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Dear Readers,

It is with great pleasure that we present to you Volume LI, Number 2 of the *Towson University Journal of International Affairs*. This edition of the Journal contains articles on a variety of topics that carry with them important implications for the study and practice of international affairs. Coincidentally, all of the articles featured in this issue were written by authors affiliated with Towson University, including an alumna, two current students and *Journal* members, and a faculty member in the Department of History. These articles demonstrate the variety and high quality of work that members of the Towson community regularly produce, and we are delighted to publish their work in this edition of the *Journal*.

First, Mackenzie E. Rice examines the prominence of masculinity within American nationalism and its influence on U.S. foreign policy in her article, “When Gendered Identities are National Identities: The Influence of Masculinity on American Foreign Policy.” In this unique analysis of American foreign policy, Rice demonstrates how a societal preference for and emphasis on masculinity has historically impacted both the rhetoric and outcome of various U.S. foreign policy decisions. Using the Cold War, the aftermath of 9/11, and the current administration as case studies, Rice demonstrates the impact of masculinity on the formation of both American national identity and foreign policy, offering a compelling and critical analysis of American culture and society in the process.

Second, Cameron H. Bell explores a new and emerging field within contemporary international relations in “Cyber Warfare and International Law: The Need for Clarity.” Cyber warfare is becoming a prominent alternative means by which states engage in acts of aggression against each other, which was evidenced by Russia’s interference in the 2016 U.S. presidential. However, Bell argues that current international law is not prepared to address this emerging form of interstate aggression. More specifically, the current definition of aggression under U.N. General Assembly Resolution 3314 must be expanded to include cyber warfare if this new threat is to be handled properly. In his article, Bell utilizes a number of case studies to illustrate the need for cyber warfare to be included within the framework of international law, as this threat is certain to become more widespread and must be addressed by the international community in a direct and forceful manner.

Third, Harry Nitzberg dissects the complexities behind Venezuela’s current economic crisis in “Cauterization and Infection: Trying to Fix the Venezuelan Economy.” In this article, Nitzberg analyzes the crisis in Venezuela and offers a set of solutions designed to stabilize the Venezuelan economy. By thoroughly examining the historical and factors behind Venezuela’s current state of affairs, Nitzberg is able to propose a set of solutions that operate within Venezuela’s existing political reality and are not overly ambitious or unrealistic. In doing so, he has provided a crucial analysis of the often under-discussed economic and human rights crisis in Venezuela.
Finally, Dr. Robert E. Rook of Towson University offers his perspective on North Korea’s tenuous relationship with the international community in “Arts of Evasion: North Korea, Sanctions, and the World.” This article constitutes a summary of Dr. Rook’s comments in his lecture for the second installment of the Dr. Eric A. Belgrad Lecture Series. We are very grateful for Dr. Rook’s contributions to the lecture series and this edition of the Journal. In this article, Dr. Rook draws on his years of experience studying the region to explain the various mechanisms by which North Korea has evaded the sanctions levied against it to continue to exert influence on the world stage. By exploring the various tools by which North Korea has been able to avoid the consequence of these sanctions, Dr. Rook offers an important analysis that provides the historical strategic context for understanding the actions of the Kim regime in response to international pressure.

As evidenced above, this issue of the Journal addresses a wide range of topics and approaches within the field of international affairs. The insights are original and we hope you find them as thought-provoking as we did. We are pleased to feature them here, and we sincerely trust that you find this issue of the Towson University Journal of International Affairs to be informative and timely.

Sincerely,
Tim Bynion and Amna Rana
Editors in Chief
TOWSON UNIVERSITY
JOURNAL OF INTERNATIONAL AFFAIRS

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When Gendered Identities are National Identities: The Influence of Masculinity on American Foreign Policy

Mackenzie E. Rice*

Abstract: National identities are constructed through the process of ascribing a society’s preferred attributes to the image of the state at large. In the United States, gender remains a prevailing construct that drives definitions of both individual and collective American identities. Societal preferences for masculinity frame a gendered depiction of the American identity, and subsequently shape foreign policy; as American political leaders design policies and champion rhetoric that serves to project masculinity to both allies and enemies abroad. The connection between foreign policy and masculinity, while often envisioned as “natural” or “intuitive” in traditional theories about international security and conflict, is in fact forged consciously, and in the case of the United States, predicated on gendered national identity preferences. Moreover, feminist analysis of past and present American foreign policy provides a deeper understanding of the true extent to which gendered identities have the ability to structure and define foreign policy discourse. This understanding is important, as all identities taken to extremes have the potential to be manipulated for political gain. Therefore, in the case of the United States, a comprehensive awareness of the interaction between national identity and foreign policy formation is imperative in order to maintain the ability to empirically evaluate foreign policy options.

I. Introduction

National identities are formed through the same socialization processes that shape the personal identities of individuals. As the American public makes decisions on the individual level about their identity preferences and personal image, these incremental decisions are aggregated to form an overarching national identity. Gender is one of the most salient social constructs in the United States of America, and it greatly influences the way in which the American people define themselves as a collective group and determine their national identity preferences. Dr. Anthony D. Smith of the London School of Economics defines national identity as “a measure of common culture and civic ideology, a set of common understandings and aspirations, sentiments and ideas that bind the population together in their homeland.”¹ In the United States, these ideas of common culture, understanding, and ideology are constructed based on masculine values and characteristics. The American construction of national identity based on masculinity greatly influences the image of the United States that Americans wish to project on the international stage, as well as the preferred American foreign policy solutions to issues of national security arising from external threats.

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The role of masculinity in American foreign policy can be discerned by examining the rhetoric used by politicians to frame policy positions in addition to actual policy execution. Foreign policy rhetoric is often used as a tool for expressing the state’s international objectives and providing justification for them.2 Rhetoric, by nature, is emotionally charged and provides a rationale for national objectives by grounding them deep in personal concepts such as national identity and community values. Therefore, to assess the presence of masculinity in past and present American foreign policy concerns, there is value in examining the rhetoric used by political officials as forum that expresses the motivations of foreign policy, as well as the implementation of policy itself. Furthermore, the United States’ choice to use masculinized national identities as a driving force in foreign policy is particularly apparent when past and present foreign policy decisions are contrasted with relevant feminist analyses of the same issue or event, which illustrate strong alternative policy perspectives. The emergence of masculinity in foreign policy rhetoric and action is most pronounced when the United States is involved in a conflict that poses a credible external threat to national security. The two most notable occurrences of this phenomenon are the Cold War and the period following the 9/11 terrorist attacks, including both the war in Afghanistan and the war in Iraq. In addition, the United States is currently experiencing a magnification of masculinity in American foreign policy under the Trump Administration. These three eras of United States foreign policy serve as ideal case studies that illustrate the pervasive nature of masculinity in American national identity and the resulting implications for foreign policy.

II. Constructing the National Gender

Before assessing the impacts of masculinity on American foreign policy, it is important to understand how gendered identities are formed, their defining attributes, and the policy implications when they are used on a national level. When individuals adopt certain traits and align themselves with various identity attributes, they are making implicit decisions about the way in which they wish to be represented and perceived. In the discipline of social psychology and gender studies, this phenomenon is known as gender-role preference, defined as “activities or traits that one would prefer to engage in or possess.”3 Applying the principles of gender preferences on a national level, national identities are similarly influenced by the ideals that the American public holds about gender, and the specific gender traits that Americans prefer as part of their collective identity.

Foundational scholarship in the field of gender studies frequently uses Bem’s Sex Role Inventory (BSRI), developed by Dr. Sandra Bem in 1974, to measure individual self-selection of gender attributes.4 The results of Bem’s original study using the BSRI found twenty traits that were determined to be representative of masculinity because they were commonly selected as more desirable by men than by women. The masculine gender traits listed in this inventory include attributes such as assertive, dominant, forceful, aggressive, and strong.5 By contrast, the BSRI also found a list of attributes such as sensitivity, sympathy, compassion, understanding, and warmth to be more feminine because they were significantly more desirable as self-identifiers to women than to men.6

5 Ibid., 365.
6 Ibid., 369.
about gender and its relationship to sex have certainly changed greatly since the development of the BSRI in 1974, and it is becoming ever more conventional to recognize “masculinity” as a concept distinct from the male sex, and “femininity” as a concept distinct from the female sex. Thus, traits of masculinity are not solely reserved for individuals of the male sex, and nor are the traits of femininity restricted to use solely by individuals of the female sex. However, the associations that the BSRI established between masculinity and traits of assertiveness, dominance, forcefulness, aggressiveness, and strength, and associations of femininity to traits of sympathy, compassion, understanding, and warmth, remain a valid analytical framework in the field of gender studies today.

Connecting these traditional attributes and roles of masculinity and femininity to the development of American national identity, a study recently published in Psychology of Women Quarterly found that both male and female respondents identified men and masculine attributes to be “more American” than women and feminine attributes. Furthermore, 2017 survey results from the Pew Research Center report that more than half of Americans agree that society looks up to men who are “manly or masculine.” In addition, a larger percentage of Americans agree that society looks down on women who are “womanly or feminine” than men who are “manly or masculine.” The survey also indicated evidence of how deeply gender preferences are ingrained and reinforced in American socialization processes by assessing the American public’s opinions about gender roles when raising children. While respondents overwhelmingly approved of encouraging girls to be like boys, they expressed significantly less approval of encouraging boys to be like girls. These opinions about gender in the United States reveal not only a connection between American national identity and masculinity, but also a prevailing societal subordination of feminine attributes and behaviors to masculine ones.

These gendered preferences that lay at the foundation of American national identity form the basis of the national image that the United States strives to convey through foreign policy. As a result, foreign policy platforms of national leaders are designed to portray the United States as a tough, often aggressive, global power. The role of masculinity in American foreign policy became extremely salient at the conclusion of World War II. In the aftermath of World War II, as the United States emerged as a global leader in democratic governance, military capabilities, and economic strength, the state began to seek a “fatherly role” in the world order. In addition, the development of a large standing military in the United States following the conclusion of World War II created a national glorification of American “men at war,” further promoting an idealized image of American masculinity, particularly with regard to conflict. Since this formative time in the history of American national identity, the United States has continued to forge deep connections between masculinity, national image, and militarization. As a result, when the United States is faced with credible external threats to national security or ideology, which illicit increased levels of nationalism from the American public, policy-makers rely on national identity constructs to form and justify

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9 Ibid.
foreign policies that project the desired masculine attributes of American identity to enemies and allies abroad.

III. Hegemonic Masculinity, World War II, and United States Foreign Policy

The use of masculinity during World War II bolstered the glorification of the United States military, contributed to the development of the American military industrial complex, and ultimately prompted the development of American hegemonic masculinity. Hegemonic masculinity is most succinctly defined by scholars R.W. Connell and James Messerschmidt as “the currently most honored way of being a man, it require(s) all other men to position themselves in relation to it, and it legitimate(s) the global subordination of women to men.”

The distinctive feature of hegemonic masculinity that differentiates it from other forms of gender ordering is that actors demonstrating hegemonic masculinity also assert dominance over other forms of subordinated masculinities. It is important to recognize that hegemonic masculinity is reflected in state foreign policy not because state leaders are predominantly male, but rather because institutional, organizational, and societal frameworks that are designed to reflect social preference of masculinity.

These practices of embedding culturally gendered notions in public institutions eventually results in a “common sense” ascription of masculinity to all things political, thereby setting a standard of hegemonic masculinity which is seldom questioned, and to which all policy is measured against. In the case of the United States, masculine national identity serves as the societal framework that validates the implicit associations between masculinity and foreign policy.

On an international level, states clearly demonstrate hegemonic masculinity when they engage in the processes of classifying or “othering” enemies perceived as threats to national security. Often when the United States is faced with an external security threat, the state impulsively embarks on a campaign to emasculate the enemy, or somehow mark the opposition’s masculinity as inferior to that of the American identity. During the Cold War, this tactic of hegemonic masculinity was used when the United States forged the association between communist sympathizers and homosexuality, in an attempt to make the enemy seem softer and less masculine.

This need to ascribe an inferior gendered identity to the enemy was exhibited during the response to the terrorist attacks of 9/11 though rhetoric that classified the terrorists as cowardly and deviant men, as well as the use of sexual humiliation to torture imprisoned terrorist suspects.

The persistent use of gender ordering and sexuality to define state enemies as lesser or to position them in opposition to the American identity is a definitive indication of the United States’ use of hegemonic masculinity in foreign policy.

Additionally, hegemonic masculinity is particularly salient to analysis of United States foreign policy because it can trigger policy responses that are characterized by hyper-masculinity. Ashis Nandy is thought to be the first scholar to clearly define the concept of and circumstances that give rise to “hyper-masculinity” in her study of colonialism. Nandy describes hyper-masculinity as, “reactionary masculinity that arises when agents of hegemonic masculinity feel threatened or undermined, thereby needing to inflate, exaggerate, or otherwise distort their traditional masculinity.”

Hyper-masculinity is most evident in the rhetoric that cloaks United States foreign policy initiatives as a mechanism of justifying and gaining public support for foreign policy initiatives. The two most recent instances of this

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14 Laura Sjoberg, Gendering Global Conflict, 213.
phenomenon include the Cold War era of American foreign policy and the post-9/11 response to global terrorism. Therefore, American foreign policy during these time periods serve as ideal case studies from which to assess the prevailing nature of masculinity in the foreign policy initiatives of the United States government, as well as the complementary gendered public rhetoric that accompanied these initiatives.

IV. Alternative Perspectives: Feminist Foreign Policies and International Relations Theory

The development of hegemonic masculinity in American national identity and political culture has cultivated a precedent for assuming that matters of foreign policy necessitate masculine approaches and policy prescriptions. However, the assumption that there is an implicit association between foreign policy and masculinity fails to consider other perspectives on issues such as security, negotiation, and conflict that do not fall within the framework of traditional masculinity and has the potential to create foreign policy blind spots. While masculine attributes and themes are valuable in motivating and implementing foreign policy, the masculine perspective is only representative of one school of thought. As an alternative analytical framework, feminist foreign policy and security studies scholarship recognized the role that gender plays in relationships between states and the foreign policy choices that states make. By doing so, feminist theories in these fields raise questions about why certain issues are privileged over others in a state’s foreign policy decision-making framework and seek to challenge these norms.

Author and political science theorist Ann Tickner is credited as one of the founding authors of feminist international relations theory, which has paved the way for feminist scholarship in other areas including foreign policy and security studies. In her groundbreaking 1992 book *Gender in International Relations*, Tickner notes that international relations is one of the last fields of social science to embrace gender analysis, and claims that “the reason for this is not that the field is gender neutral, meaning that the introduction of gender is irrelevant… but that it is so thoroughly masculinized that the workings of these hierarchical gender relations are hidden.” Since the foundational work of Tickner, feminist foreign policy and feminist security studies have grown exponentially and continued to become increasingly diverse. Today, feminist perspectives on foreign policy and international relations include alternative frameworks for conceptualizing state relationships, methods of achieving state security, embracing the inclusion of feminine experiences of war and conflict, and analyses that advocate the importance of women in state-building and sustainable development. Each of these perspectives have applications to both past and present foreign policy case studies.

Valuable insight on the role of gendered national identities in foreign policy can be gained by contrasting traditional “masculinist” approaches to foreign policy concerns with feminist analysis of the same issue. In order to better comprehend the embodiment of masculinity in American foreign policy, this paper provides alternative feminist interpretations of three case studies of American foreign policy. The purpose of these comparisons is not to argue that one analytical lens is inherently better than the other, but rather to recognize the relationship between masculine and feminine foreign policy and to highlight their complementary nature. By drawing these connections, this analysis illustrates how American foreign policy decision is often unbalanced in favor of masculine frameworks,
due to the need for policymakers to appease the masculine-centric national identity preferences of the American population. Therefore, it is important to consider feminist perspectives on state security and foreign policy in order to gain a more comprehensive understanding of the extent to which masculinity has acted as a mobilizing, justifying, and legitimizing force in American foreign policy.

V. United States Foreign Policy Case Studies

Setting Precedent: Masculinity and the Cold War

Although masculinity has had a pervasive role throughout the history of United States’ national identity, it became extremely pronounced as a foreign policy motivator during the Cold War. In the era of the Cold War, the United States faced the ideological threat of the rise of communism in the Soviet Union, which was thought to be an oppressive form of government that stood in opposition to traditional American values of freedom, capitalism, and democracy. This opposition caused Americans to pull inwards, exacerbating the importance of masculine attributes and ideals such as strength, resolve, and dominance in defining their collective national identity. As a result, the ideological threat was characterized as the antithesis of American identity; in this case, communism and communist sympathizers were emasculated. Furthermore, the emasculation of Soviet opposition and reaffirmation of a tough American masculinity was reinforced by the rhetoric and foreign policy initiatives of Cold War political leaders such as presidents John F. Kennedy and Ronald Reagan. Thus, the Cold War is a landmark case in the development of masculinity as a foreign policy motivator, as it established a political environment where the legitimacy of leadership was determined by gendered polarities of strength and weakness.20

Societal opposition to communism during the Cold War era produced gendered political polarization. During the early years of the Cold War, President John F. Kennedy stressed the importance of presenting a tough, masculine persona on the international stage; and maintained that a decline in rugged American masculinity at home would effectuate a decline in American military capability abroad.21 As the Cold War wore on, an obsession with masculine toughness in foreign policy discourse emerged, which also rendered anything perceived soft or feminine as a threat to national security. However, communism in the era of the Cold War was associated with more than simply “softness.” It was also associated with homosexuality, which was, at the time, an identity that was the antithesis of masculinity. During the 1950s and 1960s, mass media and literature in the United States developed an almost cautionary tale of “failed men” who turned into communists and homosexuals; “soft, spineless dupes of a foreign power who were incapable of standing up for themselves.”22 This example of gender-ordering illustrates how the American public often defines and constructs its collective national identity in opposition to external threats; gravitating towards the masculinization of the United States and the emasculation of its opponents. Furthermore, the use of gender and sexuality to characterize the threat of communist ideology during the Cold War is a clear example to the United States demonstrating hegemonic masculinity by engaging in cross-sectional gender ordering.

This gendered narrative of communism vs. democracy during the Cold War also greatly impacted the foreign policies pursued by the American government. To prevent the spread of communist ideology, American political leaders at the time believed they needed to

21 Ibid, 30.
22 Michael Kimmel, Manhood in America, 170.
project the strength and resolve of the United States through mechanisms of foreign policy, and demonstrate the impenetrable nature of American national identity. One of the most compelling cases to use as a study of masculinity and American foreign policy during the Cold War era is the Vietnam War. Historian Christian Appy claims that, “U.S. policy in Vietnam was driven by men, who were intensely concerned about demonstrating their own – and the nation’s – toughness.”

While the Vietnam War became increasingly difficult to swallow, with images of scorched villages and dying Vietnamese civilians becoming commonplace, American policymakers became more and more dependent on the idea of maintaining strength to justify a war in which American lives were being lost for little evidence of military gain. Moreover, the Vietnam War became a proxy for the United States to reaffirm its fatherly role that it sought to adopt after the conclusion of World War II. As a result, leaders of American foreign policy during the Vietnam War felt compelled to maintain and increase the United States’ military action in Vietnam, for fear of appearing to have failed in their desired role as the global father-figure. This masculine-centric justification for military involvement in Vietnam was effective in prolonging the Vietnam War, as it embodied principles that were tightly bound to American sense of self and collective identity.

For the duration of the Cold War, the conflict was presented to the American public within an oppositional framework. This opposition was highlighted in President Ronald Reagan’s famous 1983 “Evil Empire” speech, in which he implored Americans to resist the temptation to “label both sides equally at fault, to ignore the facts of history and the aggressive impulses of an evil empire… and thereby remove yourself from the struggle between right and wrong and good and evil.” Rather, the American public was urged to accede to a framework of moral absolutism that strictly aligned Soviet Union as the malicious opposite of virtuous American interests. This villain-hero narrative promotes zero-sum solutions and is a hallmark of masculine American foreign policy, particularly during the era of the Cold War. However, in the diverse field of international relations theory, oppositional frameworks are not the only approach to international conflict. Renowned feminist international relations author Laura Sjoberg explains that “traditional” masculine approaches to conflict adopt an oppositional, or “dyadic” approach. Dyadic analysis and approaches focus on characteristics that states bring to an interaction and estimate the likelihood of conflict based on these independent features. This framework of analysis particularly salient in research surrounding the causes of war is a primary foundation of the democratic peace theory. Alternatively, Sjoberg offers a feminist approach to international conflict that views state interaction through a relational, rather than oppositional, frame of analysis. Relational analysis in international relations is deemed to be feminist because it gives weight to the “emotional connectedness and social interdependence” of states in the international system; principles which are borrowed from the field of gender studies. Rather than focusing on the

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27 Laura Sjoberg, *Gendering Global Conflict*, 106.
29 Ibid, 106.
30 Ibid, 106.
31 Ibid, 108.
individual traits that states bring to an interaction, relational theories center on the shared interests that facilitate state interaction.

While an oppositional framework was the prevailing model for United States foreign policy during the Cold War, relational approaches to conflict and conflict prevention during this period were not entirely absent. However, when relational policies were pursued, they were typically cloaked in masculine policy rhetoric with the intent of maintaining a firm oppositional image. One of the most definitive moments of the Cold War that serves as an example of relational (feminist) policy cloaked in oppositional (masculine) rhetoric, is the Cuban Missile Crisis. During the tense, thirteen-day stretch that encompassed the Cuban Missile Crisis in 1962, President Kennedy was encouraged by many key policy advisers to take a hard-lining oppositional response by launching air-strikes in Cuba or initiating an invasion. However, President Kennedy’s response reflected principles of relational foreign policy. Historian Christian Appy asserts, “the crisis was resolved not by bluster or bravado, but by patience, flexibility, and a willingness on both sides to negotiate and compromise.”

Publicly, the solution to the crisis was that Premier Nikita Khrushchev of the Soviet Union would remove nuclear weapons from Cuba, in exchange for a public statement by President Kennedy that the United States would not invade Cuba. Secretly, without a public announcement, Kennedy also agreed to remove nuclear weapons from Turkey as part of the resolution to the crisis. The private nature of the latter part of this diplomatic solution was designed so that the Kennedy administration could sell the story to the American public that Kennedy had “strong-armed” Khrushchev until he agreed to back down. In private, President Kennedy added more vulgar flare in recounting the story; when talking about his interactions with Khrushchev, Kennedy said, “I cut his balls off.” Despite Kennedy’s tactical use of relational foreign policy to navigate one of the most critical negotiations in the history of the United States; the public narrative was that his manliness had saved the day.

The Cold War serves as a foundational example of masculinity in American foreign policy because the emergence of the United States as the victor of the Cold War validated the use of masculine foreign policy prescriptions and rhetoric to defeat an external threat. One of the products of the Cold War that exemplifies the emergence of persistent masculinity for the future of American foreign policy was the rise of the military industrial complex in the United States and the development of the national security state. Military servicemen and women became the embodiment of resolution, strength and toughness, demonstrating the value of using the presence of a large military as a system of defense. Since the Cold War era, references to the American military and soldiers have been incorporated into the fabric of everyday American lives, with the intention of serving as a constant reminder of America’s dominance and masculinity. In some ways, the size of the military during the Cold War is held as the gold standard for American investment in the military. During the 2016 presidential election campaign, Donald Trump cited the size of the American navy, air force, and active-duty servicemen in 1991 at the end of the Cold War as a standard to which the American military should be rebuilt to meet. As the role of masculinity in American foreign policy has developed over time, the Cold War foreign policy principles such as the

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33 Ibid, 77.
emasculating enemies, establishing a never-back-down mentality and the importance of a large, stand as tools of projecting strength have been reoccurring themes.

Overall, the success of the United States in navigating Cold War foreign policy established a standard for how “tough” future foreign policy decisions should appear in order for them to be desirable and consistent with the idealized American image. Gendered tactics that were used during the Cold War, such as emasculation of the enemy and moral absolutism, as well as rhetoric that boasted the use of strong-arm diplomacy became normalized in American foreign policy following their use in the Cold War era. In addition, the case of the Cuban Missile Crisis reveals that even when the United States’ foreign policy decisions may have been guided by principles of feminist theory, they are cloaked in masculine rhetoric by American political leaders and media outlets in accordance with gendered national identity preferences. Masculinized foreign policy tactics and rhetoric similar to that employed by the United States during the Cold War reappear in the United States’ response to 9/11 and in the era of President Trump’s America First Foreign Policy.

Maintaining the Image: Masculinity and the Response to 9/11

The terrorist attacks of September 11, 2001 on the United States evoked a resurgence of American nationalism, the magnitude of which had not been felt since the Cold War. The response of the United States to 9/11 demonstrated the hyper-masculinity that lies at the foundation of American national identity and ultimately shapes foreign policy. In this case, the threat to national security and ideology took the form of transnational terrorism, which had the demonstrated ability to extend to the American homeland. The rhetoric and foreign policy prescriptions employed by President George W. Bush in response to the 9/11 terrorist attacks reveal the pervasive nature of masculinity in American foreign policy. In President Bush’s first public address following the attacks, he stated, “Make no mistake: the United States will hunt down and punish those responsible for the cowardly acts.”38 This visceral response to the attacks immediately indicated the willingness of the United States government to embark on an unwavering mission of retribution.39 Furthermore, the foreign policy agenda pursued by the Bush administration framed the invasion of Afghanistan, and subsequently Iraq, to the American public as a “noble cause” and a “war between good and evil” in which the United States “stands strong on the side of good,” thus grounding foreign policy decisions in masculine ideals such as courage and nobility that are deeply embedded in the American national identity and psyche.40 Similar to the case of the Cold War, the rhetoric surrounding the policy responses to 9/11 sought to establish a clear, dyadic view of the enemy and the United States, by defining the terrorists as everything opposite of the United States. In addition, by “othering” the enemy, the United States government intended to emasculate the terrorists; by characterizing their identity as an abnormal and deviant form of masculinity.41 This reflexive use of gender ordering to justify and gain public support for military action is an example of the United States exercising hegemonic masculinity to bolster foreign policy choices when the state is faced with an external threat to national security.

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39 Ibid.
In addition to the way in which American political leaders used gender ideals to frame foreign policy decisions to the public and during the aftermath of the terrorist attacks, the execution of the wars in Afghanistan and Iraq was also driven by masculinity. The tactics that were employed by the United States military during the “War on Terrorism,” such as measures of psychological warfare and extreme interrogation methods, proved the desire of the United States to use force and aggression as foreign policy tools to regain an image of strength and dominance. Methods of psychological warfare employed by the United States included dropping leaflets over Afghanistan, some of which included phrases such as, “Our goals will be achieved, if not willingly, then by overwhelming force” or alternatively displayed male American firemen raising an American flag at Ground Zero, with the caption “Freedom Endures.” Although these leaflets served little tactical purpose in the war, they were used as tools to convey the resolve, strength, and dominance of American foreign policy, and to reignite the masculinity at the core of American national identity.

In addition to rhetoric espoused by political elites and the execution of foreign policy, media outlets also serve as a primary forum for communicating ideas about national identity and policy. One of the most famously masculinized cases of media sensationalism during the years following 9/11 was the capture and subsequent rescue of Private Jessica Lynch in 2003 during the war in Iraq. Although the Iraq War was not a direct product of the 9/11 terrorist attacks, it was a part of the broader “War on Terror,” led by the United States military, which was developed as an American foreign policy framework by President George W. Bush after the attacks of September 11th, 2001. While Private Jessica Lynch was deployed in Iraq in 2003, her unit was ambushed, and she was captured as a prisoner of war. A dramatic and highly gendered rescue mission executed by U.S. Army Special Forces ensued and was broadcast widely to the American public.

The imagery used to portray Jessica Lynch during the rescue and upon her return to the United States serves as an excellent case study in the examination of the masculinization of the American military and national imperative to validate masculine ideals during times of war. The footage and the corresponding media commentary represented Jessica Lynch as a “damsel in distress,” saved by a masculine rescue crew in the midst of war. Several American media outlets, such as CNN, heavily criticized the release of the footage of Lynch’s rescue, claiming that it was fictionalized wartime propaganda. Despite being portrayed as a damsel during the immediate release of the rescue footage, the public narrative of Jessica Lynch changed dramatically once she was back in the United States. Upon return, Lynch was commonly referred to as a “female Rambo,” a portrayal that masculinized her experience by equivocating her to the “hyper-masculinist, all-American, patriotic, hard-guy” that is encapsulated by the Rambo character.

Jessica Lynch, despite being a woman serving in combat, served as a mechanism to reinforce American masculinity in the execution of post-9/11 foreign policy, rather than the embodiment of the intersection of femininity and war. The case of Jessica Lynch serves as a microcosm of the larger gendered narrative of the United States’ response to 9/11 and reveals a critical facets of feminist international relations theory; that femininity and female experiences of conflict are typically only represented in conflict as a tool for validating masculine action.

42 Ibid, 30-31.
46 Ibid.
Feminist analysis of foreign policy decision-making during the invasion of Afghanistan highlights the frequent use of women as justifications of war, and as a self-validating measure. In the response to 9/11, Afghan women were identified by American leaders as victims of the Taliban regime, and thus gave the United States opportunity to play the role of the hero, liberating these poor women from the violence and oppression facing them in their homeland. The invasion of Afghanistan was about retribution and the elimination of foreign threats to the American homeland, but the United States needed a cause that would give the military action nobility and chivalry, and Afghan women quickly filled that void. In November 2001, First Lady Laura Bush framed the “War on Terrorism” as a battle for human rights, stating:

The fight against terrorism is also a fight for the rights and dignity of women… Afghan women know, through hard experience, what the rest of the world is discovering: The brutal oppression of women is the central goal of terrorists. Long before the current war began, the Taliban and its terrorist allies were making the lives of children and women in Afghanistan miserable.48

The emphasis of Afghan women as the victim of the Taliban regime, reaffirmed an image of the United States as the masculine protector, framing the invasion as an almost romanticized rescue mission of, “our men, setting out to rescue their women, from their men.”49 The way that United States authorities used Afghan women as justification for military action during the invasion of Afghanistan demonstrates the use of femininity and female experiences to solidify masculine ideals of American national identity and validate masculine action in foreign policy.

Additionally, the invasion of Afghanistan and the experience of Afghan women provides interesting insight into feminist foreign policy options for state-building that were not adopted. Feminist foreign policies also advocate for the inclusion of women in economic and political spheres, their representation in state-building to foster peace and sustainable development in communities worldwide; and particularly in the case of re-building weak states. The landmark Resolution 1325 adopted by the United Nations Security Council explicitly advocated for the “increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.”50 Furthermore, the Bonn Agreement (Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions) included language specifying that decisions regarding appointments to the Interim Administration in Afghanistan should include a “significant number of women.”51 However, only 2 women out of 30 total representatives were included in the interim administration.52 Similarly, state-building efforts following the invasion of Iraq saw only three women appointed to the post-Saddam Hussein interim council.53

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48 Laura Sjoberg, Gendering Global Conflict: Toward a Feminist Theory of War, 139.
52 Jan Jindy Pettman, “Feminist International Relations After 9/11, 89.
53 Ibid.
Traditional masculinist perspectives on state-building generally assume the inclusion of women in government and state-building to be a peripheral concern; something to attempt or strive for after foundations of peace and concrete democratic institutions have taken hold. By contrast, feminist analyses argue that the representation of all members of society, including women and ethnic or racial minorities, is one of the most essential aspects of democratic participation, and that without this, constructed democratic institutions are unlikely to survive. In the cases of Afghanistan and Iraq, feminist analyses connect the lack of success in building stable foundations for democracy to the disingenuous effort of the international community to include women in government and peace-building efforts.\footnote{Jan Jindy Pettman, “Feminist International Relations After 9/11, 90.}

While feminist concerns, including the experience of Afghan women, were a theme during the United States’ response to 9/11 and the beginning of the “War on Terror,” the lacking effort to include women in subsequent state-building and democratization processes show that in this case, femininity was used to validate the masculine philosophy that drove American military action by giving it a sense of chivalry and nobility, rather than as a tool to better understand the role of women in conflict and peace.

*Interpreting the Present: Masculinity and the Era of Trump*

The previous examination of the intertwined nature of masculinity and American foreign policy responses to crises of security and ideology can provide a lens through which to examine the current foreign policy developments under the Trump Administration. Although the threats that face the United States today are far less eminent and centralized than during the Cold War era and the years immediately following the 9/11 terrorist attacks, masculinity has nonetheless played a prominent role in the discourse of the 2016 election and the foreign policy preferences of the American people. During the 2016 election campaign, then presidential candidate Donald Trump presented solutions to these foreign policy issues that were based on the glorification of masculine attributes, and through the use of rhetoric, painted an image for the American people of the United States as a stronger, tougher, more dominant actor on the world stage. Although the 2016 presidential election proved to be exceedingly controversial, Donald Trump was able to use the ideals of masculinity that resonate within American national identity to rally enough public support to win the presidency. Trump’s use of bombastic masculinity to guide his campaign style and policy platforms provides a unique case study because it demonstrates how these tactics can be used successful to gain public support during a highly contested election, and how they will shape the development of his foreign policy while in office.

Trump’s use of masculinity to gain public support during the 2016 election is most clearly demonstrated by his assertive campaign promises and persona. Prior to the election, almost 70% of Trump supporters believed that the United States had become “too soft and feminine.”\footnote{Daniel Cox and Robert Jones, “Two-thirds of Trump Supporters Say the Nation Needs a Leader Willing to Break the Rules,” PRRI, April 7, 2016, https://www.prri.org/research/prri-atlantic-poll-republican-democratic-primary-trump-supporters/} This sentiment indicated a preference amongst the American public for a leader that would project a tougher, more masculine image at home and abroad. As a presidential candidate, Donald Trump tapped into this desire for increased masculinity by designing his personal image as well as his foreign policy platforms on the premise of masculinity. Trump’s comprehensive speech on foreign policy on April 27th, 2016 outlined an isolationist, individualistic vision for the future of American foreign policy. This speech emphasized a Trump’s intent for a tougher approach to multilateral agreements and organizations such as
NAFTA and NATO, describing these treaties as “false globalism” and supported increasing military investment and troop counts. 56 Lobbying for these policies highlighted the masculinity of Trump’s foreign policy proposals because they valued independence over collective action, resolve over compassion, and the use of force over diplomacy. By doing so, Trump claimed that these policies would “make America strong again,” and thus “make America respected again”, signaling the re-masculinization of America that would accompany a Trump presidency.57

During the 2016 election campaign, Trump’s vice-presidential running mate Mike Pence also used rhetoric to build a masculine image of what American foreign policy would look like under a Trump Presidency. This masculine rhetoric was used most prominently in the 2016 Vice Presidential Debate, in which Pence repeatedly used masculine attributes to describe the foreign policy positions of the would-be Trump Administration. During the debate, Pence referenced the need to approach foreign policy issues in Russia and Syria with “strong, broad-shouldered American leadership.”58 The use of adjectives such as “strong” would generally constitute the masculinization of a policy position, however Pence extends this effect by personifying American foreign policy with a reference to “broad-shoulders.” This descriptor effectively associates the idea of American leadership with the body image of a powerful, athletic man with a physically dominating stature, thus signaling the masculinity embedded in foreign policy platforms of the Trump/Pence campaign. Furthermore, Pence promoted the idea of American masculinity in foreign policy with reference to the American military, claiming that the United States had experienced a great decline in naval power and number of standing troops, and reassuring the public that Donald Trump would “rebuild our military and project American strength to the world.”59 These campaign promises were a verbal display of the intended masculine virtues of future American foreign policy under the Trump Administration.

The use of hyperbolic masculinity is also evident in the development of Trump’s foreign policy agenda while he has been in office. The Trump Administration’s America First Foreign Policy confirms and validates the values of masculinity that shape American national identity. The official description of the America First Foreign Policy that is publicly available to the American people first begins by establishing the primary goal of achieving “peace through strength.” 60 The articulation of this goal already demonstrates the masculinization of American foreign policy. Peace, a concept generally associated with feminine attributes, such as compassion, sensitivity, and understanding, is immediately stripped of its feminine connotation in Trump’s America First Foreign Policy by its association with strength; implying the necessity of using masculine means to meet feminine ends. The America First Foreign Policy agenda then continues by proposing the use of American military action to “defeat and destroy” terrorist organizations through “aggressive joint and coalition military operations.”61 In this section of the agenda, the use of the words destroy and aggressive imply dominance and further remove the policy from any feminine association with its overarching

57 Ibid.
59 Ibid.
goal, peace. Furthermore, the policy also reconfirms President Trump’s commitment to expanding the American armed forces, with the rationale being that, “he knows that our military dominance must be unquestioned.”62 While Trump’s foreign policy agenda began with the goal of peace, it uses hyperbolic masculinity to negate any feminine connotations with this objective, and instead colors it in with masculine attributes of aggression, dominance, and the use of force. The official language of America First policy demonstrates the pervasive and persistent use of masculinity as a guiding principle of American foreign policy under the Trump Administration.

The hyper-masculinity communicated by the Trump Administration’s foreign policy agenda is particularly interesting when contrasted with recent foreign policy initiatives of other developed nations, several of which have incorporated gender equality and feminism as a central focus. Feminist foreign policies are ones which actively promote the global health, economic empowerment, and political inclusion of women as a means of achieving international peace and stability. Feminist foreign policy perspectives that advocate for women’s rights and participation are premised on the theory that issues of human security are tantamount to issues of state security; and that the prosperity of women plays a vital role in mitigating human security concerns.63 These theories acknowledge the importance of human development in the creation of stable societies and recognize that women’s educational attainment and participation in the labor force is associated with faster economic growth, reductions in child mortality, and better opportunities for children.64 Furthermore, support for the inclusion of women in state-building processes is grounded in the evidence that when women are included in peace negotiations; agreements receive greater public consensus, resolutions are more likely to be implemented, and post-conflict states have improved prospects for maintaining peace and achieving sustainable development.65

Recently, feminist foreign policies have been developed and implemented by countries such Australia, Norway, Sweden, and Canada.66 These countries have taken action to enshrine the principles of UN Security Council Resolution 1325 in their own foreign policy initiatives by designing foreign policies that support gender equality and the inclusion of women in peace-building, governance, and sustainable economic development across the world.67 A specific example of this brand of feminist foreign policy in action is Canada’s innovative Feminist International Assistance Policy, which identifies gender equality and the empowerment of women as a priority in peace building, the reduction of poverty, and global stability.68 The initiatives of Canada’s Feminist International Assistance Policy include commitments to providing sexual health and reproductive education and services to women in developing countries, promoting access to safe educational institutions that are inclusive of

62 Ibid.
girls, and advocating for the inclusion of women in post-conflict state-building. By contrast, at the end of 2017, President Trump released the 2018 National Security Strategy of the United States, including a section on foreign policy entitled “Peace Through Strength,” which does not contain any references to women, gender equality, peace building, or human security. Instead, the foreign policy directives outlined in the “Peace Through Strength” platform emphasized increasing the military presence of the United States around the globe, modernizing and expanding the United States’ nuclear weapons programs, and continuing the use of economic sanctions to safeguard American interests.

The absence of policies directed towards improving the security or inclusion of women in the Trump Administration’s foreign policy is not necessarily evidence of sexist policy-making, but rather reflective of a traditionally gendered hierarchy in international security studies that considers issues of state security as separate from, and more important than, issues of human security. The traditional “masculinist” approach to security studies, typically establishes a firm divide between issues of state security and human security; with the former viewed as “high politics,” and the latter as “low politics.” As a result, this perspective has a tendency to dismiss issues of human security, such as forced migration, human trafficking, sexual violence, and poverty (which often impact women and children disproportionately) as unfortunate consequences of the overarching and consuming quest for state security. Thus, traditional masculinist foreign policy tends to devalue the centrality of human security to achieving state security, choosing to view human security concerns as merely humanitarian issues that need not be included foundations of foreign policy or national security. Alternatively, feminist security studies theories often view the security of individuals within a state as a function of achieving state security at large.

VI. Conclusions

Masculinity has been a founding principle of American national identity, as it is one of the defining attributes of collective American culture and politics. During the Cold War, masculinity was used to reinforce the virtue of traditional American values, and it characterized the opposition, in this case communism, as everything that was un-American, and thus “un-masculine.” Similarly, the rhetoric and policies that the United States pursued following the terrorist attacks of 9/11 served to emasculate America’s enemy by emphasizing the virtues of American military troops and first responders and using the protection of females as a justification military action. Using these case studies as an informative background reveals its driving influence in foreign policy as well as its importance to the American public. Turning to the era of Trump, it is evident that the desire for masculinity amongst the American public played a role in the outcome of one of the most controversial

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69 Ibid.
71 Ibid, 25-34
74 Jan Jindy Pettman, “Feminist International Relations After 9/11, 91; Gillian Youngs, "Feminist International Relations: A Contradiction in Terms..." 75.
elections in the history of the United States and determined the trajectory of American foreign policy.

The purpose of this analysis is not to offer a normative evaluation of the role of masculinity in American national identity or foreign policy. Rather, this analysis is intended to illuminate a discussion about how foreign policy decisions are formed, how national identity is projected, and how these understandings can be used to explain current foreign policy debates. On the international stage, the American public desires a country that appears tough, unwavering, dominant, and, at times, aggressive. These preferences subsequently play a role in the decisions of political representatives, as they opt for foreign policy actions that reflect the public’s desire for masculinity. Furthermore, feminist analysis provides a useful tool for understanding the extent that gender influences policy discourse, and how policy can be designed to reflect a gendered national identity.

The 2016 presidential election serves as an example for how politicians can use the personal and emotional connection that Americans have with masculinity as part of their national identity to amass public support. However, taken to the extreme, national identities, much like any other form of identity, have the potential to be manipulated for political gain. To avoid such manipulation, it is important for people to understand the way that their national identities relate to their policy preferences. In the United States, the danger of the relationship between masculinity and national identity is that an implicit connection between masculine and “better” exists in the minds of the American people. Masculine attributes and experiences are so central to American national identity, that they are often idealized when used as guiding principles of American foreign policy, whether they are truly in the interest of the United States or not. A comprehensive understanding of the masculinity as a component of American national identity allows for a more empirical, rather than emotional evaluation of foreign policy.
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Cyber Warfare and International Law: The Need for Clarity

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Abstract: The internet and computerization have revolutionized how humans and states interact. However, with these new technologies comes a new arena for conflict between states. The definition of aggression under U.N. General Assembly Resolution 3314 is inadequate in addressing these new threats. This work suggests the addition of an inclusive definition of cyber warfare to the current internationally accepted definition of aggression. Additionally, through analysis of cyber-attacks on Estonia, Georgia, Iran, the Philippines, and the United States, this work will show that while cyber-attacks violate international law under Resolution 2625, and should be considered acts of aggression, the language of Resolution 3314 is such that these attacks do not meet the current legal definition of aggression. Moreover, this analysis will show that, through the use of cyber weapons, states have successfully circumvented Resolution 3314, allowing aggressor states to take destabilizing actions with near impunity.

Introduction

The advent of the internet and computerization is a great leap forward for humanity. These new technologies aid in everything from communication to education to medicine. However, as technology and the internet have spread into almost every facet of daily life, both in the civilian sector and the military and defense sectors, these advancements open the world to a new arena for conflict. The ongoing global cyber arms race and the use of these new weapons of war threaten global stability. Within the last decade there has been a marked increase in state-sponsored cyber-attacks both in the civilian and governmental sectors. This increase marks a change in how states perceive and use cyber weapons, creating an opportunity for conflict where previously none existed.1 Some international organizations, such as NATO (North Atlantic Treaty Organization), have attempted to address this new potential for conflict through works such as the Tallinn Manual, a guide to cyber warfare and accepted responses developed in response to the 2007 Russian cyber-attacks on Tallinn, Estonia. However, these attempts have not kept up with the pace of technological advancement, which has been too rapid for the international system to develop a clear and adequate response. The 2007 cyber-attacks on Estonia, the use of cyber weapons in Georgia in 2008, the U.S. cyber-attack against Iran in 2008-2009, and the more current use of cyber weapons for information warfare by countries such as Vietnam, and by Russia in the 2016 U.S. election provide case studies to show the range of

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weapons now in use, as each attack used vastly different methods. Furthermore, the vast differences in each attack shows why providing a clear and precise definition of cyber warfare is a complicated, but imperative task.

There is an ongoing debate within the international and academic communities on whether cyber-attacks constitute use of force and are acts of aggression under the current U.N. Resolution 3314: Definition of Aggression. This debate can be seen through the respective works of Nils Melzer and Priyanka Dev: “Cyber Warfare and International Law” written in 2011, and “‘Use of Force’ and ‘Armed Attack’ Thresholds in Cyber Conflict: The Looming Definitional Gaps and the Growing Need for Formal U.N. Response” written in 2015. The U.N. General Assembly Resolution used to define aggression and use of force, Resolution 3314: Definition of Aggression, was created in 1974 prior to the advent of the internet and the integrated computer systems in use today. The Definition of Aggression Resolution was designed to clarify which actions states may not take against each other; however, since it was written before the internet, the language used in this Resolution does not clearly incorporate cyber weapons. In the ongoing debate, I contend that cyber-attacks are acts of aggression and do violate Resolution 3314 in spirit, but not in its explicit language. This absence of clear language, explicitly including cyber-attacks, in the definition of aggression has created a grey area in which states feel they can use these weapons without their actions being labeled as aggression. An additional Resolution according to which these attacks may be understood as being in violation of international law, is Resolution 2625, the “Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations.” The ‘Friendly Relations’ Resolution, introduced in 1970, outlines acceptable conduct of member states in their interactions. These two Resolutions will be used to show that cyber-attacks are clear violations of international law; however, the lack of an explicit cyber component in the Definition of Aggression Resolution has created a grey area, which some states may consider a loophole, allowing the use of cyber weapons. Analysis of recent cyber-attacks using these two U.N. Resolutions will show that cyber-attacks draw into sharp relief that states can act in an unfriendly manner without their actions being labelled as acts of aggression.

Finally, given the difficulty in defining cyber weapons and the failure of Resolution 3314 to adequately address cyber warfare, states that have been subjected to such attacks should be able to respond in kind without fear of judgement or retaliation from the international community until international organizations, such as the U.N., develop and enact new definitions and laws specific to cyber warfare and the right of retaliation or compensation of affected states. Cyber-attacks are in violation of international law, specifically U.N. General Assembly Resolution 2625; however, due to the lack of explicit language relating to cyber warfare in the U.N. definition of aggression in General Assembly Resolution 3314, cyber weapons are currently being used without being labelled acts of aggression. Furthermore, while Resolution 2625 outlines the principles of international law concerning “friendly relations and cooperation among states,” it does not discuss actions of aggression which states may use as a reason for war under international law. In contrast to the ‘Friendly Relations’ Resolution 2625, the ‘Definition of Aggression’ Resolution 3314 defines what constitutes an act of aggression under the U.N.

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Charter. Thus, on the discussion of cyber warfare, a violation of Resolution 3314 holds more importance for state actions and international stability than a violation of Resolution 2625. However, ‘Definition of Aggression’ lists seven general scenarios, which are considered acts of aggression, with each scenario entailing physical armed force or physical action by a state, such as the bombardment of cities, invasion of territory by armed forces, or the blockading of ports. The physical nature of this resolution has led many to conclude that cyber-attacks do not meet the physical requirements listed in the Resolution, nor do they constitute armed force under Resolution 3314.3 International law must meet reality; reality cannot be forced to meet existing law. Therefore, to resolve any confusion with Resolution 3314, there should be a cyber warfare component added to the definition of aggression. This will enable states to act with surety when harmed by cyber weapons, and it will stabilize the currently unstable environment which the international community is operating in.

Current International Cyber Laws

The current international legal system is built on principles which themselves are formed through customary practice by states. A customary practice, in the international legal sense, according to J.L. Brierly, “means something more than mere habit or usage; it is a usage felt by those who follow it to be an obligatory one. There must be present a feeling that, if the usage is departed from, some form of sanction will probably, or at any rate ought to, fall on the transgressor.”4 After a customary practice is identified and accepted by U.N. member states, it is drafted into written international law through treaties or U.N. resolutions.5 However, it is important to understand that international law does not function like domestic law and there are no guaranteed, but only expected, consequences for violating international law. Moreover, states must consent to being subject to an international law. According to J.L. Brierly, international law is not meant to provide concrete solutions to specific problems, rather it is meant to create structures for understanding state conduct and actions, and provide a framework for response.6 Through the use of international law, states are able to identify issues, such as acts of aggression, and understand the internationally accepted response options available to them. This creates a more stable environment in which states can interact in an understandable and predictable fashion.7

Crafting international law is a slow process because it entails the formation of consensus among states prior to the acceptance of a general practice as law, thereby making the process ill-suited to responding quickly to fast-developing technologies such as cyberspace. Existing international law on internet and computer technology has remained largely focused on international trade law and trademark law. While there are robust laws and practices regarding private, individual use of the internet, there is almost no precedent or customary practices

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7 Ibid. p. 77-78.
established to address state use of the internet as a weapon. The relative unprecedented nature of cyber warfare and the subsequent lack of international customs or practices on the subject have allowed states to “fill the void with their views on how international law applies in this area.”
Some individual states and organizations have attempted to address this void by creating understandings and guidelines, such as NATO’s creation of the Tallinn Manual; however, this manual was never officially adopted and remains more of an idea rather than a practice or custom. Furthermore, many states believe that existing international law can be applied to cyberspace, thereby hindering the creation of new international law on cyberspace. This void in international customs and practices has allowed states such as Russia and the United States to conduct cyber operations, which threaten global and regional stability, without defined consequences. While cyber-attacks certainly violate aspects of Resolution 2625, due to the physical nature of the definition of aggression and the lack of explicit cyber language in Resolution 3314, these attacks fall into a legal grey area in which they are not labelled acts of aggression. The obstacles facing the international community with regard to computer oriented international customs and practices are time, and the ability to create a functional and inclusive definition of cyber warfare.

Defining “Cyber warfare”

As a relatively new development on the international stage, cyber warfare lacks a clear and concise definition. Various countries and even organizations within countries define cyber warfare differently. For example, the U.S. National Research Council’s Committee on Offensive Information Warfare does not include cyber-attacks with the goal of information-gathering as meeting the definition of cyber warfare or an offensive cyber-attack, but other organizations such as the U.S. Department of Defense, according to the “DoD Cyber Strategy” drafted in 2015 and still in effect today, consider information-gathering cyber-attacks as a direct threat to national security. Furthermore, other attempts to define and outline responses to cyber-attacks on the international level, such as the Tallinn Manual, fall short as comprehensive approaches to the problem. The Tallinn Manual, created in response to Russian cyber-attacks on Estonia in 2007, is only an understanding among NATO states, not an international legal understanding or agreement. Having individual states or groups such as NATO create their own definitions for an international event such as a cyber-attack further complicates the issue and makes the development of a comprehensive international agreement on cyber warfare more important in order to avoid future conflict. Moreover, as technology advances, cyber weapons can take more varied forms, further hindering any attempts to provide clear or concise definitions. This inability and incoherence in providing a definition of what exactly constitutes an act of cyber warfare invites states to use cyber weapons against each other without conducting an explicit act of aggression.

9 Ibid.
10 Ibid. 172.
Furthermore, there remains a question of where cyber warfare and information warfare should be differentiated. Information warfare has multi-faceted definitions for both wartime and peacetime political and social influencing activities. In wartime, “information-based warfare is an approach to armed conflict focusing on the management and use of information in all its forms and at all levels to achieve a decisive military advantage.” However, information warfare is also used in non-military applications to influence, manipulate, and control social movements and political discourse. In recent years this non-military application of information warfare has become a pervasive peace-time activity between states. Recent cases, such as Russia’s attempts at influencing the U.S. election or Vietnam’s attempts to harm U.S.-Philippine relations, prove that cyber warfare contains vast potential for propaganda and information warfare. Should information warfare involving a cyber aspect such as the hacking of emails or recordings of phone calls be considered an act of aggression?

As a concept of international law, the definition of aggression has been critical to the “strengthening of international peace and security,” without which it is safe to assume that the world would be in a much more precarious position. Defining aggression through the international legal system and providing a legal framework for responses to aggression have allowed nations to act with surety if they feel they have been attacked by another state. Furthermore, this resolution and framework provides stability to the global environment by allowing all states subject to the international legal system to have a mutual understanding, which works to limit the escalation of conflicts. However, UN General Assembly Resolution 3314, which defines aggression, deals primarily with physical acts of states rather than individuals. Therefore, while aggression and its internationally accepted definition have been highly significant to global stability, the current definition does not adequately cover cyber warfare. However, cyber-attacks, such as the cases discussed below, do violate other international laws such as Resolution 2625, making responding to cyber-attacks complicated.

Many argue that while cyber warfare does break international law, it does not rise to the level of armed force, nor does it meet the current definition of aggression under Resolution 3314. The Russian cyber-attacks on the 2016 U.S. elections and 2008 attacks on Estonia are evidence enough to show that the current legal definition of aggression is inadequate with respect to cyber warfare. These attacks can be directly connected to Russian individuals and, in the case

of Estonia, Russian government addresses can be connected to the assaults.\(^\text{18}\) However, due to the nature of cyber warfare, attacks are difficult to attribute directly to state operations. This inability to directly attribute attacks effectively circumvents the international legal system, making individual states solely responsible for their responses to such attacks with limited international legal support. However, U.N. Resolution 2625 states, “Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State…when the acts referred to in the present paragraph in a threat or use of force.”\(^\text{19}\) The word “instigating” indicates that if a state encouraged private individuals, whether through physical or rhetorical support, to conduct cyber-attacks on another state, the sponsoring state would be guilty of a violation of international law. However, this supposes that acts of cyber warfare are indeed acts of aggression and cyber-attacks constitute a use of force, which is not the case in actual practice due to the physical nature of Resolution 3314 and the lack of a cyber warfare component.

U.N. Resolution 3314 Article 3: the Definition of Aggression, lists seven general scenarios, which the international system would consider acts of aggression, such as the crossing of territorial borders with an armed force, the bombardment of a state’s territory, or the blockade of a state’s ports.\(^\text{20}\) In addition, Article 3 states that the list is not exhaustive and the Security Council can include other acts under the definition of an act of aggression.\(^\text{21}\) However, while the list presented in Article 3 is not exhaustive, it has “led to a conclusion that only a physical action by a State would be considered an act of aggression.”\(^\text{22}\) Case studies examined below on cyber-attacks on Estonia, Georgia, Iran, and the United States show that currently, while acts of cyber warfare do violate Resolution 2625, they do not meet the standards of aggression established in the Definition of Aggression, Resolution 3314. These cases highlight the need for the U.N. to incorporate a cyber warfare component to the definition of aggression to avoid future misunderstandings and conflict.

Given the clearly complicated nature of the topic, providing an inclusive and clear definition of cyber warfare is difficult, however, it must be addressed. Cyberwarfare and acts of cyber aggression should be defined in the following manner. Cyber aggression consists of the utilization of computer or internet technology to disrupt or harm a state's ability to function through economic, infrastructural, or political means, including invasive information warfare if it can be directly attributed to state actors. Furthermore, if it is proven that an act came from private individuals of a state, that state is responsible for the apprehension and prosecution of such individuals. If a state does not assist with the apprehension and conviction of an individual who has been proven to be involved in a cyber-attack, that state will be considered to be aiding or otherwise encouraging such an attack, and therefore would be subject to lawful reprisals including, but not limited to, economic sanctions and monetary compensation to the victim state subject to proceedings in the International Court of Justice. While this definition is far from

\(^{21}\) Ibid.
\(^{22}\) Cammack, “The Stuxnet Worm”, p. 306.
comprehensive, it is written in order to expand progressively with advancements in computer and internet technology as well as address the current issue relating to direct connections to State actors.

Some scholars, such as Nils Melzer, contend that the current international law system can be applied to cyber warfare. Melzer argues that cyber warfare is considered an act of aggression under the U.N. Charter. Furthermore, Melzer contends that logically “the Charter cannot allow that the prohibition of interstate force be circumvented by the application of non-violent means and methods which, for all intents and purposes, are equivalent to a breach of the peace…” In each case study discussed below, cyber warfare was conducted against other states. Yet even in the case of Georgia, where the cyber-attack began weeks prior to the use of conventional forces, the cyber-attack was not taken into consideration when investigating possible acts of aggression.

In spirit, Melzer is correct, the U.N. cannot allow one of the core tenets of its Charter to be so easily circumvented. However, Melzer fails to consider that this circumvention is already occurring in practice due to the lack of a cyber component in Resolution 3314. International laws are created through the formulation of precedents and norms; the longer that cyber warfare remains unaddressed by the U.N. and the international legal system directly, a precedent is being set that cyber warfare can indeed circumvent Resolution 3314. However, Melzer does not entirely neglect the issues facing the international legal system with respect to cyber warfare. He agrees that there remains no consensus on the threshold beyond which a cyber operation amounts to a use of force. This is a crucial problem facing the international community which, without clarification, invites states to conduct increasingly damaging cyber-attacks.

The case studies discussed below will show that while cyber-attacks do violate international law under the ‘Friendly Relations’ Resolution, the lack of a cyber component in Resolution 3314 as well as the physical nature of the Resolution have allowed states to conduct these attacks without fear of their actions being labelled as aggression. Melzer makes a convincing theoretical argument, but in actual practice, due to the lack of a cyber component in Resolution 3314, cyber warfare has proven in many cases to avoid international legal consequences. This should spur scholars such as Melzer to address the evident gaps in the definition of aggression and strengthen the international legal system involved with cyber aggression.

Estonia

In 2007 and 2008, the countries of Estonia and Georgia suffered large scale cyber-attacks that crippled broad sections of their governments and economies. For nearly a month after announcing a decision to remove a WWII-era Soviet monument, Estonia faced an unrelenting “denial-of-service” (DDOS) cyber-attack on banks, government bodies, media outlets, and telecommunications services in what is known as the Bronze Soldier Incident. This type of cyber-attack overloads networks with requests until the network crashes, effectively ‘denying’ access to that network or service until the attack stops. Despite Estonia tracing some of the

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24 Ibid., p. 8.
26 Ibid. p. 9.
DDOS attack to an address associated with the Russian government, Russia denied any official responsibility for the attack on Estonia, suggesting that the attack came from private, pro-Russian activists.\(^{27}\) Despite economic and governmental damage, Estonia and NATO had few options for retaliation at the time.\(^{28}\) This type of cyber warfare has been commonly used by state actors in recent years because it does not currently meet the threshold for a military response.\(^{29}\)

**Under Resolution 2625: Friendly Relations**

In this case, a foreign state either conducted or encouraged an assault on Estonian infrastructure critical to government and civil function. Estonians used the internet for voting, education, government-civilian dialogue, security, and banking. At the time of the attack, an estimated 95% of banking operations in Estonia were conducted online.\(^{30}\) The DDOS attack shut down these services and hindered intra-government communication. The damage done by this attack should not be measured in dollars and cents, rather it must be recognized as a violation of the political independence of a State. Estonia had built its government to function as a “paperless government” with the majority of civilian-government interaction occurring online. This attack limited and, in some respects, halted the ability for the Estonian government to communicate with its people. Therefore, this is a violation of Estonian political independence, as Resolution 2625 states, “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference… are in violation of international law.”\(^{31}\) The ‘Friendly Relations’ Resolution goes on to emphasize that all states have a duty to refrain from “organizing, instigating, assisting or participating in acts of civil strife.”\(^{32}\) In the Bronze Soldier Incident and the resulting cyber-attacks Russia both directly and indirectly involved itself in the internal affairs of another state.\(^{33}\) Furthermore, NATO and Estonia successfully traced some of the DDOS attacks to Russian government buildings; however, Russia denied involvement in the attack, and rejected to aid in the investigation to find the attackers.\(^{34}\) First, by denying involvement, Russia is acknowledging that a state’s involvement in such an attack is unacceptable under international convention. However, despite this denial, by allowing their territory to be used by non-state actors to launch an attack on another state, Russia is already in violation of international law under Resolution 2625.\(^{35}\)

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\(^{32}\) Ibid., 570-572


Under Resolution 3314: Aggression

However, despite the implications of such an attack, and the clear violation of Resolution 2625, this attack does not meet the current definition of aggression under Resolution 3314 Article 3; there was no armed invasion, no border crossed, no bombardment, and no physical damage to the infrastructure. The Definition of Aggression lists physical actions by states, making cyber-attacks, such as the one conducted against Estonia, difficult to concretely label as aggression under the current definition. The lack of a cyber component in the definition of aggression in Resolution 3314 creates a gray area in which cyber warfare is currently stuck in limbo, where it can be both understood as aggression and not aggression. The attack on Estonia resulted in no physical damage, allowing an argument to be made that it was not an act of aggression, despite the attack clearly being intended to inflict harm on another state. Furthermore, scholars such as Larry May consider the “kind of disruption of services that cyber-attacks can achieve is insufficient…” to be considered an act of aggression. The disruptions caused by the cyber-attacks on Estonia did not directly take any lives; therefore, scholars such as May believe that cyber-attacks should not be subject to the laws of war. This divide between cyber-attacks and acts of aggression or war displays the instability that arises in the absence of a cyber component in Resolution 3314. Moreover, it evinces the problem with forcing reality to fit existing laws instead of making laws fit that reality.

Response

In response to this attack, Estonia launched an investigation to positively identify the attackers. However, the Estonian investigators were denied access and aid by the Russian government, limiting the effectiveness of the investigation. Having limited ability to conduct proactive investigations, Estonia and NATO instead invested heavily in cyber security infrastructure and aid. NATO’s Computer Emergency Response Teams (CERTs) and the EU’s European Network and Information Security Agency both aided in Estonia’s recovery and electronic fortification. Furthermore, NATO established its cyber security headquarters, the Cooperative Defense Centre of Excellence in Tallinn, Estonia. Finally, NATO unofficially drafted the Tallinn Manual to better understand cyber warfare; however, NATO does not consider cyber-attacks to be acts of war, and therefore, its member states are not obligated to respond militarily to such an attack. This, in combination with the lack of a cyber component to Resolution 3314 left Estonia, a country with limited means to respond individually against Russia, with no avenues for legal recourse for this attack on their state.

The cyber-attack on Georgia represents a similar style of attack as was conducted against Estonia. In this case, Russia used a denial of service attack against the Georgian government in the days prior to the commencement of the conventional conflict on August 8, 2008. The cyber-attack intensified once open hostilities began between Russia and Georgia, with a denial of service attack targeting government servers, media outlets, and telecommunication services. This cyber-attack successfully and effectively limited the Georgian government’s ability to communicate with its citizens as well as sympathizers around the world. The cyber-attack contained two stages: first, in the days leading up to the conventional invasion by Russian forces, Georgian electronic infrastructure suffered massive DDOS attacks, effectively isolating the nation from global communication.41 While first stage continued, the second stage coincided with the launching of the Russian conventional invasion and targeted economic infrastructure such as banks and media outlets, which limited the ability of the Georgian government to disseminate information to their citizens, and inflicted significant harm to the national economy.42

While Russia has denied responsibility for the cyber-attacks in Georgia, and there is no conclusive evidence of their involvement, many national security and cyber warfare experts believe it was a Russian government operation.43 While he did not directly connect Russia to the cyber-attacks, Colonel Anatoly Tsyganok, the head of the Russian Military Forecasting Center stated that the Russian cyber campaign focused on information warfare against the Georgian government. The goal of this campaign was to “isolate and silence” the Georgian government and media.44

Under Resolution 2625: Friendly Relations

This attack occurred in the lead up to and during the conventional military conflict between Russia and Georgia in 2008. Examining the cyber aspect of this conflict separately from the conventional conflict makes clear that Russia violated international law under Resolution 2625. Similar to the attack on Estonia, this attack came from Russian territory. Furthermore, the Russian government denied involvement and refused to aid in any investigation.45 With regard to Georgia, at best, Russia allowed their territory to once again be used in an assault on another state. At worst, as the analysis from leading cyber security experts would suggest, the Russian government facilitated and aided non-state actors in the assault on Georgia.46 In either case, Russia violated the ‘Friendly Relations’ Resolution by allowing their territory to be used by non-state actors to launch an attack on another state.

42 Ibid. p. 65-66.
Under Resolution 3314: Aggression

As in the case of Estonia, the cyber-attacks in Georgia do not clearly meet the U.N. definition of an act of aggression due to the lack of a cyber component to the Definition of Aggression and the physical nature of the language used in the Resolution. Both the Georgian and Russian conventional military actions that followed could be considered acts of aggression, but the cyber aspect of the conflict was largely ignored, and attempts by the U.N. Security Council to attribute aggression focused solely on the conventional actions of Russia and Georgia. The failure of the U.N. Security Council to consider the cyber-attacks when investigating aggression in this conflict establishes the notion that under the current definition, cyber-attacks are not interpreted as aggression. Indeed, had this attack taken place without a corresponding conventional conflict, the events would not have met the definition for an act of aggression. While this cyber-attack limited the flow of information within Georgia, it did not harm any physical infrastructure, and did not meet any of the seven general scenarios listed by UN Resolution 3314, Article 3. Furthermore, Resolution 3314 focuses entirely on physical actions of states or state-actors. In this cyber-attack, Russia either directly or indirectly supported non-state actors in a non-physical assault, which certainly violates Resolution 2625, but is not currently understood to meet the definition of aggression under Resolution 3314. Moreover, similar to the attack on Estonia, some believe that cyber-attacks that disrupt services and communication do not rise to the level of aggression. If the international legal definition of an act of aggression had incorporated a cyber aspect, such as the definition proposed in this article, Russia may have been declared the aggressor, since the cyber-attack began weeks prior to the conventional conflict. Thus, the Georgian case is a clear example of the lack of an inclusive cyber warfare definition in Resolution 3314 leading to a failure of that system in maintaining peace and stability around the world.

Response

Numerous outside technologies and cyber-security organizations, both private and governmental, assisted Georgia in its recovery from this attack. Estonia, having recently been the subject of similar attacks, sent two CERTs experts to help establish better network security. Furthermore, other states, such as Poland, attempted to aid Georgian communication by posting messages on their websites from the Georgian government to the Georgian people during the attacks. As an official response, Georgia attempted to use established U.N. channels to blame Russia for an act of aggression; however, as discussed above, the cyber-attacks were not considered when determining which state was the aggressor. These limitations restricted Georgia’s ability to seek redress or respond in kind.

The attacks in Estonia and Georgia represent examples of one of the most straightforward cyber-attack methods. Additionally, these attacks show how difficult it is to find conclusive evidence of a foreign government’s involvement. In both cases, both Georgia and Estonia had limited legally recognized response or retaliation options. Not only were they limited by their own capabilities, the absence of an explicit cyber component in Resolution 3314 also

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limited their avenues for retaliation or compensation. Due to the complicated nature and fast advancement of cyber warfare, antiquated international legal systems held no protections or avenues of redress for a victim state. The Tallinn Manual attempted to remedy this; however, as discussed above, even this document falls short of articulating allowable protective measures or systems of retaliation. Furthermore, the Tallinn’s Manual is only unofficially used by NATO members and not recognized at all by the international legal system.50

U.S. Stuxnet Attack on Iran

One of the most well-known cases of international cyber-attacks is the Stuxnet and Flame attacks on the Iranian nuclear program initiated by the United States and Israel. Discovered in 2010, the Stuxnet malware targeted Iran’s centrifuges and, through malicious coding, caused the centrifuges to destroy themselves. Designed to be a persistent attack, Stuxnet’s coding hid the malware from Iranian engineers, allowing it to damage or destroy approximately 1,000 of Iran’s centrifuges, setting the Iranian nuclear program back an estimated two years.51 Opposing Iran’s nuclear advancements, the United States and Israel sought to slow progress while a solution could be found.52

This attack represented a new and more aggressive form of cyber weaponry. Prior to Stuxnet, cyber warfare remained largely within the scope of information gathering or “denial-of-service” attacks, with only a few small-scale instances of cyber weapons being used to cause physical infrastructural damage. To many cyber experts, this incident was a turning point in the realm of cyber warfare. This case provided evidence that cyber weapons can act in a similar fashion to conventional weapons in their ability to destroy or dismantle infrastructure.53

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The ‘Friendly Relations’ Resolution 2625 states, “States parties to an international dispute, as well as other States, shall refrain from any action which may aggravate the situation so as to endanger the maintenance of international peace and security.”54 Furthermore, Resolution 2625 specifies that states cannot use force or coercion to subvert another state’s sovereign rights.55 Sovereignty is the principle that states have supreme authority within their own borders, and can only be limited by external laws if they consent.56 By using Stuxnet, the U.S. government sought to hinder the Iranian nuclear program, a program which the Iranian government desired. This is a clear violation of Iranian sovereignty, and therefore a violation of Resolution 2625.

53 Ibid.
55 Ibid.
Under Resolution 3314: Aggression

Given the destruction of one state’s physical infrastructure by a foreign state, the Stuxnet attack should be considered an act of aggression under Article 2 of the United Nations Charter.57 Furthermore, this U.S./Israeli action directly led to the physical destruction of Iranian infrastructure which, under the current interpretation of Resolution 3314 Article 3, would constitute an act of aggression.58 However, the fact that the initial action occurred in cyberspace confuses the subject, and by a rigid interpretation of Article 3, might not be classified as an act of aggression. Under the Definition of Aggression, the physical crossing of borders by physical bodies, be they human or armament, is an act of aggression. However, arguments can and have been made that a cyber-attack does not represent a physical event, and therefore, does not constitute an act of aggression or war.59 This case study shows that without a focused cyber warfare addition to Resolution 3314 Article 3, an attack as straightforward as the Stuxnet virus can circumvent Resolution 3314. This places the world in a more precarious position, where states may assault each other using cyber weapons without worrying about the victim state being able to invoke Article 2. The addition of explicit cyber language to the Definition of Aggression would resolve any issues involving the interpretation or misinterpretation of the language in Resolution 3314 and make clear that cyber-attacks are indeed acts of aggression.

Response

The Iranian government, similar to the previous victim states discussed, found itself in an untenable position when attempting to respond to this attack. First, as with the attacks on Estonia and Georgia, cyber weapons remain extremely difficult to trace to their origination point. While circumstantial evidence points to the U.S. and Israeli governments, at the time, there was no conclusive evidence that Iran could use to officially accuse the two nations.60 Secondly, similar to the attacks in Estonia and Georgia, no agreed upon system for responding to cyber warfare existed at the time.61 Due to the lack of such a system, if Iran responded with a conventional attack on Israel, they would have risked being labeled the aggressor in the eyes of the international system, despite simply responding to a damaging attack on their state infrastructure. Instead, Iran strengthened its own electronic fortifications, and is suspected of having launched a series of increasingly sophisticated attacks in retaliation against both the United States as well as other states is the region.62 If the Definition of Aggression Resolution included a cyber warfare component, such as that proposed in this article, Iran would have been on stable legal ground to accuse the U.S. of an act of aggression. The inclusion of this cyber component would have allowed for a more stable response, from both Iran and the international community, to the attack.

61 Anderson, “Fitting a Virtual Peg into a Round Hole.”
The Philippines

The latest and currently most popular use of cyber weapons is to use these tools to wage information warfare. For example, in 2017, it is suspected but not conclusively proven that Vietnam or a group closely associated with the Vietnamese government launched a cyber espionage attack, which resulted in the release of private communications between United States President Trump and Philippine President Duterte. Vietnam sought to expose warming relations between the Philippines and China, potentially harming U.S.-Philippines relations. This attack and the subsequent release of private communications represent the latest evolution in the use of cyber weapons on the international political stage. Such attacks do not aim to physically damage infrastructure, an economy, or communications systems, but rather to publicize politically damaging information.

This case study presents an important issue in the debate over cyber warfare: when does information warfare in the digital age transition into an act of aggression? The hacking group, OceanLotus, a group indirectly connected to the Vietnamese government, used cyber-attacks against Philippine state agencies to attain sensitive data, and subsequently used the release of that data to damage the relations between the Philippines and China. Such a release of information does not and should not be considered an act of aggression. However, the cyber aspect of this attack should be considered as a potential violation of Article 2, as the cyber-attack and the resulting release of sensitive data posed the risk of destabilizing diplomatic relations in the region.

Under Resolution 2625: Friendly Relations

If evidence can be found directly linking the Vietnamese government to this attack, it most certainly is a violation of international law under Resolution 2625. As discussed in the previous case studies, the ‘Friendly Relations’ Resolution states that no state may interfere with the sovereign rights or political independence of another. The goal of this attack was to influence the Philippine-U.S. relationship; therefore, it was an attack on Philippines’ sovereignty and political independence. Furthermore, Resolution 2625 makes clear that even though Vietnam is only indirectly linked to the OceanLotus group, their actions may still violate international law by allowing the attack to be executed from within their territory.

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64 Ibid.
67 Ibid.
Under Resolution 3314: Aggression

As Resolution 3314 is currently written, this cyber-attack and the resulting release of information is not a violation. There is not a physical aspect to this attack which could meet any of the examples of aggression in the current definition. Furthermore, unlike the previous case studies of Estonia and Georgia, this attack did not hinder the economy, media, or telecommunications. While Resolution 3314 protects political independence, the nature of its language has led to a belief that only physical actions by states may violate the resolution. Therefore, despite the harm to Philippines’ political independence and sovereignty and the stability of the region, this attack does not violate Resolution 3314 under its current interpretation. Additionally, the lack of a clear cyber component to the definition of aggression leaves a void in which this attack might be understood to not be an act of aggression.

Response

Both the Philippines and the United States were limited in their response options to this attack. First, the information warfare side of this attack is not and should not be considered an act of aggression. Furthermore, due to the limitations of the current definition of aggression under Resolution 3314, neither victim state could respond with force under international law. In this case, there seems to have been almost no response from either the Philippines or the United States.

Russia 2016 U.S. Election

An additional example of the use of cyber weapons in information warfare is Russian attempts to influence the 2016 U.S. elections and exacerbate divisions among U.S. citizens. It is alleged that Russian state actors conducted cyber-attacks to access email servers owned by the Democratic National Committee (DNC) and subsequently released damaging information in an attempt to disrupt the U.S. democratic process. Complicating this attack, it is also alleged that numerous private Russian citizens conducted a coordinated campaign which included identity theft and extensive use of social media platforms to sow divisions and exacerbate tensions between U.S. citizens on flash point issues such as immigration. The U.S. Director of National Intelligence (DNI) released a report titled, “Assessing Russian Activities and Intentions in Recent U.S. Elections: The Analytic Process and Cyber Incident Attribution,” which makes clear the U.S. intelligence communities’ opinion that the Russian government directly conducted cyber campaigns to influence the 2016 U.S. presidential election. These attacks on the U.S. democratic system are just that, attacks, by one state on another.

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If the evidence discussed in the DNI report is taken as fact, this attack is undoubtedly a violation of international law under Resolution 2625. The government of Russia used a cyber campaign, which included the theft of communications and subsequent release of those communications to directly influence the political process of the United States. This is a clear violation of Resolution 2625. Furthermore, this campaign aimed to disrupt national unity and harmed U.S. political independence, both of which are violations of Resolution 2625, which states that, “…any attempt aimed at the partial or total disruption of national unity…or at its political independence is incompatible with the purposes and principles of the Charter.” These actions are certainly not the actions of a friendly nation and are clearly violating Resolution 2625; however, they do not rise to the level of aggression under the current definition.

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Current international law might hold that it was potentially a state attack on a private company, the DNC, with no economic or infrastructural damage, therefore not meeting the definition of an act of aggression. Alternatively, it could be argued that it was private Russian citizens conducting this information warfare, thus placing the case outside the jurisdiction of the international legal system. Additionally, while these cyber-attacks were meant to influence the political independence of a state, they do not clearly meet the threshold of ‘an act of aggression’ under Resolution 3314 Article 3, because no physical armed force was used. Moreover, the lack of an explicit cyber component in the definition of aggression creates a grey area in which attacks such as this are not labelled as aggression. This attack represents a failure of the international legal system to maintain and protect stability. Furthermore, because these attacks do not meet the international legal definition of aggression, the U.S. has limited options to respond that are justifiable under international law.

Response

In response to these attacks, the United States placed sanctions on Russian individuals and companies and government entities. These sanctions largely targeted individuals and private entities rather than the Russian government itself due to the difficulty in attributing the attacks. However, two government organizations were sanctioned in this action, the Russian Federal Security Service, and the GRU, Russia’s chief military intelligence agency. When compared to the responses in the other case studies, this response may seem more complete and proactive. However, it remains concerning that a cyber-attack of this magnitude, with direct attribution to a foreign government, only warranted limited sanctions. This response indicates that cyber-attacks continue to be understood as unfriendly acts of states, rather than as acts of aggression under Resolution 3314.

States’ Right to Respond

Given these examples of the evolution of cyber weapons as both tools of war as well as political coercion, and the failure of Definition of Aggression Resolution to adequately address this new weapon, it is clear that these attacks will continue to occur. However, until Resolution 3314 is amended to include cyber-attacks, states maintain the right to respond to such attacks with any means at their disposal. Sovereign states have a natural right to respond forcefully if they feel they have been attacked. Sovereignty in international law is an essential principle, both to domestic and international order. Anél Ferreira-Snyman notes that state sovereignty, which is generally accepted as a fundamental principle of international law, upholds three norms: “first, that all sovereign States, irrespective of their size, have equal rights. Second, that the territorial integrity and political independence of all sovereign States is inviolable. Third, that intervention in the domestic affairs of sovereign States is not permissible.” Furthermore, according to David Bederman, principle of sovereignty holds “that each nation answers only to its own domestic order and is not accountable to a larger international community, save only to the extent it has consented to do so.”

Using the principle of sovereignty, a state may take retaliatory action when threatened or harmed by another state, without consent or agreement from the international community. This concept is in fact enshrined in Article 51 of the U.N. Charter, which explicitly recognizes the “inherent right of individual or collective self-defense.” Moreover, J.L. Brierly contends that if international law fails to protect a victim state, or give that victim state a legal avenue for redress, “it is likely that the injured state, if it is strong enough, will seek by other means the redress that the law cannot afford it.” In the case studies examined above, all of the victim states could have responded with cyber-attacks of their own or conventional means as deemed necessary. Until the international legal system develops adequate definitions and frameworks for dealing with this new arena of conflict, states can defend themselves and retaliate as they see fit. Therefore, not having a cyber element to the U.N. definition of aggression threatens international stability. It is widely accepted that states may respond to threats or attacks in any manner they choose, including conventional armed attacks, and are only restricted by proportionality and the laws of war. Furthermore, the lack of a cyber component may also limit a state’s legal ability to respond to these attacks. States such as Iran were limited in their response due to the ambiguity of Resolution 3314 on cyber-attacks. Due to the risk of being labelled the aggressor if they responded using conventional means, Iran instead chose to conduct cyber-attacks of their own. This response has the potential to create a series of increasingly damaging assaults between two states, which Resolution 3314 is unable to address. This void in legal structure creates instability.

As part of the discussion on states’ right to respond to cyber-attacks, there is debate over whether a cyber-attack constitutes a violation of the state’s territorial integrity. The idea of defined borders and the defense of territorial integrity is integral to the defense of a state’s

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Some scholars contend that cyber-attacks do not meet the threshold to be considered violations of a state’s territory, and therefore are not acts of war. However, it must be understood that if a state were to decide that a cyber-attack constitutes a violation of territorial integrity, they could respond with a conventional military attack. Victim states have an “inherent right” to self-defense protected by the U.N. Charter, and in the exercise of that right, states have no legal requirement to seek the approval of the U.N. or any other international body. The state’s ability to act unilaterally when responding to threats or aggressions of another state is undeniable. This ability to respond unilaterally and without condition, except proportionality and the laws of war, to cyber-attacks makes the addition of a cyber warfare component to Resolution 3314 imperative.

Furthermore, under the Effects Doctrine, victim states automatically hold jurisdiction over a cyber-attack if that attack inflicted economic costs. The Effects Doctrine “permits the exercise of jurisdiction over the extraterritorial activities of foreigners which produce economic effects within the territory.” Under this doctrine, states may hold foreign non-state actors legally responsible for cyber-attacks that caused economic damages. For example, in the Estonia case study, one bank reported $1 million dollars in damages. If the Estonian government could trace the attack to an individual operating in Russia, that individual would be subject to Estonian law for their actions. Through the Effect Doctrine, regardless of whether cyber-attacks are understood as aggression or not, individuals who conduct these attacks are automatically subject to the victim state’s judicial system.

Conclusion

The case studies discussed here provide evidence of not only an increase in cyber weapon use, but also the varied formats in which they have been utilized. These variations display why it remains difficult to provide a succinct definition to these new weapons. Yet, without a clear understanding of the danger these new weapons bring, along with the addition of a cyber component to the Definition of Aggression in Resolution 3314, there is the risk that cyber-attacks may act as a catalyst to conventional warfare. Laws must be made to fit reality. Attempting to force reality to fit laws creates gaps in understanding and protection, which endanger global peace and stability. As long as states believe that cyber warfare is not an act of aggression, they will continue to use these weapons, thereby endangering global stability. The case studies above prove that while cyber warfare certainly violates the ‘Friendly Relations’ Resolution 2625, it does not meet the definition of aggression under Resolution 3314. This gap in international law has created an unstable global environment, in which states are conducting increasingly damaging cyber-attacks against one another, and places victim states on unstable legal ground concerning retaliation. The inclusion of cyber warfare and its definition to Resolution 3314 Article 3 will help prevent the use of these destabilizing weapons in the future. However, until such a framework exists within the international legal system, states should

maintain the right to respond to cyber-attacks by any reasonable means at their disposal. These response options should include the use of conventional weapons if the cyber-attack is deemed harmful to state economies, infrastructure, or political institutions. Moreover, a robust and immediate conversation within the international community is imperative to address the lack of understanding of cyber warfare as a weapon of war, to better define what constitutes an act of war in this new cyber dimension, and how states should respond to such attacks. Without this conversation and a cyber warfare addition to Resolution 3314, cyber-attacks will continue to have the potential to escalate into conventional war and the current global instability will continue.
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Cauterization and Infection: Trying to Fix the Venezuelan Economy

Harry Nitzberg*

Abstract: In the past few months, the Bolivarian Republic of Venezuela has seen some of the greatest challenges to its democracy in a generation. Low oil prices and mismanagement of the state-run oil company PDVSA have sunk the country into an economic and political crisis. The downfall of the self-proclaimed “socialist” country has brought free-market economists out of the woodwork. The majority of their policy prescriptions boil down to a set of free-market oriented policies that have come to be called “neoliberal” policies. The problem with these policies is that they do not allow for the political and economic intricacies of individual countries to be accounted for. This paper is an attempt to set forth a set of economic suggestions for Venezuela based on its economic and political realities. Economic reforms will take a two-pronged approach; reforms that are set to address short term and long-term problems. The short-term reforms will be composed of three parts: (1) decreasing inflation through counter-inflationary policies, while introducing social programs to help poor Venezuelans survive the policies; (2) bringing in foreign human capital to increase productivity in the oil sector; and (3) decreasing Venezuela’s sovereign debt. The long-term plan is centered on diversification of the Venezuelan economy.

Introduction

In the past few months, the Bolivarian Republic of Venezuela has seen some of the greatest challenges to its democracy in a generation. The streets are lined with protesters, there are mass shortages of all basic necessities, and the National Assembly has been temporarily stripped of its powers by the Venezuelan Supreme Court. Furthermore, low oil prices and lack of economic diversification have left the economy in ruin. The Organization of American States encouraged President Nicolas Maduro to step down to no avail. In August 2017, Maduro used a referendum to replace the suspended national assembly with a new legislative body that has the power to change the constitution. Nicolas Maduro and other Venezuelan government officials have been sanctioned by the US Treasury Department for their involvement in the election and its potential to hinder democracy in Venezuela. In addition, sanctions imposed in August 2017 bar US persons from “engaging in specified dealings involving the government of Venezuela and its instrumentalities…including state-owned oil company PDVSA.”* Recently, the questionable results of regional elections led the European Union to approve an arms embargo against

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Venezuela, and Venezuela has begun the slow process of debt restructuring negotiations. By any measure, Venezuela is facing a political and economic crisis.

This paper will argue a specific set of economic reforms that are constructed to meet Venezuela’s economic and political realities. The reforms will draw on elements of the preexisting schools of economic development, as well as pragmatic historical reforms by states that have experienced similar economic and political crises. While the reforms will only be economic, they will be made in anticipation of political obstacles and with the intention of lasting more than a single election cycle.

Defining the Problem

For the purposes of this paper, the primary short-term problems of the Venezuelan economy will be defined as follows: (1) inflation projected to rise as high as 2,350 percent by the end of 2018; (2) decreased oil revenue resulting in a major loss in foreign currency reserves for the heavily oil dependent economy; and (3) a total foreign debt between $60 and $140 billion USD, divided between holders of sovereign Venezuelan and Petróleos de Venezuela S.A. (PDVSA: the state run oil company) bonds (depending on the source of the estimate).

Given the interconnectedness of an economy, each of these problems feeds and exacerbates the others. As such, the more detailed explanations of each problem and their potential solutions will be interconnected.

Viable Treatments

Economic reforms will take a two-pronged approach, as they are set to address short-term and long-term problems. The short-term reforms will be composed of three parts: (1) decreasing inflation through counter-inflationary policies, while introducing social programs to help poor Venezuelans survive the policies; (2) bringing in foreign capital and human capital to increase productivity in the oil sector; and (3) decreasing Venezuela’s debt. The long-term plan is centered on diversification of the Venezuelan economy via encouragement of infant industries using protectionist policies.

While the proposed policy solutions of this paper may seem sound, it is worth noting that they are based on past experiences in other countries, at different times or both. As such, the goal of this paper is not to fix the Venezuelan economy by providing perfect solutions. These policy suggestions are meant to start a dialogue on how to fix the Venezuelan economy in ways that fit its political and economic realities, rather than relying on the sort of one-size-fits-all policies that dominated economic development discourse in the international monetary institutions and in much
of the developed world’s think tanks and schools during the 1980s and 90s, and arguably continue to lesser extent today.\textsuperscript{5}

\textbf{Short Term Solutions}

\textit{Bringing Down Inflation}

For the economy to be fixed, inflation must be brought back down before the other two steps can be attempted. There are two reasons for this: (1) low inflation will help attract desperately needed foreign human capital (the importance of which will be explored in the “low oil production” and “diversification” sections) and (2) lower inflation will help restore foreign currency reserves desperately needed to buy medicine, food, and other basic goods\textsuperscript{6}. With high inflation, it is difficult to attract potential foreign talent (including Venezuelan emigrants in other countries) that needed to help reinvigorate Venezuelan oil production. These workers would need to be offered decent salaries, on a currency that can buy things, in a place where there are things to be bought. Inflation decreases buying power by making things require more of the currency to buy the same things.

Inflation in Venezuela has continued to spike according to external estimates (the Venezuelan government has ceased to report figures). The International Monetary Fund (IMF) estimates that inflation has reached 652.7 percent and estimated that it will reach 2.35 thousand percent by the end of 2018.\textsuperscript{7} What is more, the World Bank has estimated that inflation reached 254.5 percent in 2016.\textsuperscript{8} In either case, the consensus is that Venezuela has entered what economists call hyperinflation, meaning that inflation has risen over 50 percent per month.\textsuperscript{9} Inflation of this magnitude is an impediment to economic growth because it leads to disruption of coordination in the economy,\textsuperscript{10} may cause currency to “[cease to be] a useful medium of exchange, and leads to a bartering economy and breakdown of the country’s financial system”.\textsuperscript{11}

Traditionally, during times of such great inflation, Latin American countries have taken two courses of action. The first is tying their currency to a stronger currency. This method usually takes one of two forms, “currency pegging” or “currency boarding.” Currency pegging is tying the worth of one country’s currency to another. All of the Latin American countries that have

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\item[6] Venezuela imports the vast majority of its food, medicine, and other basic goods. In order to buy foreign goods, foreign currency is needed. By decreasing the quantity of Venezuelan Bolivars in circulation, the Venezuelan government will be able to buy foreign reserves on the open market. These reserves can then be used to further stabilize the currency by buying Venezuelan Bolivars from the open market, decreasing their quantity and increasing their value; Vera, Leonardo. 2017. “In Search of Stabilization and Recovery: Macro Policy and Reforms in Venezuela.” \textit{Journal of Post Keynesian Economics} 9-26.
\item[7] International Monetary Fund. 2017. \textit{World Economic Outlook (October 2017)- Inflation Rate, Average Consumer Prices}. October. \url{https://www.imf.org/external/datamapper/PCPITCH@WEO/WEOWORLD/VEN}.
\end{itemize}
\end{footnotesize}
implemented this policy in the past have pegged their currencies to the American dollar, given the relative stability of the dollar and high levels of trade between Latin American countries and the United States. Similarly, in a currency boarding system, a central bank “issues notes and coins convertible on demand into a foreign anchor currency at a fixed rate of exchange. It holds low-risk, interest-bearing bonds denominated in the anchor currency as reserves.” In addition, under an orthodox currency board, the state implementing it has no control over the state’s monetary policy. Currency boards and pegging have produced mixed results in Latin America and beyond. The currency boarding of the Argentinian peso to the American dollar in 1991 eventually led to an economic crisis in 2002.

The second is a set of policies that have come to be called “neoliberal” economic policies, which aim to pull down inflation and encourage foreign investment. These policies typically include extreme reductions in government deficits and the removal of what economists call “trade barriers.” This typically means slashing social programs, privatizing government-run enterprises (by selling them to private investors), eliminating subsidies, opening the country to foreign direct investment (when foreign companies open factories in a country), and eliminating tariffs/trade quotas (self-imposed limits on the amount of a good that a country can import). The logic is that by reducing government expenditures, the need to print extra money to pay for such expenditures is reduced, thus decreasing the amount of that country’s currency entering the economy, and by extension slowing inflation. The logic to reducing barriers to trade and foreign investment is that by reducing such barriers, the domestic economy will be better able to import the foreign machines and money it needs to build its industries and develop its economy. Usually, these policies are accompanied by an infusion of foreign capital (money) via one of the international monetary institutions: the International Monetary Fund (IMF). The infusion of money allows the countries to meet their short-term debt payments, fund day-to-day operations, and implement the aforementioned neoliberal economic policies.

For Venezuelan president Nicolas Maduro, both courses are political suicide. Over the course of Maduro’s presidency and the presidency of his predecessor Hugo Chavez, their party, the Partido Socialista Unido de Venezuela (PSUV), thrived on galvanizing impoverished Venezuelans with anti-American/imperial rhetoric. In addition, he railed against the international monetary institutions that created the inflation countering “neoliberal” reforms mentioned earlier; the IMF and World Bank. Currently, despite Venezuela’s deep economic crisis, a very sizable percentage of the population still supports Maduro because he continues to resist what is seen as an American-orchestrated push by the international community for Maduro to step down. As such, any attempt by Maduro to peg the Venezuelan Bolivar to the American dollar would be seen as nothing short of traitorous by the true “Chavistas” (supporters of Hugo Chavez’s nationalist, social-capitalist ideology) in his support base.

In a similar vein, implementation of neoliberal economic reforms would likely be met with intense backlash, not only due to the sheer hypocrisy of it, but because of the negative disproportionate effect that such policies have had on the lowest sections of the socioeconomic

13 Ibid.
ladder,\textsuperscript{15} which makes up Maduro’s largest support base. Neoliberal economic reform would likely include the slashing of social programs aimed at helping the poorest Venezuelans (implemented by Chavez and maintained by Maduro), privatization of many (if not all) assets of the state-run Venezuelan oil company PDVSA, and removal of price controls. For this reason, such reforms must be implemented with a safety net for the poorest Venezuelans, the money for which will be drawn from reinvigorated oil revenues (refer to “productivity through PDVSA reform” section).

\textit{Where to Go from Here}

With all of the aforementioned limitations of borrowing options in mind, Venezuela must embark on counter-inflationary measures (including some elements of the neoliberal counter-inflation recipe) without the help of international monetary institutions or American banks — at first. Implementing counter-inflationary measures will serve several purposes at once. It will (1) signal to foreign banks that the government is taking steps to stabilize the economy, helping to decrease the reluctance of potential investors (both foreign and domestic), including the international monetary institutions; and (2) increase productivity in the oil sector for reasons that will be explained later on. The counter-inflationary measures include lifting price controls, partially privatizing the state oil company PDVSA, and floating the Venezuelan currency, the Bolivar. To compliment these reforms, a large portion of government expenditures will be temporarily shifted to bolster existing social programs and institute temporary new ones (part of the funding for which will explained in the “decreased oil revenue section”).

\textit{Floating the Bolivar}

The most basic cause of inflation is the overprinting of money by governments\textsuperscript{16} and Venezuela is no different. Record oil lows have robbed the Venezuelan government of its most valuable revenue stream. Rather than risk the “political dangers that increasing taxes can create, governments around the world... [resort] to inflation”.\textsuperscript{17} After the onset of the Venezuelan economic crisis, Maduro had little choice but to run the Venezuelan currency presses for all they were worth, until 2016, when the Venezuelan government became so broke that merely printing money became too much of a burden on the budget.\textsuperscript{18} By then, the damage had already been done. The more money that is printed, the higher producers increase their prices, forcing governments to tighten price controls. The tighter price controls are implemented, the more money is needed to buy basic goods, prompting the government to print more money, and so on, until the currency is not worth the paper or the ink used to print it.

To stop this cycle, the Venezuelan government must remove the two sources of the inflation: shortages and an excessive money supply (more money is in circulation than is demanded to be held). For the sake of clarity, this paper will focus on food shortages.


\textsuperscript{17} Ibid.

To fix the money supply, Venezuela must implement a “managed float” of its currency. A managed float is when a state allows the international currency market to determine the worth of its currency, within a range determined by that country’s central bank. This style should seem familiar to many readers because that is currently what the United States, Europe, and most of the developed countries do. The central bank sets goals on the levels it wants for inflation, unemployment, and sometimes economic growth. Then, the central bank uses a series of tools to influence the money supply in ways that pushes it closer to the desired target. The goal of implementing a “managed float” in Venezuela is a stabilization of the Venezuelan Bolivar. Without the long held “fixed” exchange rate between the Bolivar and USD, the widely used black-market price of the Bolivar and the official price will eventually come closer together, leading to stable prices. With stable prices, investors will have more confidence to invest in Venezuela and the central bank will be better able to regulate the money supply.

Floating currencies after prolonged periods of price controls are often popular among the upper-middle and upper classes, and unpopular among the business class because while they do eventually stabilize currencies, they will lead to extreme disruptions in the short run. When currencies are floated, the black-market price of the currency falls to meet the official price and the official price rises to meet the black-market price. The problem is that this does not happen instantaneously, and the results are wildly different across the economy, leading to price discoordination across the economy in the short term. For individuals with larger incomes, this is easier to deal with because they have the income to afford different prices in different areas of the economy. For low income individuals, this may mean that they are not able to afford the prices of basic products that had previously been held down by price controls. To assure that the poor are able to at least feed themselves and have proper medical care, social programs are needed.

Social Programs

Fixing the Food

During the presidency of former Hugo Chavez, subsidized food programs and price controls were successfully implemented for years. As Rhoda Howard-Hassmann summarizes:

Chávez established the Mercals, or special people's markets, where a large range of subsidized goods could be purchased. By 2007, about 9.3 million people (out of a total population of about 28 million) shopped for food at the Mercals. The missions also distributed free, ready-to-eat foods to the very poor. The free food was distributed to groups of neighborhood women who cooked hot lunches for the extremely poor in their own kitchens.

The problem with the Mercals is that they targeted individuals based on location rather than need. In effect, this allowed people to take advantage of the Mercals by buying food cheaply from the

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19 For Venezuela and the rest of Latin America, setting goals for unemployment is not valid because they have such large “informal sectors”, i.e. individuals who do not have formal employment (such as street vendors).
Mercals and selling it in other places for a profit.\textsuperscript{22} Prior to the fall in oil prices, this was less of a problem because food was more plentiful, but today, shortages have caused such leakages to have devastating effects on the lives of poor Venezuelans.

To reform the food subsidies and replace the price controls, Venezuela must adopt a system that better targets beneficiaries. This system must make sure that only individuals that are in need can use them and that no one can take advantage of the system by buying up a large amount of the subsidized good and selling it elsewhere. To help better target beneficiaries, Venezuela can reform its food subsidy system in ways that have been successful in other countries.

One such example is a recent technological innovation in Egypt, called the smartcard. These electronic cards are used as identity cards that ensure that only eligible persons can purchase bread under Egypt’s “baladi bread” food subsidy program. Each card permits participating families to purchase a limited amount of bread per day.\textsuperscript{23} While the smartcard may prove too expensive for the exasperated government coffers of Venezuela, the program can be altered to still be effective. The cards serve as identification cards for beneficiaries. The Venezuelan government may be able to get by with just requiring beneficiaries to provide some other form of state-issued identification when purchasing subsidized food and limiting the amount of food that a family can buy from stores in their area. An obvious problem with this is that given the massive shortages in food in Venezuela, local stores may run out of food quickly. For the food subsidies to be effective, the food shortages must be addressed.

\textit{Price Controls and Shortages}

Prior to the onset of the economic crisis, President Chavez began to rely increasingly on price controls as a means of ensuring the support of his low income political base. In April of 2012, “to contain inflation…price controls [were expanded] to include diapers, laundry detergent…bottled water,” shampoo, and toilet paper among other items.\textsuperscript{24} Inflation had begun to put pressure on producers to increase their prices to continue to profit; however, with price controls, they could not raise prices. According to Jose Nino of the Mises Institute,

\begin{quote}
When price ceilings are implemented… An artificially low price leads consumers to demand more of a good than producers are willing to supply. When demand outstrips supply, shortages emerge… [because] many businesses are forced to incur losses, especially if the legislated price falls below the natural market price that is needed to meet operational costs. Less fortunate enterprises will find themselves compelled to shut down their operations as they can no longer afford to supply goods to the market given the artificially low prices.\textsuperscript{25}
\end{quote}

Put more simply, when the government imposes price controls on an industry, producers often cannot make a profit from the price at which they are forced to sell. When sellers cannot make a

\textsuperscript{22} Ib\textit{id}.

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profit, they either reduce costs by selling less or cease to produce entirely.\textsuperscript{26} When all the sellers in an industry are faced with this choice, shortages spring up.

One of the most commonly cited examples of price controls leading to shortages is the effect that rent controls had on the American housing market following World War II. Although the number of houses and population of the United States had both risen by ten percent, the rent control laws introduced during the war made housing more affordable for many people, resulting in less houses than people wanting to live in them. The result was that people had to wait for months to find an affordable apartment, if they could find one at all. Once the rent controls were removed, prices rose, thus decreasing the amount of people demanding houses and eliminating the shortages.\textsuperscript{27}

As such, in order to eliminate the food shortages in Venezuela, price controls must be removed. While this may seem to pose a political risk, as it will make the price of food skyrocket, the aforementioned food subsidies will help to ease the burden on poor families until the shortages are eliminated and prices return to normal.

\textit{Decreased Oil Revenue}

Since the onset of the Venezuelan economic crisis in 2014, Venezuelan oil production has fallen from around 2,700 barrels per day to 1,769 barrels a day in February.\textsuperscript{28} This decrease only tells half of the story. After the oil is produced, it is not always sold for immediate cash. As the economic crisis began to worsen, foreign governments demanded more concrete payments for their loans than the Bolivar (which is virtually worthless outside of Venezuela) or USD (that the government was starting to run short on). These concrete payments were oil. China and Russia agreed to give Venezuela advanced loans in exchange for oil to be sent at a later date, and now, almost 500,000 barrels per day are committed to paying them back.\textsuperscript{29} With Venezuela falling behind in payments during 2017,\textsuperscript{30} Russia negotiated licenses to develop two offshore Venezuelan oil fields in December of 2017.\textsuperscript{31}

In addition to using oil to pay off debts, the Venezuelan government also gives Cuba and Nicaragua a considerable amount of oil with a discount.\textsuperscript{32} According to PDVSA documents seen by Reuters, as recently as March 2017, 88,000 barrels per day were still being sent “to Cuba,

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Nicaragua and other countries...equivalent to a fifth of domestic consumption.” Finally, if the aforementioned drain of production was not enough, the government of Venezuela heavily subsidized domestic sales of petroleum at a consistent rate for 20 years, until February of 2016, when the subsidy was slightly decreased. With oil debts to China/Russia, the already low production levels of PDVSA, and the large oil subsidies given to the Venezuelan people and Venezuelan socialist allies, oil production (and, by extension, government revenue from oil sales) is in desperate need of change.

**Productivity through PDVSA Reform**

The needed change is twofold: (1) partial privatization of PDVSA and (2) the return of former Venezuelan oil managers from outside of the country. The purpose of these changes is to give the Venezuelan oil industry the two things that any industry needs to increase productivity, human capital, investment, and up-to-date technology in that sector. Privatization of PDVSA will bring human capital, foreign investment, and technology. The return of Venezuelan emigrant human capital will bring human capital.

Human capital is “the skills the labor force possesses and is regarded as a resource or asset.” It is necessary for the functioning of a company because without the managerial and technical skills needed to extract and transport oil efficiently, production and revenue suffers. In the Venezuelan case, this reality is illustrated by the impact of Hugo Chavez’s firing of 22,000 workers following a general strike that lasted from 2002-2003. Since their firing, Venezuelan oil production levels in terms of barrels per day have not exceeded pre-strike levels.

**Partial Privatization**

National ownership of any company has long been criticized by free market advocates as a recipe for inefficiency and corruption. In the case of PDVSA, the argument is accurate. In February 2018, three former employees of PDVSA were accused of embezzling more than $60 million USD between 2008 and 2014. In November of 2017, Major General Manuel Quevedo of the Venezuelan National Guard was appointed president of PDVSA, despite having no

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33 Ibid.
experience in the energy sector. On March 9, a “trust linked to Venezuela’s state oil company PDVSA…filed a lawsuit against major international energy trading firms for their alleged role funneling bribes to corrupt company officials in exchange for rigged oil purchase contracts.” The lawsuit alleges “billions in lost revenue since 2004.” To address the problems with corruption while maintaining revenue flow from the oil sector to state coffers, and subsequently to the Venezuelan people, a combination of two extra-national case studies is needed: Chile and Bolivia. After the military coup in Chile in 1973, an authoritarian military junta rose to power in Chile under the leadership of General Augusto Pinochet. Under junta’s leadership, the Chilean economy was recrafted by a group of Chilean “free market” economists. In 1980, Pinochet added a provision to the newly created Chilean constitution which ensured that ten percent of the revenue from Chilean copper exports would go directly to the Chilean military. According to data from Cochilco, Chile’s copper regulatory agency, during the two decades following privatization, copper production rose by approximately 244 percent (in the decade before privatization, it only rose approximately 50 percent). During the commodity boom of the early-to-mid 2000s, “the substantial increase in international copper prices, [gave] the armed forces…important sums from this source, which were mostly spent on modernizing their military equipment.” By taking ten percent of revenue from Chilean copper exports, the Chilean military was able to take full advantage of the efficiency brought on by private ownership.

In a similar vein, the socialist government of Bolivia has been able to harness the efficiency of the private sector for the benefit of Bolivians. On May first, 2006, newly elected president Evo Morales nationalized Bolivia’s oil and natural gas reserves. The decree gave foreign companies 180 days to renegotiate contracts with the state and compensated the foreign companies by the value of their shares. While the Bolivian government does officially own the natural gas deposits and production, the foreign companies, who renegotiated contracts, are allowed to sell the natural gas and oil in the international market. In turn, Morales has used the revenue from taxes on the companies to “deploy a set of social policies designed to alleviate poverty, inequality and shortcomings in the areas of health and education.” Between 2006 and December 2011, Bolivian


42 Ibid.


49 Ibid.

50 Ibid.
natural gas barrels per day increased\textsuperscript{51} and between 2006 and 2016, economic inequality in Bolivia (as measured by the GINI coefficient) decreased.\textsuperscript{52}

The success of the Bolivia’s loose-nationalization and Chilean copper revenue appropriation created the possibility of implementing similar policies in Venezuela. Furthermore, the implementation of a mere partial privatization, which was done by Bolivia, may allow President Maduro to save face in the eyes of his hardened nationalist supporters.

\textit{Buyers}

The most daunting obstacle to partial privatization of PDVSA is finding a buyer. A buyer must have enough money to buy PDVSA and finance the PDVSA’s debts. The latter of the aforementioned responsibilities brings up another concern. In March 2018, the United States Treasury Department announced new sanctions that forbade American commercial entities from buying debts connected to the Venezuelan government, like PDVSA debt.\textsuperscript{53} As such, the buyer cannot be American (which severely limits the number of buyers). Similarly, finding a buyer in the European Union may be difficult because potential buyers may fear that the European Union may place sanctions on Venezuela that will mirror American sanctions. In addition, it may be difficult to attract a Middle Eastern, Russian, or Chinese buyer for reasons that will be explained in the following section. With these limitations, there may be one potential buyer with the money and freedom from politics to purchase PDVSA, an English oil company.

Besides the process of elimination, there are more reasons that English companies are more likely to buy PDVSA. In 2016, citizens of the United Kingdom voted to leave the European Union (EU). In the aftermath, many saw the potential for omelettes to be made of the broken eggs. One such omelet was the diversification of England’s economic ties beyond what the politics of the European Union would allow. Prime Minister Theresa May has made clear that in the aftermath of the British exit from the European Union (Brexit), her government would push for Europe to become a leader of global free trade.\textsuperscript{54} One form of this is the pursuit of trade agreements that would have been impossible had England stayed in the EU.

An example of this is Dr. Nile Gardiner’s testimony before the Subcommittee on Terrorism, Nonproliferation, and Trade and the Subcommittee on Europe, Eurasia, and Emerging Threats of the Committee on Foreign Affairs in February 2015. When asked if Brexit would make it easier to “resolve some of the perennial issues of GMOs and other aspects that often make it impossible for U.S. agricultural products to have a fair opportunity to enter those markets?”:

\begin{quote}
I would say, you know, firstly, that with regard to TTIP that you mentioned earlier, there were major problems in terms of U.S.-EU discussions because of the EU’s common agricultural policy, which some in Britain would describe as a vast
\end{quote}

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protectionist racket basically... And once Britain leaves the European Union, it will not be subject to the common agricultural policy.55

Another example is Britain’s desire to create a free trade agreement with Australia.56 Today, the European Union does not have an all-encompassing trade agreement with Australia.57 Similarly to the US case, trade between the European Union and Australia has been strained for decades due to the EU’s agricultural protectionist policies, which blocked access of many Australian agricultural products from the EU market.58

Based on British expansion of economic relations with countries that EU politics have delayed, it is possible that a British company would be more able to buy PDVSA than its counterparts in the EU, the United States, the Middle East, or China. After an official Brexit in March of 2019, British companies may no longer be bound to sanctions initiated by the European Union. As such, British companies would not have to fear impending sanctions by the European Union that could derail such a deal or dampen their profits once a deal to purchase PDVSA was made.

Debt Management

Of all of Venezuela’s economic troubles, this is by far the hardest to tackle. As previously mentioned, Venezuela’s foreign debt has reached $60 billion by conservative estimates and Venezuela has had to resort to selling off licenses to oil fields to pay back loans to Russia. While $60 billion dollars in debt may not seem high by American standards, keep a few things in mind: (1) much of this debt is in the form of government and PDVSA bonds, which are all coming due (or “maturing”) around the same time, and (2) these bonds are maturing at a time when oil revenue is at the lowest point that Venezuela has seen while governed by Chavez’s party.

The maturation of Venezuelan bonds and demands for repayment by Russia and China have left Venezuela in dire need of immediate cash. Recently risen obstacles have limited potential sources of said cash. China has ceased to give new loans to Venezuela.59 Sanctions issued in the aftermath of the election of representatives for the newly created “Constituent Assembly” forbid American businesses from buying new debt from PDVSA or the Venezuelan government.60 Worse

yet, the international financial institutions that usually provide cash to countries in economic or financial crises are not politically viable for Maduro’s government or for the United States.

Studies have found that IMF lending is often “systematically biased” with preferential treatment being “largely driven by the degree of similarity between beliefs held by IMF officials and key economic policy makers in the borrowing countries.”° Given the democratic socialist nature of the Venezuelan government and the well-known free-market ideology of the IMF, loans are unlikely. Conversely, the government of Nicolas Maduro would not be inclined to accept a loan. As mentioned previously, Maduro and his predecessor, Hugo Chavez, thrive on the use of anti-American and anti-international financial institution rhetoric. The acceptance of any loan deal between the IMF and the Maduro government would be seen by Maduro’s political base as a betrayal of the late Hugo Chavez.

With these limited options, Maduro must find alternative means to finance the most immediate payments of Venezuela’s debt. This alternative cannot include the United States, China, Russia, or the IMF. This seemingly leaves two major potential sources, Europe and the Middle East. Unfortunately, the only states in the Middle East with large enough economies to provide such funds are states whose economies are heavily dependent on oil, which have already been forced to cut government expenditures immensely in response to the global fall in oil prices.° On the other end of the spectrum, Europe has faced weak economic growth since the 2008 financial crisis and subsequent Euro crisis. As a result of these two crises, European GDP has not yet returning to pre-2008 levels.

This debt burden and limitation of access to credit gives the Venezuelan government further incentive to partially privatize PDVSA. In the next year, of the $9 billion dollars in payments that will become due, $2.9 billion dollars will be from PDVSA. By privatizing PDVSA while maintaining government revenue from it (as suggested in the previous section), Venezuela may effectively be able to dump some of its debt burden onto PDVSA’s new owner (who would probably have more access to the credit needed to finance the debt). This buys the Venezuelan government some breathing room to focus on paying off its sovereign debt; a debt that the Venezuelan government itself owes to bondholders.

In addition to offloading some debt by privatizing PDVSA, as mentioned earlier, the Venezuelan government may be able to regain access to foreign banks after it has initiated counter-inflation measures. To do this, investor confidence in the economy must be restored. Investor confidence can be boosted by a change of government leadership and from the managed float of the Venezuelan Bolivar.

As previously noted, Maduro and the United Socialist Party, to which he belongs, cannot afford to lose their base by seeking help from the IMF. As such, in any other situation, the opposing political coalition would be the optimal choice to step into power. In any other situation, a change to a ruling party of the center-right would be a good signal to foreign banks and investors; it would mean that Venezuela would be willing to accept help from the IMF and that the IMF would be willing to give it. However, the main opposition coalition in Venezuela, the Mesa de la Unidad Democrática (MUD), has been fractured since the creation of the Constituent Assembly in August,

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with some members accepting the Constituent Assembly as the new rules of the Venezuelan political game and others refusing to accept it as a legitimate institution. Furthermore, MUD has announced that it will be boycotting elections in May on the grounds that the election will be fraudulent, despite the presence of United Nations observers.

With a fractured and weak opposition, Venezuela must do the best that it can with the political party that it has, but not necessarily with the current face of that party. Contrary to popular belief, there is a sea of difference between the leadership of Nicolas Maduro and that of his predecessor Hugo Chavez. In contrast to Chavez, “who often managed to resolve social tension or make unexpected alliances at key moments, Maduro easily falls for provocations.”

In the words of The Nation reporter Greg Grandin, “Maduro has responded to extremists in the opposition by assuming everyone in the opposition is an extremist, presiding over an ineffective and incoherent mix of distributivist carrots and repressive sticks, aimed not so much at consolidating his personal power as at digging in a besieged and out-of-touch revolutionary bureaucracy.” For a more concrete look at the difference in public support between the Maduro and Chavez, consider their electoral successes. Prior to the massive downturn of the economy, Maduro only won the presidency by 1.5 percent of the votes cast, while Chavez consistently won by huge majorities in 1999, 2001, and 2007.

Having established Maduro’s poor political skills and the MUD’s impotence, only one option remains: the replacement of Maduro with another member of his own party. Currently, such an individual has not presented themselves yet.

Policies for Economic Sustainability

Once inflation has been decreased and government revenues have been refilled by reinvigorated oil production, the Venezuelan government will not have much time to celebrate their short-term victory, they must focus on sustainability. Under the umbrella of sustainable economic growth is one necessity, economic diversification. In the case of Venezuela, economic diversification would entail a decrease in the percentage of GDP that can be tied back to the oil sector. To put the dependence of the Venezuelan oil exports in perspective, 95 percent of Venezuela’s export earnings and 25 percent of Venezuela’s GDP are from oil and gas exports.

With Venezuela’s large amount of oil reserves, should oil prices continue to steadily rise, Maduro’s government may be tempted to just ride the wave of growth that would surely follow—directly into an economic trough when prices fall again. This is what economists call a “resource

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curse” or stagnation in economic development that accompanies booms and busts in the price of the product that an economy overly depends on.\textsuperscript{71} When the price of the main export is high, the value of the country’s currency rises. When a country’s currency becomes stronger, that country’s exports become more expensive. As the other industries’ prices rise, their ability to compete in international markets is decreased.\textsuperscript{72} Without the ability to compete, these firms die off.\textsuperscript{73} When the domestic firms that are needed for technological development die off, economic development is hindered.\textsuperscript{74}

Rather than wholeheartedly throwing the percentage of oil revenue that the government would receive on social programs and in oil production investment (extraction related machines/labor or land surveying), the Venezuelan government can attempt to counteract the “resource curse” by reinvesting a portion of the revenue in what economists call “infant industries.”

An infant industry is a group of new companies in a country that cannot sell their product at a price that is competitive in the international market for that good. To help these infant industries compete and grow, governments often give them some sort of help, whether it be in the form of subsidies, tax credits, money to foreign firms to buy domestic goods (as the American Import/Export Bank does), tariffs on imports of the good that the foreign firm is selling, etc. The use of any of these strategies is called “protectionism.”

In the case of Venezuela, the temptation to rely on oil is so great that government protectionism is necessary to develop infant industries. Without the aforementioned protectionist measures, Venezuelans will continue to rely on the import of basic necessities, which become scarce in times of crisis. The main industry to be developed in the meanwhile is agriculture, an industry that former president Hugo Chavez passively attempted to grow during his presidency.\textsuperscript{75} As the current crisis in Venezuela is showing, food production infrastructure is vital to sustain the Venezuelan population during sustained periods of low oil prices. With protectionist policies to protect the infant agricultural industry and removal of price controls on food, Venezuela may be able to better sustain downturns in oil prices in the future and become less reliant on oil revenue at the same time.

**Human Rights**

It is no secret that the Venezuelan government has been violating human rights during the economic and political crisis. Freedom of the press is virtually non-existent, protesters have been killed and many people that have opposed Maduro’s government are jailed for their dissent.\textsuperscript{76} In regards to fixing the economy, the human rights abuses create three obstacles to the aforementioned policy suggestions: (1) human rights violations scare off potential foreign direct


\textsuperscript{72} Ibid.

\textsuperscript{73} Ibid.

\textsuperscript{74} Ibid.


investment (FDI)\textsuperscript{77,78} (2) they cause the flight of human capital\textsuperscript{79} from Venezuela,\textsuperscript{80} and (3) they have led to economic sanctions.\textsuperscript{81} In order to remove these obstacles, the Venezuelan government must (at the very least) cease the violation of the opposition’s human rights.

Specifically, the Venezuelan government must cease the arrest of political opponents. This serves to alleviate all three obstacles. Ceasing to arrest political opponents may encourage the return of educated Venezuelans, who have left the country, by making them less fearful that they would be arrested if they were to return. Should the human capital return, it may increase the likelihood the Venezuela may receive more (desperately needed) foreign direct investment, because studies have shown that multinational corporations (MNCs) may be more reluctant to invest in a country if they fear that its human rights record may have a negative impact on the company’s image, even if that country has a large amount of human capital.\textsuperscript{82} Finally, the cessation of politically motivated arrests may lead to the removal—or at least avoidance—of future sanctions. In the announcement of sanctions by the European Union in January 2018\textsuperscript{83} and in the announcement of American sanctions in August 2017 and March 2018,\textsuperscript{84} the motivations of the sanctions were explicitly stated to be human rights violations. As previously mentioned, the presence of existing sanctions and the threat of further sanctions makes potential buyers of PDVSA and Venezuelan debt, reluctant to buy debt or PDVSA. Hopefully, if human rights violations were to be ceased, the sanctions would be removed and probability of future sanctions will be reduced.

Conclusions

This paper took a two-pronged approach in trying to reduce Venezuela’s economic crisis. Short term reforms sought to decrease inflation by floating the Bolivar and removing price controls, while reforming existing social programs to better target at-risk populations. The point of reforming these social programs was to reduce waste and help poor Venezuelans deal with the further economic downturn that floating the currency and removing price controls will do in the

\textsuperscript{77} Foreign Direct Investment is when a company moves some of its operations into a country rather than contracting work to a foreign company.


short run. To increase oil production from current record lows, it was suggested Venezuela try to encourage the return of educated Venezuelan emigrants and encourage foreign investment by partially privatizing the Venezuelan state-run oil company PDVSA. Partial privatization of PDVSA also aims to increase government revenue that can be used to help pay off Venezuela’s short debt and help fund the aforementioned social programs. Long term reforms sought to diversify the Venezuelan economy by encouraging the growth of industries that were unprofitable during the oil boom years due to an oil-driven increase in the value of the Venezuelan Bolivar currency. Finally, both short-term and long-term reforms must be complemented by the protection of the political opposition’s human rights. Arguably, violations of human rights will decrease the likelihood that the aforementioned economic reforms will be successful.

To reiterate the disclaimer in the introduction, these policy suggestions are solely meant to be a means of generating discussion on how to fix the Venezuelan economy in ways that fit Venezuela’s political and economic realities. Many of these ideas are drawn from the economic experiences of other countries, and as such may not work in Venezuela.

Future Economic Concerns

It is worth noting that should Venezuela somehow be able to find the funds to finance its debt repayments, it may face more obstacles down the road. One of the most fearsome potential concerns is the threat of foreign bondholders suing in foreign courts. The most prevalent regional precedent is the case of Argentina. After Argentina exited its economic crisis that lasted from 1998-2002 by re-negotiating with debt holders, it left a time bomb in the form of foreign vulture funds that refused the terms offered by the Argentinian government. In 2014, the Supreme Court of the United States confirmed a lower ruling by a lower American court that said that Argentina had to pay back all of the holdout bondholders in full. Two years later, after grueling negotiations, Argentina made a precedent-setting deal with foreign vulture funds that rewarded the funds with $2.4 billion dollars for bonds bought for $117 million during the Argentine economic crisis of 2001. Should the Venezuelan economy show signs of returning to stability, many of the vulture funds that observed or participated in the outcome of the Argentinian debt negotiations may swoop down and pick at the bones of Venezuela (if they have not begun to already). Should the same thing that happened to Argentina happen to Venezuela in the future, it would prove to be a great drag on the economy.

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Arts of Evasion: North Korea, Sanctions, and the World

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Abstract: As the United States and the international community search for more effective sanctions to force the DPRK to the negotiating table, the need for improved understanding of North Korea’s complex sanction evasion techniques becomes pressing. The purpose of this article is to explore the mechanisms that the DPRK has used, and continues to use, to evade sanctions. These include the manufacture and sale of small arms and munitions, the development and sale of ballistic missile technology, and extensive counterfeiting operations. One important and innovative sanction evasion mechanism used by the DPRK is the commission and sale of painting and other works of art through the North Korean art company, Mansundae. Through these and other methods, North Korea has successfully overcome international pressure; any future sanctions regime, if it is to be effective in curbing North Korean nuclear ambitions, must take cognizance of them.

In September 2013, NBA basketball player Dennis Rodman returned from his second trip to North Korea (Democratic People’s Republic of Korea—DPRK).1 The trip was his then most recent attempt to undertake ‘basketball diplomacy’ between the United States and North Korea.2 At a press conference shortly after his return, the NBA Hall of Fame and multi-championship winning legend sat at a podium that prominently featured a life-size bronze bust of his head.3 The statue, a gift to Rodman, was a product of Mansudae Art Company, one of North Korea’s many non-military corporate conglomerates. Three years later, in December 2016, the United States Department of Treasury’s Office of Foreign Assets Control (OFAC) added Mansudae to a steadily expanding list of sanctioned North Korean enterprises in response to continuing North Korean nuclear and ballistic missile tests. Although none of Rodman’s five trips to date to North Korea have been officially endorsed by the United States government, Rodman has spoken with U.S. President Donald J. Trump about North Korea and recently endorsed the impending meeting between Trump and North Korean leader Kim Jong-Un, tweeting “Hoping for this after my two friends and leaders meet next month. #Peace #Love #NotWar #Diplomacy.” The ‘this’ Rodman refers to is a Photoshop photograph of Kim Jong-Un wearing a “Make America Great Again” ball cap.4

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1 For the purposes of consistency and clarity, North Korea and DPRK will be used interchangeably rather than the official name of the country.


3 Dennis Rodman won five NBA championships with two separate teams, the Detroit Pistons and the Chicago Bulls, between 1989 and 1998. He was a 2011 inductee into the Hall of Fame.

Mark Twain’s oft quoted ‘truth is stranger than fiction’ rightfully seems a strange reference for an article on contemporary world affairs. What is perhaps stranger is that the complete quote, ‘truth is stranger than fiction, but it is because fiction is obliged to stick to the possibilities; truth isn’t,’ is actually more appropriate when it comes to emerging developments between the United States and North Korea. Rarely in recent modern history has there been a diplomatic convergence of an American professional basketball player, a real estate developer/reality television show host become president, and a now sanctioned North Korean art company. That this convergence of circumstances involves nuclear weapons, ballistic missiles, and two nation-states still technically at war makes the truth even stranger and all the more significant. Yet, at some point in 2018, Donald Trump and Kim Jong Un will meet to discuss the denuclearization of the Korean Peninsula. Although the outcome of this meeting is at present unknowable, the mere prospect of such a meeting is historic on several fronts, not the least of which being the first time any sitting American president has met with a North Korean leader.

While the meeting outcome indeed is yet to be decided, the purpose of this article is to explore the mechanisms that the DPRK has used, and continues to use, to evade sanctions that seemingly have been one factor in bringing North Korea back to the negotiating table. To be clear, sanctions alone undoubtedly did not bring about North Korea’s changed posture with regard to the United States and its demand for denuclearization of the Korean peninsula. As a former Director of the Central Intelligence Agency (CIA) and Deputy Director of National Intelligence, General Michael Hayden noted recently that a ‘multi-pronged’ approach including sanctions, diplomatic engagements beyond North Korea, and military posturing most likely accounts for the change. Such an approach recently prompted the Republican Senator from Tennessee, Bob Corker, to suggest that President Trump, if successful in the negotiations, might well deserve a Nobel Peace Prize. However, other factors suggest that North Korea might also once again be offering great change in pursuit of immediate relief from sanctions that likely have been more effective, depriving North Korea of vital foreign income and other resources necessary to keep the regime afloat. The eventuality and durability of any proffered real change in North Korea’s nuclear capabilities or its ballistic missile development is both an absolute unknown and an outcome that, unfortunately, past performance does not indicate as likely. What is clear is that North Korea has a robust and well-developed capacity for circumventing economic sanctions, a capacity that has evolved not only in concert with its financial needs, but also in response to the sanctions imposed against the regime over the past decades.

The current focus of the most intense sanctions ever imposed on North Korea, beginning in 2013 after North Korea’s nuclear test, target all North Korean weapons programs with an announced aim of curtailing and eventually ending North Korea’s nuclear weapons ambitions and its arsenal. Under the leadership of U.S. President Donald Trump, the United States has taken unambiguous direct steps to convince Kim Jong Un to end his nuclear program. Direct negotiations between the governments of North Korea and the United States on nuclear and ballistic missile programs are not new, however. The actual process, albeit in fits and starts, is nearly thirty years old, beginning in the earliest days of the George H.W. Bush administration.

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6 At the time of this article, most open-source media strongly indicate that the meeting likely will occur in Singapore sometime in June.


8 Ibid.
and continuing through the next three presidential administrations (William J. Clinton, George W. Bush, Barack H. Obama) before entering the current round of negotiations. There is an element of irony in the current nuclear crisis on the Korean Peninsula. The prevailing media coverage of the United States’ insistence that North Korea denuclearize rarely mentions that it was the United States that first ‘nuclearized’ the Korean peninsula and introduced nuclear weapons capable missiles in the mid to late 1950s, an act that explicitly violated of the 1953 armistice agreement at the end of the Korean War. The target then was not North Korea but rather the Soviet Union and China, both allies of North Korea and America’s Cold War adversaries. Ironically, both Russia and China currently stand as North Korea’s most reliable major power partners in sanctions evasions. The United States steadily expanded its South Korean-based nuclear weapons and missile capabilities across the 1950s and 1960s; the count peaked in 1967 at almost one thousand warheads. Ultimately, the United States removed its nuclear weapons from the peninsula in 1991, amid the dissolution of the Soviet Union and the de facto end of the Cold War. Fifteen years later, in October 2006, North Korea tested its first nuclear weapon, reigniting a sanctions regime against it that had first been imposed in response to its ballistic missile tests in the 1990s. However, North Korea now has a clearly demonstrated capability to develop both ballistic missiles and nuclear weapons despite threats of war, economic sanctions, and myriad diplomatic efforts via third parties, namely China. North Korean abilities to circumvent sanctions via a complex, highly effectively network of mechanisms pose a continuing challenge to the international community in its efforts to pressure North Korea. The ongoing success of this network suggests two problematic realities for policymakers and the world community. First and most obviously, North Korea’s success in circumventing sanctions, albeit with increasing difficulty given the growing range of sanctions, also makes it possible for Kim Jong Un to limit the effects of sanctions, both on the North Korean people and the regime’s weapons development. Secondly, given North Korea’s history of non-compliance with agreements, there is a strong possibility that any ‘grand bargain’ brokered on the Korean peninsula in the coming months will not stand the test of time. The pessimism inherent in such an assessment is predicated upon several premises each resting on prior North Korean performance. The history of North Korea’s non-compliance with agreements lies beyond the scope of this article and is well covered by others. However, some basic history of prior and on-going North Korean sanctions evasion practices is necessary.

North Korean sanctions evasion operates on multiple fronts. Leaving aside North Korea’s nuclear ambitions and activities for the moment, the most notorious conduct (yet more vulnerable to sanctions) is North Korea’s profiteering from conventional weapons sales, including ballistic missile technologies. One key actor in this dynamic is the former Soviet Union. As an element of both the export of Marxist-Leninist revolution and as a form of de facto

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12 See Michael Rubin’s, *Dancing with the Devil* cited previously.

13 For the purposes of this article I employ a definition of conventional weaponry that excludes all non-nuclear, non-chemical, and non-biological from the conventional category.
economic support, the Soviet Union shared weapons technology and allowed the manufacture of many of their small arms and munitions abroad, most notably the now famous AK-47 assault rifle and RPG shoulder-fired antitank/antipersonnel rocket launcher.\textsuperscript{14} Like many Eastern European nations, notably the former Czechoslovakia and East Germany, North Korea was a major beneficiary of this lower-level weapons technology transfer and subsequently continues to manufacture these and other Soviet origin weapons for use at home and for sale abroad. Given the widespread adoption of Soviet weaponry by nations around the world during the Cold War, the collapse of the Soviet Union in 1991 created new openings for former Soviet allies capable of manufacturing such weapons. Moreover, given the relative simplicity and ruggedness of Soviet-era weapons and the wide network of former Soviet clients, North Korea was not short of customers. A further unfortunate wrinkle in a seemingly paradoxical puzzle is that given the expense and complexity of American and other western weapons, even nominally staunch American allies were often in the market for North Korean produced, former Soviet-designed arms. The recent scandal involving the sale and transport of North Korean small arms weapons and munitions to Egypt is an excellent specific case in point.\textsuperscript{15} This unfortunate yet significant episode illustrates not only a potential divergence in interests between the United States and Egypt when it comes to a matter of major global importance but also highlights a clear case of Egypt’s more local, regional concerns prevailing over more globally oriented American interests. This incident prompted a United States’ rebuke of Egypt for the endeavor, but it nonetheless illustrates the opportunistic environment within which North Korea circumvents sanctions. In this instance, Egypt’s purchase of North Korean weapons suggests that Egyptian concerns over an ISIS-led insurrection in northern Egypt (the Sinai) and support for an Egypt-backed partner in Libya’s continuing civil war required weapons the United States itself was unable or unwilling to provide despite a very robust long-standing arms trade between the United States and Egypt. Such ‘zones of interest divergence’ is but one example of the fertile terrain in which North Korea continues to operate despite increasingly stringent sanctions.

The case of Egypt also raises the specter of more strategically important weaponry, specifically the transfer of ballistic missile technology and assistance with nuclear weapons development. North Korea’s military relationship with Egypt is nearly fifty years old, with North Korean military advisors replacing many of the Soviet advisors that Egyptian President Anwar Sadat expelled in the year prior to the 1973 Arab-Israeli War. The Egyptians were responsible for the introduction of Russian-designed ballistic missile technology into North Korea in the 1980s, a byproduct of Egyptian efforts to reverse engineer Soviet supplied SCUD missiles. The effort succeeded. Both countries now possess ballistic missiles based on the original Soviet missiles supplied to Egypt in the early 1970s. However, North Korea’s more


advanced engineering capabilities and more developed ballistic missile program eventually led to North Korean experts assisting Egypt in its current efforts to upgrade its ballistic missile capabilities. This transfer of ‘personnel expertise’ also occurred with Sudan, Libya, Syria, and possibly Iran. North Korea’s export of both missile components and technical expertise has led many strategic analysts to label North Korea, “Missiles R Us.” More ominously, North Korea’s assistance to Syria in building its al-Kubar nuclear reactor ultimately provoked an Israeli attack that destroyed the facility in 2007, an attack that Israel only recently acknowledged.

Furthermore, as in both cases of small arms weaponry and larger strategic weaponry, the actual sale of weaponry is only one element of North Korea’s subsequent revenue stream generated by weapons sales. The export of military personnel, the training of local forces in the region by North Koreans, and the assistance of higher level, more technical, Korean weapons development and deployment personnel generates either direct cash payments, transferred by any number of still available financial payment mechanisms for the North Koreans or in various in-kind non-cash payments that, while less fungible, nonetheless provide support for the government in Pyongyang. In the case of Egypt, and also Syria, not only are they direct beneficiaries of North Korean weaponry and military expertise, but they also allow North Korean embassies in their respective countries to market North Korean military hardware and expertise regionally. Egypt’s geographic proximity and historical political connectivity with African states provides an ideal regional sales office for North Korea.

North Korea’s African sanctions evasion pathways remain among the most difficult to preempt given the governments and local circumstances in many African states. North Korean arms sales to Sudan, Tanzania, Namibia, and several other nations in the surrounding region are in direct violation of prevailing sanctions against North Korea. The sales and other North Korean economic activities continue to bedevil efforts by the wider international community to disrupt Pyongyang’s economic lifelines, while at the same time furnishing North Korea with still significant sources of income. Indeed, as sanctions expert George Lopez of Notre Dame University has noted, “It’s good to go after the big fish, but even our best efforts can be undermined by lots of small fish” While the United Nations, the United States, and much of the western world has been successful in steadily reducing and even shutting down many of the ‘big fish’ North Korean customers in a global arms ocean, there remain sufficient numbers of small fish to float North Korea’s international financial activities.

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Weapons sales and the export of North Korean technical expertise understandably capture most of the world’s attention in terms of North Korean economic activities abroad. However, arms sales and the provision of military technical expertise abroad constitute only one of the many facets of North Korea’s ability to evade sanctions against it. For decades, North Korea has engaged in extensive counterfeiting operations, everything from the production of fake American and Chinese cigarettes to counterfeit U.S. currency, specifically $100 bills, the latter instance ultimately resulting in a redesign of the U.S. currency.\(^\text{21}\) Such activities are neither unique nor exclusively practiced by North Korea. However, North Korean sanctions evasion goes beyond the routine and mundane and often approaches the sublime bordering on the bizarre. North Korean workers filled vacant jobs in Eastern Europe as the fall of the Berlin Wall freed Poles, Czechs, Hungarians, and other Eastern European workers, who fled west in search of more lucrative employment in the European Union.\(^\text{22}\) North Korea has been implicated in rhino poaching in Africa, seeking an entrée into the Chinese and other Asian traditional medicines trade.\(^\text{23}\) North Korea operated a youth hostel as an ancillary enterprise on the grounds of its embassy in Berlin, Germany.\(^\text{24}\) North Korean expatriate skilled and unskilled laborers helped build sports stadiums in Qatar as that nation prepares to host the 2022 World Cup Football Championship.\(^\text{25}\) And, in a true east helps west moment, North Korea’s state-run Mansudae Art Company won a contract from Germany to refurbish a fountain in Frankfurt as a part of the “Fairy Tale Trail,” a theme park depicting the stories of the Brothers Grimm.\(^\text{26}\)

Given these and other North Korean efforts to generate revenue despite escalating sanctions in late August, 2017, the United States Treasury Department’s Office of Foreign Asset Control (OFAC) announced further sanctions targeting several North Korean state enterprises including Mansudae Overseas Projects Architectural and Technical Services, legally and hereafter (MOP).\(^\text{27}\) Mansudae began as a domestic North Korean art company, initially heavily influenced by Soviet ‘Socialist Realist’ art produced during the Stalinist years. However, for over thirty years, Mansudae’s overseas activities gradually grew into a separate state entity and invaluable generator of hard currency.\(^\text{28}\) OFAC had previously sanctioned MOP much earlier (December 2016) for its use of North Korean laborers abroad to generate revenue that subsequently was used by other previously sanctioned North Korean companies engaged directly in the production both of conventional munitions and in support of North Korea’s ballistic


missile program. The latter activity was the target of United Nations (U.N.) sanctions via a U.N. Security Council Resolution (UNSCR 2371) addressing several U.N. member states’ concerns over North Korea’s ballistic missile development and testing.

MOP has a long-lived and global reputation as a major purveyor and contractor of North Korean art, undertaking projects in more than a dozen countries including Egypt, Syria, Namibia, Cambodia, Germany, and several others. The actual history and products of MOP lies beyond the scope of this article; however, two central elements of MOP’s decades-long endeavors that ultimately provoked the sanctions against it require comment. First, as a state-sponsored art company, Mansudae builds monuments and museums, renovates extant museums, and provides additional arts services. For example, North Korea built panoramas in Cairo depicting Egypt’s crossing of the Suez Canal and Damascus celebrating Syria’s attack into the Golan Heights in the 1973 Arab-Israeli War, monuments celebrating African leaders in the Democratic Republic of the Congo and Mozambique, and victories against various enemies in Ethiopia and Cambodia. According to some estimates, Mansudae has generated millions of dollars annually for North Korea in direct cash payments. Often lost in the analysis of North Korea’s general pattern of overseas revenue generation, and specific to MOP, the collapse of the Soviet Union in 1991 resulted in North Korea’s loss of its largest and most vital source of foreign currency and economic assistance. MOP’s activities increased significantly in the late 1980s, as Soviet aid began to dwindle and again in the aftermath of the Soviet Union’s collapse.

Secondly, as mentioned briefly previously, each art/architecture project abroad employed North Korean artists, laborers, and administrators with each worker generating income for Pyongyang while being paid a subsistence wage while employed abroad.\(^{29}\) North Korean state contract laborers were at work seemingly everywhere in the Persian Gulf, the wider Middle East, and in Eastern Europe throughout the 1990s and continuing until quite recently. North Korean laborers often filled labor shortages created by Polish, Hungarian, Romanian, and other Eastern Europeans who sought higher wages and a better life further west in the European Union. In the Persian Gulf, North Korean laborers filled positions that were too hazardous and less desired, particularly as South Asian nations, most notably India, began to demand better treatment for their expatriate workers in the region. In short, then-celebrated European integration and the collapse of the Soviet Union opened yet another niche for North Korean opportunistic economic behavior in support of Pyongyang’s revenue requirements and its increasing need to evade sanctions. Export of North Korean labor was one of the stated rationales for the U.S. Department of Treasury’s eventual imposition of sanctions against MOP in late 2016.

According to Robert Litwak, a Wilson Center expert on nuclear policy, Kim Jong Un’s North Korea faces a dilemma. Its military capacities, including its nuclear arsenal, stand in sharp contrast to its very much constrained domestic economy and alleged rising expectations of the North Korean people, particularly as the latter become more aware of the lives and livelihoods of their Chinese neighbors. Litwak suggests that this juxtaposition of strength and weakness that you have in North Korea – where, according to projections, it could have nuclear arsenal half the size of Great Britain’s by 2020 in terms of number of warheads… and an economy of $1,800 per capita. [That’s] is 43

billion dollars a year… in contrast with South Korea’s 1.4 trillion dollars… so this is the dilemma that Kim Jong Un is in.\textsuperscript{30}

This theme of weakness and vulnerability, given North Korea’s history on one side of the equation and the need to show strength in the face of potential aggressors regardless of the required sacrifices to do so on the other hand, can be found throughout the political culture and society of North Korea.\textsuperscript{31} Kim Jong Un’s dilemma is certainly one plausible reason for his new openness to negotiations with the United States on nuclear issues. It also constitutes a plausible explanation for the North Korean leaders’ now well-established record of building waterparks, amusement theme parks, and other affordable leisure venues for the North Korean people, an undertaking that also has the optical effect of countering foreign claims that his people are starving, oppressed, and without hope.\textsuperscript{32} Not surprisingly, North Korean workers recently completed a water park in Russia as a “symbolic [gesture] of goodwill” between North Korea and Russia. The price of the Russian water park has not been disclosed. Water parks and amusement theme parks aside, Mansudae and its overseas unit, MOP, remain one of the more prominent, non-lethal enterprises that North Korea currently employs in its efforts to evade sanctions.

While this article only touches the surface of North Korea’s sanctions evasion mechanisms, it does suggest the complexity of those mechanisms and subsequent challenges in identifying and restricting them. As General Hayden has suggested, North Korea’s recent openness to negotiations on its nuclear program likely is the product of more factors than the effectiveness of increasingly stringent sanctions. However hopeful and perhaps fruitful the impending negotiations may be, there is another factor that, over time, will likely present more opportunities for North Korea to continue funding its various programs, both military and civilian, via international commerce, both legal and illegal (sanctioned).

Geopolitical circumstances, that initially greatly facilitated the development of North Korea’s sanctions evasion mechanisms in the late 1980s and throughout the 1990s, have changed, in North Korea’s favor. In these final decades of the American Century (roughly 1945 to the dawn of the 21st century), both China and Russia, for differing reasons, were more amendable to and less inclined to disrupt an American-dominated international legal and commercial framework. That framework emerged in the immediate post-World War Two era, endured throughout the Cold War, and initially survived that conflict. But, costly American interventions in the post-9/11 world, financial volatility in global markets, and other disruptive moments in the early 2000s (Arab Spring, the Brexit movement, the emergence of democratically generated anti-democratic movements in Europe and beyond) challenged, weakened, and now threaten this environment. The Russian and Chinese governments, initially cautious and seeking greater cooperation with the United States in the 1990s, have reemerged as major rivals and competitors, openly challenging and disrupting established American-led


international systems. China has moved beyond Tiananmen Square era upheaval and Russia has shaken off its post-collapse of the Soviet Union malaise. These developments unfortunately coincided with the continued rise of anti-democratic, authoritarian, nationalist movements throughout Asia and Europe. Pakistan, Iran, Turkey, and an increasingly fractured and fractious Europe constitute a much more challenging reality for 21st century American policy. Prevailing indicators suggest that the 21st century global political environment likely will be less friendly and possibly more openly hostile to American interests.

Unfortunately, and paradoxically, this emerging reality is a nearly perfect medium for North Korean sanctions evasion. Both China and Russia continue to allow North Korean workers and companies to generate income in their respective countries. While technically supportive of the sanctions and more stringent in their enforcement of sanctions, both China and Russia view North Korea as a valuable strategic lever in their relations with the United States. A politically neutered North Korea, much less North Korea’s collapse, either politically or via any reunion of the Korean peninsula, is not in China’s or Russia’s interest. Consequently, Vladivostok shipping companies and Siberian forests and mines continue to provide reliable incomes for North Korean workers and subsequently the regime in Pyongyang. Similarly, Chinese border cities of Dandong and Hunchun continue to serve as major gateways for North Korean-Chinese cross-border trade, providing a robust conduit for North Korean commercial endeavors beyond China. While China has begun more strict enforcement of sanctions in these cities, significant trade continues. And, in the middle of this conduit, much closer to North Korea, Mansudae is pursuing an emerging Chinese middle class that, according to a 2015 Credit-Suisse report, now outnumbers America’s middle class, offering its paintings and other art products to Chinese consumers eager to collect and to decorate households earning incomes that were, to so many Chinese, unimaginable in the 1980s. In fact, Mansudae has an office in Beijing to facilitate access to the Chinese art market, yet one more mechanism that offers another ‘escape route’ from sanctions.

China’s ambitious domestic and foreign policy agenda provides multiple opportunities for North Korea. The ‘One Belt, One Road’ policy, and China’s vision of a maritime Silk Road, broadening China’s economic and political reach across the Asian and European land mass and


expanding its seaborne trade network across both the Pacific and the Atlantic ocean basins can rightly can be seen as a security challenge for the United States and its allies. But China’s strategic agenda also offers additional networked pathways for further North Korean sanctions evasion, or, absent sanctions, continued North Korean commerce along its long-demonstrated weapons, labor, and art/architecture pathways. Indeed, Panama’s recent decision to rescind its diplomatic recognition of Taiwan reinforced this reality, a change that greatly pleased China and only reinforced Chinese control of major port facilities on either side of the Panama Canal, providing another possible future option for North Korea in terms of goods transiting in search of potential Caribbean partners in trade.

In July 2013, Panama seized a North Korean cargo ship headed east, filled with Cuban brown sugar covering Soviet-era weaponry presumably bound for repair and return in North Korea. Regardless of any probable outcome of the talks between President Trump and Kim Jong Un, North Korea’s efforts to generate revenue, either illegally or legally (absent sanctions), likely are almost certain to travel along well-established avenues within a truly sophisticated network of front companies, diplomatic actors, weapons-related enterprises, and one now very prominent North Korean art company. Whether it is a bust of Dennis Rodman, or North Korean kitsch art hanging in Chinese middle-class households, or giant statues of aging dictators in Africa, Masundae Art Company is a name that is unlikely to fade away.

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