1995), p. 233.

escape clauses within their respective domestic trade policies.[53] Thus states with domestic uncertainty, particularly democracies, appear to have favoured escape clauses and hence an element of uncertainty within their international trade policy. In regards to the actual launch of a new trade deal, rationalists explain that being uncertain about the deal can actually make it easier to agree to in the first place.

Uncertainty – Escape Clauses – Makes Trade Deals More Palatable

As mentioned, states with large levels of domestic uncertainty favoured a degree of uncertainty within international trade relations by using escape clauses. In addition, Sykes explains that escape clauses also encourage the initial challenge of establishing a trade agreement. According to Ruggie, all post-war global economic regimes held the condition that any multilateral agreement must be conducive to domestic stability.[54] From the establishment of the WTO it was a norm to include domestic safeguards, thereby enabling governments to confidently agree to trade deals by integrating an element of uncertainty within their multilateral agreements. Every single WTO trade settlement includes at least one type of escape clause.[55] The Rationalist tenet explains that each state party to a new trade agreement is a gain-maximiser, so the prospect of not having to agree to rigid long-term commitments is more palatable when a state commits to an agreement. As Sykes argues:

> [w]hen self-interested political officials must decide whether to make trade concessions under conditions of uncertainty about their political consequences, the knowledge that those concessions are in fact 'escapable' facilitates initial trade concessions.[56]

Ultimately, all states that engage in international trade relations are

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[53] Ibid., p. 232.

[54] J. G. Ruggie, 'International Regimes, Transactions and Change: Embedded Liberalism in the Postwar Economic Order', *International Organisation*, vol. 36, no. 2 (1982), p. 381.

[55] Rosendorff and Milner, op. cit. (2001), p. 834.

[56] A. Sykes, 'Protectionism as a Safeguard', *University of Chicago Law Review*, no. 58 (1991), p. 259.

subject to a degree of uncertainty within the domestic sphere and international sphere. The use of escape clauses can thus moderate their uncertainty and facilitate trade agreements on clear terms. In order to show why it was advantageous to the member states of the WTO to support uncertainty when entering into a trade deal at the outset, it is important to understand how the escape clauses function.

It was previously shown that the inclusion of escape clauses at the outset of international trade agreements reduces states' uncertainty that long-term gains from an agreement do not favour one party. States are given the certainty that, if uncertain future circumstances require them to violate terms of a trade agreement, they can pay a penalty during the period of deviation and then return to cooperation without tainting their reputation. This way initial bargaining is not so critical to a state's interests. By and large WTO rules permits a member state, when invoking its right to an escape clause, to repeal its obligations for the duration of a specified period on the precondition that it publically agrees to penalties. This policy also complements the rule of reciprocity within the WTO: when a state applies a temporary trade barrier it must also offer some other benefit to all of its trading partners so that they are not disadvantaged and retaliate by erecting their own trade barriers.

Evidently, without escape clauses many trade agreements would not have been feasible for many governments' political circumstances. Whilst some argue that escape clauses have a negative impact upon the integrity of the WTO trade agreements, escape clauses provide flexibility and provide an element of security for statesmen and have hence been supported by the majority member states.[57] In conclusion, escape clauses enable trade relations for states with high domestic uncertainty, particularly democracies, to be flexible and also allows states to engage in contracts more willingly because of their perceived ability to manage future domestic and external shocks. For these reasons, rational political leaders ensure that international trade agreements are malleable, unfixed, and to a certain extent uncertain to

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[57] S. A. B. Schropp, 'Trade Policy Flexibility and Enforcement in the WTO. A Law and Economics Analysis', *Cambridge International Trade and Economic Law*, no. 1 (2009), p. xvii.

manage their own uncertainty.

A Clarification of Uncertainty

Plainly, the force of uncertainty is omnipresent within international relations, permeating the practices of major financial organisations such as the IMF and the WTO. However by understanding uncertainty through the different IR paradigms of realism and rationalism, uncertainty has a very different role to play. The first section of the paper demonstrated, from the IR realist paradigm, how uncertainty and ambiguity were maintained through the IMF's conditionality policy, specifically by the powerful industrialised states. Throughout the implementation and compliance monitoring of conditionality policy during IMF 1968 Debate, , wealthier states favoured uncertainty whilst poorer states argued against it. Additionally, it was shown that at the turn of the twenty-first century in the 2001-2002 Debate, IMF member states were once again divided about how uncertainty should be managed within conditionality policy. Wealthy states once again argued that stricter policies would inhibit the abilities of the IMF to manage individual cases, whilst poorer countries argued that the IMFs reach was becoming too comprehensive and too intrusive. Ultimately, through the realist paradigm in this case uncertainty was both perceived to be and in reality was a disadvantage to poorer member states of the IMF.

In contrast, through the IR rationalist paradigm section two challenged the realist assumption that uncertainty is always a flaw within international financial relations, arguing that uncertainty can actually be mutually advantageous. This section revealed how the majority of member states of the WTO favoured a degree of uncertainty within international trade deals through inclusion of escape clauses. Higher domestic uncertainty was manageable and agreements that were not entirely binding could enable states to engage in trade agreements. When a government was unable to predict the future retaliation of firms in the face of an international shock, such clauses provided the ability to agree to international trade agreements under the auspices of the WTO. It was also shown that escape clauses were largely favoured by democracies, and that states in general have been more confident in the actual initiation of trade agreements because they held the certainty that

uncertain circumstances would not bind them to constraining obligations.[58] As Rathbun explains, 'The direction of international politics is rarely certain'.[59] By reconsidering how the force of uncertainty has functioned within the IMF and WTO, it appears that being uncertain within international financial relations is certainly not always a disadvantage at all.

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[58] Rosendorff and Milner, op. cit. (2001), p. 853.
[59] Rathbun, op. cit. (2007), p. 550.

International Discourse: Stresses Importance in English Communication

Virgil Tomlian[*]

Communication between international actors occurs daily, and with the rapid tempo at which states are expected to react to international situations, tactful discourse is necessary to ensure sound and productive relationships. This paper summarises the importance of the communication process to diplomacy and the problems associated with miscommunication. It focuses specifically on how language usage influences diplomatic discourse and highlights the development of diplomatic language and its shift from French to English. Emphasis will be placed on advantages and disadvantages English has in the diplomatic sphere, identifying lexical stress[1] as its most notable flaw. Furthermore, this paper poses possible approaches to alleviating lexical stress problems in English, notably through the use of symbolic modelling (clean language) and code-switching.

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[1] Lexical stress is the stress placed on a given syllable in a sentence to emphasis its importance.

> *Communication is to diplomacy as blood is to the human body. Whenever communication ceases, the body of international politics, the process of diplomacy, is dead, and the result is violent conflict or atrophy.*[2]

This quote by former American diplomat, Van Dinh Tran, highlights the importance of communication to diplomacy and the significant role it plays in shaping international relations. The association between diplomacy and communication dates to the times of the Greeks, when it was said that the first diplomats were angels, 'messengers between deities and human beings'[3] due to the significant power they had in shaping relationships. To this day, diplomacy still plays a vital role in inter-state affairs, whereby it enables disclosed communication to take place in a formal diplomatic demarché (approach).

Linguists and scholars now recognise English as the only true remaining international language, due to its prominence and use in most international affairs. However, this does not mean that it is without fault, nor even the best available means for diplomatic interaction. For nearly two centuries French was seen as the language of diplomacy, due to its nuanced form that did and still does not allow for ambiguity to arise. This work will demonstrate how French, the previous diplomatic language, utilises a tense known as the subjunctive, which alleviates ambiguity. However, this paper will ultimately argue that due to the prominence of English, the reintroduction of the French language as the dominant form of diplomatic communication is not feasible, despite it being a far more appropriate international communication method. As a result, this report proposes the adoption of a language style based around 'Clean Language', a technique that is simple yet effectively communicates desired goals, and advocates for a framework whereby stress timing in spoken communication is taught to people of various linguistic backgrounds.

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[2] V. D. Tran, *Communication and Diplomacy in a Changing World* (Norwood, NJ: Ablex, 1987), p. 8.

[3] H. Nicolson, *Diplomacy* (London: Oxford University Press, 1963), pp. 5-6.

The presumption in diplomacy (that the choice of words and phrasing has been conscious and deliberate) makes the construction of the right sentence extremely important.[4] Accompanying the historical development of the diplomatic arena, a careful, balanced, moderate vocabulary has been established, ensuring a specified way of polished command where the connotation of words is restricted and rapport established.[5] One such example can be found at the X111 Non-Aligned Movement (NAM) Summit Conference 2003 where Shri Atal Bihari Vajpayee (the then Prime Minister of India) use of language choice was heavily restricted to ensure rapport and precise understanding:

> [a]s a number of distinguished colleagues before me have already done, I congratulate Malaysia on its assumption of the Chairmanship of the non-aligned Movement. We are at a critical point in international relations. Perhaps we are also at a defining moment in the life of this movement itself.[6]

However, using simple language can be, and often is, the best method of communication in cross-cultural relations as it reduces ambiguity. Not all diplomats are masters of the language in use, nor do they automatically understand the nuances of how meaning is derived. Therefore mistakes and misinterpretations may be made. There are instances where complete misinterpretation occurs for long periods of time, and this is where the importance of the communication process is evident. Examples here include the United States (US) Secretary of State Hilary Clinton's discussion with the Chinese government over the release of Chen Guangcheng (a civil rights activist), which was marked by 'missteps and misunderstandings',[7] that led to a halt in negotiations

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[4] N. S. Stanko 'Use of Language in Diplomacy', *Language and Diplomacy* (2001)*, p. 44.

[5] Ibid., p. 45.

[6] Text from Shri Atal Bihari Vajpayee, Prime Minister of India, X111 NAM Summit Conference, 2003 in H. Burhanudeen, 'Diplomatic Language: An Insight from Speeches Used in International Diplomacy', *Akademika, vol.* 67 (2006), p. 44.

[7] H. Kurtz, 'Has Hillary Clinton Salvaged Deal to Bring Chen to U.S. Temporarily?', *The Daily Beast* (4 May 2012), available online: http://www.thedailybeast.com/articles/2012/05/04/hillary-clinton-s-effort-to-help-chen-guangcheng-turns-into-a-debacle.html (accessed 12 September 2012).

and near a stop to relations entirely.[8] Ultimately, the goal of diplomatic communication is the development and use of a method through which communication can be easily transferred and understood.

Communication

Both verbal and non-verbal communication is a process in which signs express meaning to another individual in order to affect, change, or pass on information.[9] In order to achieve an effective level of communication, one must share meaning and understanding between the person imparting the message and the person receiving it. The goal of diplomatic negotiation is working towards an understanding between the two states involved in the dialogue, and in this the message must be clear and should, ideally, be decoded with ease and accuracy.

The problem in most cross-cultural situations is the difference in interpretation of the codage and decodage of messages, whereby one's frame of reference can distort the intended meaning. Whenever diplomatic communication takes place, at least two people are involved, often from different cultural backgrounds. This means that various cultural influences (language, styles of communication, stereotypes and relationships) can affect the interpretation of certain words and gestures, especially in English. This is specifically relevant to Conference Diplomacy where there is, '[…] constant exposure to legal texts and contain(s) mandates or precedents governing the conduct of the conference or those which have to be drafted containing its results'.[10]

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[8] On May 3rd 2012, U.S. Secretary of State Hilary Clinton met with Chinese officials to discuss the release of Chen Guangcheng, a civil rights activist. Mr Chen originally sought refuge in the U.S embassy in Beijing, escaping from house arrest for stating his beliefs. However, he was forced to leave for medical treatment under the protection of U.S. officials. But within hours of leaving, U.S. officials were prevented from contacting him. Clinton was sent to discuss Chen's extradition to the U.S.

[9] *Communication Process*, King Saud University, p. 82, available online: http://faculty.ksu.edu.sa/drfahad/Articles/Communication%20Process.pdf (accessed 10 September 2012).

[10] N. Scott, 'Ambiguity versus precision: the changing role of terminology in conference diplomacy', *Language and Diplomacy* (2001), p. 158.

As a consequence, the way we express ourselves, or diplomats express themselves, is vital, and one of the most obvious ways we do that is through the language we choose to communicate in. This paper focuses on the role that the language that is used in diplomatic relations, specifically at English, and the impact (both positive and negative) that this has upon diplomacy.

Diplomatic Language History

Diplomacy is far from a new concept, and the history underpinning the language used today is important in establishing the way it has developed and changed.[11] A great deal of the language and formalities surrounding diplomatic negotiation today derive from Latin and French, the two main languages that have dictated diplomatic interactions since the 13th century.[12] During the Middle Ages, diplomatic intercourse was conducted in Latin, due to it being viewed as the civilised Christian language.[13] This was reinforced by its official use as the lingua franca of the Catholic Church. The French language began to question the supremacy of Latin in the 17th century, due in part to the insufficiencies of Latin established during the Treaty of Westphalia (1648), where the vocabulary was underdeveloped, and pronunciation among speakers so inconsistent, it became impractical as a mode of communication.[14]

There are a number of other reasons contributing to the elevation of French as the diplomatic language, specifically its use as the common

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[11] E. Sucharipa, '21st Century Diplomacy', available online:
 http://campus.diplomacy.edu/lms/pool/BD%20materials/Sucharipa.htm (accessed 20 September 2012).
[12] A. Mehtiyev 'French: The language of diplomacy in Europe from the seventeenth to twentieth century', *California Linguistic Notes*, volume 36, no. 2 (2011), p. 1.
[13] Ibid.
[14] F. Peña 'The Ending of Three Long Histroical Cycles: A backdrop for the dilemmas faced in the construction of regional spaces?', *International Trade Relations Newsletter* (November 2011), available online:
http://www.felixpena.com.ar/index.php?contenido=negotiations&neagno=report/2011-11-backdrop-for-the-dilemmas-faced-in-the-construction-of-regional-spaces (accessed 12 September 2012).

language of high society in the 16th century.[15] Many of the principles we see today in diplomatic discourse derive from the French, such as the recognition of diplomacy being a continuing process, necessitating permanent negotiations between states, as defined by Cardinal Richelieu.[16] In the second half of the 17th century, Louis XIV '*le Roi Soleil'* (the Sun King) helped consolidate French as the official diplomatic language by increasing the influence of the Crown over the Church and European Aristocracy, thereby replacing Latin and encouraging the pre-eminence of French until the 20th century.[17]

However, since the Treaty of Versailles (1919), where the Treaty was written both in French and English, the prominence of English as a means of diplomatic discourse has risen significantly. Although the French language has not been displaced completely, its influence in diplomatic discourse has gone into decline.[18] The use of French is still seen in many multilateral treaties, including the European Union (EU) treaties, and, along with English, French still plays a major role in the United Nations (UN).[19]

The prominence of English in modern-day discourse is less to do with its capabilities as a language and more to do with its use (and its possible recognition as a *lingua franca*) by the dominant powers of the time, notably the United States of America.[20] To many this is a shame, as the indelible qualities of the French language made it a medium more suitable for diplomatic uses than English as it has maintained a formal

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[15] P. Rickard, *A History of the French Language,* (London: Routledge, 1993), 2nd Edition, p. 118.

[16] Cardinal Richelieu was a French clergy, and statesman. He was known as the King's 'Chief Minister', and is considered to be the world's first Prime Minister. He sought to consolidate royal power and stamp out domestic factions. By restraining the power of French nobility he revolutionized the state into a strong and unified body.

[17] S. Potter, *Our Language* (Middlesex: Penguin Books, 1964), p. 180.

[18] T. Schultz, 'Are French-speakers victims of "linguistic terrorism"?', *Global Post* (26 March 2010), available online*:* http://www.globalpost.com/dispatch/european-union/100325/french-language-diplomacy (accessed 15 September 2012).

[19] Duke University School of Law, *Treaties* (last updated 12 January 2011), available online: http://law.duke.edu/lib/researchguides/treaties/ (accessed 15 September 2012).

[20] N. Stanko, 'Use of Language in Diplomacy', *Language and Diplomacy* (2001), p. 41.

and consistent language structure. As lecturer Alex Chubarov suggests, 'strict rules of syntax guarantee the precision of the sentence, while vocabulary is constantly supervised by the *Acadamie Francaise*',[21] ensuring the language is not corrupted, as some may argue has happened to English.[22] This regulatory role guarantees that French remains clean in its depiction of both context and meaning.[23] The clarity and precision which the French language has in the diplomatic sphere will be discussed later in this paper, specifically in relation to its ability to overcome one of the main problems in English, in particular spoken English, that is, the stress placed on words to reflect meaning.

Speed of Diplomacy

Before delving into diplomatic English, it is important to recognise the changing speed of diplomatic communication, which has varied greatly over time. The capacity for international communication with which we experience today has not always been the case. The famous quote that 'Napoleon did not travel faster than Caesar [for he used the same Ancient Roman roads to carry messages]'[24] highlights the technological changes that have occurred over the past 200 years, and how diplomacy has progressively changed.[25] While facilitating communication, the technological innovations that have emerged can also be seen as challenges to entrenched procedures. Most notably, diplomacy has lost its position as the main facilitator of interaction across state

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[21] A. Chubarov 'The Language of Diplomacy', *1006 and all that* (2011), available online:
 http://www.1066andallthat.com/english_contemporary/diplomacy_01.asp (accessed 09 September 2012).
[22] The suggestion that the English language has been corrupted advocates that there is one correct form of English
[23] Academie Francaise, *L'historie*, available online: http://www.academie-francaise.fr/linstitution/lhistoire (accessed 12 October 2012).
[24] G. Törnqvist, *Proximities in a knowledge based economy* (Lund University 1983), p. 1, available online: http://www.strc.ch/conferences/2002/toernqvist.pdf (accessed 15 September 2012).
[25] Previously, diplomacy was largely orchestrated through letters or envoys, which took significant amounts of time, whereas today email and planes, or even the improved postal service, make it far easier and quick to conduct discourse internationally.

boundaries.[26] In contemporary international society, decision-makers are often forced to construct solutions to international events instantaneously, bypassing the tradition models of diplomacy. This is possibly a result of the 'megaphone diplomacy' that has overtaken traditional forms of more subtle, private diplomacy, and consequently the tempo to which diplomatic communication transpires has been corrupted, and undermined.[27] Therefore, the use of a carefully deliberated strategy, employing a clear, clean language in which misinterpretation is less likely, should be the focus of all diplomatic communication.

Diplomatic English and the French Language's Influence upon it

The language used in diplomacy is a specialised form, which aims to allow for tactful communication. Interestingly, diplomatic English already incorporates an array of French structures and apparatuses. \Such structures comprise of words and expressions '… denoting the concepts, ideas and principles with which diplomacy operates as the science and art of international relations'[28] as appropriate. These principles can be seen to indicate the component parts of a letter, *Le traitement,* which is used when mentioning the person addressed in the text, or *La Date,* which includes time as well as the place of writing.[29] Additionally, a range of technical terms are still used in defining the

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[26] C. Jönsson and M. Hall, *Communication: An Essential Aspect of Diplomacy* (Lund University 2002), available online:
http://isanet.ccit.arizona.edu/noarchive/jonsson.htm (accessed 12 September 2012).
[27] The most well known case of tempo undermining diplomacy is the WikiLeaks case, where the non-for profit organisation began releasing classified documents and statements of diplomatic missions around the world. It corrupted the diplomatic system because information that was confidential and in some cases highly opinionated gave an insight into the private sphere of diplomacy.
[28] M. Šumberová, *Investigating the Idea of Diplomatic Culture*, Pan-European Conference on International Relations (2007)*,* p. 7, available online:
http://turin.sgir.eu/uploads/Monika-Diplomatic_culture_Sumberova.pdf (accessed 20 September 2012).
[29] M. Vlotides, 'The Language of Diplomacy', *Diplomat Magazine* (October 2012), available online:
http://www.diplomatmagazine.com/index.php?option=com_content&view=article&id=174&Itemid (accessed 15 October 2012).

niceties of diplomatic protocol. This is not due to the fact that these English words and expression do not exist, but that 'French regulations may be safely taken by other nations in matters of etiquette'.[30] Such examples include *Pour remercier* (to say thank you for the hospitality) and *Pour presenter* (to introduce someone to another person). Further examples of the continuing influence of the French language on diplomacy can still be seen in diplomatic titles, ranking and procedures. This terminological system, rooted in French as it is, is accepted and used by diplomats because of, at least in part, the 'remarkable capacity of English to accommodate any number of Romance borrowings'[31] and this allows for significant variation and development.[32] As has been shown, a significant portion of the diplomatic model that is used today in English is based upon the French system. Therefore, it does not seem unreasonable to suggest that a French style subjunctive system be integrated into the English diplomatic language model.

Another notable influence that French has had on diplomacy is in the use of syntax, wherein phrases can be seen to have a certain 'Frenchness'. For example, 'I am obliged to tender reservations' demonstrates a sense of politeness, which if expressed in plain English ('I do not believe this is possible') could be interpreted as being hostile. These qualities have largely been absorbed into diplomatic English, making it a more appropriate and subtle mode of communication. Some have gone to the extent of saying that diplomatic English has come very close to a French linguistic structure.[33] However, as we will see below, irrespective of the syntax that is employed, there are areas of English expression and structure that remain, and this can have significant

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[30] A. Chubarov, 'The Language of Diplomacy: Niceties of the Diplomatic Protocol', *1006 and all that* (2011), available online:
http://www.1066andallthat.com/english_contemporary/diplomacy_04.asp (accessed 09 September 2012).

[31] Ibid.

[32] For example, approximately 72% of modern English words are of Romance origin (Latin, French, Spanish, etc.); Z. Batzarov, 'Periodization of the Romance Lexical Borrowings', *Orbis Latinus* (1999), available online:
http://www.orbilat.com/Influences_of_Romance/English/RIFL-English-Periodization.html (accessed 25 October 2012).

[33] For example, 'I have the honour to inform you' being based on the French 'J'ai l'honneur de vous informer'.

effects on the way meaning is derived. The use of these French structures today, even in English, establishes that French has played a significant role towards modelling the way diplomacy is conducted and establishes that it is not completely unreasonable to suggest the adoption of further French models within English.

Advantages of English in Political Discourse

Being perhaps the most widely spoken language of contemporary international society, English has numerous advantages in diplomacy. The greatest of these is its diverse and ever-adapting vocabulary. With an estimated six hundred thousand words (including technical and scientific words), English has the ability to describe nearly any situation in modern society with a single word or a phrase.[34] It is said that 20,000 words are created in languages every year and more than 65% of these are in English.[35] Indeed, English is so diverse that many other languages adopt the English words for new objects and descriptions (such as 'email' being the same word in Chinese and accepted in French), due to the pace at which vocabulary develops today, and a belief that it sounds more modern.[36] However, the rapidly evolving nature of English also creates problems, notably the underdevelopment or death of other languages.[37] English does not have an *Acadmie Francaise*, whose domain it is to preserve the integrity of the language, leaving it open to manipulation for better or worse.

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[34] G. Elert (ed.), 'Number of Words in the English Language', *Hypertextbook.com*, available online:
 http://hypertextbook.com/facts/2001/JohnnyLing.shtml (accessed 21 September 2012).

[35] G. Pullum, *Twenty thousand new words a year* (23 December 2003), available online: http://itre.cis.upenn.edu/~myl/languagelog/archives/000256.html (accessed 20 October 2012).

[36] M. Haller, 'The influence of English on Other Languages (and Vice Versa)', *Language Connections* (14 February 2012), available online: http://thenewsconnections.com/2012/02/14/the-influence-of-english-on-other-languages.aspx (accessed 29 October 2012).

[37] The development of words and the cultural influence this can have will not be addressed within this work, as it does not directly relate to communication.

Another notable advantage of English to political and diplomatic discourse is its near universality, if not as a first, most certainly as a second language. As Braj Kachru, an American linguistics professor who was previously the Director of the Linguistics Society of America and Professor Emeritus of the University of Illinios, states that English can be 'separated into three concentric circles'.[38] These circles consist of the inner (English as a first language), the outer (where it serves as a lingua franca) and the expanding circle (where it is not the official language, but nonetheless important to institutional and business functions). These three circles are shown in Figure 1. This figure indicates the universality of English, where it is seen as vital to communication around the globe. Consequently, many countries have adopted language programmes to help people learn the most commonly spoken language of the day, both for economic and social reasons. Therefore, more people internationally are able to communicate with one another, thereby increasing the capabilities of countries to communicate through the same medium. Ultimately, a common language creates a means by which diplomacy is more readily transmutable to a wider audience and can be responded with greater effect.

Disadvantages of English in Political Discourse: Tone and Mood

While English does provide a solid communication framework within which diplomacy can, and does, take place, this does not mean that it is without fault or weakness. Being perhaps the most commonly used form of communication within diplomacy, and with its prominence increasing, it is important to recognise its potential weaknesses and, if possible, demonstrate how these can be dealt with.

One of the defining weaknesses of the English Language is the stress placed on specific words to derive meaning. Within linguistics stress is defined as the relative emphasis that may be given to certain syllables in

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[38] B. B. Kachru, *Norms, Models, and Identities*, University of Illinois (5 May 1997), available online:
http://jalt-publications.org/old_tlt/files/96/oct/englishes.html (accessed 15 October 2012).

a word, or to certain words in a phrase or sentence.[39] 'Standard' English is said to be a stress-timed language where syllables to which stress is applied appear at a roughly constant rate, and syllables in which no stress is applied are shortened to accommodate this. However, as discussed later, certain dialects from Africa and Asia use different stress patterns that can lead to misunderstanding for 'Standard' users.[40] As a result, internationally English is often spoken very inconsistently, with few rules about when and where to use stress, thereby creating problems of interpretation and meaning. As Hopkins, a noted linguist attests, 'meaning in any sentence depends considerably on the rise and fall in ones tone of voice and in the consequent emphasis given to particular words'.[41] Improper stress on the wrong words may destroy the intended meaning of a sentence, possibly creating awkwardness or miscommunication in the diplomatic arena.[42] Emphasis on certain words should be reserved for occasions in which one feels it necessary to express emotion, however this is not always the case. As can be seen below (in Example 1), where one places emphasis on a word or syllable can vary the intended meaning significantly.

Example 1:
I do not wish to discuss that issue currently
- clean example, whereby tone and annunciation is constant, leaving the words to present the meaning.
(however too flat a tone [a monotone] may show disinterest)

I do *not* wish to discuss that issue currently (emphasis placed on the word not)
- demonstrates the emotions of anger and frustration, this can also be brought about through emphasis on the word 'wish'

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[39] J.O. Babalola and G.O. Oyinloye, 'Prosodic Variations and Language Attainment in a Multilingual Society', *Current Research Journal of Social Sciences*, vol. 3, no.4 (2011), p. 304.

[40] L. Hopkins, *Accent and tone of voice,* available online: http://www.leehopkins.com/accent-and-tone-of-voice.html (accessed 08 September 2012).

[41] Ibid.

[42] C. Clennell, 'Raising the pedagogical status of discourse intonation teaching', *ELT Journal,* vol. 51, no. 2 (1997), p. 119.

I do not wish to discuss that issue *currently* (emphasis placed on currently)

- brings across an ironic frame of reference, whereby the receiving party may become confused or offended.
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In practical terms, these examples highlight the possible problems English can create. Although it is evident that most diplomats are fairly skilled in numerous languages, and English is perhaps the most commonly spoken in bilateral/multilateral affairs, this does not mean that all states will have highly skilled linguists in the English language, as can be seen by former Japanese Prime Minister Mori Yoshirô, who asked the question 'Who are you?' not 'how are you?' when greeting the then first lady Hilary Clinton.[43] This is also not to say that all stress patterns are the same for dialects of the English language. Furthermore, diplomats are individuals who traditionally suffer from many demands being placed on their time, and while speeches and events may be organised for them, there is nonetheless constant pressure for rapid responses, and negotiations can occur for long periods on contentious issues. Marco Pinfari, a Professor at the London School of Economics and Political Science, suggests that the artificially-imposed deadlines and the time pressure placed upon diplomats could encourage brinkmanship (pushing dangerous events to the verge of disaster in order to achieve the most advantageous outcome).[44] Further, fatigue levels may be an issue for diplomats, and the wrong emphasis on a certain word may result in a serious diplomatic issue emerging.[45] Ultimately, a means by which confusion and the possibility of misinterpretation is reduced is clearly necessary to ensure that diplomatic problems do not arise.

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[43] R. Kowner, 'Japanese Miscommunication with Foreigners in search for valid accounts and effective remedies', *Japanstudien,* vol. 15, p. 117.

[44] M. Pinfari, *Peace Negotiations and Time: Deadline diplomacy in territorial disputes* (London: Routledge, 2012), p. 152.

[45] For example, one of the main problems in the diplomatic negotiations around Afghanistan 2003-2010 highlighted by William Byrd, was that they often resulted in meeting fatigue, where the message became lost; W. Byrd, *Avoiding Meeting Fatigue*, United States Institute of Peace (July 2012), available online: http://www.usip.org/files/resources/PB-130.pdf (accessed 16 October 2012).

Variation in Dialects

Although English is largely spoken around the world, it is evident that there are numerous dialects in the language itself, and these bring with them varying prosodic structures. The divergent stress patterns these variations have can significantly affect meaning. This, one could argue, is in part due 'English (not having an) Academy or other authority to set standards for usage, and with over 130 countries using it in some form, transmutations are likely to occur'.[46] A clear example of this is the variation of pronunciation within Britain itself, where there are said to be more than thirty mutations of Standard English.[47] In Australia, dialect difference is colloquially identifiable, and is based on state boundaries.[48] As J. O. Babalola, a professor of the University of Ado-Ekit, suggests, for Nigerians speaking English one of the greatest problems a person can have is 'the inability to apply stress correctly to the level of prominence given to the right speech segment'.[49] For example, for the word 'humiliated', tests showed that Nigerians often stressed humiliated, rather than the standard humiliated.[50] Furthermore, he suggests that Nigerians can experience the same problem as many Korean speakers do, because they do not employ word prosody (emphasis) in a similar way to native English, but instead utilize a phrase-level prosodic structure (pitch variation) that stems from 'Americanisms interspersed with British English to create a unique

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[46] J. Freeman, 'Losing our illusions', *boston.com* (9 October 2005), available online: http://www.boston.com/news/globe/ideas/articles/2005/10/09/losing_our_illusions/ (accessed 2 October 2012).

[47] Jr Gordon, G.Raymond 'English', *Ethnologue: languages of the world*, available online: http://www.ethnologue.com/show_language.asp?code=eng (accessed 13October 2012).

[48] S. Kiesling, 'Variation, Style, and Stance: Word-Final-er and Ethnicity in Australian English', *English World Wide*, vol. 26, no. 1 (2005), p. 5.

[49] J. O. Babalola, and G.O. Oyinloye op. cit. (2011), p. 302.

[50] I. M. Udofot, 'Stress and Rhythm in the Nigerian Accent of English', *Journal of Teaching, Linguistics and Literature* (1998), p. 97, available online: http://www.ukm.my/ppbl/3L/final_1/inyang_final.pdf (accessed 20 September 2012).

identity that [draws from] both American and British'.[51] As a result, Korean speakers, and Nigerians, have difficulty integrating lexical stress (emphasis on syllables of words in a sentence) when distinguishing between words in comparison to Euro-centric English speakers.[52] This is in large part due to the significant differences in rules guiding the languages. For example, Korean never has more than two consonants in a syllable.[53]

Alternatively, Mandarin is defined as a tonal language that uses tones lexically to derive meaning. This is in contrast to English, which uses tone both lexically and intonationally.[54] English is said to use tones in two ways: intonational structures describe the natural rise and fall of voice in speaking that is not used to distinguish meaning and lexical stress, which is the emphasis placed on specific syllables to distinguish meaning. By combining different pitch levels and contours, native-speakers of English express a range of intonational meanings through 'grammatical, attitudinal, discoursal and socio-linguistic functions'.[55] In English, changes in pitch are used to emphasise or express emotion, not to give the same word a different meaning. By contrast, Mandarin uses the highness or lowness of pitch to distinguish word meaning. For example the word 'ma' has four different meanings: mother, hemp, horse or scold, depending upon how they are pronounced.[56] As a result,

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[51] F. A. Kperogi, *Divided by a Common Language: Comparing Nigerian, American and British English* (8 September 2007), available online: http://www.farooqkperogi.com/2007/09/divided-by-common-language-comparing.html (accessed 25 September 2012).

[52] Lexical stress is emphasis placed on a word of syllable in a sentence. Within English this is used to derive meaning.

[53] Hi Teacher, *Teaching English to native Korean speakers*, available online: http://hiteacher.com/korea/teaching-english-to-koreans.htm (accessed 23July 2013).

[54] Z. Qin and P. Mok, *The perception of speech and non-speech tones by tone and non-tone language listeners*, Chinese University of Hong Kong (2012), available online: http://www.speechprosody2012.org/uploadfiles/file/sp2012_submission_74.pdf (accessed 10 October 2012).

[55] W. Zhou, *The learnability and teachability of English tones by Chinese EFL learners*, Jiangsu University of Science and Technology (2009), available online: http://www.phon.ucl.ac.uk/ptlc/ptlc2009/ptlc2009-proceedings/ptlc2009_Zhou_021_ed.pdf (accessed 17 October 2012).

[56] Chinese Society of Anglo-Chinese Understanding, *Chinese Tones* (2004), available online: http://www.sacu.org/langtones.html (accessed 15 October 2012).

this can create serious problems for English speakers whose native language is Mandarin. Further, it has been suggested that if intonation is not taught as a specific learning area of English, native Mandarin speakers struggle to ever develop the skill of intonational stress, and therefore lack the ability to properly express emotion and derive meaning, creating significant problems in cross-cultural discourse.

As observed earlier, British English is usually described as stress-timed language.[57] However, dialects may also differ in the location of stressed syllables. For instance, the word *suddenly* has the stress placed on the first syllable in British English, but in Singaporean English it is often the last syllable of the word that is heard as being most prominent, which can create confusion for listeners from a British English background.[58] Due to the divergent nature of the use of stress, as exemplified in the differences between British and Singapore English, speakers are less capable of making prominent judgments with a great degree of confidence and can therefore sound less confident and authoritative than intended. While sounding less authoritative can be regarded as being tactful in diplomacy, it can also make conveying non-agreement for certain goals or agreements difficult. The variation of stress patterns in English can create substantial problems with regard to expressing emotion. Consequently, we will now explore the stress structures of French and see if the same problems occur.

French Prosodic Stress

Unlike English, French has been referred to as a non-tone, non-stress language, whereby emphasis is placed on the last syllable of a word, in order to maintain a more uniform vocal tone.[59] This is known as natural

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[57] Stress-timed language: syllables may last different amounts of time, but there is perceived to be a fairly constant amount of time (on average) between consecutive stressed syllables.

[58] E. L. Low and E. Grabe, 'A contrastive study of prosody and lexical stress placement in Singapore English and British English', *Language and Speech*, vol. 42, no. 1 (1999), p. 47.

[59] S. Duanmu, 'Tone and Non-tone Languages: an alternative to Language typology and Parameters', *Language and Linguistics*, vol. 5, no. 4 (2004), p. 915, available

prosodic stress. In French there are strict rules governing stress patterns, and as a result, French has less variation of stress between dialects. This is in large part due to the *Acadamie Francaise'*s strict guidelines, ensuring that many traditional aspects of the language still prevail. One of these defining areas is the 'seven syllables rule', which prevents the occurrence of more than seven consecutive syllables without one of these having stress placed upon it.[60]

Example 2:	Je ne le lui ai pas **pris**	7 syllables
Example 3:	Je ne le lui ai **pas** don**né**	8 syllables
Example 4:	Je ne le lui ai **pas** présen**té**	9 syllables

Using the examples above, one can see that the 'seven-syllable rule' necessitates that after every seven syllables one must be stressed, with the last always being stressed. In Example two (above), there are seven syllables, consequently it is possible to only have one syllable stressed, the last syllable. Example three has eight syllables, thus stress must be placed on another syllable in the sentence. Therefore, one would read this by stressing both the last syllable and a syllable that is at least one more prior to the last. When applied to the contextual conversations of diplomacy, it means that French has a continuous and flowing stress verse.

Further, French uses a stress-clash condition, which prevents the occurrence of stress being placed on two consecutive syllables, unless a pause is used between them.[61] As one can see in examples three and four, there is stress placed on *pas* and the last syllable of the sentence.

Through the application the principles stated above, the stress patterns foster a means whereby syntactic structures are used to derive meaning rather than stress, therefore providing a clearer, cleaner language. As a result of the constraints placed on lexical stress within French, the

online: http://www.ling.sinica.edu.tw/files/publication/j2004_4_07_0114.pdf (accessed 17 October 2012).

[60] Ph. Martin, 'Prosodic and Rhythmic Structures in French', *Linguistics* (1987)*,* p. 931, available online: http://projects.chass.utoronto.ca/semiotics/cyber/martin2.pdf (accessed 15 October 2012).

[61] Ibid., p. 933.

language provides a means whereby less ambiguity and greater interpretation is available to speakers, because meaning is not derived through the stress patterns. Unlike English, French uses stress only to maintain interest, not derive meaning. Consequently, it is far more difficult to misinterpret the meaning of a sentence in the later language, thereby improving diplomatic communication capabilities.

Unfortunately, despite French having a far more developed stress pattern structure, the prominence of the English language in cross-cultural communication means that it is important to evaluate potential methods of alleviating its weaknesses.

Teaching Stress Patterns

This paper has established that English is the most widely used diplomatic language. As such it is crucial to evaluate how it is taught to non-native speakers. Despite the importance of stress structures in English, they often do not form part of the English language learning process, either within a native-speaking English country, or in non-native-speaking states. This can be seen in speakers of Arabic learning English, where there are no stress patterns and drills introduced at any level of the curriculum.[62] This pattern is further evidenced in Asia.[63] Therefore, a new approach will require a paradigm shift for English language education, away from learning only grammatical structures and towards the additional inclusion of lexical stress, even for diplomats. It is important to remember that the learning process is something that will take time and expertise, and it would be preferable if someone in the field of phonetics or phonology was directly involved. Further, Weijing Zhou's research has shown that those who are introduced to English tonal structures at a younger age have an increased understanding of the language, and faster development later in

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[62] N. Guella, *Teaching English Stress-Patterns at Arab Universities: An Absolute Requirement,* King Saud University (2006), p. 2, available online: http://pdfsb.com/readonline/59465a456551353158334e364433396a56413d3d-5437187 (accessed 10 October 2012).
[63] K. Lee, *Teaching discourse stress to Asian students*, KOTESOL Proceedings (2001), pp. 103-116.

their studies.[64] As a consequence, they are able to communicate more proficiently and with less confusion.[65]

Frameworks based on teaching that have at their heart the placing of stress on words, have been developed since the 1950s, as can be seen in Trager and Smith's work.[66] The latter provides a sound fabric for learners to develop the basic lexical stress skills of English. Unfortunately, they do not orientate their structure towards a particular target/region, and therefore development is somewhat limited because it does not directly relate to the problems associated with diplomacy. Alternatively, the framework provided by Kent Lee is a sound example of a teaching format that supports the development of skill in the use of stress patterns required for Asian students.[67] He particularly highlights the need for a model where pitch-change and emphasis are incorporated, as this seen as essential for Asian learners of English.[68] Other notable linguistic frameworks that are region-specific include programmes focusing on the use of intonation, for Chinese learners, and natural tone variation for Korean speakers.[69] These programs seek to address concerns about Korean Language usage being based on a non-tone, non-stress language.[70] In addition, pitch-change, the length of stressed vowels and syllables, vowel shortening, intonation, and stress are also deemed to be necessary in forming strong, well-versed English speakers. Further, Jessica Ball, Co-Coordinator of First Nations Partnership Programs based at the University of Victoria, suggest that linguistic frameworks for other English dialects, are necessary for

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[64] A professor of linguistics at Jiangsu University.

[65] W. Zhou, op. cit. (2009).

[66] Trager and Smith's work attempted to separate the 'loudness' of English into four distinguishable degrees: primary, secondary, tertiary, and weak or unstressed. The system has been successful because most speakers in English can identify the differences in their own speech that are suggested by Trager and Smith; G. L. Trager, and H. L. Smith, *An outline of English Structure* (American Council of Learned Societies: Washington, 1966), p. 204.

[67] A Professor at Korea University.

[68] K. Lee, op. cit. (2011), p. 104.

[69] Korean speakers struggle to learn English as some sounds do not exist in Korean and they struggle to understand how words can have more than two consonants in one syllable (*HiTeacher,* op. cit.).

[70] G. L. Trager and H. L.Smith, op. cit (1966), p. 105.

developing continuative discourse in bilateral relations between non-native English users.[71] However, this teaching should not be limited to just second language speakers, as an understanding of how other dialects use stress will facilitate an easier, more continuative, discourse. A culturally relevant course should be made available to budding diplomats, enabling them to learn how others use stress and prosody within their maternal language. It is important to recognize that theoretical frameworks are strongly discouraged, as learners develop much quicker when practical angles are applied.[72]

Ultimately, a country-specific framework should be established that gives precedence to the specific difficulties of stress that arise from the maternal language, and uses practical, easily identifiable examples. This would be the most appropriate means to address the problem of stress in English and would greatly aid discourse between various states communicating in English.

Supplementary Aspects of Language Use in English

Whilst teaching country-specific stress patterns is one possible way of dealing with this issue, there are other methods that may provide means to achieve improved understanding in English. In the following section, this paper will explore two supplementary aspects of language use in this regard: symbolic modelling and code-switching. If these two supplementary approaches are used effectively they could aid diplomatic communication through an increase in understanding and a reduction in ambiguity.

Symbolic Modelling

The process of communication developed by David Grove, a psychotherapist with a background in analytic, humanistic and neuro-

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[71] J. Ball and B. Bernhardt, 'First Nations English dialects in Canada: Implications for speech-language pathology', *Clinical Linguistics & Phonetics*, vol. 22, no. 8 (May 2008), p. 576, available online:
http://www.ecdip.org/docs/pdf/Dialects%20Clinical%20Linguistics%20article.pdf (accessed 9 October 2012).
[72] N. Guella, op. cit. (2006), p. 5.

lingustic therapies, is a method of assisting individuals to better understand the way they use metaphors in speech, and how this shapes the description of the world around them.[73] Symbolic Modelling is made up of three components: metaphors, self-modelling and clean language. As Penny Tompkins, a renowned psychotherapist, describes, symbolic modelling is 'an approach which uses Clean Language to facilitate individuals to become aware of the organisation of their metaphors and symbols through self-modelling',[74] thereby creating a symbolic personal perception. It is important to recognise metaphors as, according to research by James Lawley, one in every 40 words spoken in conversation, is a metaphor, or, in other words, two to ten metaphors are used in every minute we speak.[75] Consequently, the method by which the metaphor is responded to appropriately is imperative in diplomacy. In relation to the latter, clean language facilitates one party to derive their intended meaning and for the group responding to answer in a clear, concise manner that can be understood with ease. As a whole, symbolic modelling can be used in one of three ways: to model strategies and states of excellence; to facilitate change; and to facilitate individuals and groups to create new metaphors (see Figure 2).

While the primary purpose of symbolic modelling is to aid a person in understanding oneself,[76] it also creates a framework for more direct, distortion-free communication, where one is able to discuss with the understanding that all aspects of what is said heard and responded to.[77] As a result, this framework provides a sound example of how to develop and respond to dialogue in a positive manner that stimulates ideas. Although it does not directly address the stress structures of English, symbolic modelling creates a framework by which diplomats can mould their thoughts and encourage dialogue.

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[73] D. J. Grove, and B. Panzer, *Resolving Traumatic Memories: Metaphors and Symbols in Psychotherapy* (Irvington: New York, 1989), p. 15.
[74] Ibid., p. 14.
[75] Ibid.
[76] Understanding oneself means looking at how one comes to shape ideas, perceptions and the world around them.
[77] Ibid., p. 12.

Clean Language

Clean Language is one of the core aspects of symbolic modelling and is described as a set of questions that combines four facets of communication: syntax, wording, vocal qualities and non-verbal specification.[78] The idea of Clean Language is to create a way of asking questions in response to metaphors created by the original speaker that recognise rather than distort them. Clean Language provides a guide for questions that are as free as possible of the questioner's 'inferences, presuppositions, mind-reading, second guessing, references and metaphors'.[79]

David Grove devised nine questions to respond to and incorporate metaphors within a conversation (see Example Five). Clean Language questions are clean 'because they keep the facilitator from *unwittingly* introducing their metaphors, assumptions or suggestions into a conversation'.[80] The idea is for a narrative to develop organically through the ideas of the client, which are involved in the responders question.

Example 5:
    Identifying Attributes
        And is there anything else about [client's words]?
        And what kind of [client's words] **is that** [client's words]?
    Converting to Metaphor
        And that's [client's words] **like what**?
    Locating in Space
        And where is [client's words]?
        And whereabouts [client's words]?

MOVING TIME QUESTIONS
    Forward

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[78] J. Lawley and P. Tompkins, *Metaphors in Mind: Transformation Through Symbolic Modelling* (London: Developing Company Press, 2000), p. 32.
[79] Ibid., p. 40.
[80] D. J. Grove, and B. Panzer, op. cit (1989), p. 24.

> **And then what happens**?
> **And what happens next**?

Back

> **And what happens just before** [client's words]?
> **And where could** [client's words] **come from?**

Within diplomacy this approach may at times appear repetitive, due in part to the potential for a loop of questions to occur, however, the questions offer a greater degree of acknowledgement to the speakers' ideas, in which they are encouraged to develop their own symbolic mapping. As Grove states, 'the concept of being 'clean' resides not in the questions themselves [which are merely the medium] but in the intention of the facilitator'.[81]

Therefore, if the facilitator truly wants a positive way of communicating with the other party, clean language seems appropriate. French in many ways represents this clean language ideal, as it is less prone to ambiguity and the message can be deciphered easily. As previously stated, the subjunctive is one of the primary reasons that French is deemed to be clean in expression. Unfortunately, as has already been established, the prominence of English in diplomacy means that it is not feasible to revert to French as the dominant diplomatic language of the time. However, Grove's framework of Clean Language is used in much the same way as diplomatic negotiation, in order to prevent distortions. His work was designed to reduce the power imbalance between a therapist and a patient, where the therapist is no longer controlling the conversation, but rather responding to the statements of the patient. This is akin to diplomacy, as the neutralisation of power allows for a more continuative message, where power is not able to impose shades of meaning or misrepresentation. If this approach is to be adopted, it will have to be taught in much the same way as the regionally specific linguistic frameworks already discussed, where diplomats are trained in understanding how stress derives meaning. Clean language ultimately presents an ideal for diplomacy, where interpretation is simple and can be decoded with accuracy. While this format can be seen as an alternative to learning how stress on words can change implicit

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[81] Ibid., p. 53.

meanings, Clean Language would, ideally also supplement the latter as a tool in diplomatic language.

Code-Switching

Using more than one language can at times be an advantage to diplomatic intercourse, and conducting this within the same conversation is known as code-switching.[82] This is the practice of moving back and forth between two languages, or between two dialects or registers of/in the same language.[83] In international discourse there are notable reasons for using code-switching: to align people with others in specific positions (within an ethnic group, for example), and/or 'to announce specific identities, create certain meanings, and facilitate particular interpersonal relationships'.[84]

Most often speakers who use code switching are fluent in each other's language. However, this cannot always be ensured, so certain phrases may be used in one, while the rest of the conversation is conducted in another. While creating a greater semblance of equity, this does not mean that problem of stress variation still does not exist, and a strong knowledge of the way meaning is derived in these languages is still needed (notably of how tone and stress influence the connotation of phrases). A possible means to greater communication may be to utilise French when the subjunctive is appropriate and revert to English in other circumstances. Despite the fact that this may be a sound alternative for highly proficient speakers, when diplomatic communication occurs through lower tracks,[85] the use of a solitary

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[82] M. Clyne, 'Constraints on code-switching: how universal are they?', *Linguistics*, vol. 25, no. 4 (2009), p. 739.

[83] C. DeBose, 'Codeswitching: Black English and Standard English in the African-American linguistic repertoire' in C. Eastman (ed), *Codeswitching* (Multilingual Matters: Clevedon, 1992), p. 160.

[84] W. B. Gudykunst, *Bridging Differences: Effective Intergroup Communication* (Sage Publications, 2004), 4th ed., p. 184.

[85] Lower tracks of diplomacy include; unofficial dialogue and problem-solving activities aimed at building relationships and encouraging new thinking that can inform the official process, as well as, person-to-person diplomacy undertaken by individuals and private groups to encourage interaction and understanding between hostile communities; *Tracks of Diplomacy*, Endowment of the United States Institute

language may be more proficient and feasible, especially if the two countries are not Anglo-French affiliates.

Conclusion

Although it may appear that French is a more appropriate language for diplomatic discourse, the prominence and acceptance of English within the international sphere means that it is not likely to lose it hierarchical position anytime soon. Therefore, it seems appropriate to analyse and evaluate the language and discover its weaknesses, so that we may be able to overcome them, or at least adapt to them. As demonstrated, there are notable advantages to the use of English within the diplomatic field. However, there are also significant flaws in the way meaning is conveyed in English, particularly through the use of lexical stress. As has been shown, unlike English, French does not suffer from this problem, due in large part to the use of the subjunctive tense distinguishing certainty. Unfortunately, due to the simplification of English in contemporary international society, the use of the subjunctive tense has been reduced to only a few specific structures (even in nuanced language) and therefore cannot properly be re-introduced or utilised. Consequently, an alternative framework is necessary. This paper proposed the prioritisation of stress in teaching for all forms of English, and suggested that linguistic frameworks be established: ones that are country-specific, and thereby identifiable weaknesses of that state/region in regards to stress structures in English can be amended. Ultimately, through the development of teaching frameworks that prioritise the understanding of how lexical stress affects meaning in English, communication in cross-cultural circumstances can significantly improve, resulting in not only more manageable, but also more beneficial diplomacy.

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of Peace (2011), available online: http://glossary.usip.org/resource/tracks-diplomacy (accessed 25 October 2012) - Site currently offline due to technical problems.

Strengthening Australia-China Relations with Track II Diplomacy

Oliver Theobald[*]

The dramatic rise of China demands special consideration by Australian foreign policy makers and particularly within an uncertain era of shifting power realities in the Asia-Pacific. Asia is a region rife with territorial disputes and historical tensions; middle powers, including Australia, look nervously and at times suspiciously at the rise of China. The need to respond to threats and alleviate rising tensions has created an opening for new actors to engage in non-traditional diplomacy. Track II diplomacy involves non-state actors engaging in unofficial dialogue with the intention of influencing the official process and is considered an important diplomatic tool when negotiations break down at the official level. Track II diplomacy is believed to have already played an important role in preserving stability and forging regional identity in Southeast Asia. Australian institutes are proactive participants at track II dialogues and they engage closely with China. The impact of Australia at the track II level, however, can be limited by funding, changing political cycles in Australia and the country's modest profile in international affairs. Australian institutes also face various other challenges including limited resources, the aging demographic of track II participants and a lack of knowledge of partner institutes. China is also an active track II participant and despite their obvious lack of autonomy, Chinese institutes have a strong connection to the policy making process in China. This paper concludes that track II cooperation will be an important aspect of Australia's future engagement with China.

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Introduction

Human history has long been moulded by the rise and fall of great powers. The dramatic end of World War II, for example, oversaw a transition in power away from Europe and heralded a new era of nuclear weapons and superpower rivalry. The collapse of the Soviet Union in the late twentieth century has similarly shaped the new world order. The United States (US) and open markets have dominated the post-Cold War era but recent events have triggered speculation over the rise of a new era. The US economy has been hit by the worst financial crisis since the Great Depression and Europe is in the midst of a severe debt crisis.

Asian economies have not been immune to the Global Financial Crisis (GFC) but they have proven far more resilient than their Western counterparts. Strong economic growth in Asia over the last decade has been led by China; other countries in the region are also growly strongly and are benefiting from rapid Chinese economic growth. Since 2000, the Gross Domestic Product (GDP) of Asian economies has outclassed the growth of the G3 (America, the EU and Japan) by an average of six percentage points.[1] The gap has widened to eight percentage points following the collapse of Lehman Brothers in 2008.[2] Robust Chinese economic growth has also combined with rapid military expenditure and growing international attention. There is now an unprecedented focus on China and the twentieth century is becoming increasingly known as the 'Asian Century'.[3]

Australia at the youth level. He has represented Australia at the International Youth Week for the Centennial Anniversary of Taiwan, the International Youth Forum, the 2012 China Bridge Language Proficiency Competition and was selected as Australian 'Head of State' at the 2012 G20 Youth Summit. In 2013 Oliver graduated with a Certificate in Chinese and American Studies from the Johns Hopkins Nanjing Center and currently works part-time with the Irish Chamber of Commerce. Oliver previously interned with the AIIA under the auspices of the ANU's National Internship Program.

[1] Western Asset Management Company, *Why Asia Matters: When East Meets West* (October 2011), available online:
http://www.westernasset.com/SG/qe/pdfs/commentary/AsiaMatters201110.pdf
(accessed 29 March 2012), pp. 2-4.

[2] Ibid., p. 2.

[3] Former Australian Prime Minister, Julia Gillard, has referred to the 'Asian Century' as the rapid shift of economic and strategic weight to Asia, a change which will be

The Rise of China and the Implications for Australian-Sino Relations

The rise of China as an economic powerhouse has been rapid and at times bewildering. The economic model laid out by Communist Party leader Deng Xiaoping has lifted millions out of poverty and has won China the mantle of the world's second largest economy. China has also emerged as a chief driver of world economic growth in the turbulent years following the GFC. Over the last three decades, China has typically maintained a relatively low international profile while focusing attention on domestic development.[4] However, China's more assertive behaviour on the international stage since 2010, its growing military capacity and economic resilience in the face of the GFC has raised concerns that China is priming to assert power and influence over the region. The recurring courtship of foreign leaders, sizable foreign investment and a growing chain of Confucius Language Institutes across the world have seen China's foreign influence grow steadily in recent years. The Chinese People's Liberation Army (PLA) is expanding rapidly as well. Spurred on by a 12.7% budget increase in 2011, the PLA is developing aircraft carriers, a new cruise missile, fifth-generation aircraft and new strategic weapons.[5]

China's growing military capacity registered public attention in Australia in 2009 following the release of the Australian government's White Paper on *Defending Australia in the Asia Pacific Century: Force 2030,*[6] which highlighted the threat of China's military expansion. The

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paramount to Australia's interests in the twenty-first century; see J. Gillard, 'Australia in the Asian Century', *Prime Minister Press Office* (28 September 2011), available online: http://www.pm.gov.au/press-office/australia-asian-century (accessed 7 March 2012).

[4] S. Dewar, *Australia and China and the United States: Responding to changing great power dynamics* (Canberra: Australian National University Australian Centre on China in the World, 2011), pp. 3-19.

[5] Ibid., p. 4.

[6] In 2011, the Australian Government commissioned a White Paper to develop a 'national blueprint' on Australia's strategic and economic role in Asia and to 'navigate' Australia forward. Released to the public in 2012, the *Australia in the Asian Century White Pape*r focuses on several issues including avenues to engage with Asia, the potential opportunities and challenges ahead, and the likely trajectory of economic,

immediate threat to China's rising military expansion lies in the Taiwan Strait and the South China Sea. The South China Sea has been described by Andrew Tanzer as 'Asia's next flashpoint'[7] and as the 'mother of all territorial disputes' by other experts.[8] The South China Sea is a region rife with 'intraregional distrust', historical grievances and burgeoning military budgets.[9] The situation is complicated further by a wide range of claimants and stakeholders, and the strategic importance of the region is underlined by the critical sea-lanes that link Northeast Asia, the Western Pacific, the Indian Ocean and the Middle East. Major conflict has until now been avoided with the aid of regular dialogue, but Australian strategic expert, Professor Hugh White, is confident that as China grows stronger it will demand greater power and access to resources in the region.[10]

According to White, China will essentially pursue one of three strategic policies in order to expand its influence over the region.[11] First, China could pursue a policy of seeking hegemony over the region through the use of hard power.[12] The second alternative is for China to pursue hegemony through soft power, comparable to an Asian Monroe Doctrine, in order to deny the US its influence over the region.[13] The third alternative is for China to abide by a concert of powers system whereby major powers agree to manage security in the region through multilateral cooperation.[14] Australia holds important relationships with both the US and China. A potential power shift therefore places Australia in a strategic conundrum and poses serious policy questions for Australia.

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political and strategic changes in relation to China, India, ASEAN, Japan and the Republic of Korea.

[7] A. Tanzer, as quoted in M. Weissmann, 'The South China Sea Conflict and Sino-ASEAN Relations: A Study in Conflict Prevention and Peace Building', *Asian Perspective*, vol. 34, no. 3 (2010), p. 36.

[8] A. Baviera (ed.), *South China Sea: Managing Territorial and Resource Disputes* (Searching for Peace in Asia Pacific, 2005), p. 505-523.

[9] Ibid., p. 505; and M. Weissmann, op. cit. (2010), p. 36.

[10] S. Dewar, op cit. (2011), p. 9.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

Engaging with China through Track II Diplomacy

A major theme of the 2012 *Australia in the Asian Century* White Paper is the need to engage and work cooperatively with China. Likewise, Hugh White calls for Australia to improve engagement with China. One promising but perhaps overlooked avenue of engagement is track II diplomacy. Track II diplomacy is a key example of non-traditional diplomacy and is considered an important diplomatic tool when negotiations break down at the official level.

Track II diplomacy involves non-state actors engaging in unofficial dialogue with the intention of influencing the official process or what is known as track I. Track I relates to government-to-government diplomacy. Participants at the track I level include the diplomatic corps and political leaders, and their decisions constitute the official policy of the state. Track II, on the other hand, encompasses a wider spectrum of organisations and individuals such as think thanks, academics, retired officials and journalists who discuss issues of diplomatic importance from an independent point of view. Advocates of informal diplomacy reject the notion that governments should monopolise dialogue on security issues and emphasise the potential creativity and frankness of unofficial dialogue.[15] Nonetheless, track II does not replace the function of traditional diplomacy in state-to-state negotiations.[16] Rather, track II acts as an aid to track I in developing and determining policy.

A critical feature of track II diplomacy is the existence of connections to track I through an institutionalised reporting process or the participation of government officials who attend in their 'private capacity'. Attending in their private capacity, government officials can voice their own independent views and which may not necessarily be the views of their government. However, track II diplomacy can sometimes be stalled by a public image problem where dialogues are viewed as 'talkfest' by the

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[15] S. Simon, 'Evaluating Track 2 Approaches to Security Dialogue in the Asia-Pacific Region: The CSCAP Experience (2002)', in D. Ball and K. Chong Guan (eds.), *Assessing Track II Diplomacy in the Asia-Pacific Region* (Canberra: Strategic & Defence Studies Centre, 2010), pp. 77-111.
[16] Gulf Research Centre, 'Track II Diplomacy and the GWMFDZ', *Gulf Research Centre Insights*, no. 1 (2005), pp. 15-7.

official process.[17] This is due in part to the discrepancy in values between the track I and track II communities. The track II community values dialogue, networking activities and the generation of new ideas, whereas the track I community puts onus on tangible and measurable results.[18] Governments can also exploit the track II process for the purpose of 'public symbolism' whereby officials endorse track II to publicise their interest on an issue, but without ultimately changing official policy.[19] However, track II diplomacy can sometimes be stalled by a public image problem where dialogues are viewed as 'talkfest' by the official process.[20] This is due in part to the discrepancy in values between the track I and track II communities. The track II community values dialogue, networking activities and the generation of new ideas, whereas the track I community puts onus on tangible and measurable results.[21]According to Professor David Capie of Victoria University of Wellington, there is little evidence to suggest that track II networks in East Asia significantly affect official policy.[22] Funding, autonomy and a divide with track I are also commonly cited limitations of track II diplomacy.

The Theoretical Benefits of Track II Diplomacy

The academic community generally remains positive about the benefits of track II diplomacy. According to Dr. Diane Stone, track II diplomacy plays a constructive role in providing advice to track I participants, due to its capacity to consider, explore and generate new ideas in regards to issues which may be deemed too sensitive or controversial for discussion at the track I level.[23] The track II process also offers an alternative forum or 'neutral territory' for discussion, negotiation and overcoming deadlocks when diplomacy breaks down at the track I

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[19] D. Stone, *The ASEAN-ISIS Network: Interpretative Communities, Informal Diplomacy and Discourses of Region* (Policy Studies Organization, 2011), p. 9.
[20] D. Capie, 'When Does Track Two Matter? Structure, Agency and Asian Regionalism', *Review of International Political Economy*, vol. 17, no. 2 (2010), pp. 291-318.
[21] B. Taylor, A. Milner and D. Ball, *Track 2 Diplomacy in Asia: Australian and New Zealand Engagement* (Canberra: Australian National University, 2006).
[22] D. Capie, op. cit. (2010), p. 311.
[23] D. Stone, op. cit. (2011), p. 2.

level.[24] Furthermore, track II dialogue theoretically allows potential adversaries to gain a greater appreciation for respective standpoints, develop a shared understanding and can perform a socialising or networking function through the interaction of parties.[25] The Council for Security Cooperation in the Asia Pacific (CSCAP) Study Group meetings, for example, allow Chinese and Taiwanese policy experts to interact, exchange views and develop consensus in an informal setting.[26] According to Mikael Weissman, track II diplomacy has been an 'important force' in developing regional trust, confidence building and regional identity within the East Asian community.[27]

Track II diplomacy in East Asia has grown exponentially since the end of the Cold War.[28] Between 1993 and 1994, track II meetings in Asia occurred more than one a week.[29] Track II in East Asia has proliferated to the point that the Japan Centre for International Exchange has now developed a *Dialogue and Research Monitor* to map and monitor 'the web' of track II activity in East Asia.[30] According to Brian Job, track II diplomacy is highly conducive to the East Asian emphasis on multilateralism, consensus building, face-saving, conflict avoidance and an aversion to the official decision making process.[31] Track II diplomacy has typically focused on conflict resolution and solving non-traditional security threats, especially in relation to the South China Sea. The South China Sea was a critical flashpoint during the 1990s, but reconciliation and peace building efforts were successfully implemented via the Canadian funded Workshops on Managing Potential Conflicts in

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[24] Ibid.

[25] B. Taylor, A. Milner and D. Ball, op cit. (2006).

[26] Ibid.

[27] M. Weissmann, op. cit. (2010), p. 41

[28] D. Ball, 'CSCAP's Foundation and Achievements', in D. Ball and K. Chong Guan (eds.), *Assessing Track II Diplomacy in the Asia-Pacific Region* (Canberra: Strategic & Defence Studies Centre, 2010), p. 9.

[29] Ibid.

[30] D. Stone, op. cit. (2011), p. 24.

[31] B. Job, 'Track 2 Diplomacy: Ideational Contributions to the Evolving Asia Security Order (2003)', in D. Ball and K. Chong Guan (eds.), *Assessing Track II Diplomacy in the Asia-Pacific Region* (Canberra: Strategic & Defence Studies Centre, 2010), pp. 112-61.

the South China Sea.[32] The informal track II workshops were designed to alleviate tensions and mitigate serious conflict through the promotion of regional cooperation, confidence building measures and preventative diplomacy. The workshops were at their most prominent between 1990 and 1999.[33] Their success was highlighted by the willingness of governments to finance and dispatch senior government staff to attend and also by the fact that China had limited cooperation with ASEAN prior to this process.[34] China now engages with ASEAN closely on South China Sea issues at both the track I and track II levels.[35]

Chinese Engagement with Track II Diplomacy

China now has a strong penchant for informal dialogue and Chinese think tanks have risen to play an important role in engaging with track II diplomacy and shaping Chinese foreign policy.[36] Xufeng Zhu explains that through 'years of education, training and research', Chinese think tanks are able to effectively communicate policy recommendations to Chinese officials.[37] However, the independence of these institutes has been highly scrutinised as Chinese think tanks are typically funded and controlled by the Chinese government.[38] According to some Western analysts, Chinese institutes are used to convey the government's viewpoint and to enhance the legitimacy of the Chinese Communist Party.[39] According to Sheldon Simon, China's CSCAP committee is but one example. Simon asserts that 'any distinction between track I and track II is difficult to detect in regards to China CSCAP'.[40] Following

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[32] M. Weissmann, op. cit. (2010).

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] D. Shambaugh, 'China's International Relations Think Tanks: Evolving Structure and Process', *The China Quarterly*, vol. 171 (September 2002), pp. 575-96.

[37] X. Zhu, 'The Influence of Think Tanks in the Chinese Policy Process: Different Ways and Mechanisms', *Asian Survey*, vol. 49, no. 2 (2009), pp. 333-57.

[38] T. Bondiguel and T. Kellner, 'The Impact of China's Foreign Policy Think Tanks', *BICCS Asia Paper*, vol. 5, no. 5 (Brussels: Brussels Institute of Contemporary China Studies, 2011), pp. 1-32.

[39] X. Zhu, op. cit. (2009).

[40] S. Simon, 'Evaluating Track 2 Approaches to Security Dialogue in the Asia-Pacific Region: The CSCAP Experience (2002)', in D. Ball and K. Chong Guan (eds.),

the Foreign Ministry's approval, China CSCAP personnel are generally sourced from the Beijing Institute for International Studies and the Shanghai Institute for International Studies.[41] Over the last decade the core leadership of the committee has included several serving ambassadors, a People's Liberation Army General and a high level State Council official.[42] Simon asserts that while these participants are technically participating in their 'private capacities', it remains doubtful whether their policy orientations are independent from the government.[43] Evidence of this includes China CSCAP's refusal to discuss the independence of Taiwan and disputed sovereignty claims in the South China Sea.[44]

On the positive side, Chinese think tanks offer foreign scholars valuable insight into the 'closed policy process of Chinese politics' and they possess strong connections to the policy making process.[45] Chinese think tanks enjoy strong administrative links to the government and are invited to official meetings and seminars concerning immediate policy issues.[46] Chinese think tanks submit policy recommendations to the government through two main reporting channels: Typically, institutes submit their research to the personal assistants of government leaders and through the Bureau of Foreign Affairs of the Central Committee.[47] Research reports are also submitted through the less bureaucratic process of personal *guanxi*. Guanxi can be translated into English as 'relationships', but guanxi is also well known as a 'system of interpersonal relationships' that facilitate mutual 'favour exchange' and benefits between parties.[48] Guanxi is an integral part of Chinese culture and important when studying the connection between track I diplomacy

Assessing Track II Diplomacy in the Asia-Pacific Region (Canberra: Strategic & Defence Studies Centre, 2010), p. 98.
[41] Ibid.
[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] X. Zhu, op. cit. (2009), p. 356.
[46] Ibid.
[47] T. Bondiguel and T. Kellner, op. cit. (2011).
[48] GCIS, *China Characteristics – Regarding Guanxi*, available online: http://www.gcis.com.cn/China/Regarding%20Guanxi.htm (accessed 2 May 2012).

and track II diplomacy in China.[49] According to Xuanli Liao, the flexible network of guanxi allows certain think tanks to circumvent the more bureaucratic channels.[50] Think tank directors and prominent researchers also tend to have strong personal relations with senior state leaders and whom are regularly posted for rotational assignments by the Chinese Foreign Ministry.

Despite the generally strong link between track I and track II in China, there is dissatisfaction among Chinese think tanks about the lack of two-way interaction and feedback from track I.[51]

Australian Engagement with Track II Diplomacy

Australia has emerged as an active participant at the regional track II level. According to several prominent experts, including Australian National University (ANU) Professors Peter Drysdale and Anthony Milner, Australian institutes have played an instrumental role in establishing track II structures in the Asia-Pacific.[52] Australia was a founding committee member of both CSCAP and the Pacific Economic Cooperation Council (PECC).[53] The support of Australian Prime Minister Malcolm Fraser was central to providing the initial support for track II dialogue after strong opposition from government bureaucracies.[54]

There is now a wide range of organisations, think tanks, academics and retired officials in Australia participating in track II diplomacy, but very little research has focused on institutes engaging with track II diplomacy. Taylor, Milner and Ball's 2006 report *Track 2 Diplomacy in Asia: Australian and New Zealand Engagement*[55] is the only comprehensive overview of Asia-focused track II institutes in Australia

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[49] Ibid.

[50] T. Bondiguel and T. Kellner, op. cit. (2011).

[51] Ibid.

[52] P. Drysdale, pers. comm. (3 April 2012); and A. Milner, pers. comm. (2 April 2012).

[53] A. Milner, op. cit. (2012).

[54] P. Drysdale, op. cit. (2012).

[55] B. Taylor, A. Milner and D. Ball, op. cit. (2006).

and New Zealand. Key conclusions made by this report include the rapidly growing nature of track II activity in Asia, structural gaps between track I and track II and a clear correlation between the investment of resources and the effective operation of track II diplomacy.[56] The report also highlighted several challenges including the changing shape of regional architecture,[57] the aging demographic of the track II community and poor perceptions of track II diplomacy within the official process.[58]

In early 2012, the Australian Institute of International Affairs (AIIA) conducted research on Australian, Chinese and Indian think tanks and their role in the field of track II diplomacy. The research found that Australia's track II capacity has grown rapidly over the past decade. At the beginning of the century, only one of the five[59] Australian institutes surveyed, the Australian Committee Member of the Council for Security Cooperation in the Asia Pacific (Aus-CSCAP), was actively involved in track II diplomacy. Today all five institutes are actively involved in track II diplomacy and there is a strong focus on Asia and China. All five institutes receive government funding, but each stressed their autonomy and intellectual independence from track I. Respondents were positive about the influence of Australia's track II engagement. The impact of track II on official policy is difficult to measure but AIIA Executive Director, Melissa Conley-Tyler, asserts that a key indicator of track II success is consistent government participation at track II dialogues.[60] The research found that Australia's track II dialogues have a strong participation rate from government officials. Australian track II activities have also received positive feedback in recent years from partner institutes, foreign leaders and the media.

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[56] Ibid.
[57] In this paper 'regional architecture' refers to Asia's network of track I and track II institutions.
[58] Ibid.
[59] The five institutes surveyed included Asialink, the Australian Institute of International Affairs (AIIA), the Australian Strategic Policy Institute (ASPI), Aus-CSCAP (the Australian Committee Member of the Council for Security Cooperation in the Asia Pacific) and the Lowy Institute for International Policy.
[60] M. Conley-Tyler, pers. comm. (25 April 2012).

However, the AIIA research identified questions over Australia's overall track II capacity in relation to regional influence. Drysdale in particular was 'ambivalent' when analysing Australia's capacity to impact the regional track I process.[61] Drysdale cites that Australia has a relatively small profile on the world stage and track II diplomacy in Australia is bound by limited resources.[62] Drysdale points out that American institutes are far more advanced in regards to funding, profile and experience.[63] Former Australian diplomat, John Denton, also made similar comments in *The Australian* in 2009.[64] Denton said that Australia 'does not have the highly developed second-track networks that have emerged in the US and elsewhere' and that 'the notion of second-track diplomacy has not been a priority for Australia'.[65] A 'lack of continuity' surrounding the changing political cycles in Australia was also cited by Drysdale as a major limitation because of the long-term nature of track II influence.[66]

Australia and Track II Engagement with China

China is a major target of Australian track II engagement, especially for the Lowy Institute for International Policy, the AIIA and the Australian Strategic Policy Institute (ASPI). However, ASPI's Dr. Rod Lyon and Dr. Anthony Bergin assert that Australia's track II engagement with China severely lags behind its track II engagement with the US and Israel in relation to funding and the quality of participants.[67] The AIIA's research also found that holding track II dialogues with Chinese counterparts is no precursor to success. Drysdale, for example, warned that track II diplomacy requires an enormous amount of intellectual input, well thought-out ideas and must carry weight in order to influence policy makers, including Ministers at the top level and even

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[61] P. Drysdale, op. cit. (2012).
[62] Ibid.
[63] Ibid.
[64] J. Denton, 'Second-track diplomacy aids foreign policy', *The Australian* (17 July 2009).
[65] Ibid.
[66] Ibid.
[67] R. Lyon, pers. comm. (4 May 2012); and A. Bergin, pers. comm. (4 May 2012).

the Prime Minister.[68] Two respondents also criticised ASPI's track II program with China due to what was seen as an error in indentifying the most influential Chinese think tank to partner with on their dialogues. In this case, the China Institute for International Strategic Studies was not viewed as the most influential of Chinese institutes.

Challenges to Australian Track II Engagement with China

The AIIA research also found limited funding to be another major challenge to track II engagement: three Australian institutes emphasised the limited nature of their respective budgets for track II diplomacy. This echoed the same conclusion made by Taylor, Milner and Ball, who suggested in 2006 that 'there exists a clear correlation…between the level of resources devoted to second track processes and their effective operation'.[69] Their report highlighted the case of the South China Sea Workshops which have 'struggled to make an impact' after the Canadian International Development Agency withdrew funding in 2001.[70]

The potential divide between track I and track II was not cited by any of the five surveyed institutes as a major constraint. However, there was strong consensus on improving the Australian government's recognition and cooperation with the track II community. Drysdale emphasised the 'high quality thinking' of non-government institutes and the need for the government to recognise these institutes as the 'intellectual anchors' of Australian foreign policy.[71] Drysdale and Milner both asserted that the Australian government has at times failed to engage with the track II community. The two authors cited the example of Kevin Rudd's proposal for an Asian Pacific Community, which purportedly failed to leverage the benefits of track II diplomacy. Milner explained that Rudd doggedly put forward the proposal without first consulting the Australian track II community about his concern over regional

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[68] P. Drysdale, op. cit. (2012).
[69] B. Taylor, A. Milner and D. Ball, op. cit. (2006), p. 64.
[70] Ibid.
[71] P. Drysdale, op. cit. (2012).

architecture.[72] Rudd would have benefited from utilising the Australian track II network to explore the feasibility of his proposal.[73] The Australian track II network would have been able to receive feedback from their Asian counterparts and perhaps even secured potential partners for the Prime Minister's proposal.[74] According to Milner, Rudd's plan would have either been modified or dismissed by the track II community.[75] Instead, the proposal remained a 'Rudd plan' and ultimately failed to gain international support.[76]

The Future of Australian Track II Engagement with China

China will continue to feature as a major theme of Australian foreign policy in the twenty-first century and Taylor, Milner and Ball argue that Australia's engagement with Asia, including China, requires a multi-dimensional approach that encompasses both track I and track II diplomacy.[77] Respondents to the AIIA's research agreed unanimously on the growing importance of track II in response to the changing political and economic environment in Asia. Conley-Tyler articulated that 'in times of uncertainty and change, track II is always going to be appreciated'.[78] In the current context it would also be 'a brave ministry of foreign affairs' that thought it 'knew exactly what was going to happen in the region' and what shape government policy should take.[79]

For Australia, a key benefit of track II diplomacy is the ability to explore and test alternative viewpoints on sensitive issues. Hugh White's theoretical projections of growing Chinese dominance in the region, for example, has been controversial and criticised as radical, but as Scott Dewar asserts, 'deep debate about the future of our region is essential' and White's argument is a 'provocative contribution to start

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[72] A. Milner, op. cit. (2012).
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] B. Taylor, A. Milner and D. Ball, op. cit. (2006), p. 69.
[78] Ibid.
[79] Ibid.

that process'.[80] Track II diplomacy is a valid platform to explore the feasibility of White's argument and to debate the future of Australian foreign policy. The increasing track II focus on China, as found by the AIIA's research, is also an indication that track II will play a more substantial role in resolving and minimising strategic problems. Drysdale concedes that track II diplomacy is not the only answer to Australia's relationship with China, but informal dialogue between the two countries could certainly improve bilateral relations.[81]

As found in Taylor, Milner and Ball's 2006 report, the aging demographic of the track II community also remains a challenge for Australia and future track II engagement. The Lowy Institute's Rory Medcalf stresses the need to educate the next generation of track I leaders about the benefits of track II diplomacy and highlights that there is a real need for young professionals to be sensitised to China before they reach the peak of their careers.[82] Taylor, Milner and Ball explain that as track II activities 'rely so heavily on personal linkages and the intellectual contribution' of individual participants, there is therefore a strong 'need to expand social capital by bringing younger scholars' and 'the next generation…into the fold'.[83] Their research commended the Lowy Institute's *New Voices* initiative, which they reported as a step in developing the 'skills and networks' of Australia's future leaders in the track II community.[84]

Another youth leadership dialogue has recently been established and designed more specifically to developing China-related expertise. In 2010 the Australia China Youth Dialogue (ACYD) was launched as a youth led initiative to support 'more sophisticated cross-cultural understanding among' young people from China and Australia and to 'promote frequent and meaningful engagement' between the two countries.[85] Due to the infancy of the organisation it is difficult to

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[80] S. Dewar, op cit. (2011), p. 19.
[81] P. Drysdale, op. cit. (2012).
[82] R. Medcalf, pers. comm. (20 April 2012).
[83] B. Taylor, A. Milner and D. Ball, op. cit. (2006), p. 57.
[84] Ibid.
[85] Australia-China Youth Dialogue, '*Our Mission*', available online: http://acyd.org.au/our-mission/ (accessed 5 May 2012).

measure the impact of ACYD and its influence on the policy-making process, but the dialogue already serves as an important networking and capacity building forum.

Ultimately, the key to Australia's track II engagement with China in the Asian Century will be developing strong cooperation between track I and track II with a wide spectrum of participants. Furthermore, track II diplomacy will be an important tool in nurturing cooperation, people-to-people connections, mutual understanding on strategic issues and in enhancing Australia's profile. However, in order for Australia to remain connected to China at the track II level, it is also essential that Australian institutes continue to be proactive in initiating track II dialogues.

Changing Strategic and Security Climates in the Indo-Pacific: Prospects for and Challenges to Stability

Julian Butler Tettmar[*]

This paper critically examines key relationships between China, the United States and Australia, as well as geo-political fault lines and strategic challenges in the rapidly developing theatre of the Indo-Pacific. It argues that the rising salience of the Indo-Pacific presents both opportunities and challenges to the region. While there is a commitment to regional stability, improved relationships through greater military and civil engagement as well as strengthened multilateral institutions are required to enhance stability.

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Introduction

The Indo-Pacific is fast becoming a critical region in international affairs. Since the 1990s, a climate of stability in the Indo-Pacific, facilitated largely by United States (US) unipolarity, has fostered the rapid rise of Asian 'Tiger Economies'. The emergence of these burgeoning Asian populations and economies provide a number of opportunities and challenges for the Indo-Pacific, resulting in both US and Australian plans for greater engagement in the region. In what the US is calling the 'Asia-Pacific Century' it is beginning to 'pivot' its political attention and military assets into the region with the support of Australia and other allied states. Concurrently, the recent emergence of the People's Republic of China (China or PRC) from its self-imposed isolationism onto the geo-political stage has been met with mixed responses. While the opportunity of deeper engagement with China presents numerous advantages, China's rise to power also engenders some apprehension, both globally and locally. Although relative stability has underpinned the success of the Indo-Pacific states, there are numerous challenges to this. Along with issues of piracy, terrorism and nuclear proliferation, tensions have been building over the sovereignty and jurisdiction of territory, resources and shipping lanes in the South and East Asia Seas.

Why the Indo-Pacific is Crucial in Emerging Geo-Political Relationships

This report replaces the more familiar concept of 'Asia-Pacific' with that of 'Indo-Pacific', now considered a viable definition of:

> …the broad region of principal strategic and economic importance… now and in all likelihood well into this century. It is also the best available shorthand for an emerging Asian maritime strategic system that encompasses both the Pacific and Indian oceans, defined in large part by the geographically expanding interests and reach of China and India and the continued strategic role and presence of the US.[1]

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[1] R. Metcalf, 'Indo-Pacific: What's in a Name?', *The Interpreter* (Lowy Institute for International Policy 2012), available online: http://www.lowyinterpreter.org/post/2012/08/16/Indo-Pacific-Whate28099s-in-a-name.aspx (accessed: 15 August 2013).

As posited by Australian Defence Minister Stephen Smith, '[i]n this century, the Asia-Pacific and the Indian Ocean Rim, what some now refer to as the Indo-Pacific, will become the world's strategic centre of gravity'.[2]

The Indo-Pacific is thus positioned as a critical geographic block in terms of political, civil and security relationships, with general agreement that the critical determinant of the Indo-Pacific's rising geo-political significance is the emergence of China and India as major powers. The Australian government's 2012 *Australia in the Asian Century* White Paper on the region finds that:

> [i]n the past 20 years, China and India have almost tripled their share of the global economy and increased their absolute economic size almost six times over. By 2025, the region as a whole will account for almost half the world's output. Many millions of people will have been lifted out of poverty. They will live longer and be better connected to the world.[3]

The geo-political significance of the Indo-Pacific has been affirmed by an increase in political and strategic manoeuvring by both regional and global powers, perhaps most notably the US. Recognising the need for change in America's geo-political posture, President Barack Obama announced a plan for greater engagement in the Indo-Pacific region. The US has commenced the pivot of its political and military attention accordingly, in line with six key priorities in the Asia-Pacific: strengthening security alliances, improving relationships with emerging powers, engaging with multilateral institutions, expanding trade, creating a broader military presence and advancing democracy and human rights.[4]

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[2] S. Smith, MP Minister for Defence, Paper presented to the Lowy Institute on the 2013 Defence White Paper (2013), p. 5**,** available online: http://www.lowyinstitute.org/files/smith_lowy_institute_090812.pdf (accessed 15 August 2013).

[3] Australian Government, *Australia in the Asian Century: White Paper* (October 2012), p. 6, available online: http://asiancentury.dpmc.gov.au/white-paper (accessed 29 October 2012).

[4] H. Clinton, *America's Pacific Century. Remarks* (US State Department 10 November 2011), available online: http://www.state.gov/secretary/rm/2011/11/176999.htm (accessed 20 July 2012).

Australia's leaders continue to regard the Indo-Pacific seriously, as demonstrated by the 2012 White Paper, *Australia in the Asian Century* that calls for greater engagement between Australia and Indo-Pacific states.[5] The Paper outlines the need for deeper and broader political relationships, capability building, a resilient Australian economy and greater economic connectedness as well as sustainable security in the region.[6] The White Paper also identifies a number of emerging challenges that require a greater engagement by Australia in the region, stating that:

> the economic growth and broader international interests of Asia's large powers, especially China and India, are changing the established strategic order. Rising national wealth is allowing states to modernise their defence forces, to acquire more advanced capabilities and to project power. At the same time, economic growth will put more pressure on energy, water and food resources. Existing regional strategic tensions remain, such as North Korea's nuclear program and unresolved territorial disputes. Australia's strategic landscape is becoming more crowded and complex.[7]

The White Paper argues that stability in the region has contributed to its economic success, and that security and stability must be maintained to continue this success.[8] Security in this sense refers not only to conventional military security, but also to food, water, energy, environmental and resource security, as well as the ability to respond to the increased frequency and severity of natural disasters in the region.

Territorial, Resource and Shipping Security: A Risk to Regional Stability

The Indo-Pacific is currently facing security challenges from both state and non-state actors that have the potential to challenge continuing stability in the region. For the many coastal and island states in the region, the security of shipping, territory and resources is both of critical concern as well as a possible source of contention and aggravation.

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[5] Australian Government, op. cit. (2012).
[6] Ibid., p. 5.
[7] Ibid., p. 7.
[8] Ibid., p. 225.

The Indo-Pacific is a rapidly expanding geo-economic hub, with its waters, particularly the Strait of Malacca and the South China Sea, bearing the brunt of an estimated 50% of world container traffic and 70% of ship-borne oil and petroleum.[910] It is estimated that half the world's container shipping traffic and 70% of ship-borne oil and petroleum transit across the Indian Ocean, with much of it travelling towards East Asia.[11] This enormous amount of maritime traffic results in trade worth an estimated US$5.3 trillion passing through the South China Sea each year.[12]

Piracy has become a major problem for maritime security, with estimates of the total economic cost of global piracy for 2010 between US$7-12 billion.[1314] Of the 1,850 reported pirate attacks and attempted attacks that occurred between 2007 and 2011, over 25% occurred in the Indo-Pacific.[15] Many vessels coming under attack globally belong to, or are managed by, Indo-Pacific states, particularly Singapore, Malaysia, India, China (including Hong Kong), Vietnam, Taiwan and Thailand.[16]

However, localised conflicts between state actors constitute a much greater risk than piracy to territorial, resource and shipping security in the Indo-Pacific. Tensions between China and India have been difficult since the

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[9] M. Manyin, S. Daggett, B. Dolven, S. Lawrence, M. Martin, R. O'Rourke and B. Vaughn, 'Pivot to the Pacific? The Obama Administration's "Rebalancing" Towards Asia', *Congressional Research Service* (28 March 2012), p. 5.

[10] G. Bonnie, 'Armed Clash in the South China Sea', *Council on Foreign Relations* (April 2012), available online: http://www.cfr.org/east-asia/armed-clash-south-china-sea/p27883 (accessed 03 August 2012), p. 12.

[11] Manyin, op. cit. (2012), p. 5.

[12] Bonnie, op. cit. (2012), p. 5.

[13] S. Bateman, 'Piracy and Maritime Security in East Asia', *East Asia Forum* (10 February 2011), available online: http://www.eastasiaforum.org/2011/02/10/piracy-and-maritime-security-in-east-asia-2/ (accessed 11 September 2012).

[14] A. Bowden, K. Hurlburt, E. Aloyo, C. Marts and A. Lee, 'The Economic Cost of Maritime Piracy', *One Earth Future* (December 2010), p. 25, available online: http://oceansbeyondpiracy.org/sites/default/files/documents_old/The_Economic_Cost_of_Piracy_Full_Report.pdf (accessed 11 September 2012).

[15] ICC International Maritime Bureau (IMB), *Piracy and Armed Robbery Against Ships: Report for the Period 1 January - 31 December 2011* (London: ICC International Maritime Bureau, January 2012), pp. 5-6.

[16] Ibid., pp. 15-19.

1962 Sino-Indian War. India and Pakistan endure very strained relationships, having fought a number of symmetrical and asymmetrical conflicts since partition.[17] The contested territory of Kashmir situated between them has been embroiled in almost constant asymmetric turmoil, with India accusing Pakistan of state sponsored terrorism.[18]

In the South China Sea, noted for its large deposits of oil and natural gas, China, Taiwan, Vietnam, Malaysia, Brunei and the Philippines all have competing claims over territory and jurisdiction, thus exacerbating the risk of conflict in the region.[19] In particular, tension over maritime boundaries and the sovereignty of the Paracel and Spratly Islands claimed by China, Vietnam and the Philippines continues, with a number of naval standoffs between fishing, civil and military vessels belonging to the three states in the disputed area causing international concern.[20]

Similarly, in the East China Sea, ongoing tension exists between China and Japan over another chain of traditionally uninhabited islands, again situated in a vital shipping lane and surrounded by valuable gas deposits (the Diaoyu in China and the Senkaku in Japan).[21] Stand-offs between fishing and patrol boats, as well as protests on the islands by activists from both Japan and China have strained diplomatic ties between the two countries, leading to violent and largely un-policed anti-Japanese protests in China.[22]

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[17] J. Borger, 'Pakistan Nuclear Weapons at Risk of Theft by Terrorists, US Study Warns' (2010), *The Guardian* (12 April 2012), available online:
http://www.guardian.co.uk/world/2010/apr/12/pakistan-nuclear-weapons-security-fears
(accessed 16 October 2012).
[18] P. Constable, 'Mumbai Attacks in 2008 Still Divide India and Pakistan', *Washington Post* (06 April 2011), available online: http://www.washingtonpost.com/world/mumbai-attacks-in-2008-still-divide-india-and-pakistan/2011/04/03/AFJjDUoC_story.html (accessed 21 August 2012).
[19] Bonnie, op. cit. p.1.
[20] New York Times, 'China's Territorial Disputes', *The New York Times* (12 October 2012), available online:
http://topics.nytimes.com/top/news/international/countriesandterritories/china/territorial-disputes/index.html (accessed 14 October 2012).
[21] BBC News, 'Japan Activists Land on Disputed Islands Amid China Row', *BBC News* (19 August 2012), available online: http://www.bbc.co.uk/news/world-asia-china-19303931 (accessed 22 August 2012).
[22] New York Times, op. cit. (2012).

Given the potential for escalation and the risk of broader conflict, these localised confrontations in both the South China and East China Seas are monitored with apprehension by the international community. The US has attempted to facilitate a code of conduct for the area, and to settle territory and resource disputes in multilateral legal proceedings.[23] The Council on Foreign Relations (CFR) believes that '[t]he risk of conflict in the South China Sea is significant',[24] and that any localised conflict runs the risk of escalating. This would involve the US given its need to uphold mutual defence treaties and also defend important energy, shipping and military assets in the region.

The issue of territorial and resource disputes in the South China and East China Seas is complicated by China's refusal to accept mediation or to employ international conventions to solve the dispute.[25] While all involved states but China welcome offers of multilateral talks, any attempt by the US or other states in the Indo-Pacific to mediate the situation is met with hostility by Chinese officials, who insist on bilateral dialogues only. China's reluctance serves to affirm the view that the Chinese state has a number of core values that it:

> essentially considers nonnegotiable and is likely willing to use military force to protect. These include Chinese sovereignty, socioeconomic development, and territorial integrity with respect to Taiwan, Tibet, and Xinjiang. There are also signs that China may consider its South China Sea claims as core interests despite its hesitancy to say so publicly.[26]

Despite international pressure to resolve the disputes peacefully, the tactics used by China in the South and East China Seas can escalate, as evidenced

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[23] P. Hartcher, 'US Sees Risk of War Over South China Sea', *Sydney Morning Herald* (21 July 2012), available online: http://www.smh.com.au/opinion/political-news/us-sees-risk-of-war-over-south-china-sea-20120720-22flc.html (accessed 15 August 2012).

[24] Bonnie, op.cit. (2012), p. 1.

[25] Global Times, 'Don't Take Peaceful Approach for Granted', *Global Times* (25 October 2011), available online: http://www.globaltimes.cn/NEWS/tabid/99/ID/680694/Dont-take-peaceful-approach-for-granted.aspx (accessed 15 August 2012).

[26] E. Walsh, 'ASEAN's China Challenge', *The Diplomat* (20 May 2011), available online: http://thediplomat.com/asean-beat/2011/05/20/aseans-china-challenge/ (accessed 25 July 2012).

by China conducting naval exercises in the East China Sea close to contested territory in October 2012.[27] This aggressive and unilateral behaviour, that was attributed to straining Chinese ties 'with many if not most governments in Southeast Asia',[28] also had the effect of fostering better ties between many Indo-Pacific states and the US, who increasingly 'share an interest in preventing China or any other country from dominating seaborne trade routes and enforcing territorial claims through coercion'.[29]

With the amount of shipping traffic, trade value and resource deposits located in the Indo-Pacific, particularly the South China and East China Seas, it is evident why the area presents a critical security challenge for many states.

China as an Emerging Superpower – Maverick or Misunderstood?

The PRC has undergone rapid, highly significant transformation in the last decade, and in recent years has been increasingly eager to participate on the world stage. Despite recent slowing of its economy, China's annual Gross Domestic Product (GDP) growth has been noteworthy and highly significant on a global comparative basis since the 1990s. In the last recorded five years it has ranged from a high of 14.2% in 2007 to a low of 9.2% in 2011, far exceeding the minimal, if not negative, growth of developed economies such as the US.[30] China is now attributed with the second largest economy after the US.

However, while China is often referred to as an 'emerging superpower', it is not necessarily a superpower yet. China's global political influence is still limited, and despite having the largest standing army in the world, its actual military power has been referred to as 'puny compared with that of the

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[27] M. Patience, 'Fresh Tensions Arise Over East China Sea Islands', *BBC News* (19 October 2012), available online: http://www.bbc.co.uk/news/world-asia-china-20006036 (accessed 25 October 2012).

[28] G. Barmé (ed.), *Red Rising Red Eclipse: China Story Yearbook 2012* (Canberra: Australian National University College of Asia & the Pacific, 2012), p. 9.

[29] Ibid., p. 11.

[30] World Bank, *GDP Growth (Annual %)* (World Bank 2012), available online: http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG (accessed 20 October 2012).

US'.[31] The only field in which China may be considered a superpower is economics, however, regardless of its rapid growth, China's GDP is less than half that of the US and will not overtake the US for six to ten years, even maintaining current growth figures.[32]

Increasing apprehension in the international community has accompanied China's rise in power. Until recently, Chinese foreign policy was largely isolationist; the state leaders were largely concerned with China's 'peaceful rise' as an economic power. In recent years, however, it has become apparent that China is moving away from a policy of 'hiding its light' to one of 'asserting its influence on the world stage'.[33] Some analysts view China's precipitous rise in regional and global politics as 'thrusting the current political leadership into an international role for which it was ill-prepared given the decades of self-imposed isolationism'.[34]

China's economic rise has lifted many Chinese citizens out of poverty.[35] This increase of wealth has spurred a growing educated middle-class to develop in China, which in turn has raised hopes internationally that China will liberalise and democratise in order to further participate in the global economic system.[36]

Although the emergence of China on the world stage has been met with apprehension, the economic rise of China has been relatively peaceful, and many states have reaped large benefits from becoming economic partners, not the least Australia. As a major world economy, China shares common interests with its trading partners on many transnational security challenges,

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[31] M. Jacques, 'A Point of View: What Kind of Superpower Could China Be?', *BBC News* (19 October 2012), available online: http://www.bbc.co.uk/news/magazine-19995218 (accessed 21 October 2012).

[32] Ibid.

[33] Ibid., p. iv.

[34] Barmé, op.cit. (2012), p. iv.

[35] World Bank, *China* (World Bank 2012), available online: http://data.worldbank.org/country/china (accessed 20 October 2012).

[36] J. Thornton, 'Long Time Coming: The Prospects for Democracy in China', *Foreign Affairs*, vol. 87, no. 1 (January/February 2008).

and, more often than not, works with the US and most multilateral organisations.[37]

A comparably formidable increase in defence spending has accompanied China's impressive economic rise. While Chinese defence spending figures are notoriously underrepresented, studies estimate that the state's real expenditure has risen from $US30 billion in 2000 to almost $160 billion in 2012, with present trends indicating that China will overtake US defence spending by 2035.[38] As the state with the world's largest population and fourth largest geographical area, China does have valid strategic concerns to justify a large defence budget. Its voracious resource appetite to support continued growth has resulted in resource insecurity, and it is not unreasonable that 'China would want to have a greater sense of security and a confidence that it wouldn't be subject to blackmail on the open seas'.[39]

Domestically, China still has some fundamental problems. The 2011 Freedom House Report ranks China as one of the least free nations on earth, identifying systemic problems with corruption and human rights abuse, as well as the repression of dissidents and the freedom of information.[40] While China recognises the need for stability, its hard-line stance on the core values of territorial integrity over Tibet, Taiwan and possibly the South and East China Seas, as well as its support of North Korea, poor human rights records and reluctance to adhere to various international conventions could well be issues of international contention until addressed.

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[37] M. Malik, 'The Pivot in US-China Relations' *Foreign Policy* (21 March 2012), p. 1, available online: http://www.chinausfocus.com/foreign-policy/the-pivot-in-us-china-relations/ (accessed 26 July 2012).

[38] The Economist, 'The Dragon's New Teeth: A Rare Look Inside the World's Biggest Military Expansion', *The Economist* (07 August 2012), available online: http://www.economist.com/node/21552193 (accessed 10 August 2012).

[39] J. Blaxland, 'To Shun or to Embrace? Australia-US Relations and China's Rise', *The Strategist* (August 2012), available online: http://www.aspistrategist.org.au/to-shun-or-to-embrace-australia-us-relations-and-chinas-rise-part-ii/ (accessed 21 August 2012).

[40] Freedom House, *Freedom in the World 2011*: *China*, Freedom House (2011), available online: http://www.freedomhouse.org/report/freedom-world/2011/china?page=22&year=2011&country=8016 (accessed 06 October 2012).

China has also been criticised for not 'meeting basic international standards' in trade and commerce.[41] In a 2012 political debate in the US, key political concerns included China manipulating its currency to achieve an unfair trading advantage, the theft of intellectual property, cheap reproduction of stolen goods, and the increase of internet hacking and fraud.[42] Chinese foreign policy also creates challenges for international security. In order to satisfy its insatiable need for natural resources, China continues to invest heavily in mining, particularly in Africa. This has led to accusations of Chinese neo-colonialism, where the practice of exploiting and undervaluing resources and fostering corruption with little regard to the environment or inhabitants is becoming more common.[43] China also attracts criticism for its 'indiscriminate' arms trade, particularly to groups affiliated with genocide and various other atrocities in Africa.[44]

In the Indo-Pacific, Chinese territorial claims have resulted in increasingly frayed relationships and heightened risks of conflict. Some commentators believe that 'China might not have the appetite for a polite and restrained accommodation with its neighbours as its power grows and its military capabilities are enhanced'.[45] The long-term stand-off between China and Taiwan has resulted in a localised arms race and friction in US-China relations.[46] Chinese aggressiveness towards the Vietnamese, Japanese, Filipinos, and Taiwanese in territorial and resource disputes in the South China and East China Seas, as well as refusals to adhere to international conventions or multilateral negotiations has led to a heightened wariness of

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[41] CNN 'Third Presidential Debate (Part 7): China', *CNN* (22 October 2012), available online: http://www.youtube.com/watch?v=kFMG0KV_4n0 (accessed 24 October 2012).
[42] Ibid.
[43] T. Clarke and C. Okumu, 'China and the Shadow of Colonialism Still Looming Over Africa', *The Conversation* (20 August 2012), available online: http://theconversation.edu.au/china-and-the-shadow-of-colonialism-still-looming-over-africa-8941 (accessed 22 August 2012).
[44] BBC News, 'Foreign Weapons 'Fuelling South Sudan Conflict', *BBC News* (28 June 2012), available online: http://www.bbc.co.uk/news/world-africa-18621674 (accessed 20 August 2012).
[45] Blaxland, op.cit. (2012).
[46] M. Roberge, and Y. Lee, 'China-Taiwan Relations', *Council on Foreign Relations* (11 August 2009), available online: http://www.cfr.org/china/china-taiwan-relations/p9223 (accessed 12 September 2012).

China, resulting in more demand for the US to act as a regional counterweight to Chinese ambition.

While China has benefited from regional stability and demonstrates an inclination to participate internationally, there is an urgent need for China to show a greater adherence to international conventions and processes of multilateral mediation. If China continues to act unilaterally, ambiguously and ambitiously, this will have the effect of destabilising the Indo-Pacific, as well as fostering distrust and fraying relations.

The United States' 'Pivot'

With the salience of the War on Terror fading and the ongoing withdrawal of International Security Assistance Force (ISAF) troops in Afghanistan, new global strategic and security priorities are emerging, and the US in particular 'stands at a pivot point'.[47] Publically, the US is experiencing war weariness from more than a decade of conflict in the Middle East, and, in a time of economic uncertainty, there is pressure to downsize foreign engagement in favour of domestic priorities.[48] Despite this, the US has recognised the need for greater political and strategic engagement in the Indo-Pacific, and has announced a 'Pacific Century'. Although somewhat rhetorical, considering that the US has never really left the region since the conclusion of the Second World War (WWII), this does indicate a willingness to deepen relationships and strategic engagement in the area.

As an integral part of the pivot into the region, November 2011 saw the US and Australia formalise an enhanced strategic partnership. This agreement allows a Marine Air-Ground Task Force (MAGTF) to be based in expanded Australian military facilities for six months of each year.[49] The Agreement proposed a ramp-up of forces from 2012, with a target for 2500 US marines

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[47] H. Clinton, 'America's Pacific Century', *Foreign Policy* (November 2011), available online: http://www.foreignpolicy.com/articles/2011/10/11/americas_pacific_century (accessed 20 July 2012).

[48] Ibid.

[49] P. Coorey, 'Obama to Send Marines to Darwin', *Sydney Morning Herald* (17 November 2011), available online: http://www.smh.com.au/national/obama-to-send-marines-to-darwin-20111116-1njd7.html (accessed 29 July 2012).

to be based in Australia by 2016-17.[50] Ultimately, the Agreement will see Australian territory accommodating the MAGTF as well as US Air Force and Naval assets.[51] There has also been speculation on the prospects of an airbase capable of supporting Unmanned Aerial Vehicles (UAVs, or drones) on the Australian owned Cocos Islands.[52]

The US intends for its troops to train with Australian and other friendly militaries in the Indo-Pacific, as well as carrying out humanitarian and disaster relief missions, and acting as a force projection element in the region.[53] As part of the pivot, the US has also facilitated stronger diplomatic and strategic ties with a number of Indo-Pacific states. India and America are engaged in mutually beneficial activities such as high-level intelligence sharing, multiple combined defence exercises and increased defence sales,[54] and the US relationship with Vietnam has improved to the extent that US officials are hopeful that Vietnam will soon host US troops much like Australia.[55] This boost in deployed forces will fall under the US Pacific Command (USPACOM), which oversees US military deployment in the area (See Fig. 2 for map), and totals around 325,000 personnel.[56] The current Asia-Pacific presence of the US is spread predominantly over bases in South Korea, Japan, Guam, Singapore, the Philippines, Thailand and on floating bases.[57]

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[50] Ibid.

[51] Ibid.

[52] C. Whitlock, 'Australia May Host US Drones at Cocos', *Sydney Morning Herald* (28 March 2012), available online: http://www.smh.com.au/opinion/political-news/australia-may-host-us-drones-at-cocos-20120327-1vwmm.html (accessed 29 July 2012).

[53] Ibid.

[54] T. Roemer, 'Deepening the Ties Between the U.S. and India' *The Washington Post* (09 June 2012), available online: http://www.washingtonpost.com/opinions/deepening-the-ties-between-the-us-and-india/2012/06/08/gJQAQbTjOV_story.html (accessed 30 July 2012).

[55] W. Wan, 'Defense Secretary Leon Panetta Highlights U.S. Ties to Vietnam During Visit', *The Washington Post* (04 June 2012), available online: http://www.washingtonpost.com/world/asia_pacific/defense-secretary-leon-panetta-highlights-us-ties-to-vietnam-during visit/2012/06/03/gJQAOWcLBV_story.html (accessed 30 July 2012).

[56] USPACOM, available online: http://www.pacom.mil/ (accessed 25 July 2012).

[57] Department of Defense, 'Active Duty Military Personnel Strengths by Regional Area and by Country (309a)' (31 December 2011), available online: http://siadapp.dmdc.osd.mil/personnel/MILITARY/history/hst1112.pdf (accessed 25 July 2012).

While only a relatively small shift in terms of numbers for the US military, the joint US-Australia Agreement sparked speculation regarding the reasons behind the US pivot, both implicit and explicit. The strategic implications of basing more troops in Australia are relatively obvious:

> This is all about the rise of China, the modernisation of the People's Liberation Army and, particularly, it's about the increased vulnerability of US forces in Japan and Guam to the new generation of Chinese missiles… Australia's 'tyranny of distance' is now a distinct strategic advantage… [The] Australian strategic rationale is that we are also hedging against increasing Chinese military power and their capacity to destabilise maritime trade routes.[58]

However, there are more subtle implications of the US pivot into the region. The rise of China and India brings with it myriad opportunities and challenges, both economic and strategic. Dr. Wesley Widmaier puts it succinctly when he argues that 'the US must walk the tightrope of ambiguity on China policy',[59] and that anxiety regarding China as a potential rival to the US is weighed against the hope that it may become a partner in commerce and politics.[60] This need to foster closer relations while simultaneously increasing regional security is reflected in US foreign policy, which states that:

> The Obama Administration can be said to have adopted a two-pronged approach to China: reaffirming and strengthening cooperative ties while simultaneously establishing a strong and credible American presence across Asia to encourage constructive Chinese behavior and to provide confidence to regional leaders who wish to resist potential Chinese regional hegemony.[61]

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[58] Dupont (Prof.), as cited in P. Hartcher, 'US Marine Base For Darwin', *Sydney Morning Herald.* (11 November 2011), available online: http://www.smh.com.au/national/us-marine-base-for-darwin-20111110-1n9lk.html (accessed 29 July 2012).

[59] W. Widmaier, 'The US Must Walk the Tightrope of Ambiguity on China Policy' *The Conversation.* (31 October 2012) available online: http://theconversation.edu.au/the-us-must-walk-the-tightrope-of-ambiguity-on-china-policy-10378 (accessed 31 October 2012).

[60] Ibid.

[61] Manyin et al, op.cit. (2012), p. 18.

Rather than an act of aggravation, the US believes that garrisoning more troops in Australia will continue to stabilise the region, and that '[…]from Washington's perspective, it is this forward presence that has served China and the region well and facilitated uninterrupted economic growth for several decades'.[62]

With military spending in the Indo-Pacific outstripping that of Europe, it is considered that 'the United States still remains the balancer of choice for many countries', and that '[a]s long as China's territorial and maritime disputes remain unresolved, there cannot be a power shift in Beijing's favor'.[63] The US Pivot to the Indo-Pacific serves to illustrate the importance of the region in international relations. While the move may be seen merely as a deterrent to an evolving Chinese military, US diplomatic and strategic posturing, if conducted appropriately, may be an answer to the current challenge of both deepening relationships and increasing security in the region.

Australia as a 'Middle Power' in the Indo-Pacific

The emergence of the Indo-Pacific as an increasingly critical geo-political strategic theatre also presents a number of opportunities and challenges for Australia. As a Western-oriented 'middle power' situated in the Indo-Pacific, Australia is positioned somewhat ambiguously. While Australia is geographically much closer to Indo-Pacific states than to Europe or North America, historically it has identified with English speaking Anglo-inhabited states, particularly the United Kingdom (UK) and the US. Strategically, Australia has traditionally depended on key allies for support and defence, given that up until WWII it was the sovereign state and colonial power of the UK. WWII, particularly the emergence of a Pacific theatre of conflict, resulted in Australia increasingly looking to the US. After the war, with colonial imperialism diminishing and the UK's geo-political eminence fading, Australia sought to strengthen ties with the US

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[62] Malik, op.cit. (2012), p. 1.
[63] Ibid., p. 2.

through the Australia New Zealand United States (ANZUS) Security Treaty.[64]

Historically, Australia traded predominantly with these Anglo-centric states, but with the rise of the Indo-Pacific 'Tiger Economies' Australian trade has become ever more regional, with China, Japan, South Korea, and India, respectively, becoming our largest trading partners.[65] With the 21st Century increasingly being entitled the Asia-Pacific Century or the Asian Century, Australia finds itself at a strategic crossroads. The most eminent consideration in coming years will be whether Australia remains committed to its identity as a western Anglo-centric state, or whether it will deepen its status as an Indo-Pacific middle power.

The new millennium has seen increasing attempts by Australia to deepen engagement in the Indo-Pacific. In 2005, Australia secured a seat at the first East-Asia Summit in the hopes that, along with India and New Zealand, Australia could help balance the growing influence of China.[66] Australia is a member of the Asia-Pacific Economic Cooperation Forum (APEC) and the Pacific Islands Forum. In 2008, then Australian Prime Minister Kevin Rudd attempted to increase multilateral engagement in the Indo-Pacific, proposing the creation of an Asia-Pacific Community not dissimilar to the European Union under the umbrella of the East-Asia Summit.[67]

The release of the 2012 *Australia in the Asian Century* White Paper has provided further evidence of the government seeking a deepening of political, economic and strategic relationships with Indo-Pacific states along with a commitment to better Australian-Asian integration in coming years.

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[64] Blaxland, op. cit. (2012).
[65] DFAT 2011, *Composition of Trade Australia 2011* (Department of Foreign Affairs and Trade, July 2012), available online: http://www.dfat.gov.au/publications/stats-pubs/cot-cy-2011.pdf (accessed 10 October 2012).
[66] P. Hartcher, 'East Asia Takes First Steps Towards One Community', *Sydney Morning Herald* (14 December 2005), available online:
http://www.smh.com.au/articles/2005/12/13/1134236063731.html?from=rss (accessed 02 August 2012).
[67] T. Woodroofe, 'Is The East Asia Summit Rudd's Gift to the World?', *Australian Institute of International Affairs* (Summer 2012), available online: http://www.aiia.asn.au/qa/qa-vol4-issue1/762-is-the-east-asia-summit-rudds-gift-to-the-world (accessed 25 July 2012).

The Paper gestures towards Australia's support of a continued and expanded US presence, stating that:

> Australia's future is irrevocably tied to the stability and sustainable security of our diverse region... We will continue to support a greater role for Asian countries in a rules-based regional and global order. Australia's alliance with the United States and a strong US presence in Asia will support regional stability, as will China's full participation in regional developments.[68]

This positioning is further strengthened by the recommitment to Australia's 'enduring strategic interests', which are detailed in the 2009 and 2013 Defence White Papers.[69] The rationale for the early release of the 2013 White Paper was due to 'significant developments internationally and domestically since 2009', where 'changing strategic circumstances' included (in part):

> • The ongoing strategic shift to our region, the Asia-Pacific and the Indian Ocean Rim, particularly the shift of economic weight to our region;
> • The United States' re-balance to the Asia-Pacific and Australia's enhanced practical cooperation with the US pursuant to our Alliance relationship.[70]

Australia's stance of 'hedging bets' between China, as its primary economic partner, and the US, as its primary military ally, has been a source of ire for Chinese officials. Following the decision to base a US MAGTF in Australia, a senior People's Liberation Army official warned then Australian Foreign Minister Bob Carr that 'Australia cannot juggle its relationships with the United States and China indefinitely and must choose a "godfather" to protect it'.[71]

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[68] Australian Government, op. cit. (2012), p. 3.
[69] S. Smith, op. cit. (2012), pp. 2-3.
[70] Ibid., p. 4.
[71] P. Wen, 'Chinese Official: it's us or America', *The Age* (16 May 2012), available online: http://www.theage.com.au/opinion/political-news/chinese-official-its-us-or-america-20120515-1yp5f.html (accessed 17 July 2012).

The 2009 Australian Defence White Paper *Defending Australia in the Asia Pacific Century: Force 2030*, provided a more practical observation of Australia's foreign policy values in the region while highlighting the importance a multilateral effort in the Indo-Pacific to increase and maintain regional stability. It stated that:

> we have a deep stake in the maintenance of an Asia-Pacific regional security environment that is conducive to the peaceful resolution of problems between regional countries and can absorb the rise in strategic and military power of emerging major players.[72]

The Paper proposed the establishment of 'Force 2030' – a capable, modern military that has the capacity to greatly enhance Australian capabilities in the fields of command and control, force projection and area denial. Combined with new generation combat aircraft, Australia would have an appropriately sized military with disproportionate capabilities of area denial of Australia's air-sea gap, as well as projecting security into the wider Indo-Pacific. While not overtly stated in the Paper, the proposed Force 2030 was widely accepted as a strategic response to growing Chinese military power in the region.[73] Shortly after its release, leading Chinese military strategist Rear Admiral Yang Yi 'slammed Australia's 2009 Defence White Paper as a 'crazy', 'stupid' and 'dangerous' document that risks inciting an arms race across the region.[74]

Since the release of the 2009 and 2013 Defence White Papers, Australia has undergone two leadership changes and spending cuts to defence have eroded

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[72] Department of Defence, *Defending Australia in the Asia Pacific Century: Force 2030* (Australian Government Department of Defence 2009), p. 12, available online: http://www.defence.gov.au/whitepaper/docs/defence_white_paper_2009.pdf (accessed 10 July 2012).

[73] D. Flitton, 'Gillard to Unveil Ambitious Asia Disaster Response Plan', *Sydney Morning Herald* (19 November 2011), available online: http://www.smh.com.au/national/gillard-to-unveil-ambitious-asia-disaster-response-plan-20111118-1nni3.html (accessed 19 July 2012).

[74] J. Garnaut, M. Grattan, and A. Davies, 'Military Build-up 'Risks New Asian Arms Race'', *The Age* (04 May 2009), available online: http://www.theage.com.au/national/military-buildup-risks-new-asian-arms-race-20090503-arew.html (accessed 15 July 2012).

some of the capabilities of Force 2030. Despite this, other projects are underway with most core priorities of Force 2030 protected.[75]

In recent years, 'bet hedging' between the US and China, planning Force 2030 and accepting a US MAGTF have all elicited almost vitriolic responses from Chinese military officials. Despite this condemnation, Australia has recognised that it must continue walking a delicate path in the Indo-Pacific. While increased ties with China present myriad opportunities, Australia must continue to foster strong political and strategic ties with the US and other Indo-Pacific states, while building a self-reliant defence force.

Future Outcomes for the Indo-Pacific – Investing in Stability

A common theme in the rhetoric produced by China, the US and Australia is the need for stability in the Indo-Pacific. The rise of Asia's Tiger Economies from the 1990s has been credited largely to regional stability under the security provided by the US and its allies in the region. In response to Chinese protestations regarding the US pivot, Washington was quick to point out that the US '[…] helped to guarantee peace in the Asia-Pacific region, where stability has fostered great economic development for countries, including China'.[76] However, despite the desire to maintain peace and security in the region, challenges remain to both the short and long-term prospects of harmony in the Indo-Pacific.

Non-state influences, including piracy and terrorist groups, remain active and present a continued challenge to all the Indo-Pacific nations. Strained relationships between India and Pakistan have left the territory between the two countries in almost constant turmoil. While Sino-Indian relationships are improving, previous conflict over territory has left its mark. In the South China Sea, China is becoming increasingly aggressive with Vietnamese and Filipino vessels in confrontations over the sovereignty of the Paracel and Spratly Islands, and in the East China Sea, tensions remain over the

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[75] S. Smith, Minister for Defence *Budget 2012-13: Defence Budget Overview* (08 May 2012), available online: http://www.minister.defence.gov.au/2012/05/08/minister-for-defence-budget-2012-13-defence-budget-overview/ (accessed 19 July 2012).

[76] S. Salil, 'Australia, China and the United States: Maintaining an Equilibrium in the Indo-Pacific', *Future Directions International* (27 September 2012), available online: http://www.futuredirections.org.au/publications/indian-ocean/716-australia-china-and-the-united-states-maintaining-an-equilibrium-in-the-indo-pacific.html (accessed 30 Sept 2012).

Japanese takeover of the Senkaku Islands. North Korea, generally accepted as a rogue state with few political proponents other than China, also continues to foster concerns about its readiness to employ conventional and nuclear armaments, with an official recently stating at a United Nations (UN) General Assembly meeting that continued tensions on the Korean Peninsula were at a point 'where a spark of fire could set off a thermonuclear war'.[77] US-Chinese relations still have much room for improvement, as do, to a lesser extent, Australian-Chinese relationships.

In order to ensure the continuity of the stable environment that has supported the economic rise of the Indo-Pacific, all of its states must commit to a sustained, multilateral effort to enhance the peace and security of the region. This can be achieved by strengthening regional participation and its associated institutions. Multilateral engagement on regional security issues has helped to bring states closer; for example Japan's formation of anti-piracy bodies opened new channels of dialogue between regional coast guard and navies, while Australia's counter-terrorism assistance to Indonesia has facilitated closer ties between the two governments, as well as a greatly enhanced Indonesian counter-terrorism capacity.[78]

In a region increasingly prone to natural disasters, mutual disaster relief and humanitarian aid also play a role in fostering better relations between states. Australia and the US have been particularly active in offering personnel, equipment and aid to countries in crisis, as seen recently following the 2011 Japanese earthquake and tsunami, as well as tropical cyclones and flooding in East Asia.[79] In 2011 Australia proposed an ambitious Asia Disaster

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[77] J. Ryall, 'North and South Korea on the Verge of Nuclear War', *The Telegraph* (2 October 2012), available online:
http://www.telegraph.co.uk/news/worldnews/asia/northkorea/9580536/North-and-South-Korea-on-the-verge-of-nuclear-war.html (accessed 03 October 2012).
[78] G. Barton, 'Ten Years on: Indonesia's Anti-Terrorism Advances', *ABC* (12 October 2012), available online: http://www.abc.net.au/unleashed/4308906.html (accessed 15 October 2012).
[79] H. Chan, 'Disaster Relief Brings Together US and Southeast Asia', *ASEAN* (9 February 2012), available online: http://www.asiamattersforamerica.org/asean/natural-disaster-relief-brings-together-us-and-southeast-asia (accessed 16 October 2012).

Response Plan to Indo-Pacific leaders, in an attempt to enhance international assistance and inter-operability during disasters.[80]

Joint military training is also an avenue to fostering greater trust and transparency between regional armed forces. The MAGTF in Australia presents a unique opportunity for regional military training and sharing, with officials stating that a:

> […] key emphasis of the US deployment will focus on joint-training exercises with the Australian military and other allied regional forces… [The US] continue[s] to engage in amphibious training in a real world construct with our partners throughout Asia such as Australia, Japan, South Korea, Thailand and the Philippines.[81]

Another priority for the continued stability of the Indo-Pacific is facilitating Chinese adherence to common international conventions, and a commitment to greater transparency with participation in multilateral mediation and discussions. Specifically, US military officials argue that 'the growth of China's military power must be accompanied by greater clarity of its strategic intentions in order to avoid causing friction in the region'.[82]

Ensuring the continuity and enhancement of regional institutions is also highly significant in maintaining and improving the stability of the Indo-Pacific. While Australian Prime Minister Rudd's initial vision for an Asia-Pacific community was criticised for being overly ambitious at the time, it illustrated the strengths of the regional institutions as well as the need to consolidate them. Currently, the Indo-Pacific has the aforementioned APEC and East Asia Summit forums, as well as the Association of East Asian Nations (ASEAN), ASEAN + 3 (APT), which includes China, Japan and South Korea, and the ASEAN Regional Forum (ARF) that further includes

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[80] Flitton, op. cit. (2011).

[81] S. DeSilva-Ranasinghe, 'Darwin's Importance to US Asia-Pacific Strategy', *Future Directions International* (12 April 2012), available online: http://www.futuredirections.org.au/files/FDI%20Feature%20Interviews/FDI_Feature_Interview_-_12_April_2012_-_Darwins_Importance_to_US_Asia-Pacific_Strategy-1.pdf (accessed 30 September 2012).

[82] USDOD, Sustaining *U.S. Global Leadership: Priorities for 21st Century Defense,* United States Department of Defense (January 2012), available online: www.defense.gov/news/Defense_Strategic_Guidance.pdf (accessed 25 July 2012).

Australia, New Zealand and India.[83] The continuity of these institutions shows a commitment from member states to regional participation and socialisation, and for the desire of increased multilateral engagement. Although ASEAN and the ARF have been criticised for being ineffective, some commentators have found that the 'ASEAN Way':

> […] has made a valuable contribution to security and stability in the Asia-Pacific through providing a key forum for discussion. Its strength lies in not being prescriptive, nor trying to enforce a particular course of action, but in the subtle diplomatic socialisation of participant states to accept the ASEAN norms of behaviour and resolve differences peacefully.[84]

In some ways, ASEAN's 'weaknesses' such as lack of formality and institutionalisation have led to greater success in promoting regional participation and socialisation, which in turn underpin peace and security in the Indo-Pacific:

> [t]he emerging multipolarity and multilateralism in Asia provide incentives for major powers to pursue a moderate, cooperative foreign policy that promotes stability and growth. Hopefully, economic interdependence and regional integration underpinned by multilateral institutions would alter the discourse and course of inter-state relations from competition and zero-sum games to cooperation and win-win games.[85]

Despite an overall recognition from Asia-Pacific states of the significance of regional stability, challenges to the continuity and improvement of security in the Indo-Pacific remain. Both transnational and state actors have continued to adversely impact regional stability, and ongoing issues such as terrorism, piracy, sovereignty disputes, nuclear proliferation and lack of transparency have the potency to push the area into turmoil. These destabilising influences are countered by regional participation on mutual security challenges, mutual aid in times of crises, joint military training, a greater commitment to meet common international conventions, and

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[83] Woodroofe, op.cit. (2012).
[84] R. Coombe, *Security in the Post-Cold War Asia-Pacific* (Canberra: Australia Defence College Monograph Series, No. 2, 2003), p. vii.
[85] Malik, op.cit. (2012),

improved transparency. Importantly, it should be recognised that institutions such as ASEAN and ARF are capable of fostering better relations through regional participation and socialisation.

Recommendations

This paper has found that significant periods of regional stability are key to the continuity of the Indo-Pacific's dramatic economic rise, as illustrated by the emergence of Asian 'Tiger Economies' from the 1990s onwards. While most states in the region recognise the need for stability, there are a number of challenges to ensuring both short and long term security in the Indo-Pacific. The recommendations for the Indo-Pacific community that this paper proffers are invested in ensuring the continuity of peace and stability, and in enhancing future security capacities of the region.

The first recommendation is the building of multilateral cooperation on mutual security issues including terrorism, piracy, food and resource security and nuclear proliferation. Multilateral cooperation on regional security issues has the effect of providing a mutually improved security climate for states involved. It also has the secondary effects of opening new channels of communication, and of building trust between governments and armed forces.

The second recommendation is to continue and extend joint military training opportunities. The greater US engagement in the Indo-Pacific presents a unique opportunity for regional militaries to train alongside members of the world's most powerful armed forces. Joint military training builds capabilities for all states involved, expands inter-operability between forces, and also serves to improve transparency and build trust.

The third recommendation is to engage more broadly with intelligence sharing and military cooperation. Along with greater military inter-operability comes the opportunity to share intelligence and to cooperate on issues of regional security. While creating strong intelligence partnerships takes time, any increased flow of information will serve to benefit regional stability.

The fourth recommendation that this paper presents is enhancing regional

cooperation on disaster management and humanitarian aid. The Indo-Pacific is becoming increasingly disaster prone. Extending disaster relief and humanitarian aid in times of crisis does not only have moral benefits; it also serves to build trust between states and between first responding agencies. An increased capacity to respond effectively to disasters enhances overall regional stability.

The fifth recommendation is the continuation of fostering regional participation and socialisation, using pre-existing forums such as APEC, ASEAN, ARF and the East Asia Summit. While these institutions have been criticised, research shows that through fostering conversation and cooperation, these institutions have contributed significantly to greater regional participation and socialisation. This has the effect of building trust and encouraging dialogue and mediation as an alternative to military escalation.

The sixth recommendation is to strengthen the above institutions, and to use them to develop a regional code of conduct. The US asserts that this would help to alleviate disputes over the sovereignty and jurisdiction of territory and resources in the South and East China Seas. The AFR has the ability to oversee the creation and implementation of any regional code of conduct, ensuring that any dispute would be settled by multilateral negotiation using common international conventions, rather than by bully tactics.

The seventh and final recommendation is that ongoing pressure for China to adhere to common international conventions be applied. China's ascendancy presents numerous opportunities for creating a strong Indo-Pacific under regional multi-polarity and cooperation. However, China's assertive and unilateral behaviour has also been responsible for fraying relationships with many of its neighbours and trading partners. In order to participate fully in the Indo-Pacific, it is necessary that China concedes to the need for multilateral participation and greater transparency; that China learns to abide by common international conventions on currency, trade, intellectual property protection, maritime law and dispute mediation. These then, are the prospects for and challenges to stability in the Indo-Pacific.

MAD in South Asia: Ambiguity and Instability in the India-Pakistan Nuclear Dynamic

Khemta Hannah Jose[*]

This paper argues that the presence of Mutual Assured Destruction (MAD) in the India-Pakistan context has not increased stability at higher levels of conflict as it did during the Cold War and as the Stability-Instability Paradox (SIP) suggests. This is because SIP is predicated on a number of assumptions, which are not explicitly stated. While these assumptions were correct in the case of the Cold War, many of them are not applicable in the South Asian context. This paper articulates the assumptions that are necessary for SIP to operate, how these are different in the Cold War and South Asian contexts and how these differences significantly and systematically increase ambiguity, thus weakening stability at higher levels of conflict. The most important aspect of the dynamic between India and Pakistan is that it is rapidly evolving. An analysis of the past decade and a half suggests that the dynamic is not moving towards stability either at higher or lower levels of conflict, and if anything, it is moving towards further instability. This paper argues that stabilising measures in the form of altering key power equations will be required, and that this can be achieved by converting the Line of Control into an international border.

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During the Cold War, the United States (US) and the Union of Soviet Socialist Republics (USSR) were locked in intense rivalry, with both sides possessing enormous nuclear arsenals. This led to a situation that came to be called Mutual Assured Destruction (MAD). MAD exists when two adversaries possess sufficient nuclear capability to destroy each other, credible second-strike capabilities to withstand an initial assault, and the capacity to launch a retaliatory strike, spelling annihilation for both.

A further characteristic of MAD was introduced when the Stability-Instability Paradox (SIP) was articulated in 1965. SIP held that in the MAD context there was instability at lower levels of conflict and stability at higher levels. This is because both players recognise the unacceptable dangers of escalation to the nuclear (higher) level, and are therefore confident that the other will not escalate. This creates a situation where proxy wars (lower level) are more likely to be fought, with both players safe in the knowledge that escalation is not an option for either. Experience through the 1960s and '70s validated SIP as a natural consequence of MAD.

MAD came to South Asia in 1998 when India and Pakistan both became overt nuclear powers (India conducted its first nuclear test in 1974). The relevant question, therefore, is: does SIP apply to the South Asian nuclear dynamic? To answer that conclusively, one needs to unpack the assumptions on which SIP is predicated. This paper argues that in the South Asian context, two of the three key assumptions – unambiguous thresholds, minimum levels of trust and cooperation and rational actors – do not apply, and therefore, the South Asian situation is subject to both greater ambiguity and higher chances of accidents or miscalculations than it was during the Cold War. This makes the South Asian situation significantly more unstable. This is already visible in the rapidly evolving nuclear dynamics between the two countries in terms of strategic concepts, technologies and military capabilities. Linear progression of this dynamic into the future is not in the interests of the region, and to stop the progression will require re-working of key power equations.

MAD in the Cold War and the Stability-Instability Paradox

During the Cold War, the US and the USSR, two global superpowers, were engaged in a rapid build-up of nuclear arms and technologies. Although

during the early years of the Cold War the USSR enjoyed conventional superiority over the US, by the sixties and part of the seventies, the two were largely evenly matched in terms of conventional forces, the size of their economies, and diplomatic influence. This situation, where both powers had assured second-strike capabilities able to launch retaliatory nuclear strikes, was captured by the concept of MAD. It meant that neither side could count on launching a successful first-strike without endangering its own population due to the other side's assured retaliation.

The next conceptual progression was articulated in 1965 when Glenn Snyder famously coined the 'Stability-Instability Paradox' (SIP). This concept held that the nuclearisation of states results in stability at higher levels of conflict (that is, chances of major wars breaking out are reduced), but instability at lower levels of conflict (chances of proxy wars or sub-conventional conflicts increase).[1] Robert Jervis further clarified that 'to the extent that the military balance is stable at the level of all-out nuclear war, it will become less stable at lower levels of violence'.[2] Kenneth Waltz argued that 'surely nuclear weapons helped to maintain stability during the Cold War and to preserve peace throughout the instability that came in its wake',[3] lending further support to SIP. The rationale behind this widely acknowledged paradox is that both participants are aware of the dangers of escalation, and they recognise that the costs of such escalation would be unacceptable. In so recognising the perils, they take great pains to avoid escalation to the nuclear level. However, the understanding that both sides will not allow nuclear escalation paradoxically emboldens them to take greater liberties in pursuing smaller-scale conflicts or proxy wars. The US and Soviet Union therefore conducted proxy wars in Afghanistan and Vietnam, where both

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[1] R. Jervis, 'Why Nuclear Superiority Doesn't Matter', *Political Science Quarterly,* vol. 94, no. 4 (1979-1989), p. 619, available online: http://jstor.org/stable/2149629 (accessed 4 October 2012).

[2] A. Panday, 'The Stability-Instability Paradox: The Case of the Kargil War', *Penn State Journal of International Affairs (*Fall 2011), p. 9, available online: http://psujia.files.wordpress.com/2012/04/the-stability-instability-paradox-the-case-of-the-kargil-war.pdf (accessed 4 October 2012).

[3] K. N. Waltz, 'Nuclear Myths and Political Realities', *The American Political Science Review*, vol. 84, no. 3 (1990), p. 11, available online: http://www.jstor.org/stable1962764 (accessed 4 October 2012).

funded and sponsored proxies in a bid to defeat the other without ever engaging in direct warfare against the other.

While there is enough evidence to show how SIP operated during the Cold War, what is not usually and explicitly stated is that it requires a number of preconditions in order to exist. Drawing upon Cold War history, three specific conditions can be teased out of SIP.

- That the adversaries involved are rational actors, making rational decisions in their own self interest.
- If there is a side which threatens first-use of nuclear weapons, that side must have unambiguous red-lines and clearly declared policies (in the case of a no-first-use posture, the red-line of nuclear use is perfectly clear). Unambiguous red lines are needed in order to avoid the accidental tripping of thresholds, which can lead to a quick escalation into all-out war.
- That there are minimum levels of communication and mutual understanding between the states to minimise the risk of miscalculation or misinterpretation. Robust communication mechanisms and agreements as well as a degree of mutual understanding that the risks of escalation are too grave, contribute to stability at higher levels of conflict.

As far as the first precondition is concerned, both the US and USSR at the time of the Cold War were largely believed to be rational actors. In the South Asian context too, both India and Pakistan are considered rational actors. This precondition, therefore, is met in both circumstances.

With regard to the second precondition, the North Atlantic Treaty Organisation (NATO), led by the US, satisfied it by adhering to a strategy of 'Flexible Response'. This strategy consisted of three stages, comprising its unambiguous red lines:[4]

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[4] 'NATO's Strategy of Flexible Response and the Twenty-First Century Executive Summary', *Global Security ,* available online: http://www.globalsecurity.org/wmd/library/report/1986/LLE.htm (accessed 4 October 2012).

1. Direct response: In the event of a conventional attack by the Soviets on Western Europe, NATO would respond with conventional weapons by European forces.
2. Deliberate escalation: In the event of NATO's European forces being overwhelmed by the Warsaw Pact countries' conventional forces, which was expected due to the Soviets' conventional superiority, NATO would escalate by using tactical nuclear weapons on the battlefield.
3. General nuclear response: In the event of NATO troops further succumbing to Soviet attack (whether conventional or nuclear at this point), NATO would resort to an all-out nuclear response.

These unambiguous red lines and declared policies served to increase clarity and reduce uncertainty within the strategic calculus of the two states, creating a stable environment. This is not the case in the South Asian context, as will be explored in more detail in the next section, under *Ambiguous Red Lines*.

The third precondition was also satisfied: there was mutual understanding of certain rules of engagement and effective communication and comprehensive agreements in place to prevent misinterpretations and miscalculations which could lead to nuclear war. During the Cold War, both sides had an understanding not to fire directly upon each other's ships or troops, with the realisation that the risks of escalation were too high.[5] Their theatres of conflict were largely proxy wars fought indirectly in other countries, with US and Soviet troops never coming in direct contact with each other. In 1963, after the Cuban Missile Crisis of 1962, the US and Soviet Union set up a hotline by which to convey information to each other in real time about their activities, in an effort to reduce misunderstandings and misinterpretations like the ones which led to the Cuban Missile Crisis.[6] Other measures and agreements to improve communication and trust between the two countries included the Strategic Arms Limitation Talks

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[5] R. Jones, 'Nuclear Escalation Ladders in South Asia', *Policy Architects International* (2011), p. 10.
[6] 'Memorandum of Understanding Between the United States of America and the Union of Soviet Socialist Republics Regarding the Establishment of a Direct Communications Link', *Bureau of International Security and Nonproliferation* (1963), available online: http://www.state.gov/t/isn/4785.htm (accessed 8 October 2012).

(SALT I) in 1969 which produced the Anti-Ballistic Missile (ABM) Treaty and the Interim Agreement.[7]

The various treaties and agreements coordinated between the two sides contributed to enhanced mutual trust and increased coordination. Trust-building agreements and treaties of this kind do not exist between Pakistan and India, and this will be further discussed in the next section of the paper, under *Inadequate Mutual Trust and Cooperation*.

It can therefore be seen that SIP does not automatically come about as a result of MAD. For MAD induced stability to exist at higher levels of conflict, the above-mentioned preconditions must be met. All of these preconditions were met during the Cold War, thus facilitating nuclear stability. This is not the case in the India-Pakistan context, as will be discussed in greater detail in the next section.

Difficulties in Applying SIP to South Asia

There are many crucial differences between the South Asian context and the Cold War which makes SIP inoperable in India and Pakistan. Kenneth Waltz, a prominent proponent of SIP, argues that:

> [h]istory shows that when countries acquire the bomb, they feel increasingly vulnerable and become acutely aware that their nuclear weapons make them a potential target in the eyes of major powers. This awareness discourages nuclear states from bold and aggressive action.[8]

This has not proven to be the case in the India-Pakistan situation. Before Pakistan acquired its nuclear deterrent, several propositions for an incursion into Kargil (a region on the Indian side of Kashmir) to cut off India's access

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[7] 'US-Russian Arms Control Agreement At a Glance', *Arms Control Association* (2012), available online:
http://www.armscontrol.org/factsheets/USRussiaNuclearAgreementsMarch2010 (accessed 8 October 2012).

[8] K. N. Waltz, 'Why Iran Should Get the Bomb', *Foreign Affairs* (2012), available online:
http://www.foreignaffairs.com/articles/137731/kenneth-n-waltz/why-iran-should-get-the-bomb (accessed 4 November 2012).

to the valley had been presented to sitting Pakistani Presidents – Benazir Bhutto and General Zia-ul-Haq[9] – by the military. But all had been rejected for fear of an all-out conventional war with India. Within 12 months of Pakistan acquiring a nuclear capability, however, the operation was carried out in the knowledge that India would be deterred from a full-scale retaliatory assault by Pakistan's nuclear threat.[10] The fact that the Kargil operation was planned and rejected previously, but put into operation after Pakistan acquired nuclear weapons shows that the acquisition of a nuclear capability did not make it more cautious. On the contrary, the nuclear umbrella emboldened Pakistan to pursue its revisionist goal of gaining disputed territory.

Secondly, the fact that the revisionist state is also the state that has adopted a policy of nuclear first-use (India has a declared policy of no first-use) dramatically alters the situation in South Asia from that of the Cold War. During the Cold War, NATO too had adopted a policy of nuclear first-use. What is noteworthy, however, is that this posture was adopted in order to deter an attack by the conventionally superior, and adventurist, Warsaw Pact countries and to maintain the status-quo. Thus, during the Cold War, the weaker side's first-use posture was essentially defensive and intended to deter aggression. This posture, thus, enabled the two powers to maintain the status quo, however uneasily, and thus achieve stability. In the South Asian context, however, one side pursues revisionist goals while simultaneously threatening nuclear first-use to deter conventional retaliation.

Apart from the problem caused by the combination of a nuclear first-use policy and a revisionist approach, there are other differences in the South Asian context that both explain and exacerbate instability. Significant power asymmetry, the participation of non-state actors and lack of minimum levels of trust and cooperation make the situation more ambiguous and fraught with risks of accidental deployments than during the Cold War.

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[9] 'Musharraf Advised Against Kargil, Says Benazir', *The Daily Times* (2003), available online: http://www.dailytimes.com.pk/default.asp?page=story_2-7-2003_pg7_19 (accessed 10 November 2012).
[10] P. Swami, *India, Pakistan, and the Secret Jihad; The Covert War in Kashmir* (New York: Routledge, 2007), p. 186.

Power asymmetry → Asymmetric Nuclear Postures → Ambiguity → Instability

In the case of India and Pakistan, unlike between the US and USSR, the power asymmetry is pronounced and significant in its effect on nuclear stability in the region. The most significant area of asymmetry for its effects on stability are conventional capabilities. India enjoys considerable conventional superiority over Pakistan. The country's available manpower for military services exceeds 600 million, whereas Pakistan's available manpower stands below 95 million. India has a greater number of military aircraft (2,462 to 1,414), land-based weapons (75,191 to 16,451), naval units (175 to 11) and submarines (15 to 1).[11] In addition, India has a defence budget of $36 billion, against Pakistan's $6 billion.[12]

As well as advantages in weaponry, technology and size of forces, India also enjoys a much larger territory, giving it greater strategic depth. Pakistani territory covers 796,995 square kilometres, whereas India's covers 3,287,265 square kilometres. The Indo-Pakistani border runs for 2050 kilometres – 770 of these demarcating the Line of Control [LoC] – which is almost the entire length of Pakistan. This leaves it vulnerable to a surgical strike from Indian forces were they to execute a deep thrust into Pakistani territory, potentially cleaving it in two.

In the Indo-Pakistan context, it is this conventional power asymmetry that has led to *asymmetrical nuclear postures.* India's nuclear posture has three components: credible minimum deterrence, civilian command and control, and no-first use.[13] 'Minimum deterrence' is defined as a small force of nuclear weapons which would deter an opponent from taking military action which would threaten India's vital interests.[14] Enjoying conventional superiority over Pakistan, India's nuclear posture need only deter a nuclear first-strike. To this end, it has adopted a posture of 'assured retaliation',

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[11] 'The World Factbook', *Central Intelligence Agency*, available online: https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html (accessed 16 November 2012).

[12] Ibid.

[13] G. Kanwal, 'India's Nuclear Doctrine and Policy', *Strategic Analysis*, vol. 24, no. 11 (2001), p. 1958.

[14] Ibid., p. 1952.

which is characterised by transparent nuclear capabilities, as well as assured second-strike capability, emphasising the survivability of its nuclear weapons in order to deliver a retaliatory nuclear strike.[15] India's no first-use posture also means that its nuclear war-fighting capabilities are for the purposes of deterrence and retaliation, rather than offence.

Pakistan, being heavily outgunned and outmanned by India's conventional superiority, has since 1998, moved from a 'catalytic' posture, to one of 'asymmetric escalation'.[16] The 'asymmetric escalation' posture[17] is predicated on the first-use of nuclear weapons, and is suited to states facing a conventionally superior adversary. In order to present a credible threat in response to conventional attack, the weapons must be able to be assembled and released quickly on the battlefield, unlike the 'assured retaliation' posture where survivability and thus deterrence is achieved through the dispersion of nuclear components. This means that it must have a rather weak command and control structure, which enables military personnel to quickly assemble and deploy them in the event of a crisis. In Pakistan's case, the combination of first-use, and weak command and control make this posture the more aggressive and unstable of the two.

Ambiguous Red Lines

Next we come to the two preconditions of SIP that have not been met in South Asia. The first of these − unambiguous red lines − was discussed in the Cold War context in the previous section. These will now be discussed in the South Asian context. Pakistan's nuclear posture requires ambiguous red lines in order to present a credible deterrent. Former Lieutenant General Khalid Kidwai has further expanded upon Pakistan's nuclear posture in an informal capacity which is nevertheless the most authoritative guideline provided by any Pakistani official by articulating its red lines for nuclear response which are as follows:[18]

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[15] V. Narang, 'Posturing For Peace', *International Security,* vol. 34, no. 3 (2010), p. 43, available online: http://belfercenter.ksg.harvard.edu/files/Narang.pdf (accessed 16 November 2012).

[16] Ibid., p. 45.

[17] Ibid., p. 44.

[18] 'Pakistan's Nuclear Programme and Imports', *Nuclear Black Market Dossier: The International Institute for Strategic Studies* (2012), available online:

- Spatial threshold: A large scale offensive into Pakistani territory could trigger a nuclear response. This threshold could be as little as 50-100 kilometres in sensitive areas such as Kashmir and Punjab.
- Military threshold: The destruction of a large part of its army or air forces might trigger a nuclear response if it was believed that defeat was imminent.
- Economic threshold: Economic strangulation could lead to a nuclear response, particularly if it restricted water flow from the Indus or involved the capture of the Karakoram Highway
- Political threshold: A destabilising of the country fomented by India could lead to a nuclear response if it was felt that national integrity was at stake.

Here, what is meant by 'large scale offensive' is left ambiguous, the military threshold of a 'large part' of its forces is not clarified and much is left up to Pakistan's perception of defeat. Economic strangulation may result from a number of activities taken by India, and is a rather broad threshold, while the 'destabilising of the country fomented by India' could again leave much to Pakistani perception of who is to be held responsible for the breaking away of one or more of its provinces, and what would constitute such a threat. These statements are left deliberately ambiguous in order to restrict India's room to manoeuvre and force it to err on the side of caution.

According to S. Paul Kapur, Pakistan's ambiguous nuclear posture, therefore, is unstable by design.[19] In this context, the threat of nuclear escalation is, and has to be, very real in order to effectively deter the conventionally superior India from taking defensive or punitive action against an aggressive Pakistan. Pakistan, being the conventionally weaker state, thus benefits from instability at the nuclear level. It is the high degree of instability at those higher levels of conflict which neutralise India's

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http://www.iiss.org/publications/strategic-dossiers/nbm/nuclear-black-market-dossier-a-net-assesment/pakistans-nuclear-programme-and-imports-/ (accessed 17 November 2012).
[19] S. P. Kapur, 'India and Pakistan's Unstable Peace: Why Nuclear South Asia is not like Cold War Europe', International Security, vol. 30, no. 2 (2005), p. 135, available online: http://www.nti.org/treaties-and-regimes/india-pakistan-non attack-agreement/ (accessed 2 October 2012).

conventional superiority, and which is an essential component of Pakistan's deterrent effect.

Due to the deliberately ambiguous knowledge about Pakistan's capabilities and red lines, miscommunication, misinterpretation and accidental deployment all become serious possibilities to consider. The current situation can be expected to grow more unstable as the target state looks for other ways to adequately defend itself and retaliate, or deter conventional (and sub-conventional) aggression by the revisionist power.

Non-State Actors → Mistrust → Higher Chance of Accidental Deployment → Instability Inadequate Mutual Trust/Cooperation

The second of the two preconditions for SIP to function being discussed – adequate measures for mutual trust and cooperation – is missing in the South Asia context. Disabling the quest for nuclear stability in this situation is the presence of *non-state actors.* The US and USSR had non-state actors during the Cold War, but these were only utilised in proxy wars and did not ever directly threaten each other. Thus, non-state activity during the Cold War did not trip any nuclear red lines and did not affect the nuclear calculus of the two powers, unlike in South Asia, where the participation of non-state actors has direct effects upon strategy and escalation.

Part of the reason for the comparatively volatile situation in South Asia is that the asymmetry in conventional power between the two countries has led the inferior power to compensate through asymmetric warfare, particularly the use of non-state actors. In 2008, ten Pakistani men carried out a terrorist attack in Mumbai, the commercial capital of India, killing 166 people and wounding many more. India blamed Pakistani terrorist groups Lashkar-e-Taiba and Jaish-e-Muhammad for the attacks. A paper published by the New America Foundation found that the Pakistani Inter-Services Intelligence Agency (ISI) was intimately involved in the attacks, having had close links to Lashkar-e-Taiba.[20] India accused the Pakistani government of failing to

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[20] S. Tankel, 'Lashar-e-Taiba, Mumbai, and the ISI', *Foreign Policy* (2011), available online:
http://afpak.foreignpolicy.com/posts/2011/05/20/lashkar_e_taiba_mumbai_and_the_isi
(accessed 7 November 2012).

effectively pursue and punish the perpetrators of the attack in Pakistan,[21] amid evidence that it has allowed Zakiur Rehman Lakhvi, the mastermind of the attacks, to continue commanding and directing Lashkar-e-Taiba communication centres from prison in Pakistan.[22] This Pakistani complicity in the attacks along with its refusal to adequately punish terrorists is considered a serious breach of trust with India. The ISI's sponsorship and support of known terrorist groups who target India, therefore, make diplomacy very difficult.[23] In turn, Pakistani Interior Minister Rehman Malik has accused India of supporting separatists in Baluchistan.[24]

Apart from these activities deepening suspicions on both sides, they can also directly influence strategic decision-making. Operation Parakram, for example, was set off by a terrorist attack on Parliament in New Delhi. In December of 2001, there was an attack on the Indian Parliament by the terrorist groups Lashkar-e-Taiba and Jaish-e-Muhammad, in which twelve people were killed and 22 injured.[25] Pakistan was blamed for supporting these groups on their soil, and in January of the next year, 500,000 Indian troops mobilised along the border with Pakistan for ten months[26] in apparent readiness for war before the crisis de-escalated with the help of international diplomatic pressure. However, the ten-month large-scale and largely ineffectual mobilisation of the Indian Army was seen as an embarrassing

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[21] M. S. Pandit, 'Lakhvi still active in Pak; Lashkar module busted in Kashmir', *The Times of India* (2012), available online: http://articles.timesofindia.indiatimes.com/2012-07-04/india/32536002_1_lakhvi-module-adiala-jail (accessed 7 November 2012).

[22] H. Baweja, '26/11 plotter Zakiur Rehman Lakhvi fathers kid in jail', *Hindustan Times* (2012), available online: http://www.hindustantimes.com/India-news/NewDelhi/26-11-plotter-Zaki-ur-Rehman-Lakhvi-fathers-kid-in-jail/Article1-958691.aspx (accessed 7 November 2012).

[23] J. Bajoria and E. Kaplan, 'The ISI and Terrorism: Behind the Accusations', *Council on Foreign Relations* (2011), available online: http://www.cfr.org/pakistan/isi-terrorism-behind-accusations/p11644#p2 (accessed 1 November 2012).

[24] Dawn News, 'What are the major issues between India and Pakistan?' (26 November 2009), available online: http://dawn.com/2010/11/26/what-are-the-major-issues-between-india-and-pakistan/. When was this accessed?

[25] '2001: Suicide Attack on Indian Parliament', *BBC* (13 December 2001), available online: http://news.bbc.co.uk/onthisday/hi/dates/stories/december/13/newsid_3695000/3695057.stm (accessed 3 November 2012).

[26] Brig. G. Kanwal, 'Lost Opportunities in Operation Parakram', *Indian Defence Review* (2011), available online: http://www.indiandefencereview.com/spotlights/lost-opportunities-in-operation-parakram/ (accessed 18 October 2012).

display of its sluggishness, and betrayed the strategic miscalculation that had led to such a costly and useless endeavour.

The activities of non-state actors, therefore, have catalysed a shift in India's military strategy. In response to Operation Parakram's obvious weakness as a retaliatory strategy, in 2004, a new Cold Start doctrine was announced at a Commander's Conference. Cold Start was proposed to remedy the long deployment time for Indian troops. During Operation Parakram, it took over a month for India to deploy its troops. Cold Start was thus developed as a means to be able to deliver swift, punitive strikes to Pakistani territory in the event of another attack, just short of crossing any stated Pakistani redlines. It is also supposed to be swift enough that the international community would not have enough time to pressure the civilian government to halt the assault. Although the Cold Start doctrine has been formally denied by the Indian military, the former Indian Army Chief General V. K. Singh has admitted to a 'proactive strategy...to achieve what [our] doctrines and strategies demand', signalling that, at least, a strategy similar to 'Cold Start' is being developed.[27]

On the one hand, the participation of non-state actors directly impacts the strategic calculus of both states, pushing them forward on unstable paths (explained further in the next section). On the other hand, it is hindering minimum levels of trust and cooperation between the two countries. This leads directly to a dearth of agreements and mechanisms by which to increase stability. Whereas the US and USSR signed a number of agreements limiting the quantities of arms stockpiled, and placing caps on certain types of nuclear weapons, no such agreements are in place when it comes to India and Pakistan, apart from the Non-Attack Agreement of 1991 where they each agreed not to target each other's nuclear facilities.[28]

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[27] D. Slungaard, 'Revisiting Cold Start: Weighing Strategic Shifts in South Asia', *Centre for Strategic and International Studies* (2012), available online: http://csis.org/blog/revisiting-cold-start-weighing-strategic-shifts-south-asia (accessed 10 November 2012).

[28] 'India Pakistan Non-Attack Agreement', *Nuclear Threat Initiative* (2013), available online: http://www.nti.org/treaties-and-regimes/india-pakistan-non-attack-agreement/ (accessed November 1 2012).

It can therefore be seen that the participation of non-state actors directly affects the strategic calculus between the two states, leading to mistrust and an inability to undertake serious confidence-building measures which might otherwise lead to nuclear stability.

Additional Factors

An additional factor destabilising the situation in South Asia is the increased risk of unauthorised deployment of nuclear weapons. Pakistan is the only nuclear power that has its national and nuclear security wholly under military control.[29] According to Shaun Gregory, there has been a trend of 'Islamisation' among younger generations of officers, and there have been links between the military and terrorist groups like Lashkar-e-Taiba and the Taliban for several decades.[30] He further argues that Pakistani military officers have been found to have links to Al-Qaeda operatives, and that many in the military are members of the Islamist political group Jamaat-i-Islami, an Islamic political group with links to terrorist organisations. John Bolton, the former US Ambassador to the United Nations, has expressed similar concerns about Pakistan's nuclear weapons falling into the hands of pro-Taliban members of the military itself.[31] He argues that the US withdrawal from Afghanistan will strengthen Pakistani Taliban, who will be well-positioned to take advantage of Pakistan's internal instability and come into power.

This threat is an unintended, but direct consequence of Pakistan's policy of nuclear first-use, which necessitates weak command and control procedures in order to present a credible threat, and of the policy of leaving its nuclear security entirely in the hands of its military wing.

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[29] S. Gregory, 'The Security of Nuclear Weapons in Pakistan', *Brief Number 22,* Pakistan Security Research Unit (2007), p. 3, available online:
http://spaces.brad.ac.uk:8080/download/attachments/748/Brief_22finalised.pdf (accessed 25 October 2012).

[30] Ibid., p. 7.

[31] J. R. Bolton, 'The Taliban's Atomic Threat', *The Wall Street Journal* (2009), available online:
http://online.wsj.com/article/SB124121967978578985.html (accessed 26 October 2012).

Shortening the Nuclear Escalation Ladder

Developments in terms of military concepts and capabilities since 1998 support the arguments made above that the nuclear dynamic in South Asia is progressing along a not-so-stable path.

Step 1 (Action): 1998
India and Pakistan both became declared nuclear powers. MAD now came into play.

Step 2 (Consequence): May 1999
Kargil War was launched by Pakistan, operationalising a previously shelved military plan. The nuclear umbrella was thought to provide a cover from behind which to pursue territorial gains.

Step 3 (Reaction): July 1999
Kargil War ended. Pakistan withdrew, and India regained Kargil.
Lesson for India: A limited war is possible under the nuclear threshold.
Lesson for Pakistan: India will not hesitate to launch conventional attack in response to territorial aggression.

Step 4 (Reaction): 2001
Terrorist attack on Indian Parliament. India blamed Jaish-e-Muhammad and Lashkar-e-Taiba, Pakistani terrorist groups.

Step 5 (Reaction): 2001-2002
Operation Parakram. Costly, ten-month mobilisation seen as a humiliating waste of time and resources by India for no significant outcomes.

Step 6 (Reaction): 2004 – 2006
India announced its Cold Start doctrine in 2004 to counter the perceived failure of Operation Parakram. ABM defence technology tested in 2006. This development of ABM technology was regarded by Pakistan as providing India space from behind which to launch a pre-emptive strike, without fearing nuclear retaliation.[32]

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[32] M. Lodhi, 'Pakistan's Nuclear Compulsions', *The International News* (2012),

Step 7 (Reaction): 2008
Pakistan found to have fastest-growing nuclear arsenal in the world. A US National Intelligence officer for South Asia said in a document released by Wikileaks that '[d]espite pending economic catastrophe, Pakistan is producing nuclear weapons at a faster rate than any other country in the world'.[33]

Step 8 (Reaction): 2011
Pakistan developed Nasr (or Hatf IX), a tactical, low-yield nuclear warhead, able to be delivered by solid-fuelled, short-range ballistic missile, to counter India's Cold Start doctrine. The development of a tactical nuclear weapon for use in battle signalled a readiness to cross the nuclear threshold even earlier than before, increasing the risks of nuclear escalation.[34]

As of now, nuclear arsenals of both countries are large and growing. Recent reports estimate that India possesses up to 100 nuclear warheads, and Pakistan from 90 to 110.[35] What this sequence makes clear is the rapid build-up of nuclear capabilities and continual shortening of the nuclear ladder in South Asia, in an environment of mistrust that is fuelled by the actions of non-state actors and the lack of robust treaties or agreements.

Way Forward

Andrew Winner and Toshi Yoshihara suggest that reducing the power asymmetry between the two countries would contribute to bringing stability to the region:

available online: http://www.thenews.com.pk/Todays-News-9-141314-Pakistan%E2%80%99s-nuclear-compulsions (accessed 10 November 2012).
[33] K. D. Young, 'New Estimates put Pakistan's Nuclear Arsenal at More than 100', *The Washington Post* (2011), available online: http://www.washingtonpost.com/wp-dyn/content/article/2011/01/30/AR2011013004136.html (accessed 9 November 2012).
[34] 'Pakistan Seen Readying to Cross Nuclear Threshold', *The Atlantic* (2011), available online: http://www.theatlantic.com/international/archive/2011/06/pakistan-seen-readying-to-cross-nuclear-threshold/239817/ (accessed 10 November 2012).
[35] 'Pakistan has 110 N-Weapons, Edges Ahead of India', *The Times of India* (31 January 2011), available online: http://articles.timesofindia.indiatimes.com/2011-01-31/us/28377446_1_weapons-fissile-material-nuclear-arms (accessed 10 November 2012).

[a]ltering the balance of forces, at least in terms of bean counting, could be made relatively transparent. If adjusted properly, the desired result, greater security for both sides, would also be more visible. Moreover, the conventional imbalance is the crucial problem that could bring both sides to the brink. The rationale for this recommendation is that Pakistan's sense of inferiority, born of its relative conventional weakness is what has led to its posture of asymmetric escalation and its policy of "bleeding India in Kashmir".[36]

The authors recognise that there is a risk of Pakistan using its new capabilities for offence rather than defence, citing Pakistan's conversion of F-16 fighters it received from the US meant to boost its military confidence and de-incentivise nuclear proliferation, into nuclear-capable delivery vehicles.[37] Winner and Yoshihara have argued, however, that such fears are outweighed by the fact that India will always have conventional and geographical superiority, and that Pakistan will never pose an existential threat to it, therefore more conventional equality will only serve to allay Pakistan's insecurities. However, what this recommendation misses is the fact that Pakistan and India are significantly unequal in terms of population, economic strength, and correspondingly, military budget. This inequality is unlikely to be reduced in any significant measure by providing Pakistan with more weaponry.

It is also important to realise that Pakistan is the revisionist side, counting on its nuclear deterrent to prevent retaliation from India. Its goal is to change the status-quo through aggression, both conventional and sub-conventional, and it uses its nuclear deterrent to prevent India from launching retaliatory attacks. Even with its considerable conventional inferiority, Pakistan has utilised conventional and sub-conventional threats to attempt to gain territory and 'bleed' India in Kashmir. Equipping Pakistan with more and better weapons would only serve to give Pakistan more space in which to launch its revisionist goals, creating a situation which would be

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[36] A. Winner and T. Yoshihara, 'India and Pakistan at the Edge', *Survival*, vol. 44, no. 3 (2002), p. 76 (accessed 1 November 2012).
[37] Ibid.

unsustainable, as India cannot be expected to keep absorbing such threats and aggression indefinitely.

Instead, stability may be better achieved if Pakistan is made to realise that a revisionist, aggressive posture is unrealistic and unsustainable in the long-term. This may not be as far-fetched as it appears. The Pakistani civilian establishment has already come a long way towards this realisation. Nawaz Sharif, in his tenure as Prime Minister from 1990 to 1993, had already begun the process of normalising relations with India[38], before talks were derailed by the incursion by the Pakistani Army into Kargil. During Sharif's first tenure, Indian Prime Minister Atal Bihari Vajpayee accepted Sharif's invitation to visit Lahore on the inaugural run of the Delhi-Lahore bus service, where they signed a Memorandum of Understanding, agreeing to engage in bilateral consultation regarding security concepts and implementing risk reduction measures[39], among other things. This peace process was short-circuited by then Army Chief Pervez Musharraf, who was already planning the Kargil War at this time. After Pakistan failed in its attempt to gain territory at Kargil, Musharraf ousted Sharif to become the country's new head. In power as President, however, Musharraf also started talking peace with India.[40]

The subsequent elected civilian Zardari government has also attempted to improve relations with India. In 2012, this government took the significant political risk of getting the process underway of granting India Most Favoured Nation (MFN) status, which India had already granted Pakistan. 'We have made significant progress on trade and economic cooperation with India. We are moving towards the grant of MFN-status to India despite

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[38] 'Politicians Hold the Key to Pak-India Peace: Nawaz', *The Nation* (2012), available online: http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/national/10-Nov-2012/politicians-hold-key-to-pak-india-peace-nawaz (accessed 10 November 2012).

[39] 'Lahore Declaration', *Nuclear Threat Initiative* (2006), available online: http://www.nti.org/treaties-and-regimes/lahore-declaration/ (accessed 6 November 2012).

[40] 'Agra Summit at a glance', *BBC News* (17 July 2001), available online: http://news.bbc.co.uk/2/hi/south_asia/1430367.stm (accessed 6 November 2012).

some hurdles', he said to a gathering of Pakistani diplomats and media.[41] The Pakistani civilian government thus appears to have accepted that better relations with India are the way forward. On its part, one of India's most prominent right-wing nationalist political leaders, L. K. Advani, has visited Muhammad Ali Jinnah's (the creator of Pakistan) mausoleum in Karachi to pay their respects. In 2005, Advani, then the opposition leader of the Bharatiya Janata Party (BJP) visited Jinnah's mausoleum to express his desire for closer relations with Pakistan, by accepting Partition as an 'unalterable reality of history'.[42] Another prominent right-wing nationalist leader, Atal Behari Vajpayee, paid homage in a similar gesture in 1999 at Minar-E-Pakistan in Lahore.[43] These overtures show that even political leaders drawn from the nationalistic right wing had no hesitation in restating India's recognition of Pakistan as a legitimate and separate state, denouncing all claims to unity. This directly addresses the deep-seated feeling in Pakistan that India has never fully accepted the fact of partition and has hoped for it to be undone.

While the civilian leaders of both countries appear to recognise the benefits of making peace with each other, right now the national security structure in Pakistan is abnormal, in the sense that the nuclear strategy and chain of command is in the hands of the military alone. Domestically, the Pakistani military derives its power from ramping up the 'India threat', and then positioning itself as the only credible institution that Pakistan has for national defence. The issue of Kashmir in particular is linked to the legitimacy of the regimes in both countries, particularly the military in Pakistan.[44] Ceding Kashmir to Pakistan would undermine India's founding ideology of secularism and pluralism, while ceding Kashmir to India would

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[41] 'Pak moving towards granting India MFN status: Zardari', *Firstpost* (2012), available online: http://www.firstpost.com/world/pak-moving-towards-granting-india-mfn-status-zardari-304550.html (accessed 6 November 2012).

[42] R. Ramaseshan, 'Advani salutes 'secular' Jinnah', *The Telegraph* (2005), available online: http://www.telegraphindia.com/1050605/asp/nation/story_4828954.asp (accessed 6 November 2012).

[43] 'Advani pays homage at Jinnah Mausoleum', *Indian Express* (4 June 2005), available online: http://expressindia.indianexpress.com/news/fullstory.php?newsid=47993 (accessed 6 November 2012).

[44] A. Winner and T. Yoshihara, 'India and Pakistan at the Edge', *Survival*, vol. 44, no. 3 (2002), p. 75 (accessed 1 November 2012).

undermine Pakistan's founding ideology that Hindus and Muslims need two separate nations. To this end, particularly in Pakistan, the military reaps benefits from keeping the Kashmir issue alive. Therefore, any development that increases the control of the civilian government over national security policy making will be conducive to greater stability. The way forward, then, is to work towards a more normal power structure for national security decision-making in Pakistan, with the civilian leaders in control and making decisions with input from the military.

With the emphatic return of Nawaz Sharif as Prime Minister in 2013 after a general election that his party won, the civilian authority seems to be in a position to take greater control of national security issues. Whether that actually happens or not is yet to be seen. The attempted suicide bomb attack on the Indian consulate in Jalalabad in Afghanistan on 3 August 2012,[45] just a few weeks after the civilian leaders of India and Pakistan had announced the resumption of dialogue, seems to suggest the path ahead could be tortuous. Indian analysts and decision-makers often see the hand of the Pakistani Army behind terrorist attacks that coincide with resumption of diplomatic dialogue between the two countries. If this is indeed what happened in Jalalabad, the outlook for the resumed dialogue is not good.

To come back to the issue of strengthening the hand of Pakistani civilian authorities, this is not something that can be forced from the outside, but has to occur as a result of internal developments. There are, however, ways in which the external situation could nudge Pakistan towards a more normal, democratic power structure. Christine Fair and Sumit Ganguly recently suggested that there could be a workable solution to changing the power equation in Pakistan: formalising the LoC as the international border between India and Pakistan.[46] This would require that both sides make some concessions; India would have to renounce its legal claim to Pakistani-administered Kashmir, and Pakistan would have to renounce its legal claim to Indian-administered Kashmir. If the US and other key international

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[45] 'Afghans foil attack on Indian Mission', *The Hindu* (3 August 2013), available online: http://www.thehindu.com/news/international/suicide-bombers-kill-8-children-near-indian-consulate-in-jalalabad/article4985030.ece (accessed 4 August 2013).

[46] C. Fair and S. Ganguly, 'A New Approach for Kashmir', *The National Interest* (2012), available online: http://nationalinterest.org/commentary/new-approach-kashmir-7754 (accessed 10 November 2012).

players expressed support for turning the LoC into the international border, it would send the message to the Pakistani military that a revisionist posture is unworkable and unsustainable. This realisation in itself would transform the power dynamics between the civilian and military establishment.

Conclusion

Strategic ambiguity, the participation of non-state actors and inadequate levels of cooperation and understanding are causing greater instability in the India-Pakistan dynamic than during the Cold War. SIP, as it had been present between the US and USSR during the Cold War, cannot be applied in this situation.

The ambiguity is caused partly by the power asymmetry between the two states and the consequent adoption of an aggressive first-use policy by a revisionist state. The result is increased risk of miscalculation and misinterpretation of each other's intents and capabilities and, therefore, reduced stability at higher levels of conflict. The participation of non-state actors, albeit financed and supported by at least one of the states, severely constrains the ability of the two sides to normalise relations, and make efforts to create structures of engagement prone to accidents and miscalculations.

The situation in South Asia is, crucially, still evolving. Rapid developments are and have been underway for the past decade and a half, resulting in a race to build more and better nuclear weapons and technologies, and develop new strategic doctrines. Pakistan currently has the fastest-growing nuclear stockpile in the world, and neither party shows signs of slowing the production of fissile materials.

This paper has argued that movement towards a more stable nuclear architecture in the region will be difficult to achieve unless both states see it in their best interests to avoid upsetting the status quo. Currently, what stands in the way of this is the Pakistani military which considers changing the borders a viable objective and is invested in the conflict in terms of maintaining an upper hand in Pakistan's decision-making structure. Therefore, the way forward could be to help the Pakistani military realise that revisionist aims in the region are no longer feasible, by converting the

LoC into the international border. This would allow the two countries to embark on serious confidence-building measures and cultivate better relations, bringing greater stability to the region.

Evaluating Moro Nationalism in the Philippines

Simon Speldewinde[*]

Despite the substantial levels of economic, commercial and social interaction that Australia enjoys with the Southeast Asian region through trade, business, education and tourism, much of the Australian public's engagement with the region is significantly distorted by the prism of 'international Islam' and the spectre of terrorist violence. For many, the memories of the Bali bombings and subsequent terrorist attacks across the region distort perceptions of the character of Islam in the region. This has not been helped by the media bias towards reporting acts of violence, and the tendency of many authors to exaggerate links to international terrorist groups to increase sales, and national governments to attract Western aid and justify violent state action. The Moro movement in the Philippines is a key piece in the Southeast Asian security and religious landscapes, but one that little is known about by both the Australian public and western populations at large. The many insurgent groups have links to various political and non-political groups in the region and manifest differently in the politics of each country. This paper evaluates the Moro nationalist movement and its nature, including its links to international terrorist groups, in order better to understand the movement in a region of increasing importance to Australia as it progresses through the Asian century.

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The violent conflict between the Moro people in the Southern Philippines and the government of the Philippine Republic has endured since the formation of the Moro National Liberation Front (MNLF) in 1971. It remains as yet unresolved, with peace talks ongoing, albeit with a different organisation: the Moro Islamic Liberation Front (MILF), who claim to fight for the 'right to self-determination and freedom of the Bangsamoro people'.[1] This fact in itself is indicative of the contested and fractured nature of almost every aspect of the conflict, from where it began to how it should end, rendering it highly resilient to any unitary explanation. Those within the nationalist movement claim the struggle began in 1521 with the arrival of the Spanish, from which point the Moro Nation has been subject to 'endless tyranny'.[2] Outside observers are far more circumspect, maintaining that the rise of a unified Moro nationalism is a modern, post-Second World War construct. The emergence of various splinter groups within the movement with competing agendas, the injection of the global phenomenon of the rise of modern Islamism, as well as the enduring ethnic and tribal structures further complicate analysis. Within academia the issue gets little considered analysis and debate is distorted by 'terrorist literature' that seeks to exaggerate the connections between the Moro Groups and Al-Qaeda's international Jihad, as well as revisionist literature sympathetic to the Moro cause.

The Moro struggle is based on a fluid, constructed nationalism in which alignment and subscription is determined by often highly pragmatic calculations. Given its constructed nature, it is a highly malleable nationalist movement susceptible to manipulation by ethnic or Islamic leaders, with insufficient evidence to characterise it as either predominantly ethno-nationalist or Islamic. This malleability has left the movement prone to factionalism amongst competing groups. As such, this article evaluates political mobilisation in the Moro struggle to show that there is a discernible element of pragmatism and political expediency involved in group alignment. This report traces this pattern by first critically examining the modern emergence of Moro nationalism against its primordial claims, before highlighting the early struggles of the movement in which ethnic tensions

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[1] *Moro Islamic Liberation Front*, available online: http://www.luwaran.com (accessed 1 October 2012).
[2] Ibid.

and tribal hierarchies significantly impacted upon the unity of the movement. The rise of international Islamism and its strength in the Philippines is then weighed against this, before further evaluating this argument against the contemporary state of the movement.

Theories of Nationalism and Political Mobilisation

Whilst nationalist movements such as the Moro claim the primordial, atavistic roots of their nation, emerging approaches in the literature on nationalism seek to challenge these assumptions. Nationalist theory began as a belief in the nation's 'invisible bonds': that the nation is a group of people who are 'by nature one and an inseparable whole' as famously outlined in the work of the German Nationalist scholar Johann Gottlieb Fichte in the 19th Century.[3] This line of thought was subsequently challenged by the contemporary French scholar Ernest Renan, who described nationalism as a 'daily plebiscite' by the individual and the collective, thus introducing the idea that nationalism was determined by something more than primordial drivers.[4] In this way, the literature on nationalism continued to develop along these broad theoretical lines, between essentially primordialist and instrumentalist explanations. The modern and influential nationalism scholar Anthony D. Smith defines nationalism succinctly and a-theoretically as 'an ideological movement for attaining and maintaining autonomy, unity and identity for a population which some of its members deem to constitute an actual or potential "nation"'.[5] Against this, Ernest Gellner, a key scholar in the development of the instrumentalist school, conversely offers an explanation of nationalism in which 'ethnic leaders and elites used their cultural groups as sites of mass mobilisations…in their competition for power and resources'.[6] Smith on the other hand, outlines in his work a belief in the persistence of the *ethnie,* an ethnic core defined by a 'complex of myths, symbols, memories and values that are handed down the generations

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[3] J. G. Fichte and G. Moore (eds.), *Fichte: Addresses to the German Nation* (Cambridge: Cambridge University Press, 2008), p. 17.
[4] A. D. Smith, *Nationalism* (Cambridge: Polity Press, 2010), p. 40.
[5] Ibid., p. 9.
[6] Ibid., p. 32.

of collectivities and which define them to themselves and those outside', making nations 'both fluctuating and recurrent in history'.[7]

Here, Smith outlines a nuanced understanding on which ethno-nationalism is based: the idea that the nation is congruent to a specific ethnic core. Importantly, Smith does not rule out the fact that ethnicity can be manipulated towards political ends, seeking to ameliorate the tension between the primordialist and instrumentalist approaches. Others, such as politics Professor Russell Hardin, believe it to turn on the rational cost-benefit analysis of the individual: 'identification with…groups is not primordial or…extra-rational in its ascendancy of group over individual interests but…rational. Individuals identify with such groups because it is in their interests to do so'.[8] Not without merit, it is limiting and often dismissive of the virulence with which nationalism is felt. Stanford University Professor David Laitin moderates this perspective. He argues that whilst national insurgent movements are largely predicated upon self-interest, or 'less out of historical territorial yearning and more as result of the inability of the state to provide security and equality', alignment is not wholly rational, as this choice occurs within a limiting cultural context.[9] Identification is a choice between the most salient cultural dimension available, such as tribe, ethnicity, religion or nation.

Existing Explanations for Moro Nationalism

The application of these approaches to the Moro struggle in the Philippines opens up new avenues of analysis beyond the two poles of ethno-nationalism and pan-Islamism. The emergence, legitimacy and character of Moro nationalism is highly disputed. Carmen Abubaker, for instance, argues for a primordial, strongly ethnic-based nationalism which has endured for nearly 500 years:

> Islam became the rallying point for resistance against the colonisers. It also became the core identity of the people… called Moros. Spanish colonial policy centred on subjugating and Christianising the Moros, a

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[7] A. D. Smith, *The Ethnic Origins of Nations* (Oxford: Wiley-Blackwell, 1988), p. 211.
[8] R. Hardin, *One for All: The Logic of Group Conflict* (Princeton: Princeton University Press, 1997), p. 71.
[9] D. Laitin, *Nations, States, and Violence* (Oxford: Oxford University Press, 2007), p. 22.

policy that brought on the Moro wars…throughout the colonial regime…the Moro label was [the] preferred reference…of the Muslims.[10]

From Abubaker's perspective, the Muslim community found a common bond in opposition to the Spanish. This unity was further cemented under United States (US) policy and recognised 'the fact that the Moros constituted a different community geographically, culturally, and religiously, including having a political tradition of its own'.[11] Other academics, such as Thomas McKenna, are quick to refute this perception as severe historical revisionism:

> the notion of a coherent Muslim identity, forged in religious wars with Spain, contravenes substantial evidence of long periods of peace, of the lack of an Ulama class ranged against the Spanish, and of inter-sultanate rivalry that mean frequent alliances on the part of the sultanates with Spain. Instead, the colonial power, saw a coherent "Moro" identity- as a fundamental fact of Filipino history and sought to use it.[12]

According to McKenna, it was only after independence that leaders of the Muslim resistance turned to 'rationalised emblems of a single Muslim ethnic identity' to unite an otherwise ethnically, tribally and linguistically divided group of people.[13] The concept of a united Moro people was actually a colonial, and then a Philippine government, tool to reinforce authority over the region.[14]

The rapid rise of pan-Islamic ideology has added a new dimension. Author W.K. Che Man argues that these ideologies have permeated the Moro

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[10] C. A. Abubaker, 'Islam in the Philippines' in A. Abubaker and K. Askandar, (eds.), *The Mindanao conflict* (Penang, Malaysia : Southeast Asian Conflict Studies Network, 2005), p. 52.

[11] Ibid.

[12] T. McKenna, 'Appreciating Islam in the Muslim Philippines: Authority, Experience, and Identity in Cotabato' in R.W. Hefner and P. Horvatich (eds), *Islam in an era of nation-states: politics and religious renewal in Muslim Southeast Asia* (Hawaii: University of Hawai'i Press, 1997), p. 56.

[13] Ibid.

[14] T. M. McKenna, *Muslim rulers and rebels: everyday politics and armed separatism in southern Philippines* (Berkeley: University of California Press, 1998).

nationalist movement: 'they have integrated Islamic concepts and symbols into a national dogma, and that Islam and nationalism reinforce each other in their struggles against foreign rulers, while at the same time linking them with the wider Islamic *Ummah*'.[15] According to this viewpoint, the two now work symbiotically to strengthen the majority of the movement. Most observers have failed 'to recognise that the ethnic protagonists perceive their conflict not in socio-economic terms but as ethnic, religious, and nationalist'. Professor Joseph Liow, whilst keen to emphasise the local specificities of the movement, also argues for the growing role of Islam in its ambitions and functioning: 'Islam is becoming…critical…to the harmonisation of differences within the Muslim communities in Mindanao that have traditionally been split along feudal and ethnic lines as well as across religious boundaries'.[16] Although he sees it more as a tool for 'mass mobilization' rather than as the 'vanguard' for a global Jihad,[17] he does observe the growing influence of global Jihadi ideology, which has been employed to reinforce apprehension towards the state, and a growing connection to Islam internationally'.

This, however, is limited as overall the movement remains:

> [d]irected to context-specific political objectives of self-determination, regaining lost national identities, setting right historical wrongs, and creating a sovereign nation-state. In other words, our understanding of the religious contents of these conflicts cannot be divorced from the specific historical, political, and ethnic contexts to which they remain anchored, or the local identities and politics that frame them.[18]

Thus whilst it is clear that Moro nationalism is a constructed concept born out of political expediency for political ends, the issue of the role of Islam is far less ascertainable. Eliseo Mercado views the distinction between the local and the religious as stratified or concentric circles of identification to which allegiance is owed, observing that 'when not threatened by external forces, the Bangsamoro tend to give importance and preference to their

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[15] W. K. Che Man, *Muslim Separatism: The Moros of Southern Philippines and the Malays of Southern Thailand* (Singapore: Oxford University Press, 1990), p. 178.
[16] J. C. Liow, 'Muslim Resistance in Southern Thailand and Southern Philippines: Religion, Ideology and Politics', *Policy Studies* 24 (Washington DC: East-West Center, 2006), p. 49.
[18] Ibid., p. 54.

ethnicity; when their Islamic life is imperilled, however, they transcend ethnic considerations'.[19] This demonstrates an ability to realign quickly between the two as priorities change. What is becoming clear is the instrumentalist aspect of Moro nationalism, the way in which it is used to pursue pragmatic, rational political ends. Dr. Moshe Yegar, for example, shares the views of McKenna, Mercado and Liow, though in contrast is far more damning of the fractious nature of the movement: 'the weakness of the separatist movements can be found in their lack of consensus about…goals, a reflection of the personal struggles between leaders of the various factions' which acts as 'an obstacle to decisive political or military action'.[20] Yegar is clear in what he regards as the overarching incentives for revolution: 'the social and economic grievances and the feelings of bitterness which went beyond the religious sphere'.[21] Moro nationalism then is born out of the loss of access to resources, religious marginalisation and the lack of economic development provided to the Muslim population in Mindanao.

The Historical Development of Moro Nationalism

Nur Misuari created the MNLF in 1971, with the nationalist proclamation in its manifesto: 'we, the five million oppressed Bangsa Moro people, wishing to free ourselves from the terror, oppression and tyranny of Filippino colonialism'.[22] From this point on, the movement and its splinter groups have purported a minimum of Moro nationalism which is neither ethno-nationalist nor Islamic. Rather it is a basic claim for nationhood which seeks to supersede the myriad ethnicities upon which it is constituted, yet does not subscribe to the international Islamic Jihad. Furthermore, the failure of the movement to produce a coherent set of goals beyond this evidences its fractious nature and an underlying ethos of political pragmatism and rational self-interest among its constituents. As McKenna observes, the decision for a Moro Muslim to join the resistance had a very rational element to it. The

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[19] E. R. Mercado, 'The Effect of 9/11 on Mindanao Muslims and the Mindanao Peace Process', in J. L. Esposito, J. O. Voll and O. Bakar (eds.), *Asian Islam in the 21st Century* (Oxford: Oxford University Press, 2008), p. 242.

[20] M. Yegar, *Between integration and secession : the Muslim communities of the southern Philippines, Southern Thailand, and western Burma/Myanmar* (Lanham, Md. : Lexington Books, 2002), p. 362.

[21] Ibid., p. 368.

[22] Che Man, op.cit. (1990), p. 169.

traditional Muslim aristocracy, known as the *Datus,* actually chose to align with the Philippines government who provided them with positions of power and access to resources. Thus those who were placed in such positions or were close to such individuals preferred to align with the state. Those for whom this was unavailable soon realised that their own leaders 'had not only little interest in protecting them but actively meant them harm' and sought protection from other structures.[23]

However, the MNLF 'never controlled all of the rebels fighting the government and was, in fact, a loosely knit group, with the borders between those fighters who were members of, aligned with, or exterior to the MNLF…never very clear'; what authority the MNLF did enjoy was 'derived at least partly from its access to critical resources, particularly weapons, from outside the Philippines'.[24] This pattern continued, and by 1980, 'virtually all members of the traditional elite had abandoned the rebellion. Most former outlaws had also surrendered for cash rewards, but leaving, in the words of a current rebel commander, "mostly poor remaining" to carry on the armed revolt'.[25]

Self-interest has contributed significantly to the political disunity of the movement, often overriding the great goal of Moro independence. As Che Man observes:

> [b]asically, every attempt at unity has been seen as benefitting one group more than the others. Unity has been attempted among groups of unequal strength and the strongest group has seen no advantage in uniting on an equal basis with weaker groups.[26]

As a result, the divisions in the movement are said to reflect lines of ethno-cultural background as well as individual loyalty. Ethnic divisions, for instance, can be seen historically in the largely Maguindanao support for the MILF against the significant Suluano allegiance to the MNLF.[27] These ethno-cultural boundaries are not definitive, as often 'personal loyalties

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[23] McKenna, op. cit. (1998), p. 155.
[24] Ibid., p. 157.
[25] Ibid., p.163.
[26] Che Man, op.cit. (1990), p. 86.
[27] Ibid., p. 88.

seem to have been dominant; leaders and followers have fought and surrendered together'.[28] Moro nationalism is therefore a strong motivator, but it can only explain mobilisation so far. Self-interest and pragmatism have manifested repeatedly in Moro politics since, with perhaps no better example than the behaviour of the ideological figurehead Misuari after taking office as the governor of the Autonomous Region of Muslim Mindanao (ARMM) in 1996. Whilst it would be hyperbole to say that Misuari abandoned all of his previous ideological virtues, his tenure as governor of the ARMM was marked by frequent self-serving tendencies. As the scholar Gordon Means describes:

> [m]any of Misuari's associates became disenchanted with his management of funds…patronage, and corrupt practices. They accused him of pocketing funds from poverty alleviation programs and spending p20million (US$770,00) for his costly foreign travels.[29]

To make matters worse, upon his removal from that position by the MNLF Executive, Misauri promptly mobilised 600 loyal ARMM fighters to violence. Moro nationalism, it seems, has its limits as a unifying force. Ideological coherence exists at a very minimal level with the very limited common objective of Moro independence, and only against the Philippines government and non-Muslims. Amidst each other they quickly fracture along ethnic, tribal and individual loyalties.[30]

The Abu Sayyaf Group (ASG) has been mentioned little thus far and, of all the groups, it is held by many to be evidence of the increasing penetration of radical pan-Islamic ideology into Moro nationalism. Certainly it is widely accepted that Al-Qaeda has managed to penetrate the Moro groups, and that international Islamism has been imported by Philippine students returning from studying Islam abroad, or the penetration of radical foreign clerics in person or through modern forms of communication. Che Man, for instance, argues that the modern resurgence of Islam spread to the Philippines and

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[28] Ibid., p. 88.
[29] G. P. Means, *Political Islam in Southeast Asia* (Colorado: Lynne Rienner Publishers, 2009), p. 200.
[30] K. Collier, 'Dynamics of Islamic Separatism in the Philippines', in D. Kingsbury (ed.), *Violence in Between: Conflict and Security in Archipelagic Southeast Asia* (Clayton: Monash Asia Institute, 2005), p. 70.

'resulted in a deepening of the Moro Islamic Consciousness and strengthened Moro nationalist sentiment'.[31] Even McKenna, who maintains the specifically local character of Moro nationalism, has reported on the return of internationally educated clerics to traditional Moro society.[32]

However, against the wider movement the ASG appears to be an anomaly. The group was created in 1991 upon the directions of Osama Bin Laden and despite sharing training camps with the MNLF and the MILF it remained ideologically and organisationally distinct.[33] Espousing violent religious intolerance and 'advocating the deliberate targeting of all southern Filipino Catholics', its objectives aimed beyond an independent Moro nation of 'asserting the global dominance of Islam through an armed struggle'.[34] These objectives are not explicitly acknowledged by either the MILF of MNLF. The ASG, now scattered and largely dismantled, can be explained in no small part by the resources that it was able to attract. Upon formation, it instantly received US$6 million and a large shipment of weapons, providing its leaders with greater independence and prestige than the other organisations. This both encouraged their split from the main groups and attracted individuals to join them. Since the death of its leader, Adurajak Janjalani, the group has scattered and has featured only sporadically in the Moro insurgency. It never acquired the popularity of the MNLF or the MILF, and what international Islamic ideology it propagated remains anomalous to the wider movement. The influence of international Islamic thought on the wider movement is better accounted for by Liow:

> [t]hough the militants have increasingly mobilised religious symbolism and employed Islamic dialectics, idioms, and metaphors to articulate their struggle, mainstream…resistance does not cohere with the objectives of jihadi ideology. The reference points remain primarily local and political.[35]

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[31] Che Man, op.cit. (1990), p.138.
[32] T. M. McKenna, 'Saints, Scholars, and the Idealized Past in Philippine Muslim Separatism' in J. Chinyong and N. Hosen (eds.), *Islam in Southeast Asia*, *Vol. 4 Myth of the 'Second Front': Muslim Southeast Asia and the War on Terror* (London: Routledge, 2010).
[33] Means, op.cit. (2009), p. 203.
[34] P. Chalk and K. Cragin, *Terrorism & Development: Using Social and Economic Development to Inhibit a Resurgence of Terrorism* (Santa Monica: Rand, 2003), p. 248.
[35] Liow, op.cit. (2006), p.53.

Since the creation of the ARMM, the MILF has become the main organ for Moro nationalist ideology and maintaining the insurgency against the Philippine state. Assessing the contemporary character of the movement through primary sources is difficult. The most readily available are those of the former leader, the late Salamat Hashim, which are often contradictory, displaying a chameleonic character. For example, in an interview with a local Moro clan member he unequivocally supported the creation of an Islamic state, claiming that 'before the end of the next 50 years, the Islamic state we envision will come into existence', that 'Islam, as a complete way of life and system of government, cannot function properly under another Constitution', and that when the global Islamic caliphate is realised, the 'Bangsamoro will automatically become one of the states comprising the Khalifa'.[36] Given that this was intended for a local audience, there is good reason to assume that this was his ultimate objective.[37]

However, he also exhibited a shrewd political awareness of his audience and adjusted his message accordingly. In an interview with Western journalists, he dismissed claims that he was pursuing an Islamic state as 'coming from the media…we are not after Islamic law'. Instead he moderated his claims to merely those of independence and freedom.[38] He re-contextualised the Moro struggle as being a struggle for wealth and prosperity: 'we have so many natural resources in our area but we cannot freely exploit and develop our natural resources'.[39] This stands in contrast to an earlier piece of writing where he displayed an apparently unwavering commitment to Islamic government:

> the system of government which shall be established is pre-determined
> by qu'ranic principles and the traditions of Prophet Muhammad…the

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[36] S. Hashim, 'We Assert Our Legitimate Rights to Self-Determination, That Is, Independence [in English]' in *Referendum: Peaceful, Civiliside, Diplomatic and Democratic Means of Solving the Mindanao Conflict,* Agency for Youth-Affairs- MILF, Camp Abubakre As-Siddique, Mindanao, extract pp.49, 56[5- in G. Fealy and V. Hooker (eds), *Voices of Islam in Southeast Asia: A Contemporary Sourcebook* (Singapore: Institute of Southeast Asian Studies, 2007), pp. 264-265.
[37] Ibid., p. 263.
[38] Ibid., p. 266.
[39] Ibid.

matter of selecting a system of government for the community is completely beyond the scope of the people's will and prerogatives.[40]

Again, in another piece he adjusted his message to illicit Islamic support internationally, likening the Moro struggle to that of the Bosnians by declaring that 'the Bangsamoro people…are parts of that one body of Islam…as such, the untold suffering of Muslim peoples…hurt us as much as they do to the Muslims in all other parts of the globe'.[41]

As the founding ideologue of the MILF, Hashim's ideology inevitably informs the nature of its aspirations. From the extracts above, there does appear to be a recurrent narrative of the foundation of an Islamic state that would one day exist as part of an international caliphate. However, what this shows is a shrewd and pragmatic ability to tailor a political message for its intended audience, and from this an acute awareness of the political reality in which the Moro struggle takes place. When speaking to followers and potential followers there is an emphasis on Islamic identity and unity. When speaking to an international audience, or to an audience from which political concessions may be gained, international links in the climate of the 'War on Terror' are downplayed. Since Hashim's death in 2003, the movement is believed to have swung to a more 'pragmatic' and 'lay' leadership position.[42] Whilst some observers have since stated that the only peaceful resolution would be complete independence for Moro controlled territory, which covered all thirteen provinces under dispute, the recent MILF agreement to a peace resolution, granting a new governing political entity called 'Bangsamoro' with greater, albeit still limited, autonomy, shows an ability to shift and compromise as political expediency demands.[43]

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[40] S. Hashim, 'The Bangsamoro Mujahid' [in English], in G. Fealy and V. Hooker (eds), *Voices of Islam in Southeast Asia: A Contemporary Sourcebook* (Singapore: Institute of Southeast Asian Studies, 2007), p. 388.
[41] S. Hashim, 'On MILF vis-à-vis Bosnia and Chechnya', in *The Bangsamoro People's Struggle against Oppression and Colonialism* [in English], Agency for Youth Affairs-MILF, Darussalam, Camp Abubakre As-Siddique, Mindanao, in G. Fealy and V. Hooker (eds), *Voices of Islam in Southeast Asia: A Contemporary Sourcebook* (Singapore: Institute of Southeast Asian Studies, 2007), pp. 421-211.
[42] Mercado, op. cit.(2008), p. 242.
[43] Means, op. cit. (2009), p. 218; and F. Whaley, 'Philippine Rebel Group Agrees to Peace Accord to End Violence in South', *New York Times* (7 October 2012), available online:

Conclusion

As demonstrated, evaluating Moro nationalism is a complex and problematic exercise. It contains elements of ethno-nationalism and Islam, without convincingly subscribing to either. The one consistent theme has been the desire for independence for the Moro nation. Thus the only claim that can be made with any certainty is that Moro nationalism exhibits the traits of the conventional nationalist model. Outside of this, the Moro people have often fractured along ideological, ethnic and tribal lines. Laitin's theory of nationalism argues that identification can shift rapidly between different points of identity as individuals pursuing their own interests mobilise behind the 'salient cultural dimension' available to them that is likely to best fulfil their requirements.[44]

For the Moro, the construction of the national identity gave them an option between their local ethnic or tribal identity, and that of the greater Philippine identity. As the Philippine state continued to oppress and preclude them from access to the resources of the region, the new Moro identity became the salient cultural dimension most likely to provide them the economic and political security that they desired. Thus neither an approach such as Smith's nuanced primordial theory of the enduring *ethnie*, nor Hardin's simple instrumentalist approach of rational choice theory suffice when applied to Moro nationalism. Instead, applying Laitin's theory highlights a pragmatic element present in Moro politics. History has shown that amongst themselves they have divided along lines that, in part, are most likely to provide for them in this way. It has also been shown that whatever the stated objectives of the movement are, they are amenable to compromise and negotiation as political expediency requires. It is an element that the Philippine government themselves are all too aware of, as evidenced in the policy of 'clear, hold, consolidate, develop' implemented under the presidency of Gloria Macapagal-Arroyo, or the two year reform program of Corazon Aquino's government to develop good governance of the ARMM. Such approaches indicate a belief that the Moro can be appeased with a

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http://www.nytimes.com/2012/10/08/world/asia/manila-and-rebel-group-take-step-toward-peace-plan.html?_r=1&ref=world (accessed 7 October 2012).
[44] Laitin, op.cit. (1997).

combination of limited recognition and autonomy coupled with well-directed socio-economic development.

The purpose of this report is not to reduce the complex nature of Moro nationalism to a dismissive and simplified rational choice analysis. It provides insights into the danger of attempting to bring the diverse movement under an umbrella such as ethno-nationalist or Islamic movement. It considers the wider cultural context in which the Moro operate, between conflicting local, Moro, Philippine and Islamic structures and identities. In seeking greater political and economic security, the Moro struggle has remained localised and limited in its ethno-nationalist scope, and whilst it has imported international Islamic ideas, it has not conclusively shifted beyond their immediate concerns.

By way of comparison, one can see a similar situation within Afghanistan. Similar to the Philippine Muslim, the Afghan is faced with alignment between the family, tribe, ethnicity and the state. Extensive field work indicates that the Afghan population, after experiencing 34 years of constant violence, craves basic political, physical and juridical security.[45] As the current Hamid Karzai government often fails to offer them their basic security needs, the Afghan population is often driven to seek other salient cultural dimensions with which to align, including the Taliban. At present, neither the state, the Taliban nor other groups appear to have a clear advantage in this area as none can offer the complex spectrum of the Afghan population the physical, political and juridical security they desire. Afghanistan is faced with a similar proposition to the Aquino government: secure these needs within a culturally acceptable framework and the chance of alignment behind the state greatly increases. For Australia, who recently donated AU$2 million to the reintegration process in Mindanao, it is critical to properly understand the requirements of the Muslim population in Mindanao to ensure that the peace process proceeds smoothly and to ensure stability within its nominated sphere of influence.

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[45] M. O. Tariq, N. Ayoubi and F.R. Haqbeen, *Afghanistan in 2010: A Survey of the Afghan People*, ed. Ruth Rene (Kabul: The Asia Foundation, 2010); R. Rennie, S. Sharma and P. Sen, *Afghanistan in 2008: A Survey of the Afghan People* (Kabul: Asia Foundation, Afghanistan Office, 2008).

Illegal Immigration into Australia, the US and the UK

Kate Fuller[*]

This paper discusses illegal immigration into Australia, the UK and the US. The three countries have largely responded to the phenomenon by implementing policies aimed at deterring and preventing illegal immigrants. The immigration policies and practices of the three countries will be compared and will be useful in drawing upon recommendations. Since 9/11, national security and combating terrorism has become a key concern of governments. Government officials and the media have inferred that there is a connection between illegal immigration and terrorism. Despite the lack of a well-founded reason behind this inference, policies continue to exclude illegal immigrants on this premise. The three countries have undermined the United Nations High Commission for Refugees (UNHCR) and have interdicted and detained asylum seekers. This has been justified as a means to protect national security. However, it constitutes a violation of human rights. This deterrence method has not stopped the flow of illegal immigration into the countries, but has rather resulted in negative psychological and physical effects of the illegal immigrants. Whilst it is necessary for countries to be able to adequately control their borders, there needs to be a balance between protecting the rights of vulnerable people and managing national security.

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Introduction

Illegal immigration is a global issue that has received increased attention over the last two decades. There is no clear or universally accepted definition of illegal immigration and the data and characteristics are extremely limited.[1] Illegal immigration generally refers to the border crossing of people who do not have authority or permission to enter a country or have legally entered and then overstayed their visas.[2] However, under Article 14 of the United Nations (UN) 1948 *Universal Declaration of Human Rights*, everyone has the right to seek asylum and the UN 1951 Refugee Convention prohibits states from punishing those who enter 'illegally', when they come directly from a territory where their life or freedom is threatened.[3] Illegal immigration is therefore a controversial subject, as who should be included, and the terminology that should be employed in identifying them, creates confusion. For example, in the media and government reports, asylum seekers are often referred to incorrectly and interchangeably with illegal immigrants. Whilst seeking asylum is not illegal, it will nonetheless be discussed, as the terminology is often blurred and states often regard asylum seekers as illegal until their claim is approved. If their claim is rejected they are then classed as illegal immigrants.

The purpose of this paper is to compare and contrast the way in which Australia, the United Kingdom (UK) and the United States (US) are dealing with illegal immigrants. National security has become high on the agenda of the three countries' governments, particularly post September 11. The need to protect their sovereign territory has been used to justify policies that aim to discourage illegal immigrants, including those seeking asylum. The countries have found loopholes in the UN Refugee Convention, which they are all signatories to, in order to reduce illegal immigration into their countries. The use of interception measures and reliance on detention centres has increased, resulting in physical and psychological issues for those who are detained. The UK and the Australian media have encouraged fear in the public about the

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[1] B. Ghosh, *Huddled masses and uncertain shores: insights into irregular migration* (The Hague: Martinus Nijhoff Publishers, 1998), p. 8.

[2] K. Koser, 'Responding to the Boat Arrivals in Australia: Time for a Reality Check', Lowy Institute for International Policy (2010), p. 189.

[3] J. Phillips, *Asylum seekers and refugees: what are the facts?,* Australian Parliament (2010), pp. 2-3.

scale of the phenomenon. Overstayers however attract far less attention in the media and government policy. In Australia focus has particularly been on those arriving by boat. The US, on the other hand, has adopted a secrecy approach to illegal immigrants, thus there is little public and media exposure. This also has negative effects, as the government is not held as accountable for their actions. It is argued here that the three countries have implemented policies aimed primarily at preventing illegal immigrants and thus the rights of asylum seekers are not adequately addressed.

Scale

Whilst illegal immigration does gain significant attention, in most countries it represents a fairly small proportion of the total number of migration.[4] Due to the nature of illegal immigration, reliable data on the issues is limited. The US has the largest amount of illegal immigrants, the UK follows and Australia has the least.[5]

Illegal immigration grew rapidly in the US from 1990 to 2006, but has since stabilised.[6] It is estimated that there are 11.2 million illegal immigrants living in the US today.[7] They come from a variety of countries, but due to the US bordering Mexico, the majority are Mexicans, who constitute 58% of the total amount of illegal immigrants. Another 23% are from other Latin American countries.[8]

Interception Strategies

Australia, the US and the UK all have policies aimed at preventing illegal immigrants, in order to protect national security. Interception strategies are being increasingly employed by states to halt irregular immigration. Stevens argues that people crossing the border seeking protection are regarded

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[4] Koser op cit. (2010), p. 190.

[5] Ghosh, op cit. (2008), p. 9.

[6] J. Passel and D. Cohn, *Portrait of Unauthorized immigrants in the United States*, Hispanic Center (2009), p. 3.

[7] R. Furman, A. R. Ackerman and N. J. Negi, 'Undocumented Latino immigrant men in the United States: Policy and practice considerations', *International Social Work,* vol. 55, no. 6 (2012), p. 816.

[8] Passel and Cohn, op. cit. (2009).

primarily as illegal immigrants and only secondarily as asylum seekers.[9] The illegality of their entrance has become the main factor in the treatment they receive by the state, rather than their need for protection.[10] Countries are making it increasingly difficult for asylum seekers to reach sovereign territory where they can make a refugee claim.[11] A reduction in asylum claims is occurring in all three countries. This is not due to a reduction of people fleeing from conflicts, but rather a result of the states' preventative measures. According to the United Kingdom Home Office, the number of asylum applications in the UK for 2002 was 84,130.[12] In 2007 the number was reduced to only 23,430 applications. Similar trends are also visible in the US and Australia.[13] The unwillingness of these countries to provide protection to asylum seekers violates human rights.

The US, and more recently Australia, have begun to intercept asylum seekers on high seas and territorial waters.[14] The US has transferred Haitian asylum seekers from the water and sent them back to their homeland under the Kennebunkport Order.[15] Australia has consciously learned from the US policy and has not sent asylum seekers back to their origin country. However, the government has given financial incentives to nearby developing countries to detain asylum seekers, rather than hosting them in their own country.

In international law, the principle of non-refoulement prohibits states from returning any illegal immigrant to their territory if they might be subjected to inhumane treatment or where their live could be at risk.[16] The practice of states denying asylum seekers access to their territories is in violation of

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[9] C. Stevens, 'Asylum Seeking in Australia', *International Migration Review,* vol. 36, no. 3 (2002), p. 40

[10] Ibid.

[11] J. Hyndman and A. Mountz, 'Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe', *Government and Opposition,* vol. 43, no. 2 (2008), p. 249.

[12] V. Stoyanova, *The Principle of Non-Refoulement and the Right to Asylum-Seekers to Enter State Territory* (Lund, Lund University, 2008), p. 1.

[13] Ibid.

[14] J. Phillips, 'The 'Pacific Solution' revisited: a statistical guide to the asylum seeker caseloads on Nauru and Manus Island', Australian Parliament (2012), p. 9.

[15] T. Magner, 'A Less than 'Pacific' Solution for Asylum Seekers in Australia', *International Journal of Refugee Law,* vol. 16, no. 1 (2004), p. 90.

[16] Ibid.

refoulement as is evident in Article 33 from the 1951 Refugee Convention, which states:

> [n]o Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.[17]

The Australian government has avoided this law by transferring asylum seekers to transit countries before they reach sovereign territory on which they could make a claim.[18] The Australian parliament has followed the US Supreme Court, which claims that asylum seekers traveling to their country have no right to claim asylum if intercepted on the high seas. They argue that since their actions are committed outside national borders they therefore do not have an obligation to process claims on their territory. Their interpretation of Article 33 essentially violates human rights. If other countries follow this interpretation, further constraints for seeking asylum will result.

The US government implemented discriminatory policy aimed directly at Haitian asylum seekers, to undermine their ability of gaining refugee protection.[19] They have defended their policy, declaring that to protect national security, it is necessary to deter Haitians.[20] The US implemented the fast tracking of asylum claims so that asylum seekers have to make their claims without legal counsel.[21] Asylum seekers who are intercepted by the Coast Guard on high seas or US territorial waters are forcibly returned

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[17] G. Goodwin-Gill, 'Article 31 of the 1951 Convention Relating to the Status of Refugees: Non-Penalization, Detention, and Protection', in E. Feller et al (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge: Cambridge University Press, 2003).

[18] Hyndman and Mountz, op. cit. (2008).

[19] Women's Commission for Refugee Women and Children, *Refugee Policy Adrift: The United States and Dominican Republic Deny Haitians Protection* (2003), p. 2.

[20] A. T. Naumik, 'International Law and Detention of US Asylum Seekers: Contrasting Matter of D-J- with the United Nations Refugee Convention', *International Journal of Refugee Law,* vol. 19, no. 4 (2007), p. 664.

[21] Stoyanova, op. cit. (2008), p. 7.

without their claims being processed unless they are fearful of returning.[22] If a fear of persecution is evident, they are transferred to Guantanamo Bay in Cuba. If in their second interview they are determined to have a well-founded fear of persecution, they are then resettled in third-party country. Between 1981 and 1990 the US interdicted nearly 23,000 Haitians and of these only 11 were granted protection.[23] Under the Refugee Convention, the US only has to provide protection to people who meet the refugee criteria. However, even this requirement has not been met in many cases.[24]

Similarly the Australian government has employed a comparable interdiction strategy. In August 2001, 433 asylum seekers heading towards Australia were rescued from their sinking vessel by a Norwegian freighter, the *Tampa*.[25] Australian officials warned the captain that he would be charged with people smuggling if he entered Australian territory.[26] The Tampa's captain, however, eventually denied this request and travelled into Australian waters.[27] In response the Australian government transferred the asylum seekers to an Australian military vessel and they were sent to New Zealand or Nauru.[28] In 2001, Katharine Betts, a sociologist, analysed an opinion poll and found that in September 2001, 77% of Australians supported the Howard government's decision to refuse entry to the Tampa and 71% believed that boat arrivals should be detained for the duration of the processing of their asylum claims.[29]

After the Tampa incident the Australian government introduced the Pacific Solution, an act of legislation passed in 2001 which enabled Australia to transfer asylum seekers who arrived by boat to regional countries.[30] This meant that Australia was transferring the responsibility to third-party

[22] Women's Commission for Refugee Women and Children, op cit., p. 3.
[23] J. Schnoebelen, 'How States are Undermining Effective Refugee Protection by Blocking Access to Asylum', Refugee Council of USA (2008), p. 11.
[24] Ibid.
[25] P. White, P. *Future seekers II: Refugees and irregular migration in Australia* (Oxford University Press, 2008), p. 136.
[26] Hyndman and Mountz, op cit. (2008), p. 259.
[27] Stoyanova, op. cit. (2008), p. 7.
[28] J. Phillips and H. Spinks, *Boat arrivals in Australia since 1976*, Parliament of Australia (2011), pp. 6-9.
[29] Ibid.
[30] Hyndman and Mountz, op. cit. (2008), p. 250.

countries. The Pacific Solution excluded Christmas Island, Ashmore Reef, Carter Island and the Cocos (Keeling) Islands from the Australian migration zone.[31] Therefore, those non-citizens arriving unlawfully were unable to make a visa application, including for protection visas. Instead, they were directed to the Offshore Processing Centres that had been established on Nauru and Manus Island, where they were detained whilst their asylum claims were processed.[32] Persons determined to be owed protection were eventually resettled in a third-party country, which the policy made preference to, or in Australia. The United Nations High Commission for Refugees (UNHCR) raised concerns about the policy, in particular the ability of asylum seekers to secure safety in the transit country.[33] Asylum seekers who were processed offshore under the Pacific Solution were denied access to legal assistance and judicial review of their rejected claims.[34] While in operation from 2001 until 2008, a total of 1,637 people were detained in the Nauru and Manus facilities of which 1,153 (70%) were found to be refugees.[35] Human rights activists and refugee advocates criticised the policy intensely, due to its contradiction to International Refugee Law and its detrimental effect on asylum seekers. The programme was not only expensive to implement and maintain, but the psychological effect on detainees was immense.[36]

The Pacific Solution was formally repealed in 2008 under the Kevin Rudd led Labor Government. However, in September 2012, the policy was re-enacted under the Julia Gillard led Labor Government purportedly to prevent asylum seekers from risking their lives on dangerous boat journeys to Australia.[37] It has been argued that Australia's solutions are causing more

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[31] Phillips and Spinks, op. cit. (2011), p. 9.

[32] Ibid.

[33] Z. Steel, B. J Liddell, C. R Bateman-Steel and A. B Zwi, 'Global protection and the health impact of migration interception', *PLoS medicine,* vol. 8, no. 6 (2011), p. 1.

[34] Phillips and Spinks, op cit. (2011), p. 9.

[35] Ibid.

[36] Ibid.

[37] Australian Human Rights Commission, 'Human rights issues raised by the transfer of asylum seekers to third countries' (2012), available online: http://www.humanrights.gov.au/human_rights/immigration/transfer_third_countries.pdf (accessed 29 October 2012), p. 3.

harm than they are preventing.[38] The re-implementation of transferring asylum seekers to regional countries will potentially fuel debate over Australia's moral and legal obligations to asylum seekers.

There is currently no legal way to enter the UK to seek asylum.[39] Like the US and Australia, the UK has adopted interdiction policies.[40] In 2003, the UK government suggested that asylum claims be decided in transit processing centres in third-party countries. Human rights activists raised concerns about the proposed locations for the processing centres, as many have a history of violating the rights of asylum seekers and refugees. The UK's interception measures have made seeking asylum increasingly difficult and the reduction in claims has been cited as an achievement by the UK government. For example, visa requirements on Zimbabwe were imposed in November 2002 and by May 2003 there was 61% drop in the number of Zimbabwean asylum seekers in the UK.[41] At this time 2,240 Zimbabweans were recognized as being in need of protection by the UK. Therefore the restrictive policies were inhumane and neglected the rights of vulnerable people. The UK government has also introduced carrier sanctions, which financially penalise airline, train and ferry companies if they allow illegal immigrants to enter the country. Whilst the increased use of interception measures in the UK is reducing the number of illegal immigrants, they are also interfering with the right to seek asylum. People are therefore taking additional risks to reach the UK, such as crossing seas in rafts, or hiding in the undercarriage of airplanes. Cases such as these include the tragic deaths of 58 Chinese people who were found suffocated in the back of a truck in June 2000.[42] Whilst the government cannot be held accountable for people

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[38] M. Crock, B. Saul, and A. Dastyari, *Future seekers II: refugees and irregular migration in Australia* (Annandale, N.S.W, Federation Press, 2006).

[39] A. Geddes, 'Chronicle of a Crisis Foretold: The Politics of Irregular Migration, Human Trafficking and People Smuggling in the UK', *The British Journal of Politics & International Relations,* vol. 7, no. 3 (2005), p. 32.

[40] Schnoebelen, op cit. (2008), p. 44.

[41] Ibid.

[42] Geddes, op cit. (2005), p. 32.

smuggling, the focus on deterring and preventing initiatives has resulted in an increase of deaths among illegal immigrants.[43]

Due to Mexicans comprising the highest amount of illegal immigrants in the US, controlling the US-Mexican border is a high priority. While the US federal police patrol a large portion of the border, approximately 800,000 illegal immigrants nonetheless manage to cross every year, with people smuggled across the border or walking or swimming across unpatrolled areas.[44] Around 400 Mexicans die every year trying to cross into the US. In the mid-1990s, the US government introduced tightened security measures along the border, by building fences and adding lights. Due to the volume of entries, '2 or 3 a minute, 24 hours a day', most of the illegal immigrants were returned immediately to avoid detention costs.[45] Those detected are fingerprinted and photographed before being repatriated. The fingerprints are then checked against the identity database and if the individual is identified as a known criminal or having tried to cross the border more than 12 times, they are imprisoned rather than just simply deported.[46] 'Operation Gate Keeper' was implemented in 1994 to reduce the numbers of illegal immigrants crossing the border. Miles of new fencing and more trained agents were employed.[47] The policy was effective in discouraging illegal immigration, particularly in the area of San Diego, which had become the main entry point.[48] However, migration routes shifted eastward to the Arizona desert. The death toll of people illegally migrating to the US subsequently rose due to the severe conditions.[49] The number of women and

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[43] N. Kelley, 'Field Experiences, Major Actors and Policies "Can't Get There from Here": Interception Measures and Their Impact on the Role of Refugee NGOs', Refugee Survey Quarterly, vol. 25, no. 4 (2006), p. 160.

[44] S. Crowe and J. Lucas-Vergona, 2007, 'What should be done about the illegal immigration from Mexico to the United States?', *Mathematical and Computer Modelling,* vol. 46, no. 7 (2007), p. 1115.

[45] P. Martin, 'Policy responses to unauthorized or irregular workers', *Intereconomics,* vol. 39, no. 1 (2004,), p. 19.

[46] L. Brakeman, 'Fingerprint scanning slows illegal immigration', *Automatic I.D. News,* vol. 11, no. 12 (1995), p. 24.

[47] D. A. Scharf, D.A. 'For humane borders: two decades of death and illegal activity in the Sonoran Desert', *Case Western Reserve Journal of International Law,* vol. 38, no. 1 (2006), p. 141.

[48] Crowe and Lucas-Vergona, op. cit. (2007), p. 1115.

[49] Scharf, op cit. (2006), p. 141.

children attempting to cross the border has declined. However, the number of men crossing has not and the use of smugglers has increased.[50] The economic and family-related incentives to migrate outweighed the political restrictions.[51] Also, once arriving in the US, the illegal immigrants tend to stay longer, due to the extremely dangerous journey of crossing the border again. The US government eventually recognised the ineffectiveness of the programme and formed the Border Safety initiative in 1998. However, the number of Border Patrol agents continued to rise, from 3,965 in September 1993 to 12,349 in September 2006. The US border policy initiatives have not effectively reduced the number of illegal immigrants crossing the border.[52]

The interception methods employed by the three countries have been primarily focused on tightening the borders rather than protecting vulnerable people. While governments have a right to protect their borders, policies implemented need to consider the rights of those migrating.

Mandatory Detention

While mandatory detention is a contested issue, in Australia, the UK and the US it is becoming a routine practice rather than for exceptional cases.[53] States argue that detention is necessary for national security however it has been at the expense of the detainees, who often suffer both physically and psychologically.[54] The detention of asylum seekers contradicts the Article 31 of the 1951 Convention Relating to the Status of Refugees, which states:

> [t]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. 2.

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[50] Martin, op cit. (2004), p. 19.

[51] W. Cornelius and I. Salehyan, 'Does border enforcement deter unauthorized immigration? The case of Mexican migration to the United States of America', *Regulation & Governance,* vol. 1, no. 2 (2007), p. 149.

[52] Scharf, op cit. (2006), p. 141.

[53] L. Schuster and M. Welch, vol. 5, no. 4 (2005), p. 332.

[54] Stevens, op cit. (2002), p. 40.

The Contracting States shall not apply to the movements of such refugee restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.[55]

Despite being signatory states, the three countries are not following the Convention. The majority of illegal immigrants detained have not committed any crimes and are solely withheld due to entering into a country without legal documentation.[56] Detention centres are seen to be a deterrent to prevent illegal immigration and to ensure that people, who arrive without authorisation, are not let into the community until they have successfully fulfilled health, character and security checks and have been granted a visa.[57] Consequently, those who have not been granted authority to stay can be removed from the country. However, it can instead discourage genuine asylum seekers from coming forward to the officials due to their fear of detainment. This results in further difficulty in estimating the number of illegal immigrants in a country. It also negatively affects the asylum seekers who will not be able to benefit from public services.

The UK government has steadily expanded its immigration detention system since the 1980s.[58] The detainment of persons was first introduced under the 1920 Aliens Act and was further elaborated under the 1997 Immigration Act.[59] In 2012, despite official promises to the contrary, a number of children continue to be detained with their families.[60] In the UK the fast tracking of asylum seekers was implemented to deal with the claims more

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[55] A. T. Naumik, 'International Law and Detention of US Asylum Seekers: Contrasting Matter of D-J- with the United Nations Refugee Convention', *International Journal of Refugee Law,* vol. 19, no. 4 (2007), p. 663.

[56] G. Broeders and Engbersen, 'The Fight Against Illegal Migration: Identification Policies and Immigrants' Counterstrategies', *American Behavioral Scientist,* vol. 50, no. 12 (2007), p. 1601.

[57] Phillips and Spinks, op. cit. (2011), p. 1.

[58] S. J. Silverman and E. Massa, 'Why Immigration Detention is Unique', *Population, Space and Place*, vol. 18, no. 6 (2012), p. 667.

[59] Ibid., p. 337.

[60] Ibid., p.668.

efficiently.[61] Webber argues that it was introduced to make seeking asylum exceptionally difficult at every stage, and that it did not take into account humane issues. Claimants had no time to recover and prepare a claim after their often dangerous journeys. Politicians applauded the 99% refusal rate of the asylum applications, which showed that fast tracking system was efficient in denying claims. However in reality many claims were not groundless, as the Detention Action report suggests. The conditions and time scale that asylum seekers had to make a claim made it difficult for them to comprehend and actively engage in the determination process. There is no time limit to those detained, so many asylum seekers are stuck in the system without a decision. The longest-known period in the UK is Indian Karamjit Singh Chahal who was detained for 6 years and 2 months and was released finally in 1997.[62] In 1999, under the Immigration Asylum Act, the government promised to introduce an automatic right to bail hearings. However this was never implemented and was withdrawn in 2002.

In Australia, the Keating Labor Government introduced mandatory detention in 1992 to deter asylum seekers who do not have visas.[63] Mandatory detention raises concern in Australia due to the racist policies implemented in the past such as the 'White Australia Policy'.[64] Asylum seekers who arrive by boat receive the bulk of attention in Australian public debate and policy. The current detention process detains all asylum seekers who arrive without authority by boat. They are usually then transferred to Christmas Island whilst their claim is determined. In July 2008 the former Minister for Immigration and Citizenship overhauled the policy of mandatory detention, stating it was to be used as a last resort rather than as standard practice.[65] However, despite this change in policy rhetoric, long-term mandatory detention continued under both the Rudd and Gillard governments. A report by the Department of Immigration and Citizenship (DIAC) demonstrated that on the 30th of September 2012, of the 9358

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[61] F. Webber, 'UK: the real 'immigration debate'', *Race & Class,* vol. 53, no. 3 (2012), p. 94.

[62] L. Schuster and M. Welch, 'Detention of asylum seekers in the UK and USA: Deciphering noisy and quiet constructions', *Punishment & Society,* vol. 7, no. 4 (2005), p. 403.

[63] Phillips and Spinks, op cit. (2011), p. 1.

[64] L. Schuster and M. Welch, op. cit. (2005), p. 403.

[65] Ibid.

people in immigration detention around 63% had been detained for 3 months or less and 90% had been detained for 12 months or less.[66] There have been efforts to make community detention and other alternative accommodation available to children and other vulnerable people, however many of these reforms are still in process.[67]

Unlike Australia and the UK, the US government secretly controls mandatory detention. Asylum seekers are detained quietly in county and state jails. An example of this is in Guantanamo Bay where national and international laws and human rights agreements are undermined. The Patriot Act was enacted whereby citizens and non-citizens are stripped of civil rights, on limited evidence, in the name of protection.[68] In 2002 the US government declared that all who arrive illegally by sea will be subjected to mandatory detention.[69] This was done in the name of national security, although it disregarded international law.

Silvemann and Massa argue that detention does not deter illegal immigrants and fails to ensure more efficient and effective asylum determination processes. [70] Children, torture survivors and other vulnerable people are at risk of suffering lifelong psychological damage from even short periods of immigration detention.[71] Detention centres are also an enormous expense to the taxpayers.[72] Detention should be used for exceptional measures and alternatives should receive more focus and development.

Access to Welfare

Illegal immigrants encounter various difficulties as they have to live without the support of institutions, including welfare systems and regulatory

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[66] Department of Immigration and Citizenship, 'Immigration Detention Statistic Summary', Australian Government (2012).

[67] Phillips and Spinks, op. cit. (2011), p. 2.

[68] J. Hyndman and A. Mountz, 'Another Brick in the Wall? Neo-Refoulement and the Externalization of Asylum by Australia and Europe', *Government and Opposition,* vol. 43, no. 2 (2008), p. 258.

[69] Naumik, op. cit. (2007), p. 663.

[70] Silverman and Massa, op. cit. (2012), p. 677.

[71] Ibid.

[72] Ibid.

bodies.[73] The denial of social security rights goes against the duty to protect universal human rights and access to basic services should be made accessible illegal immigrants.[74] However, policy makers argue that if rights for illegal immigrants are too generous it will act as a pull factor for migrants[75].

In the US the federal government essentially controls immigration policy, however due to the lack of agreement over the management of illegal immigration states have instead begun to enact laws designed to decrease the phenomenon and combat perceived social problems.[76] Policies have been implemented to decrease illegal immigrants' access to basic services. Obama's SB56 law, enacted in 2011, is one of the most restrictive of all anti-immigration laws.[77] SB56 criminalizes key aspects of illegal immigrants' lives. Under this law it is considered a felony to seek employment, register a vehicle and even have water services for their homes.[78]

In the UK policy measures have been aimed at excluding illegal immigrants from accessing to public services.[79] This causes them to go deeper underground. Illegal immigrants are indirect taxpayers in the UK for the proportion of public health expenditure met by indirect taxes was 41.7%.[80] Therefore, tax-finance health budgets should be used to allow illegal immigrants to access of basic health services.

Australia's government policy reduces asylum seekers' ability to access basic services. Not all asylum seekers are provided with basic health care,

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[73] F. Düvell, 'Pathways into Irregularity: The Social Construction of Irregular Migration', Comparative Policy Brief, CLANDESTINO Research Project, Centre on Migration, Policy and Society, University of Oxford (2009), p. 6.

[74] R. Romero-Ortuno, 'Access to health care for illegal immigrants in the EU: should we be concerned?', *European journal of health law*, vol. 11, no. 3 (2004), p. 245.

[75] Ibid.

[76] Furman, Ackerman and Negi, 'Undocumented Latino immigrant men in the United States: Policy and practice considerations', *International Social Work,* vol. 55, no. 6 (2012), p. 817.

[77] Ibid.

[78] Ibid.

[79] G. Broeders and Engbersen, op cit. (2007), p.1601.

[80] Romero-Ortuno, op. cit. (2004), p. 245.

shelter and working rights. For instance, the Temporary Protection Visa (TPV) limited the asylum seekers' rights. It removed the right to healthcare, employment and to government funded English classes, which are available to other asylum seekers.[81] Lack of access to a full range of health and community services halts the recovery of asylum seekers. The uncertainty of their future can also cause anxiety and depression. The TPV, while introduced to deter asylum seekers, did not succeed in reducing their numbers.[82] It has now been abolished due to the problematic affects that it was having on asylum seekers.

Technology Development

Since the events of 9/11, the use of biometric technology has increased worldwide[83]. Biometrics refers to a measurable characteristic that is unique to an individual such as fingerprints and face and iris recognition. These biological characteristics are used to identify individuals. The biometric databases are instrumental in the recentralization of state power and have only been met by limited public opposition.[84]

The incorporation of biometric data for travel documents is mostly cited as a measure to protect national security. The use of biometric passports has largely been due to the US's hegemonic power. Countries are continually developing technological advancements to strengthen border control. Biometric data is an increasingly important tool in helping countries reduce fraud and integrity risks. The three countries have introduced biometrics to improve visa and border checking processes and to provide identify authentication and verification.[85]

In the UK biometrics are being employed at visa posts, the border and within the country to prevent illegal immigration. Since 2002 biometric

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[81] S. Skull and S. Murray, 'Hurdles to health: immigrant and refugee health care in Australia', *Australian Health Review,* vol. 29, no. 1 (2005), p. 26.
[82] M. Crock, B. Saul, and A. Dastyari, *Future seekers II: refugees and irregular migration in Australia* (Annandale, N.S.W, Federation Press, 2006), p. 5.
[83] D. Wilson, 'Australian Biometrics and Global Surveillance', *International Criminal Justice Review,* vol. 17, no. 3 (2007), p. 207.
[84] Ibid.
[85] Ibid.

identity cards have become standard practice. Asylum seekers are given Application Registered Cards to identify the holder as being in process of claiming asylum. These identity cards contain a fingerprint on a secure chip. The United Kingdom Border Agency (UKBA) can confirm that an individual applying for further leave to stay in the UK is the same person who initially came through the border and also check them against police databases so that someone with a previous criminal record can be identified. They can consequently determine whether an applicant has previously used multiple identities to undermine immigration control, allowing them to quickly detect genuine applicants.[86] Since December 2007 it has been mandatory that all foreigners requiring a visa to visit the UK are fingerprinted, resulting in the detection of thousands of cases of identity swaps.[87] Biometrics are tightening security and improving the integrity of decision-making processes, especially in regards to asylum seekers.[88]

Australia has adopted surveillance practices that are largely in line with the policies used by the US.[89] The Australian government has introduced e-passports to be in compliance with the US requirements for visa-waiver countries. However, there are concerns about the use of biometric methods, as the biometric template may be copied or manipulated.[90] The decision of being able to grant or deny access may be altered, even if the biometric template is protected by another mechanism.[91] Wilson however, argues that the biometrics data is unique and this makes it difficult to steal or imitate.[92] The growing importance of identity management and the increasing use of biometric technology has resulted in debates about the legal regulation of personal information and reasonable limits of privacy.[93] While biometrics has become an effective tool in deterring illegal immigrants, criminal

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[86] T. Mercer, 'Using biometrics to help secure UK borders', *Biometric Technology Today,* vol. 17, no. 5 (2009), p. 7.
[87] Ibid.
[88] Ibid.
[89] Wilson, op. cit. (2007), p. 207.
[90] O. I. Heimo, A. Hakkala and K. K. Kimppa, 'How to abuse biometric passport systems', *Journal of Information, Communication and Ethics in Society,* vol. 10, no. 2 (2012), p. 68.
[91] No author listed, 'Beefing up security with biometrics', *Card Technology Today,* vol. 20, no. 5 (2008), p.14.
[92] Wilson, op. cit. (2007), p. 207.
[93] Ibid.

activity is likely to increase as illegal immigrants try to find ways around the technology.[94] It is also likely that there will be more reckless attempts to enter countries.

The technological advances in the three countries can be shared to tighten border control and help to detect genuine asylum seekers so that they can be processed faster.

Media Influence

In the UK and Australia there is a high level of public, media and political attention surrounding illegal immigration, whilst in the US there is little public and media exposure and discussion of the topic is confined within the circles of professionals, bureaucrats or experts.[95] Freeman and Birrell argue that popular opinion is more readily mobilised and volatile in Australia than in the US and that there is more pressure on Australian politicians to attend to the public's anxieties in a way that the US does not encounter.[96] The UK and Australian public are susceptible to the moral panic instilled by the government and media whereas fears are less palpable to Americans. In the US illegal immigration is widely seen to be making a positive contribution to country's economy whatever the short-term costs.[97]

In the UK and Australia moral panic has been enhanced by media campaigns against asylum seekers. The distinctions between illegal immigrants, asylum seekers and refugees are lacking.[98] This problematic issue of social categorisation appears to be evident in all three countries.[99] According to Geddes, public debate about illegal immigration and asylum seeking in the UK is highly charged and often not well informed. British press headlines are influencing negative public perceptions of illegal

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[94] Mercer, op. cit. (2009), p. 7.
[95] L. Schuster and M. Welch, op. cit, p. 339
[96] G. P Freeman and B. Birrell, 'Divergent Paths of Immigration Politics in the United States and Australia', *Population and Development Review,* vol. 27, no. 3 (2001), p. 548.
[97] Ibid.
[98] L. Schuster and M. Welch op. cit., p. 339.
[99] K. O'Doherty and A. Lecouteur, '"Asylum seekers", "boat people" and "illegal immigrants": Social categorisation in the media', *Australian Journal of Psychology,* vol. 59, no. 1 (2007), p. 2.

immigrants.[100] Headlines such as 'Handouts galore! Welcome to soft touch Britain's welfare paradise: Why life for them here is just like a lottery win' encourage negative views of illegal immigrants.[101] In 1995 the Runnmede Trust surveyed asylum coverage in the media and discovered a pattern of racist rhetoric that compared asylum seeking to natural disasters. Metaphors used such as 'tides', 'waves' and 'floods' exaggerate the scale and the size of phenomenon, whilst dehumanising the immigrants.[102] They are also criminalised in British headlines and referred to as 'gangsters'.[103] The 21st British social Attitudes Survey, conducted in 2004, reported an increase of anti-immigrant sentiment in Britain, with 74% of residents wanting a reduction of illegal immigration compared to 65% in 1995.[104] This increased opposition could have resulted from not only an increase in the numbers of illegal immigrants but also from the negative portrayal by the media and the government.[105]

While there have been periods of anti-immigration sentiment in the US, there has not been a large scale of public panic directed at illegal immigrants.[106] However, biased views do occur in the American media too. For example in 2007 on the Glenn Beck Program, a nationally syndicated talk-radio show, the host stated:

> [t]here are about 12 to 15 million illegals in this country and that number is growing by 500,000 every year. Recent investigations showed that in Los Angeles 95 percent of all warrants for homicide targeted illegal aliens. They put a strain on our Social Security, our education, our health care and, yes, national security.[107]

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[100] Ibid.

[101] L. Schuster and M. Welch, op. cit., p. 332.

[102] Ibid., p. 339.

[103] Ibid., p. 401.

[104] Geddes, op. cit. (2005), p. 32.

[105] Ibid.

[106] L. Schuster and M. Welch, 'Detention of asylum seekers in the US, UK, France, Germany, and Italy: A critical view of the globalizing culture of control', *Criminal Justice*, vol. 5, no. 4, p. 401.

[107] A. Rubio, 'Undocumented, Not Illegal: Beyond the Rhetoric of Immigration Coverage', NACLA Report on the Americas (2011), p. 4.

This stereotyping has negatively affected the public opinion of illegal immigrants, however since the media is not as pervasive of illegal immigrants in the US it has not seriously affected public perceptions. However, the government's secretive approach to illegal immigration can result in the government being less accountable for their actions.[108]

Australia's media stigmatises the refugee category of immigrants. Asylum seekers who arrive by boat to Australia are commonly incorrectly referred to as illegal immigrants. The scale of asylum seekers arriving by boat is also particularly exaggerated.[109] 'Terrorists', 'criminals', 'diseased' are also common references that have accentuated negative perceptions.[110] Along with the media and government portrayal of asylum seekers being illegal, queue jumpers and irresponsible parents.[111] The media and government representation of illegal immigrants in Australia and the UK have been focused on protecting the borders rather than sympathising with individuals. The US's secretive approach has left citizens uninformed about illegal immigrants but has not necessary ill-informed them like in Australia and the UK.

Combating National Security

Illegal immigration is seen to threaten state sovereignty by undermining the nation's control. Since the devastating events of 9/11, some media coverage has explicitly alleged links between illegal immigration and terrorism.[112] Combating terrorism has become a priority among governments around the world.[113] A sense of fear and the need to exclude foreigners has been compelled through political and media affairs.

British politicians have referenced migration and asylum as key aspects to counter-terrorism in their policy measures.[114] Controlling migrants entering

[108] Ibid.

[109] Hinsliff, op cit. (2006), p. 125.

[110] O'Doherty and Lecouteur, op. cit. (2007), p. 2.

[111] Ibid.

[112] Geddes, op. cit. (2005), p. 32.

[113] L. Schuster and M. Welch op. cit., vol. 7, no. 4, p. 404.

[114] J. Huysmans, and A. Buonfino, 'Politics of Exception and Unease: Immigration, Asylum and Terrorism in Parliamentary Debates in the UK', *Political Studies,* vol. 56, no. 4 (2008), p. 768.

Britain has become central in preventing terrorism. In a debate on 4 October 2001, Prime Minister Tony Blair clearly summarised the key aspects of combating terrorism that directly related to asylum seekers:

> [i]n the next few weeks, the Home Secretary intends to introduce a package of legislation to supplement existing legal powers in a number of areas. ... It will cover the funding of terrorism. It will increase our ability to exclude and remove those whom we suspect of terrorism and who are seeking to abuse our asylum procedures. It will widen the law on incitement to include religious hatred. We will bring forward a Bill to modernise our extradition law.[115]

Australia was affected by 9/11 in ways similar to the US in terms of how the states began to look for unusual sources of terrorist threat. Some members of the Australian government have inferred without evidence that terrorists could be seeking asylum to gain entrance into Australia.[116] These sorts of accusations negatively influence public perceptions on asylum seekers. Although the security and integrity of Australia's national borders were high on the Australian Government's agenda before 9/11, concern was intensified after the event[117]. Webber states that Islamophobia has heightened since 9/11 and that Muslims have become a suspect community and innocent people have become targeted as terrorists.[118]

In response to the events of 9/11, the US government implemented policies aimed at excluding those who were seen to be a threat to national security. Between September the 11 2001 and December 2005, 15,300 asylum-seekers were incarcerated at US airports and borders.[119] The illegal immigrants usually have no understanding as to why they have been detained. The Department of Homeland Security (DHS) enacted the policy Operation Liberty Shield on the eve of the war against Iraq in 2003.[120] The policy was implemented to mandatorily detain asylum seekers from 33 countries, which were known to have Al Qaeda operating in them. Even

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[115] Ibid.
[116] G. Hugo, 'Australian Immigration Policy: The Significance of the Events of September 11', *International Migration Review,* vol. 36, no. 1 (2002), p. 39.
[117] Ibid.
[118] F. Webber, op cit. (2012), p. 95.
[119] L. Schuster and M. Welch op. cit., vol. 7, no. 4 p. 404.
[120] Ibid.

asylum seekers who even did not raise suspicion were detained for the duration of their asylum proceedings, meaning that the majority of them were unable to request parole.[121] This type of policy contradicts the UNHCR that states, 'that subjecting asylum seekers to detention based on an national origin is discriminating, since it is contrary to Article 3 of the UN Refugee Convention'.[122]

Whilst the program was designed to protect citizens and deter terrorist attacks, it went against human rights and the most vulnerable people were left at risk.[123] The program was terminated one month after its introduction due to immense pressure from human rights organisations. However, the removal of Operation Liberty Shield did not mean that asylum seekers from designated countries were not subjected to mandatory detention.[124] Illegal immigration is seen to threaten US sovereignty and national identity and unity.[125]

Seeking asylum as a means to gain entry into the US would be extremely risky for terrorists because all asylum seekers are fingerprinted, thoroughly interrogated and face the possibility of being detained.[126] The terrorist hijackers involved in 9/11 were recipients of a temporary US tourist visa and only three out of the nineteen hijackers had overstayed their visa and were classed as illegal immigrants.[127] Koser argues that states have a sovereign right to control who crosses their borders,.[128] however there is no clear connection between terrorism and illegal immigration and therefore policies aimed at excluding people lack moral standards and rights for those people.

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[121] Ibid.

[122] Office of the United Nations, UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers (1999), p. 2.

[123] L. Schuster and M. Welch op. cit., vol. 7, no. 4, p. 404

[124] Ibid.

[125] H. Dick, 'Immigrants Illegal in Small-Town USA', *Journal of Linguistic Anthropology,* vol. 21 (2011), p. 35.

[126] L. Schuster and M. Welch, op. cit., vol. 7, no. 4, p. 403.

[127] C. M. Graham, 'Defeating an invisible enemy: the western superpowers' efforts to combat terrorism by fighting illegal immigration', *Transnational Law & Contemporary Problems,* vol. 14, no. 1 (2004), p. 281.

[128] K. Koser, 'Responding to the Boat Arrivals in Australia: Time for a Reality Check', *Lowy Institute for International Policy* (2010).

Conclusion

The analysis of illegal immigration into Australia, the UK and the US demonstrates that the states are struggling to maintain a balance between controlling their borders and protecting the rights of those seeking asylum.

Governments need to adequately address those people who overstay their visas, rather than just those entering the country illegally, as they constitute a large percentage of illegal immigration. Proper figures for this category should be used to defuse the artificial power of illegals in the media and within public opinion.

Since 9/11, national security has become high on the agenda among governments worldwide. The indirect links between terrorism and illegal immigration have been inferred in the media and governmental reports, resulting in heightened policies to protect the sovereignty of states. In the UK and Australia, the media has demonised asylum seekers by referring to them as illegal immigrants, which has misinformed the public's opinions. The US on the other hand has taken a secrecy approach to dealing with the issue and it has been contained within professionals. However, this approach can result in the government not being accountable for their actions.

There are also viable alternatives to detention. Whilst unauthorised arrivals can be detained briefly for identity, health and security checks, community release could occur within a short period of time, enabling governments to phase out mandatory detention and transition to risk-based detention combined with community detention or community release. There also needs to be maximum period of time that asylum seekers are held in detention whilst their claims are accessed.

Illegal immigration is a fluid circumstance that is constantly changing; therefore constant review in the UN is essential, along with continuing dialogue of the issue. The matter cannot be constrained to security measures, but compassionate grounds for illegal immigrants must be considered as well.

Minerals, Security and Aid: Implications for the Democratic Republic of Congo

Felicity Driver [*]

This paper investigates the ability of the Democratic Republic of Congo (DRC) to build institutions that ultimately, and arguably, improve natural resource governance, mitigate armed conflict, and endemic corruption within the kleptocracy that currently exists. With the onset of the 'digital age', the demand for the mineral known as coltan, a key component of digital devices, is having devastating effects on the Congolese population. The vast supply of coltan is mined in the DRC's eastern border with Rwanda. Local armed groups vastly control the coltan trade and continue to subject women and children to the violence reminiscent of the 1994 genocide. This research contributes to the wider debate for reform of the security sector and a functioning rule of law within conflict and post-conflict zones throughout the developing world. The DRC's crippling lack of institutions in the post-independence era has severely eroded any chance of a corruption-free and equitable minerals trade, allowing the government of President Joseph Kabila to foster a somewhat unequal trading partnership with China, the largest beneficiary of coltan. This paper contends that the international community, including Australia, has the potential to deliver a new aid modality, one that provides disincentives to the monopolised coltan trade and comprises a military grade unit capable of stemming the violence in the eastern regions.

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The Democratic Republic of Congo and Coltan

The terms 'digital minerals', and 'blood minerals' were coined to describe the unprecedented and ever-increasing demand for 'coltan'. Coltan is the shortened name given to the mineral colombite-tantalite, part of the chemical group known as tantalum.[129] An ore is extracted from tantalum forming a concentrate which is then converted into a metal. This heat-resistant metal is then used in the manufacture of capacitors for electronic devices such as mobile phones and laptops.[130] Sadly, the Democratic Republic of Congo (DRC) minerals story is complicated by a plague of corruption and conflict too often seen in mineral-rich developing countries. The conflict occurs on the eastern border with Rwanda in the North and South Kivu provinces, an area which contains the majority of the world's coltan supply. The DRC suffers a severe lack of institutions, inhibiting its ability to enforce an equitable mining sector and combat systemic corruption.

Governance in the DRC: From Mobutu to Kabila

Australia's decision to open a new embassy in Ethiopia in early 2012 speaks strongly to its intention of keeping a finger on the pulse of the African region as a whole, in order to protect its nascent economic interests.[131] There has been a long history of self-interested interference on the part of international stakeholders after the United States (US) supported former DRC President Mobutu Sese Seko and his dictatorship. During the period of 'Zairianisation' in the 1970s, Mobutu along with other elites latched onto the country's natural resource wealth and misappropriated between US$6-10 billion between 1972 and 1988.[132] Pressure eventually came from the International Monetary Fund (IMF) and World Bank for Mobutu to privatise the mining industry and democratise his government. This was met with stiff

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[129] R. Bleischwitz, M. Dittrich and C. Pierdicca. 'Coltan from Central Africa, International Trade and Implications for any Certification', *Resources Policy*, vol. 37 no, 1 (2012), pp. 19-29.
[130] Ibid.
[131] B. Guenther, 'The Asian Drivers and the Resource Curse in Sub-Saharan Africa: The Potential Impacts of Rising Commodity Prices for Conflict and Governance in the DRC', *European Journal of Development Research,* vol. 20, no. 2 (2008), pp. 347-363.
[132] Ibid.

opposition. He was unable to control resource rents and subsequently was overthrown by Ugandan and Rwandan forces while state-owned mines were bought up by international conglomerates.[133]

During Mobutu's presidency (1965-1997), investors relied upon close personal relationships in order to gain preferential access to resources, meaning that some companies had to manage their own mine security. Almost all state bureaucracies were eventually privatised by Mobutu.[134] After the fall of Mobutu in 1997 and the assassination of his successor Laurent Kabila in 2001, the international community increased their efforts to put an end to the bloodshed. It was after the 1999 Lusaka Peace Accords, the 'Inter-Congolese Dialogue in 2001', and the exit of foreign troops shortly thereafter that the transitional government created a new constitution, elected a new parliament and elected Joseph Kabila (son of Laurent) as President in 2006.[135] Kabila was re-elected in December 2011 and, despite vast protests, remains President of the DRC today.

It would seem that an economic and political environment has surfaced whereby President Joseph Kabila can continue Mobutu's practice, reportedly creating exclusive access rights to mines for himself, excluding his competitors, and profiting from the substantial foreign investment that mining brings to the DRC's already struggling economy.[136] Kabila is considered unlikely to possess either the capacity or the leadership vision to embark on any institution-building or reform process. As a Chinese-educated, ethnic outsider with no particular loyalty or belonging to one particular region of the DRC, Kabila has followed in his father's footsteps as a cunning leader.

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[133] Ibid.
[134] W. Reno, 'Mines, Money, and the Problem of State-Building in Congo', *Issue: A Journal of Opinion,* vol. 26, no. 1 (1998), pp. 14-17.
[135] Guenther, op. cit. (2008), pp. 347-363.
[136] W. Reno, 'Congo: From State Collapse to 'Absolutism', to State Failure', *Third World Quarterly*, vol. 27, no. 1 (2006), pp. 43-56; J.H. Smith, 'Tantalus in the Digital Age: Coltan Ore, Temporal Dispossession, and "Movement" in the Eastern Democratic Republic of the Congo', *American Ethnologist*, vol. 38, no. 1 (2011), pp. 17-35.

Mining as a Security Issue

The combination of little regulation and mass international demand for 'digital minerals' has allowed for the control of mines in eastern DRC to fall into the hands of militarised groups and independent militias such as the Congo's own army, the highly factionalised *Forces Armée de la République Démocratique du Congo* (FARDC), the Mai Mai (an armed group operating in the jungle which maintains that it is the spiritual owner of the land and soil), the Rwandan-led M23 rebels and the Forces Démocratiques de Libération du Rwanda (Hutu FDLR).[137] Militant group *Congrès Nationale pour la Défense du Peuple* (CNDP), who are present in several mines, protect mines from rival armed groups for a state senator who pays the CNDP US$0.20 per kilo of coltan mined.[138] The majority of the eastern Congolese jungles, especially in the North and South Kivu provinces, are controlled and inhabited by Rwandan nationals. This means that French or a French-Rwandan dialect is spoken, acting as a further point of differentiation between already warring ethnic groups. The Rwandans hold all of the power and control over mines in the region and do not hesitate to use force to protect what they believe belongs to them. Nearly 20 years after the atrocities committed in Rwanda in 1994, substantial tensions remain between Hutus and the Congolese Tutsis, often sparking armed confrontations and massacres on the eastern border near the city of Goma. The international community should be aware and prepared for the Rwandan presence in eastern DRC and respect the violent nature of the armed groups in residence there. It is suggested that the nature of the First and Second Congolese wars (1996-1997 and 1998-2003 respectively) can be attributed to grievances associated with the 1994 Rwandan genocide.[139] The effects of these brutal wars were further exacerbated by the crippling lack of institutional quality in both Kabila governments.[140]

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[137] J. H. Smith, 'Tantalus in the Digital Age: Coltan Ore, Temporal Dispossession, and "Movement" in the Eastern Democratic Republic of the Congo', *American Ethnologist*, vol. 38, no. 1 (2011), pp. 17-35.
[138] Bleischwitz, op. cit. (2012), p. 19-29.
[139] O. Olsson and H. Congdon Fors, 'Congo: The Prize of Predation', *Journal of Peace Research*, vol. 41, no. 3 (2004), pp. 321-336.
[140] Ibid.

Does the Resource Curse Exist in DRC?

Arguably the intensity of the conflict strongly correlates with natural resource abundance and individual greed. The DRC is not unique in suffering from what is known as the 'resource curse'.. This refers to the inability of the economies of resource rich countries to experience growth as fast as non-resource rich countries.[141] For example, Professor of Economics Halvor Mehlum[142] concludes that there is an 'unconditional negative relationship between resource abundance and growth'. In contrast to the well-established work of economists Jeffrey Sachs and Andrew Warner in 2001, who believe institutions to be an insignificant factor in the resource curse, Mehlum further argues that institutions are, in fact, decisive in the onset of the resource curse, meaning that their existing quality determines the extent to which the country will suffer the resource curse.[143] Therefore, abiding by this logic, the DRC will likely suffer the worst possible effects of the resource curse due to its lack of effective institutions within all levels of government and military (see later discussion). The DRC is not alone in this situation and examples from the developing world can be used to contextualise the difficulties facing the DRC.

How does Botswana Differ from the DRC?

The case of Botswana can be used to demonstrate that in a country with effective institutions in place the resource curse does not apply to the same extent as it has in the DRC. Botswana gained independence from Great Britain in 1966 and subsequently became the second poorest country in the world.[144] Ten years later the De Beers Company discovered alluvial diamonds there and created the Debswana Diamond Company. This paved the way for the government of Botswana to profit from diamond extraction,

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[141] H. Mehlum, K. Moene, and R. Torvik, 'Institutions and the Resource Curse', *The Economic Journal*, vol. 116, no. 508 (2006), pp. 1-20; J. Sachs and A Warner, 'The Curse of Natural Resources', *European Economic Review*, no. 45 (2001), pp. 827-838; K. Wick and E. H. Bulte, 'Contesting Resources: Rent Seeking, Conflict and the Natural Resource Curse', *Public Choice*, vol. 128, no. 3/4 (2006), pp. 457-476.
[142] Mehlum, op. cit. (2006), pp. 1-20.
[143] Mehlum, op. cit. (2006), pp. 1-20.
[144] V. Daniele, 'Natural Resources and the 'Quality' of Economic Development', *Journal of Development Studies*, vol. 47, no. 4 (2011), pp. 545-573.

which currently accounts for 40% of Gross Domestic Product (GDP) and 85% of total exports.[145] As a result, since 1999 Botswana has been considered an upper-middle income country, on par with China. This is attributed to sound macroeconomic policies that allowed for the initial export boom, avoided external debt, and favoured economic diversification.[146] These factors are non-existent in the DRC as the illegal coltan trade far exceeds any legitimate figures.

A key difference between the historical legacies left to the DRC and Botswana is that the elites and power-holders were interested in fostering economic opportunities in Botswana rather than capitalising on corruption and resource extraction as seen in the DRC. An effective institution for managing resource wealth and diamond exploitation in Botswana is the Ministry of Finance and Development Planning.[147] Sadly, there is little scope within the Kabila Government to foster any realistic resource wealth management. The task has fallen to DRC's international partners to attempt to replicate a version of what is seen in Botswana. Furthermore, between 1970 and 2006, when resources were being discovered and exploited in both nations, Botswana increased its GDP at a rate of 6.5% per year, while the DRC decreased its growth rate by 3.5% per year in real terms.[148] This is a clear and abrupt example of institutions affecting the onset of economic growth.

The stark differences between the two nations indicate that it is not simply the presence of natural resources in a country but the presence of functioning institutions to deal with the exploitation of natural resources which determines the extent of the resource curse. The lack of good governance and effective institutional systems are more of a curse to resource rich countries than the presence of natural resources. The DRC is by far the most negatively affected country as a result of resource wealth rating extremely low on governance indicators in comparison to Botswana and the US (Figure 1). Furthermore, the DRC rates last out of 187 countries listed on the 2011 Human Development Index and 116th among states with

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[145] Daniele, op. cit. (2011), pp. 545-573.
[146] Ibid.
[147] Ibid.
[148] Ibid.

a high risk of failure, where Botswana is in 5th position on the Failed States Index.[149]

Professors Erika Weinthal and Pauline Jones Luong[150] suggest that without strong institutions in place, common solutions associated with nation-building, such as focusing on macroeconomic policies, economic diversification, natural resource funds, transparency and accountability, suffer immensely. Widely considered a 'rentier state',[151] the DRC might look to private ownership, as opposed to state ownership, to provide an incentive for creating the institutions needed for capping the government's decision-making power and fiscal independence. Private ownership can also force investment in times of resource dependability.[152] Once resource interests are privatised, a boundary is created between the 'domestic capitalists' who own the resources and the state which is in charge of regulating them. This would in no way be a fluid process for the DRC given its demonstrated record in corruption and resource exploitation.

DRC's Coltan Curse

With the current climate of corruption and the armed control of mines, provided big businesses and governments are willing to 'play dirty', the DRC is a free-for-all coltan supplier. Astoundingly, twelve out of thirteen major mines in eastern DRC are controlled by armed groups,[153] allowing Rwandan military groups to adopt self-governance and benefit from a lack of an effective and sufficiently paid national army.[154] There is no doubt that the correlation between an abundance of natural resources and their effect

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[149] Ibid, p. 568.
[150] E. Weinthal, and P. Jones Luong, 'Combating the Resource Curse: An Alternative Solution to Managing Mineral Wealth', *Perspectives on Politics*, vol. 4, no. 1 (2006), pp. 35-53.
[151] A 'rentier state' is a term used to define states that depend heavily on the trade and exportation of a natural resource indigenous to that state. These states are highly subject to corruption as they create natural resource dependencies as a result of their sole authority to allocate and distribute income obtained from natural resource rents.
[152] Ibid.
[154] Mobekk, op. cit. (2008), pp. 113-138.

on incomes and the onset of civil wars has had severe consequences for governance and peace-building in the DRC.[155]

Chinese Investment in Coltan Extraction

In 1960, during the chaos of post-independence Congo, China was initially uninterested in the DRC and its plight.[156] It was not until the potential to promote a Maoist-style of national liberation to Africa that China began to pay closer attention to the DRC.[157] In 1963, US President John Kennedy was determined to avoid the appointment of the pro-Soviet Antoine Gizenga as Prime Minister. He therefore expanded the US' presence to protect its economic and political interests in Africa. In the same year, China supported the 'Rebel Rebellion' in eastern Congo which led to the First Congolese War.[158] On balance, despite its best efforts, China's involvement in Africa has not promoted goodwill nor conjured an image of a mutually beneficial trading partnership.

Despite the domestic and international lack of trust in DRC's state institutions, rather than being deterred, investment in DRC mineral extraction is extremely high. During the 1990s, China's involvement in Africa increased by 700%, attracting the attention of the West who were a late arrival.[159] Over the past fifteen to twenty years, China's changing foreign policy has sought to 'integrate itself into the international system', and in doing so has endeavoured to view Africa as an ally, rather than as a threat.[160] China has nearly overtaken the US as Africa's largest trading partner, and, as a fellow developing country in Africa's eyes at least, China portrays itself as the friendly alternative to the hegemonic style of US'

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[155] C. David, and J. Gagné, 'Natural Resources: A Source of Conflict?', *International Journal*, vol. 62, no. 1 (2006), pp. 5-17.
[156] J. Dobbins, S. G. Jones, K. Crane, A. Rathmell, B. Steele, R. Teltschik, and A. Timilsina, 'Congo', *The UN's Role in Nation-Building: From the Congo to Iraq* (United States: RAND Corporation, 2005). pp. 5-27.
[157] Ibid.
[158] Ibid.
[159] D. M. Tull, 'China's Engagement in Africa: Scope, Significance and Consequences', *The Journal of Modern African Studies*, vol. 44, no. 3 (2006), pp. 459-479.
[160] Ibid.

engagement with Africa.[161] Such Western democracies pressure African leaders to liberalise their political systems, atone for human rights abuses, and stamp out all corruption in the public service – such demands are not pursued by the Chinese. Western demands came in the form of Structural Adjustment Programs in the 1980s followed by calls for democratic reform in the 1990s, whereas the Sino-African relationship is founded on common values – exploitation and wealth accumulation.[162] Just as African leaders begrudge external pressure to reform political systems, China's 'One China Principle' champions a similar logic.

90% of China's trading partners are rich in resources.[163] During the 1990s coltan was predominantly imported by Western nations. However, since 2000, China has become the most dominant direct importer of coltan from the DRC, accounting for 60% of coltan extraction from the Kivu provinces.[164] China must guarantee the importation of natural resources to sustain its own economic boom, a necessity that Beijing will not relinquish easily. Between 1989 and 1997, the bilateral trade volume between China and DRC grew by 430% and in recent times has quadrupled, reaching US$24 billion in 2004.[165]

China's Demand for Coltan

In 2003, China accounted for more than 100% of world demand for commodities exported by the DRC.[166] This in turn saw foreign direct investment (FDI) to Africa increase to US$36 billion, as reported by the United Nations Conference on Trade and Development (UNCTAD).[167] Such vast transactions require regulation of the mining sector. Mining institutions are crucial to ensure accountability, transparency and supply chain diligence. Global Witness' official statistics for 2009 indicate that the three largest Chinese companies importing coltan from the eastern provinces were Fogang Jiata Metals, Star 2000 Services, and Unilink Trading Hong

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[161] S. Michel, 'When China Met Africa', *Foreign Policy*, no. 166 (2008), pp. 38-46.
[162] B. Sautman, and Y. Hairong, 'Friends and Interests: China's Distinctive Links with Africa', *African Studies Review*, vol. 50, no. 3 (2007), pp. 75-114.
[163] Tull, op. cit. (2006), pp. 459-479.
[164] Bleischwitz, op. cit. (2012), pp. 19-29.
[165] Tull, op. cit. (2006), pp. 459-479.
[166] Guenther, op. cit. (2008), pp. 347-363.
[167] Ibid.

Kong.[168] These companies reportedly do not import coltan sourced from mines controlled by armed groups, which seems remarkable as reports indicate that twelve of the thirteen major mines in eastern DRC are militarised.[169] The Chinese state-owned CNMC Ningxia Orient Metal Group imports coltan with disregard for safety regulations, the use of children, and the ensuing armed conflicts. Ningxia is one of the world's top three smelters of tantalum and supplies manufacturers such as Dell, Intel, Blackberry, and Hewlett-Packard.[170] At a minimum, the promotion of recycling and reusing mobile phones in an effort to reduce the demand for tantalum is a step in the right direction.

China's engagement in Africa has not led to peace, democratic reform, fiscal accountability, or the cessation of civil wars. With this in mind, however, the Chinese can hardly be accused of malpractice when Kabila's government itself turns a blind eye to mining regulations and the World Bank sponsored Mining Code.[171] Without institutional preconditions such as well-paid and well-trained staff, intergovernmental cooperation and administrative structures, the DRC will continue down its lawless path.

What does the DRC Get in Return?

The nature of China's aid to Africa, and indeed to the DRC, largely concerns infrastructure and public sector works, including infrastructure such as roads, railways, dams, and power plants. The vast majority of these works are directly beneficial to the further extraction of resources. China anticipates these 'goodwill' projects will enhance their strategic and commercial influence over the Congolese government. However, the 'win-win' concept of China's investment does not apply to the DRC on the receiving end.[172] In reality China receives access to the DRC's coltan, uranium, oil, and copper and in return the DRC is provided with new roads, hospitals, and housing. Unfortunately, these structures seldom assist the Congolese people as the infrastructure is located in the mining regions. To

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[168] Bleischwitz, op. cit. (2012), pp. 19-29.
[169] Nathan and Sakar as quoted in Bleischwitz, op. cit. (2012), pp. 19-29.
[170] Ibid.
[171] Guenther, op. cit. (2008), pp. 347-363.
[172] Tull, op. cit. (2006), pp. 459-579.

put the presence of China in the DRC in perspective, Chinese-owned Exim Bank financed 600 projects in Africa in 2006, amounting to US$12.6 billion of investment, far exceeding the total infrastructure expenditure from all developed nations in the same period.[173]

How can Security Sector Reform Change the DRC?

Security sector reform (SSR) is driven by the 'understanding that an unreformed security sector represents a decisive obstacle to the promotion of sustainable development, democracy and peace'.[174] During the 1990s, the development community, such as the Organisation of Economic Cooperation and Development (OECD) and the United Nations Development Program (UNDP), integrated SSR into their programs in an effort to stem the flow of conflicts. SSR activities undertaken by new or transitional governments include policy and legal advice, training programmes, and political dialogue. Technical assistance and funding can also assist in reforming the police force, intelligence, and the judicial and prison systems.[175] Even though violence continues in the DRC, in the context of SSR, the DRC can be considered a post-conflict nation. Therefore, in order to promote institution-building as a bi-product of peace building in a post-conflict nation, SSR is often coupled with disarmament, demobilisation, and reintegration (DDR) and the rule of law. The school of thought on this issue is that the DRC must first address the existence of non-military security forces constituting a 'de facto' security sector and work toward demilitarisation of the eastern regions.[176]

How to Implement Successful SSR

The European Security and Development Policy (ESDP) considers SSR to be one of the 'major emerging fields of activity' within its civilian crisis management division.[177] It is national will and a 'local readiness' to reform

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[173] Sautman, op. cit. (2007), pp. 74-114.

[174] A. Bryden, and H. Hänggi, 'Reforming and Reconstructing the Security Sector', in *Security Governance in Post-Conflict Peacebuilding* (Geneva: DCAF, 2005), pp. 23-41.

[175] Ibid.

[176] Ibid.

[177] A. Justaert, and S. Keukeleire, 'The EU's Security Sector Reform Policies in the Democratic Republic of Congo', in S. Vanhoonacker, H. Dijkstra and H. Maurer (eds),

that is the crucial link to SSR success.[178] However, even with the willingness of the population to reform, this does not change the fact that DRC still has a commodity that attracts enormous attention and foreign investment. This foreign investment spurs opportunistic corruption, conflict, and acts as a disincentive to regulate the mining sector and promote institution-building. The crux of the conflict in DRC is the monopoly over coltan mines currently held by armed groups such as M23 rebels in the eastern provinces. If SSR is the solution to DRC's security crisis, the international external involvement required would need to firstly gather a military grade force that could match the Rwandan troops stationed in the eastern DRC. Secondly, enough incentive would need to be provided to the Rwandan forces to reform the eastern regions. When considering that between 1999 and 2000 Rwanda profited US$250 million from illegally traded minerals from eastern DRC, the likelihood of reform seems ever diminishing.[179]

Despite the clear necessity of SSR in DRC, there exist multiple barriers. Firstly, the SSR activities undertaken must acknowledge the existing structural problems of the country. The DRC relies heavily upon economic and food assistance which contributes to the absence of social and economic capital.[180] Further to this, there is very little political will coming from President Kabila in Kinshasa to engage in DDR programs, as he considers it an 'imported policy'.[181] The UN's role in East Timor was successful in the resettlement of over 100,000 refugees and internally displaced persons, and the holding of free elections and the rebuilding of a civil service. The stark difference between East Timor and DRC is that East Timor welcomed

'Understanding the Role of Bureaucracy in the European Security and Defence Policy', *European Integration Online Papers,* Special Issue I, vol. 14 (2010), pp. 13-22.

[178] Bryden, op. cit. (2005), pp. 23-41.

[179] R. Lemarchand, 'The Tunnel at the End of the Light', *Review of African Political Economy*, vol. 29, no. 93/94 (2002), pp. 389-398.

[180] Bryden, op. cit. (2005), pp. 23-41.

[181] H. Boshoff, 'Overview of Security Sector Reform in the DRC', *African Security Review*. (Pretoria, South Africa: Institute for Security Studies, 2004), pp. 1-14; H. Hoebeke, H. Boshoff, and K. Vlassenroot, '*Assessing Security Sector Reform and Its Impact on the Kivu Provinces*', 'Situation Report', Institute for Security Studies, 2008, pp. 1-10; C. Clément, 'Security Sector Reform in the DRC: Forward to the Past', in H. Born and A. Schnabel (eds), *Security Sector Reform in Challenging Environments* (Munster: Lit Verlag, 2009), pp. 89-117.

external military involvement whereas DRC repudiates foreign presence. Further to this, there is a danger of creating a 'dependency culture' where 'de facto multilateralist states' are created in the place of truly independent stand-alone nations after the withdrawal of international support.[182]

The most prominent instigator of violence in eastern regions is General Bosco Ntaganda.[183] At present, there is an International Criminal Court (ICC) arrest warrant out for Ntaganda, whose former role as CNDP military chief of staff and leader of the Congolese Army M23 mutiny based in North Kivu province of eastern DRC saw the deaths of thousands of Congolese civilians.[184] Ntaganda is charged with widespread rape, murder, mutilation, and the forceful recruitment of child soldiers. In 2008, Ntaganda was appointed a General in the Congolese Army by President Kabila and became a de facto ally of the UN peacekeeping forces present in the eastern regions. Only after continued systematic massacres of civilians did Ntaganda's atrocities become intolerable to the international community.[185] In 2009, a truce between Rwanda and DRC led to Ntaganda and the CNDP's integration into the Congolese Army. Kabila then had reason to defend Ntaganda until diplomatic pressure to seek his arrest in 2012.[186] Ntaganda is supported by the Rwandan military who are aiding his disappearance and evasion of arrest.

It is absolutely essential for the restoration of integrity of state institutions in DRC for Ntaganda and his officers to be effectively prosecuted for their crimes and punished accordingly. It is only then that rebuilding the brutalised eastern Congo can commence with assurance of relative security. Successful SSR would see the further prosecution of human rights offenders, removal of surplus weapons, reintegration of former child

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[182] Bryden, op. cit. (2005), pp. 23-41.

[183] Human Rights Watch, 'DR Congo: Arrest Bosco Ntaganda for ICC Trial' (2012), available online at http://www.hrw.org/news/2012/04/13/dr-congo-arrest-bosco-ntaganda-icc-trial (accessed 26 August 2012).

[184] Ibid.

[185] Ibid.

[186] C. Rhoades, 'Wanted for War Crimes, Ntaganda Still at Large' (2012), available online at http://live.wsj.com/video/wanted-for-war-crimes-ntaganda-still-at-large/9553BB3F-FE3E-421F-984F-0C9D84611915.html#!9553BB3F-FE3E-421F-984F-0C9D84611915 (accessed 26 August 2012).

soldiers into the community, and implementation of transitional legal regimes. Given the DRC's violent past and present coupled with its continuing internal corruption, transitional justice mechanisms such as truth commissions and vetting processes would contribute to successful SSR.[187] For example, in South Africa, the Truth and Reconciliation Commission was used to hear examples of abuse and subsequently forced the departure of many senior government officials.[188] This was key in re-establishing trust in state institutions – something DRC is severely lacking.

The Need for a Functioning Rule of Law

A final measure of institution-building is rule of law. This relates to the courts, the ministry of justice, the correctional system, legal statutes and other legal institutions.[189] The DRC lacks all areas of rule of law. Furthermore, the notion of security is predicated upon a functioning justice system that prosecutes criminals and uses the rules of evidence to determine guilt and innocence objectively.[190] This area of DRC's discourse requires immediate attention, and, much like the judicial system of East Timor, will need to be rebuilt from the ground up. Criminal law requires particular attention as it is often subverted and manipulated by local powerbrokers.[191] The Belgian legal system leftover from colonial times provides the necessary legal framework for judicial reform in the DRC, however it is in itself a misaligned reminder of colonisation.[192]

The instigation of judicial reform as a part of SSR in the DRC would require international mentoring at a minimum until some sort of institutional functionality could be established. After the 1994 Rwandan genocide, the

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[187] P. van Zyl, 'Promoting Transitional Justice in Post-Conflict Societies', *Security Governance in Post-Conflict Peacebuilding* (Geneva: DCAF, 2005), pp. 209-227.
[188] Ibid.
[189] J. Dobbins, S. G. Jones, K. Crane, and B. C. Degrasse, 'Rule of Law', *The Beginner's Guide to Nation-Building* (United States: RAND Corporation, 2007), pp. 73-82.
[190] Ibid.
[191] Ibid.
[192] D. Zongwe, F. Butedi, and C. Phebe, 'The Legal System and Research of the Democratic Republic of Congo (DRC): An Overview' (2007), available online: http://www.nyulawglobal.org/globalex/democratic_republic_congo.htm (accessed 2 September 2012).

donor community contributed US$10 million annually for the prosecution of genocide offenders between 1997 and 2002.[193] The result was 7000 trials with few convictions due to the poor legal processes in place. Similarly, when the International Criminal Tribunal for Rwanda (ICTR) was given an additional US$400 million to conduct its trials of war criminals, less than ten offenders were convicted and the legal and judicial capacity in Rwanda remained unchanged.[194] The practice of judicial reform and injections of funding for prosecutions, while promising in theory, is a treacherous and rarely successful path that would likely line the pockets of the very corrupt officials in line to be prosecuted.

How can Australian Aid Impact the DRC?

As a general concept, the effectiveness of aid has long been debated.[195] What is relevant to the DRC is the level of effectiveness of aid when compounded by mining, civil conflict, and autocratic regimes. According to the Australian Agency for International Aid and Development (AusAID), Australia's estimated budget for Official Development Assistance (ODA) for Sub-Saharan Africa for 2012-13 is AU$354.6 million down from $389 million in 2011-12.[196]

On 27 January 2011, former Foreign Affairs Minister and then Prime Minister Kevin Rudd delivered a speech to the African Union (AU) in Addis Ababa, announcing the opening of Australia's new multi-million dollar embassy in the Ethiopian capital. Rudd reaffirmed the presence of more than

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[193] Van Zyl, op. cit. (2005), pp. 209-227.

[194] Ibid.

[195] F. Bourguignon, and M Sundberg, 'Aid Effectiveness: Opening the Black Box', *The American Economic Review*, vol. 97, no. 2 (2007), pp. 316-321; D. Dollar, and C. Burnside, 'Aid, Policies, and Growth', *The American Economic Review*, vol. 90, no. 4 (2000), pp. 847-868; S. Kosack, 'Effective Aid: How Democracy Allows Development Aid to Improve the Quality of Life', *World Development*, vol. 31, no. 1 (2003), pp. 1-22; OECD-DAC. 'Paris Declaration on Aid Effectiveness: Ownership, Harmonisation, Alignment, Results and Mutual Accountability', Paper presented at the OECD High Level Forum, 28 February - 2 March, Paris, 2005.

[196] AusAID, 'Australian Government Support for Peace Building in Africa' (2012), available online http://www.ausaid.gov.au/countries/ame/Sub-Saharan-Africa/Pages/peacebuilding.aspx (accessed 21 September 2012).

200 Australian mining companies, over 600 projects, and an investment of over AU$20 billion across 40 African Countries.[197]

Since 2006, Australia has given AU$12.6 million to the DRC in humanitarian relief. This came in response to the violent attacks from rebel armed groups forcing the internal displacement of 1.4 million people in the Kivu provinces, mass sexual violence, 1.6 million people in need of food assistance, and half the child population being chronically malnourished.[198] In March 2010, a humanitarian package worth AU$11.5 million was delivered to Somalia, the DRC and Kenya. Five million dollars of this package was allocated to displaced women and malnourished children in the DRC.[199]

Aid and Security

Security is an ever-present issue facing aid delivery. In situations where law and order is not maintained, the need for security sector reform and the protection of civilians during armed conflicts is heavily reinforced.[200] Australia contributed funding to the AU in running an international symposium on the protection of civilians in March 2010.[201] Subsequently, in 2012 the AU was successful in combating and removing terrorist group Al Shabaab from Mogadishu, a conflict that claimed numerous lives and exacerbated the Somalian security crisis. This success validates claims that the AU is the closest body to an institution in place in Central Africa that can oppose the Rwandan forces controlling eastern DRC.

Australia's election to the UN Peace Building Commission indicates a clear commitment to peace and security in Africa. However, despite AusAID being 'committed to assisting African countries achieve and maintain peace

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[197] K. Rudd MP, 'Executive Council Speech, African Union'. Addis Ababa, Ethiopia, 27th January 2011.

[198] AusAID, op. cit. (2012).

[199] Ibid.

[200] AusAID, 'Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade: Inquiry into Australia's Relationship with the Countries of Africa' (Canberra: AusAID, 2010).

[201] Ibid.

and security over the long term',[202] the Organisation for Economic Co-operation and Development (OECD) Creditor Reporting System claims only 1.4% of Australia's total ODA is earmarked for SSR.[203] Since 2010, Australia committed AU$6 million to UN peace building efforts in total, with a focus on Burundi and Sierra Leone, not the DRC.[204] Burundi shares an eastern border with DRC and has a history of military intervention. Should the UN further base its operations there, it would be advisable to act as support to the existing, however nominal, presence of the UN in eastern DRC, where violent attacks on civilian villages occur mere kilometres from UN headquarters in Goma. Given that the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) has no mandate allowing them to use force, they cannot retaliate.

Fortunately, Australia is working to strengthen rule of law in Africa through ODA jointly managed by the Australian Federal Police (APF), the Attorney General's Department (AGD) and the Australian Transaction Reports and Analysis Centre (AUSTRAC) and demonstrated by a total of AU$17.5 million being allocated to commence the Africa Law and Justice Program in 2010.[205] Since 2010, there has been little reported from this programme and most likely it failed to reach the DRC.

Is ODA effective in the DRC?

The question of effectiveness regarding AusAID's ODA in the DRC remains the dominant discourse of this report. It has been widely acknowledged that aid can prove counter-productive to good governance, the formation of effective political and economic institutions, and in many cases encourages a culture of aid dependency.[206] Despite an estimated

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[202] AusAID, op. cit (2012).

[203] Act for Peace, 'Invest in Peace: Opportunities for Australia', in National Council for Churches in Australia (eds), (Sydney: Act for Peace, 2011).

[204] AusAID, op. cit. (2010).

[205] Ibid.

[206] S. Djankov, J. G. Montalvo, and M. Reynal-Querol, 'The Curse of Aid', *Journal of Economic Growth*, vol. 13, no. 3 (2008), pp. 169-194; D. Bräutigam, and S. Knack, 'Foreign Aid, Institutions, and Governance in Sub Saharan Africa', *Economic Development and Cultural Change*, vol. 52, no. 2 (2004), pp. 255-285; N. Birdsall, 'Do No Harm: Aid, Weak Institutions and the Missing Middle in Africa', *Development Policy Review*, vol. 25,

US$2.3 trillion spent on foreign aid worldwide in the last 60 years, there remain stark lessons to be learnt regarding its delivery.[207] Democratic institutions are eroded, incentives for accountability decrease, and the diminishing middle class all results of weak institutions and an over saturation of foreign aid. As far as aid is concerned, the mere construction of physical institutions is not sufficient; they must be staffed by people who possess the relevant training and education, and who believe that there is a substantive intellectual and practicable incentive to do so.

Colonialism left little home-grown institutional basis on which African countries could cope with the development demands of modern states. Newly independent countries, such as the DRC, were unprepared for self-government, certainly after the traumatic transition from Belgian rule. Ethnic, linguistic, and tribal differences dictated the breakdown of local skill bases in the DRC and left a void never to be refilled.

Effective aid delivery is possible and some donors are striving toward this goal. Recently, the Netherlands used direct budgetary support and common pool funding to consolidate the number of aid recipient countries from 80 to 20 in order to reward performance. Similarly, the US created the Millennium Challenge Account to target those countries with a proven success rate in selected indicators using ODA funds.[208] Australia has the potential to build on these precedents and support effective aid delivery by committing to SSR and demilitarisation activities.

Chinese ODA in the DRC

The ever-increasing presence of China in developing countries under the guise of ODA is subject to investigation. Professor Deborah Bräutigam and the World Bank's Lead Economist Stephen Knack argue that Chinese aid programs are in place to 'smooth the way' for Chinese firms to gain access to resources.[209] In comparison to most Western nations, China lags far

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no. 5 (2007), pp. 575-598; M. Huchet-Bourdon, A. Lipchitz, and A. Rousson, 'Aid for Trade in Developing Countries: Complex Linkages for Real Effectiveness', *African Development Review*, vol. 21, no. 2 (2009), pp. 243-290.

[207] Djankov, op. cit. (2008), pp. 169-194.

[208] Bräutigam, op. cit. (2004), pp. 255-285.

[209] Ibid.

behind on ODA as it grapples with defining its presence in Africa as an aid donor.[210] The Chinese model of aid known as the 'Beijing Consensus' is not informed by the Washington Consensus, nor is it framed by IMF or World Bank neo-liberal reform packages.[211] The Washington Consensus recommends that governments should reform their policies and focus on all or a combination of macroeconomic stability by reducing fiscal deficits, opening their economies to the rest of the world through trade liberalisation, and privatising and deregulating domestic product markets.[212] The Beijing Consensus does not abide by the Development Assistance Committee's (DAC) definition of ODA, sparking debate on what is considered to be ODA and what is merely 'aid for trade'.[213] The DAC focuses heavily on social sectors such as education in its definition of ODA, whereas the main Chinese goal is to promote and foster infrastructure and commercial activities.[214] If the Chinese wish to be viewed as a serious aid donor in Africa, especially in the DRC, they need to contribute more responsibly to social capacity-building while encouraging political will for security sector reform and demilitarisation. These competing practices of ODA further challenge Chinese and Western harmonisation in the context of aid for Africa. Foreign aid institutions need to adapt to a different type of engagement with Africa, one in which economic and institutional interests provide a lens through which to contextualise human development aims.

Conclusion

The process of institution-building in DRC will only occur in the long-term if all of the necessary outcomes are achieved. It can be initiated, supported, mentored, and monitored by external forces, but without the trust and willingness of the Congolese population to invest in the public good, institution and peace-building cannot succeed. As a measure of responsible development practice, the Australian aid and development policy-makers

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[210] Tull, op. cit. (2006), pp. 459-479.

[211] Sautman, op. cit. (2007), pp. 74-114.

[212] C. Gore, 'The Rise and Fall of the Washington Consensus as a Paradigm for Developing Countries', *World Development*, vol. 28, no. 5 (2000), pp. 789-804.

[213] D. Bräutigam, 'Aid 'with Chinese Characteristics': Chinese Foreign Aid and Development Finance Meet the OECD-DAC Aid Regime', *Journal of International Development*, vol. 23, no. 5 (2011), pp. 752-764.

[214] Ibid.

should firstly recognise the value of rule of law and the imperative of a functioning security sector. As the number of donors invested in Africa increases by the day, Australia could look to the long-term benefit of promoting security sector reform to China as a legitimate and critical component of its ODA. This would transfer China's aid program away from commercial and economic survival and toward tangible development outcomes.

Suggested effective aid delivery outcomes for the DRC include the implementation of a transitional legal regime with mentoring at its core, the adoption of vetting programs and truth commissions as well as police, military, and intelligence service reforms, and the introduction of a mining code and regulations. Funding from the Australian government in conjunction with other donors would help to effectively demilitarise the eastern regions through the targeted removal of rebel leaders. Engaging the AU is currently the most viable option in this regard. Once the process of SSR has begun, Australia can further engage with other international partners to work in harmony toward common development goals.

The remarkable power of mining has demonstrated its ability to enrich and stabilise the Australian economy while simultaneously decimating Congo's opportunity for growth. Australia has the opportunity to pioneer a new responsible aid modality, one that acknowledges the emergent relationship between resource exploitation and human development. It is well understood that the landscape of Australian aid delivery requires careful navigation of budgetary constraints and changing political priorities. This, however, should not dictate Australia's readiness to take action against the world's injustices.

How Untouchable are the Untouchables? An Analysis of PMFs and their Accountabilities in the Modern Era

Simon Alexander Asfour[*]

Private military firms (PMFs) are a reasonably new and growing phenomenon. As a result, the international environment is relatively ill-prepared for their presence. An urgent and ongoing problem facing both governmental and non-governmental bodies is the accountability of PMFs for their actions in international conflicts. This paper examines what is being done internationally to make PMFs accountable. It demonstrates, with supporting evidence, that such efforts are inherently restricted by market forces which seemingly dictate the landscape of private security contracting, only combated by non-governmental forces. This report will centre predominantly on PMFs hired by government bodies. This specific focus allows for a detailed assessment of actions where PMFs have been required to meet accountability checks and therefore leave trails of solid evidence for external parties.

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Since the end of the Cold War there has been a surge in the number of globally active Private Military Firms (PMFs). After 1991, both the East and West embarked on ambitious programs to downsize and privatise their respective forces given the dissipating need for such substantive numbers of personnel and expensive publicly run militaries.[1] For instance, the Australian Defence Force (ADF) alone released around 18,000 personnel to the private sector between 1990 and 2005.[2] In addition to the influx of large numbers of unemployed soldiers, the global marketplace also experienced a large release of weaponry into the channels of commerce and corporate entities were quick to seize the opportunities offered by government privatisation initiatives.[3] In turn, and as an 'inevitable illustration of the free market ideal', existing PMFs expanded to incorporate broadened services, harnessing the surplus expertise of ex-military personnel. This was coupled with a surge in the establishment of new PMFs.[4]

Creating issues for accountability, PMFs operate in a wide variety of different contexts and circumstances meaning that there is difficulty in creating definitive culpability measures, causing gross difficulty in specifying precise accountabilities. This is exacerbated by the international nature of the industry in which they function. According to academic scholar Jenny Lam, the American military has increasingly relied upon private entities to perform functions which are traditionally reserved for militaries.

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[1] J. Maogoto, 'Private Military Companies & International Law: Building New Ladders of Legal Accountability & Responsibility', *Cardozo Journal of Conflict Resolution,* vol. 11, no.1 (2009), p. 1.

[2] M. Thomson, 'War and Profit: Doing Business on the Battlefield', *Australian Strategic & Policy Institute* (2005), available online: http://150.203.86.5/cipl/Conferences_SawerLecture/05-ANZSIL-Papers/Thomson.pdf (accessed 13 June 2012).

[3] P. Singer, *Corporate Warriors: The Rise of the Privatised Military Industry* (Cornell University Press, 2003).

[4] Put simply, three primary factors fuelled the growth of the private military industry into modern warfare: '(1) large scale reduction of military forces after the Cold War… (2) the policy shift to privatising government services whenever possible; and (3) an increase in regional conflicts'. Please see Maogoto, Private Military Companies & International Law: Building New Ladders of Legal Accountability & Responsibility, p. 100.

These tasks include the support for weapons and communications systems, infrastructure reconstruction and detainee interrogation.[5]

Despite increases in their use, some PMF contracts have been highly contentious. Contracts where PMFs were used as a substitute for political processes or used to engage in activities breaching international law and violating human rights have proven to be consistently troublesome.[6] For example, Executive Outcomes, a South African based PMF, previously used fuel air explosives in Angola which drew attention due to its particularly torturous methodology.[7] On September 16 2007, one of the most controversial incidents involving PMFs in Iraq occurred when Blackwater employees shot and killed seventeen unarmed Iraqi civilians and injured twenty others in a seemingly unprovoked incident.[8] Most infamous, however, was the 2004 Abu Ghraib prisoner scandal licensed by California Analysis Center Incorporated (CACI) which resulted in the most widely publicised incident of misconduct of any PMF misdeeds.[9]

Over the last few years, PMF accountability has been the subject of considerable media coverage, scholarly debate, advocacy efforts and congressional attention. This report assesses what has been done to make PMFs more accountable by drawing examples from all of the focal points above. This report is divided into two sections. The first examines governmental checks on PMFs, focusing on legal strictures, voluntary codes of conduct, and governmental efforts to improve business oversight. The second section looks at the non-governmental checks on PMF accountability following recent developments around victims of abuse bringing lawsuits to Firms and reporting from Non-Governmental Organisations (NGOs). The

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[5] J. Lam, 'Accountability for Private Military Contractors under the Alien Tort Statute', *California Law Review,* vol. 97, no. 1459 (2009)

[6] Ibid.

[7] P. Singer, 'Corporate Warriors: The Rise and Ramifications of the Privatised Military Industry and Its Ramifications for International Security', *International Security,* vol. 26, no. 3 (2001)

[8] J. Meyer, 'US Details Case against Blackwater Guards', *LA Times* (9 December 2008), available online: http://articles.latimes.com/2008/dec/09/nation/na-blackwater9 (accessed 13 June 2012).

[9] Maogoto, op. cit.

concluding section asserts that it is these non-governmental checks which force the greatest amount of accountability.

Governmental

As detailed in the introduction, this section examines forms of governmental checks which may be applied to PMFs in order to hold them accountable for their actions.

Legal reforms addressing the lack of accountability of PMFs is an ongoing process that has been evolving for many years. In order to highlight this environment of flux, and the apparent adaptability of the legal system in combating the lack of accountability by PMFs in global warfare, it is important to identify some of the changes made to international legal regulation in recent history. To date, however, there have been few successful criminal and civil court cases against PMFs.[10] In addition to those who maintain that this may be due to a lack of existing law, there are those who also argue that a more pertinent issue is the inefficiencies of those laws already in place.[11]

PMFs must be held accountable for their criminal actions. While this is primarily a measure to preserve the human rights of those involved in the conflict and adhere to the rules of war, it should also be noted that it forms a sound business strategy. Retaining the support of citizens, both domestic and foreign, is relevant to the profit-making ability of PMFs.[12] It has been claimed that citizens employed by PMFs have in recent times slipped through a legal loophole whereby they are all but beyond the confines of criminal law and thus left largely unaccountable for their actions, causing them to become known as 'the Untouchables'.[13]

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[10] M. Fanara, Circumventing Accountability: Private Military Companies and Human Rights Abuses (January 27, 2011), available online: http://ssrn.com/abstract=1749684 (accessed 24 July 2012).
[11] Ibid.
[12] K. Chapman, 'The Untouchables: Private Military Contractors' Criminal Accountability under the UCMJ', *Vanderbilt Law Review,* vol. 63, no.1047 (2010).
[13] Ibid.

This loophole was enabled by terminological ambiguity. When enshrined in international law, definitions were not strict enough to fully bind all private military entities such as mercenaries, private security companies and contractors. This legal ambiguity restricts the ease of prosecution. The international laws that exist in regard to PMFs, such as the Geneva Conventions, were formulated with classic mercenaries in mind and were thus widely viewed as inapplicable in determining modern-day criminal liability.[14] Legal adaptations were made just shy of a decade after the first formal PMF contract[15] was established; the Logistics Civil Augmentation Program (LOGCAP) contract, demonstrating the law's failure to react quickly to the rapid development of intra-state conflict.

In an attempt to refine the definitions of PMFs and their associated forms, the United States (US) passed a bill in 2000 named the Military Extraterritorial Jurisdiction Act (MEJA). MEJA was enacted to allow those employed by the armed forces, or those accompanying them, to be punishable if crimes were committed within the special maritime and territorial jurisdiction of the US.[16] Despite the government's best efforts, the attempts were of limited success, with twelve prosecutions under the bill since its establishment demonstrating its limited abilities.

Furthermore, in the US in 2007, legislation was enacted in response to atrocities committed by PMFs acting abroad, including the Abu Ghraib incident, who were previously able to operate outside the boundaries of such restrictions.[17] The Uniform Code of Military Justice (UCMJ), the legislative doctrine which provides the foundation of military law in the US and its

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[14] D. Isenberg, 'Narrowing PMC Legal Ambiguity', *Huffington Post* (2 May 2010), available online: http://www.huffingtonpost.com/david-isenberg/narrowing-pmc-legal-ambig_b_560183.html (accessed 26 August 2012).

[15] Paragraph (10) of section 802(a) of title 10, United States Code (article 2(a) of the UCMJ); see Mark Thomson asserts the first formal contract in PMF activity after the Cold War was in 1992. Please see M. Thomson, *War and Profit: Doing Business on the Battlefield*, p. 10.

[16] U.S. Senate, 106th Congress, 768th Session 768. [Public Law 106-523], *Military Extraterritorial Jurisdiction Act of 2000*, Washington: 2000.

[17] J. Maogoto, 'Private Military Companies & International Law: Building New Ladders of Legal Accountability & Responsibility'; P. Singer, 'The Law Catches up to Private Militaries, Embed', available online: http://defensetech.org/2007/01/03/the-law-catches-up-to-private-militaries-embeds/ (accessed 26 Auguest 2012).

actions abroad, was altered to make PMFs more accountable for their actions. As a result, the previous ambiguity surrounding the influence of laws over PMFs was clarified. The UCMJ amended the article, changing the text from '[I]n time of war, persons serving with or accompanying an armed force in the field' to '[I]n time of declared war or a contingency operation, persons serving with or accompanying an armed force in the field'.[18] Prior to this amendment, PMFs, had they been adequately identified under the law, would have only been held accountable if the US Congress officially declared war, an act dormant since the Second World War. As such, those civilians suspected of contractor crimes in missions such as Bosnia, Kosovo, Iraq or Afghanistan fell outside legal jurisdiction. Military contractor conduct could now be much more easily checked by military investigation and the court system.

In 2010, further changes were made to make PMFs more accountable for their actions. Again in the US, the Civilian Extraterritorial Jurisdiction Act of 2010 (CEJA) was enacted in response to the dismissal of five Blackwater guards for their alleged involvement in a September 2007 incident which killed 17 civilians and wounded 24 others at Nisour Square in Baghdad.[19] This act was an effort of the US Congress to extend US jurisdiction to contractors overseas who were not employed directly by the Department of Defence (DOD).[20] Its intention was to ensure that all Americans overseas were covered by law and that they remained accountable for their actions despite being in a jurisdictional 'grey area'.[21]

Both of these measures have since been characterised as a 'meaningful step towards closing the accountability gap', further extending criminal jurisdiction over contractors abroad regardless of its effectiveness.[22]

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[18] *United States Code*, Title 10 U.S. Code, Title 10, Subtitle A, Part 2, Chapter 47, Subchapter 1 (Washington DC, 2012).

[19] J. Tracy, 'Civilian Extra-Territorial Jusrisdiction Act Hearing before Senate Committee' (27 May 2011), available online: http://www.nimjblog.org/2011/05/civilian-extraterritorial-jurisdiction.html. (accessed 25 August 2012).

[20] Ibid.

[21] Ibid.

[22] B. Soder, 'Legislation Addresses Accountability Gap for Private Military Contractors' (2 February 2010), available online: http://www.humanrightsfirst.org/2010/02/02/Legislation-

Despite this, Huma Yasin of South Methodist University has revealed that, although legislation is formulated with best interests at heart, market forces simply protect PMFs from assuming full accountability.[23] Seemingly, governments and PMFs have forged a business relationship which has provided PMFs with a powerful partner, well placed in legal decision making. Despite legislation being enacted as a response to particular instances of PMF misconduct, it appears that contractors such as CACI have been rewarded notwithstanding their 'illegal' acts having allegedly committed gross atrocities against detainees in a 'hard site' at Abu Ghraib prison from 2003-2008. In 2010, CACI was awarded a US$558 million indefinite delivery and indefinite quantity contract to support the US Navy's Space and Naval Warfare Systems Command's command and control operations.[24] Furthermore, the US State Department announced that it would renew its contract with Blackwater for an additional year even after the events at Nisour Square in Baghdad.[25] Despite attempts to ensure accountability for their actions, this demonstrates that PMFs have still received favourable treatment regardless of their contentious actions. This can be attributable to the bond formed between government and business partners. A way to combat this, however, would be to ensure payment to contractors is withheld until such times as the law has been upheld throughout the contract.

A further check by government to make PMFs more accountable is in their efforts made to improve oversight through business and hierarchy. As a direct link between government and business, in 2009 US Secretary of Defence Robert Gates testified that contractors were being used without any

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Addresses-Accountability-Gap-for-Private-Military-Contractors/ (accessed 28 October 2013)

[23] H. Yasin, 'Playing Catch-Up: Proposing the Creation of Status-Based Regulations to Bring Private Military Contractors Forms within the Purview of International and Domestic Law', *Emory International Law Review,* vol. 25, no. 1 (2011)

[24] D. Isenberg, 'I Have a Dream: An International Legal Treaty', *Huffington Post* (3 July 2012), available online: http://www.huffingtonpost.com/david-isenberg/private-military-contractors_b_1320049.html (accessed 27 October 2013).

[25] Ibid.

supervision or any coherent strategy.[26] Thus, the DOD took a number of steps to try and improve the way it managed contractors. These measures included organisational changes such as implementing regulatory and policy changes aimed at improving management and improving training for uniformed personnel on how to manage contractors.[27]

On an international scale, governments have worked with nongovernmental entities to establish voluntary codes of conduct in order to make PMFs more accountable. These codes are standards that 'set forth norms of behaviour that most companies in an industry accept should be followed'.[28] These codes are voluntary and therefore not legally enforceable. However they monitor the level of compliance with such guidelines and give the industry a specific set of guidelines to which all should aspire.[29] These codes aim to obligate PMFs to comply with human-rights principles and international humanitarian law.[30]

The first code to be established was the International Peace Operations Association (IPOA) of 2001. According to the code, the voluntary signatories must abide by a number of laudable provisions such as taking 'every practicable measure to minimise loss of life and destruction of property', to ensuring that 'all Rules of Engagement should be in compliance with international humanitarian law and human rights law'.[31] The IPOA also has a whistle blowing mechanism that is open to anyone who believes that a member company had violated the code.[32] According to the IPOA President Doug Brooks, the International Stability Operations Association (ISOA) represents a step toward a more accountable industry

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[26] M. Schwartz, 'Department of Defense Contractors in Afghanistan and Iraq: Background and Analysis', in Congressional Research Service (ed.) (2011).
[27] Ibid.
[28] D. Isenberg, 'Codes of Conduct: Trust but Verify' (16 January 2009), available online: http://www.cato.org/publications/commentary/codes-conduct-trust-verify (accessed 20 July 2013).
[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ibid.

given additional lines of checking are in place to avert contentious activity taking place.[33]

Additionally, the British Association of Private Security Companies was founded in 2006 stating that members agree 'to follow all rules of international, humanitarian and human rights laws...'.[34] It also provides the 'provision of guidance on the substance and requirements of international statutes'.[35]

Finally, in 2008, seventeen states[36] finalised the 'Monteux Document' on private military and security companies. This Code was the first international document to describe international law as it applied to the 'activities of private military and security companies whenever these [were] present in the context of an armed conflict'.[37] The Code was established to serve as a guide on the legal and practical issues raised by PMFs. It also gives expression to the consensus that international law does have a bearing on PMFs and that there is no legal vacuum for PMF activity.[38]

Where the limitations of these Codes lie is in getting signatories to abide by the rules they have assigned themselves to. The Geneva Center for the Democratic Control of Armed Forces demonstrated the limitations of these Codes by stating:

> [i]n order to guarantee the universal character of the international standards included in codes of conduct despite their voluntary – and thus selective — acceptance by companies, a suitable implementation and monitoring mechanism should be created in which violations of

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[33] International Stability Operations Association, 'International Stability Operations Association', available online: http://stability-operations.org/ (accessed 14 May 2013).

[34] Isenberg, 'Codes of Conduct: Trust but Verify'.

[35] British Asscoication of Private Security Companies, 'British Association of Private Security Companies', available online: http://www.bapsc.org.uk/ (accessed 26 April 2013).

[36] Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom, Ukraine, and the United States of America.

[37] International Committee of the Red Cross, 'The Montreux Document on Private Military and Security Companies', available online: http://www.eda.admin.ch/psc (accessed 13 Spetember 2013).

[38] Ibid.

these standards both inside and outside a company can be addressed, discussed and ultimately also penalized.[39]

This issue has been further complicated by the efforts of PMFs to justify their actions in the eyes of their employers. Given their seemingly close relationship with government, as their employers, and thus access to those who craft and enforce the law, the motivations of government action in urging the creation of voluntary codes are questionable. The efforts to press signatories into non-binding guidelines as 'part of a larger movement to improve global corporate responsibility' could ultimately be inspired by the desire to appease their business partners, not necessarily to curb illicit behaviour.[40] In summary, voluntary principles fail to provide any direct mechanism of accountability, but are rather intended to assert aspirational principals.[41]

Non-Governmental

To help understand what is being done to make PMFs more accountable, checks from non-governmental entities must also be assessed. It is certainly possible for non-governmental entities to force PMFs to account for their actions. The following section will analyse two great forces of checks on PMF accountability: the pursuit of lawsuits against the companies by individuals; and reports from NGOs bringing about awareness to the external populace.

Victims of PMF abuses are a key demographic that have recently started asking questions about PMF activities. Human rights advocates have adopted legal and non-legal strategies in international and national forums to hold PMFs accountable for their human rights abuses.[42] Furthermore, they

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[39] N. Roseman, 'Code of Conduct: Tool for Self-Regulation for Private Military and Security Companies', available online: http://www.humanrightsfirst.org/our-work/law-and-security/ending-contractor-impunity/ (accessed 12 February 2013).

[40] J. Cockayne, *Beyond Market Forces, Regulating the Global Security Industry* (IPI, 2009).

[41] Yasin, 'Playing Catch-Up: Proposing the Creation of Status-Based Regulations to Bring Private Military Contractors Forms within the Purview of International and Domestic Law'.

[42] Anonymous, 'Combating Imputnity in Focus- Demanding Justice', *Business and Human Rights Documentation Project* (International Network on Economic, Social, Cultural Rights and the Center for Human Rights and Global Justice at New York University Law School).

have also advocated international minimum standards of conduct and binding law to regulate global PMFs.

In October 2007, 22 Iraqi citizens, represented by the Center for Constitutional Rights and private attorneys, sued Blackwater for its involvement in the previously mentioned Nisour Square shootings.[43] They sued Blackwater on the grounds of creating a 'culture of lawlessness…at the expense of human life'.[44] The families of three men killed 'unjustifiably' at Al Watahba Square in September 2007 brought further action against Blackwater in December of the same year.[45] In January 2010, both of these civil cases resulted in a settlement agreement whereby Blackwater paid reparations of US$30,000 for each wounded person and US$100,000 to the families of those who were killed.[46]

Notwithstanding these cases, it is not always that tried Firms are found guilty or settle terms. The failure of many cases again demonstrates the limitations of the checks being put in place to make PMFs more accountable for their actions. In 2004, over 250 survivors of acts of torture at Abu Ghraib and their families brought legal action against Titan/L-3 and CACI International for their alleged involvement in the abuses.[47] They brought the case on grounds of 'torture, negligence, and sexual assault, in violation of state, federal and international law'. However the cases were dismissed on the grounds that private military contractors enjoyed immunity because they act in 'common mission' with the US military.[48] This non-governmental loophole is a good example of the limitations of governmental legal checks when attempting to hold PMFs accountable for their actions. PMFs seem to

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[43] Ibid.

[44] Abtan, et al., *Center for Constitutional Rights* (District Court for the Easter Distrcit of Virgina, 2010).

[45] Ibid.

[46] M. Baker, 'Blackwater Settles Series of Civil Lawsuits', *Huffington Post* (1 July 2010), available online: http://www.huffingtonpost.com/2010/01/07/blackwater-settles-series_n_414706.html (accessed 24 May 2012).

[47]Anonymous, 'Accountability for Torture by Pmc- the Cases against Titan/L-3 and Caci', available online:
http://ccrjustice.org/files/Accountability%20for%20Contractors%20factsheet%2012.11%20(2).pdf (accessed 13 March 2013).

[48] 'Haider M Saleh, Et Al. V. Titan', in United States Court Of Appeals (ed.), *08-7008* (Columbia, 2009).

be largely protected by laws as prescribed in the previous section, with a business partnership taking precedence over legal continuity.

NGOs have also attempted to hold PMFs to account for their actions. Organisations such as Amnesty International and Human Rights First and War On Want work to ensure that victims of rights violations are provided with justice.

In July 2009, Amnesty USA lobbied US Attorney General Eric Holder to ensure that contractors implicated in cases of detainee abuse do not escape scrutiny and are fully investigated and prosecuted where appropriate.[49] This action, according to Amnesty, helped to provoke the proposition of CEJA, helping to close the gaps in US law to ensure that contractors can be prosecuted for crimes committed overseas.[50] Human Rights First also lobbies the US government, issuing reports outlining the issues on PMF accountability and 'putting forth recommendations to establish accountability and oversight'.[51] In addition, NGO War On Want (WOW) lobbies the United Kingdom (UK) Government on the continued national regulation of the private security industry. WOW campaigns in the public forum, detailing that voluntary codes such as the IPOA are not stringent enough and are therefore not the answer to the culture of impunity that PMFs enjoy.[52]

NGOs are powerful in checking PMF accountability due to their distance from governmental bodies. Those entities removed from governmental roles appear to provide more substantive checks on PMF accountability given that

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[49]Amnesty, 'Existing National Laws for Accountability and Prosecution', available online: http://www.amnestyusa.org/our-work/issues/business-and-human-rights/private-military-and-security-companies/existing-national-laws-for-accountability-and- (accessed 10 January 2013).

[50] Amnesty, 'A Real Chance for Accountability for Private Security Contractors', *Human Rights Now Blog*, available online: http://blog.amnestyusa.org/business/a-real-chance-for-accountability-for-private-security-contractors/ (accessed 11 June 2013).

[51] Human Rights First, 'Accountability for Private Security Contractors', available online: http://www.humanrightsfirst.org/our-work/law-and-security/ending-contractor-impunity/ (accessed 15 October 2012).

[52] War On Want, 'Private Military & Security Contractors: A Culture of Impunity', available online: http://www.waronwant.org/news/latest-news/17468-companies-profiting-from-conflict-take-action-to-end-impunity (accessed 14 January 2013).

their efforts so raise awareness of pertinent issues are not influenced or manipulated by government-contract partnerships. The methods and operational standards suggested by NGOs are exemplary in their attempt to hold PMFs to strict regulations. Until these standards and practices are adopted by those bodies which have the power to directly affect the profits and methods of PMFs such solutions remain a long way off.

Will these Efforts be Successful?

Today, PMFs remain largely unaccountable for their actions. The failure of governments and the international community to introduce binding legal precedents forcing accountability onto PMFs has allowed unregulated activity to blossom. The close link between the use of PMFs and the fiscal benefits for governments and those they employ suggests that any disruption to the freelancing ability of PMFs is a financially unattractive proposition.

PMFs remain largely unchecked by measures implemented internationally which aim to hold them accountable for their actions and to limit their freedom in environments of conflict. Ambiguity in enshrined law, both international and domestic, is to this day inefficient in dealing with the freedom enjoyed by PMFs since the early 1990s. Even after efforts to adequately modify codified law, the exact nature of PMFs and their relationship to such doctrines is still troublesome. The changes appear to have been made in vain given the close relationships forged between PMFs and their government contractors. Furthermore, voluntary codes put in place that are reliant upon the philanthropy of the PMFs are rather limited in their ability to combat the problem due to their non-legally binding nature. In addition, those afflicted by PMF activity have limited appeal given the legal standing of PMFs in domestic and international legal systems.

It appears that those most capable of checking the link between government and PMFs are NGOs, tasked with raising awareness of PMF activity and providing consistent accountability checks. Without these checks, efforts from other areas attempting to provide accountability measurements will fall short, given the links between government and contracted firms. Adopting the standards of NGOs in viewing the issue and finding ways to disrupt the financial benefits of offending PMFs, such as finance withholding, is potentially the only way to successfully hold PMFs to account. As Huma

Yasin established, the potency of capitalist market forces keep PMFs from assuming full accountability given the strength of partnerships forged in conflict zones, notwithstanding the damage caused in select cases. Governments and Firm partners must assume greater responsibility in providing accountability checks if their efforts are to be deemed a success. Otherwise, those whom lack links to government and contractual partnerships will have to go it alone in providing legitimate checks to PMF activity.