UVU Security Review

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UVU Security Review

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The CNSS at UVU was established in January 2016. The Center is the first of its kind in the State of Utah. The CNSS is a nonpartisan academic institution for the instruction, analysis, and discussion of issues related to the field of US national security. The mission of the CNSS is twofold: to promote an interdisciplinary academic environment on campus that critically examines both the theoretical and practical aspects of national security policy and practice; and to assist students in preparing for public and private sector national security careers through acquisition of subject matter expertise, analytical skills, and practical experience. The CNSS aims to provide students with the knowledge, skills, and opportunities needed to succeed in the growing national security sector.

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A Note from the Editor-in-Chief

Mizuki Hassell

Welcome to the inaugural issue of the *Utah Valley University Security Review.* In direct collaboration with UVU's National Security program, the Security Review collects and celebrates a wide variety of undergraduate student work in the ever-pressing matter of national security.

Working in the midst of the global pandemic, I would like to thank all of the students, staff, and faculty for their willingness, perseverance, and hard work in making this publication a reality. The wide variety of topics available this issue is but a glimpse of the increasingly complex issues that are foreign policy, cyber security, international affairs, and national security. I am thankful for the deliberate opportunities and academic freedom that UVU provides for present individual and future professional success that remain unfettered in the face of and midst of this pandemic. I was incredibly fortunate to have an attentive, patient, and hardworking team of editors—Sam Peterson, Taylon Peterson, Rebekah Morgan, Lauren Estrada, Jacob Stebbing, Andrew Boswell, and Ethan Elzinga—whose sharp eyes oversaw these manuscripts through publication.

It was an honor to work with these individuals who are students in of themselves, and with our authors, who, in their earnest efforts and opportunities strove to continue their education even in the challenges of the pandemic. Therefore, this edition is, very appropriately, dedicated to students.

Mizuki Hassell
Editor-in-Chief
UVU Security Review

Targeting Data and the Law of Armed Conflict

Hunter Karr

Cybersecurity is essential in a world where cyber warfare and cyber terrorism are becoming tangible, realistic threats. Equally essential are the principles that govern cyberwarfare that are outlined under the law of armed conflict (LOAC). The topic of targeting data has been widely debated amongst cyberwarfare professionals and academics. Much of this debate stems from whether data is considered an "object," and whether the legal principles under the LOAC apply to data, in "targeting matters." As the prospect of cyberwarfare becomes increasingly more realistic, examining whether data is a feasible military object is important not only for the United States but also for the international community as a whole. It will be crucial to explore the idea of data as a feasible military object for targeting purposes and examine the LOAC to see what changes need to be made to encompass this. The process will require closer examination of key ideas such as the laws and principles behind targeting data, specifically distinction and proportionality; the current law of armed conflict; and the adjustments that need to be made to ensure the civilian population is protected when data is targeted. These examinations will elucidate that when data is accepted as an "object" under the LOAC, the civilian population will be provided the protection they require in cyber operations.

Introduction

A. Framing the Issue

The Department of Defense (DoD) defines cyberspace

> as a global domain within the information environment consisting of interdependent networks of information technology infrastructures and resident data, including the

> internet, telecommunications networks, computer systems, and embedded processors and controllers.[1]

The domain of cyber can be subject to cyber operations, commonly known as cyberattacks, which the DoD defines as "employment of cyberspace capabilities . . . to achieve objectives in or through cyberspace" and includes use of "computers, software tools, or networks."[2] Cyber operations focus heavily on operations involving data, and the legality behind targeting data, especially as it encompasses the civilian population. The targeting of data in cyberspace is a widely debated topic in the international community, stemming primarily from the notion of data as an "object." The data that need clear protections in armed conflict is civilian data, specifically, data essential to the well-being of civilian life. Essential civilian data includes, but is not limited to, medical records, identification data, financial records, and other data that have become "essential component[s] of digitalized societies."[3] Data secured in cyberspace has become key infrastructure in civilian life. Therefore, it is crucial that this data be protected under the Law of Armed Conflict, most notably because of the devastating consequences a cyberattack could have on civilian life.

B. *Assessing Data as an Object*

The *Tallinn Manual 2.0* states, "A minority of the Experts was of the opinion that, for the purposes of targeting, certain data should be regarded as an object."[4] The data referenced is civilian data, specifically, essential civilian data. These experts were of the opinion that civilian data should be protected and encompassed as an object under the Law of Armed Conflict, more specifically, "data that is essential to the well-being of the civilian population."[5] This opinion stems from the

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1. Department of Defense (DoD), Office of General Counsel, *Department of Defense Law of War Manual*, June 2015, https://dod.defense.gov/Portals/1/ Documents/pubs/DoD Law of War Manual - June 2015 Updated Dec 2016. pdf?ver=2016-12-13-172036-190D, 1012.

2. DoD, *Department of Defense Law of War Manual*, 1012.

3. International Committee of the Red Cross (ICRC), "International Humanitarian Law and Cyber Operations during Armed Conflicts," November 28, 2019, 8, https://www.icrc.org/en/document/international-humanitarian-law-and-cyber-operations-during-armed-conflicts.

4. Michael N. Schmitt et al., eds., *Tallinn Manual on the International Law Applicable to Cyber Warfare* (New York: Cambridge University Press (Kindle ed., 2013), 437 https://doi.org/10.1017/CBO9781139169288.

5. Michael N. Schmitt, et al., *Tallinn Manual*, 437.

principles of distinction and proportionality.

The principle of distinction, simply summarized, is, "The Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."[6] From this rule we understand why the experts were of the opinion that certain data should be regarded as an object.[7] Civilians have the right to be protected against being targeted during military operations, and the experts cited in the *Tallinn Manual 2.0* were of the opinion that civilian data should encompass that. This opinion is vital to protecting the civilian population from unnecessarily being targeted in military cyberoperations and the destruction that comes in wartime. If essential civilian data were not protected as an object under the principle of distinction and happened to be destroyed in a cyberoperation, this could prove to have serious, possibly fatal, consequences for the civilian population.

The principle of proportionality states, "An attack shall be cancelled or suspended if it . . . may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."[8] The principle of proportionality is crucial as it prevents the targeting of essential civilian infrastructure and includes essential civilian cyber infrastructure. Simply put, the principles and rules under the LOAC are in place to provide protection to civilians and civilian objects. Therefore, it is important that civilian data be understood between states to be protected under the law of armed conflict because "excluding essential civilian data from the protection afforded by International Humanitarian Law (IHL) to civilian

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6. ICRC, "Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977," Article 48, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=8A9E7E14C63C7F30C-12563CD0051DC5C.

7. The experts referred to within are the many Law of Armed Conflict and Cybersecurity experts that collaborated on the *Tallinn Manual 2.0*. These are experienced professionals within the field of cybersecurity law and are experts at the forefront of forming laws relating to cybersecurity.

8. ICRC, "Protocol Additional," Article 57, https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=50FB-5579FB098FAAC12563CD0051DD7C.

objects would result in an important protection gap."[9]

The argument of data as an "object" under LOAC originates from the meaning of "object." An "object," under LOAC, is widely interpreted as something that is tangible. In the view of many data is "intangible and therefore neither falls within the 'ordinary meaning' of the term object."[10] Many of the experts who collaborated on the *Tallinn Manual 2.0* had the opinion that data should not be considered an "object." The authors of the *Tallinn Manual 2.0* concluded that data does not fall under the "'ordinary meaning' of the term object."[11] However, cyberwarfare is not a traditional, or ordinary, form of war. With this being considered, the traditional meaning of "object" under the Law of Armed Conflict should be expanded to encompass data:

> The restrictive approach adopted by the majority of the Tallinn Manual experts is underinclusive in a practical sense, for it leaves data open to destruction or alteration that could have extremely serious, even if not destructive or injurious, consequences for the civilian population.[12]

This is important to note because the LOAC was created to protect the civilian population and the military from unnecessary suffering. However, because of the definition of the word "object," the civilian population is losing some of the protection it requires during an armed conflict. The civilian population necessitates protection in armed conflict on all fronts. Such protection is becoming increasingly important in the cyber world. That protection could be provided if data as an "object" were to become widely accepted under the LOAC.

Laws and Principles Behind Targeting Data

A. Who Will Be Doing the Targeting?

In the United States these operations are being performed by the US military CYBERCOM division, while also collaborating with other agencies within the US federal government, such as the Cybersecurity and Infrastructure Security Agency and the National Security Agency.

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9. ICRC, "International Humanitarian Law," 8.

10. Michael N. Schmitt et al., *Tallinn Manual*, 437.

11. Michael N. Schmitt et al., *Tallinn Manual*, 437.

12. Michael N. Schmitt "Wired Warfare 3.0: Protecting the Civilian Population During Cyber Operations," *International Review of the Red Cross* 101, no. 910 (May 27, 2019), 342, https://doi.org/10.1017/s1816383119000018.

It is expected that similar agencies have been created in countries around the world and the same type of force is being used in their cyber operations. These militaries are bound by the Law of Armed Conflict; however, it is currently hindered by the lack of direct law addressing data targeting operations. In order to provide clarity to the militaries performing cyber operations, there need to be clear laws so that the military personnel performing these operations can make viable judgments regarding the principles of distinction and proportionality and how they relate to targeting data.

B. *Importance of Distinguishing Between Military and Civilian Object in Cyber Operations*

When engaged in armed conflict, the parties to the conflict must actively distinguish between the civilian population and combatants, more specifically between civilian objects and military objectives.[13] The law of distinction requires military operations to distinguish and direct their targets towards military objectives; under this principle the civilian population gains special protection. This is true in cyber operations as well. Civilian data cannot be the target of an operation because it is not a military objective. This means that when cyber operations are planned, those performing the targeting need to distinguish civilian data from military data. Rule 111 in the *Tallinn Manual 2.0* prohibits cyberattacks not directed at a military objective.[14] Rules such as the one above should be considered by states when drafting policies regarding the principle of distinction and how it applies to cyberwarfare.

The principle of distinction serves two primary purposes within armed conflict; it "excludes not only deliberate attacks against civilians, but also indiscriminate attacks in which the attacker does not specifically target any particular persons (either civilians or combatants) or objects."[15] In the context of cyber operations, this includes indiscriminate attacks in cyberspace targeting data. These operations are required to distinguish who they are targeting and direct their operations only against military objectives. If an indiscriminate attack is perpetrated, and essential civilian data is lost or destroyed, the attacker would be in violation of the principle of distinction.

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13. ICRC, "Protocol Additional to the Geneva Conventions," Article 48.
14. Michael N. Schmitt et al., *Tallinn Manual*, 468.
15. ICRC, "Protocol Additional to the Geneva Conventions," Article 51(4)–(5) (n 3) 736.

C. Proportionality Analysis in Cyber Operations

Military operations in any form require a proportionality analysis when the civilian population is expected to be affected by the operation. The principle of proportionality, simply summarized, states that attacks are prohibited if they are expected to cause incidental injury or death to civilians, damage to civilian objects or infrastructure, or combination, "which would be excessive in relation to the concrete and direct military advantage anticipated."[16] The primary purpose of the principle of proportionality is to protect the civilian population during military operations. It does not always prevent the loss of civilian life or damage to civilian objects; however, it limits the extent of the damage. If a cyber operation were performed to alter or delete data to achieve a military advantage, but civilian data would be lost in result as well, the operation should be reevaluated in order to ensure the least amount of collateral damage to the civilian population. Just like any other military operations where the civilian population could be collateral in an attack, cyber operations should receive the same consideration. A cyberattack should be cancelled or reconsidered when the possibility of civilian data being lost in a cyber operation could have potential serious consequences to the civilian population.

The principle of proportionality is further complicated in cyberwarfare by knock-on effects, which are an indirect continuing effect of a cyberattack that has unconfirmed consequences.[17] "Attacks generating collateral knock-on effects are possible in cyberwar given the interconnected nature of computers and cyber systems."[18] This presents a major complication in cyber operations when targeting computer networks, and more specifically data, because of the many ways knock-on effects could present themselves. While the initial operation may have a clear military objective, the knock-on effect could cause an incidental threat to the civilian population. This would complicate the proportionality analysis needed on cyber operations. "The collateral damage considered in the proportionality calculation includes any indirect effects that should be expected by those individuals planning, approving,

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16. ICRC, "Protocol Additional to the Geneva Conventions," Article 57.

17. Peter Pascucci, "Distinction and Proportionality in Cyber War: Virtual Problems with a Real Solution," Minnesota Journal of International Law (2017), https://core.ac.uk/download/pdf/217210854.pdf.

18. Pascucci, ""Distinction and Proportionality in Cyber War," 449.

or executing a cyber-attack."[19] In a proportionality analysis, it is crucial for civilian data to be included in the initial analysis, as well as the analysis of expected, or possible, indirect effects.

III. Adapting the Concept of Data to the Law of Armed Conflict

A. Cyber Laws and Principles within the United States of America

Cyber operations are an emerging form of warfare. Because of this the legal framework is sparce pertaining to cyber operations to which the United States can look for clarification. However, in recent editions of the Department of Defense's *Law of War Manual* there are policies and rules regarding how the United States military conducts cyber operations in an armed conflict. The United States has also made it a priority of US policy to work with international partners to make clarifications to existing international law and policy with relation to cyber operations.[20] The US recognizes that cyber capabilities are in continuous development, as are aspects of law regarding cyberwarfare.[21] This evolving aspect of cyberwarfare has led to difficulties in drafting laws and policies, regarding cyber operations, within the United States and within the international community.[22]

B. Cyberwarfare Policy of the International Committee of the Red Cross

"For the ICRC, there is no question that International Humanitarian Law (IHL)[23] applies to, and therefore limits, cyber operations during armed conflict—just as it regulates the use of any other weapon, means and methods of warfare in an armed conflict, whether new or old."[24] The International Committee of the Red Cross (ICRC) acknowledges

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19. Michael N. Schmitt et al., *Tallinn Manual*, 472.

20. DoD, *Law of War Manual*, 16.1.

21. DoD, *Law of War Manual*, 16.1.

22. DoD, *Law of War Manual*, 16.1.

23. International Humanitarian Law, used interchangeably with Law of Armed Conflict and Law of War.

24. ICRC, International Humanitarian Law, 31IC/11/5.1.2, 36–37; available at https://www.icrc.org/en/doc/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf; ICRC, International Humanitarian Law, 40; ICRC, International Humanitarian Law, 33IC/19/9.7, 18, https://rcrcconference.org/app/uploads/2019/10/33IC-IHL-Challengesreport_EN.pdf.

that IHL applies to cyberspace and that the application of IHL in cyber operations is acceptable. The ICRC concerns regarding cyberwarfare arise from the vulnerabilities present in cyber networks and potential risk these vulnerabilities present to the civilian population if a cyberattack were to occur.[25] The interconnected nature of cybernetworks makes it difficult to control the collateral effects a cyberattack may have on a system, generally on the civilian population. "The well-being, health, and lives, of hundreds of thousands of people, could be affected. One of the ICRC's roles is to remind all parties to a conflict that constant care must be taken to spare civilians."[26] The ICRC's main concern is how the civilian population is affected in conflict. With cyberwarfare becoming a tangible reality, it is important that non-governmental organizations, like the ICRC, are on the forefront of protecting civilian cyber infrastructure. As stated by the ICRC, networks are very interconnected, as is data, which makes it crucial for those participating in conflict to properly distinguish between civilian and military objectives.

C. Summary

While concrete policy may not be set on cyberwarfare, the United States, ICRC, and the international community are major influences of the future policy. With them being the major players in international policy, they are able to adapt the current law of war policy to include data as an "object." The *Tallinn Manual 2.0* is a great supplement to current international law and is sufficient in addressing the issues of cyberspace; however, more protection for data needs to be addressed and put forth as law. The ICRC is a leader in protecting the civilian population; because of this, the acceptance of civilian data as an "object" in targeting situations is important for them. The international community, including the United States, is greatly concerned about protecting civilians from the dangers of war. It would be in everyone's best interest to adapt the current law of armed conflict, especially Additional Protocol I, to have the definition of "object" include civilian data.

Conclusion: Does the Law of Armed Conflict Adequately Protect Civilian Data from a Cyberattack?

The LOAC is conflicted on the idea of data being included into the definition of "object." This would exclude the civilian population from

25. ICRC, "International Humanitarian Law," 1.
26. ICRC, "International Humanitarian Law," 1.

receiving specific protections they deserve in an armed conflict. In order to properly protect the civilian population from the dangers of war, the term "data" needs to be accepted as part of the definition of "object." When data is not protected, it can have extremely harmful ramifications on the civilian population, potentially resulting in the loss of life. The data that requires special protection under the law of armed conflict is essential civilian data.

The principles of distinction and proportionality address the targeting of civilian objects in their own ways. With the law of distinction, it is important in cyber operations to distinguish between military objectives and civilian objects, and not target indiscriminately. When the principle of distinction is not followed, it puts civilian data at risk in cyber operations. When civilian data is a direct target of cyber operation is should be given the same protections as targeting any other civilian object in an armed conflict. However, when there is a possibility of collateral damage in a cyber operation the principle of proportionality becomes relevant. The principle of proportionality is extremely important in cyber operations because of the indirect, or knock-on, effects that can occur. These indirect effects have to be factored into a cyber operation and should be seriously considered if essential civilian data could be put at risk with the proposed cyber operation. Each of these principles need to be considered when addressing a cyber operation and how the civilian population could be affected.

To adequately protect civilian data in a cyber operation, the law of armed conflict needs to be amended to include cyber operations. Specific changes include the terminology of "data" and how its relation to targeting situations. These amendments can be made within the international community, addressing the Geneva conventions, specifically the Additional Protocols to the Geneva Conventions. The countries belonging to the Geneva Conventions, as well as the United States, and the ICRC need to review the current law of armed conflict, looking to where cyber operations can relevantly be applied in order to better protect the civilian population. The first step to better protections of the civilian population would be agreeing to include civilian data as a protected object under the law of armed conflict.

Overcoming Historical and Modern Security Challenges in Colombia

Dallas Karren

Abstract

Colombia is a developing nation that continues to battle on many fronts as a struggling state with a notorious past. As the second oldest democracy in the western hemisphere behind the US, "Colombia has confronted challenges to its democracy."[1] Several domestic and transborder security issues present threaten sustainability on local, national, inter-state, and global scales. There is risk that an escalation of political tensions and the current Venezuela crisis could result in additional conflicts. The United States has been closely involved in a decades-long war on drugs and allocates hundreds of millions of dollars annually to Colombia in foreign aid. US investments in the country ultimately benefiting and serving American interests were enhanced in 2018 when Colombia became the only Latin member of NATO. This action solidified its position as the strongest US ally in the region. Considerably significant progress has been achieved in Colombia during a relatively short timeframe proving the Andean country's potential to become a regional leader and model in South and Central America. Actualization of this status would by extent bolster American influence and control in the area. However, Colombia will require international assistance and guidance, particularly from the US. This paper will briefly look at Colombian political history and modern security concerns.

Guerilla History

The armed struggle in Colombia is generally understood to be a

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1. Francisco Santos Calderón, "Opinion: Colombia Knows How Precious Democracy Is. Just as the US Has Stood by Us, We Stand by You," CNN, January 9, 2021, https://www.cnn.com/2021/01/09/opinions/colombia-us-capitol-comparison-santos-calderon/index.html.

political conflict, with hostilities essentially presenting themselves as an extension of the political.[2] Las Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia, or FARC) and the Ejército de Liberación Nacional (National Liberation Army, or ELN), currently the main guerrilla organizations in Colombia, were officially formed in 1966 and 1964, respectively, out of a ten-year period of political violence between conservatives and liberals known as La Violencia (The Violence; 1948–1958). This period began because of the Bogotazo riots over the murder of the widely admired liberal presidential candidate Jorge Eliécer Gaitán on April 9, 1948.

The acts today and formation of the guerillas derive from Bogotazo, La Violencia, and the deliberate exclusion of the left "from electoral politics since the late 1950s by the bipartisan peace act"[3] of the Frente Nacional (National Front; 1958–1974), which followed that era of Colombian history. The National Front was a mutual agreement signed between Colombia's two primary parties on June 24, 1956, to rotate power for a duration of four presidential terms. This was in response to growing concern over increasingly authoritarian and corrupt tendencies of Rojas Pinilla's government (1953–1957). Although the National Front technically ended in 1974, it would take more than a decade until 1986 to fully cease the power-sharing aspects.

The FARC and ELN groups sport an ideologically similar combination of mixed left-wing Marxism-Leninism and Liberation theology[4] emphasizing "social concern for the poor and political liberation for oppressed peoples."[5] The guerilla conflict with the FARC has torn Colombia during a 52-year civil war[6] that has left an estimated 220,000 dead,[7] 25,000 disappeared, and 5.7 million forcibly displaced.[8] The US

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2. Julieta Lemaitre, "The Peace at Hand: War and Peace in Colombia's 1991 Constituent Assembly, Yale Law, 2012, 13, https://law.yale.edu/sites/default/files/documents/pdf/sela/SELA12_Lemaitre_CV_Eng_20120511.pdf.

3. Lemaitre, "The Peace at Hand," 13.

4. Claire Felter and Danielle Renwick, "Colombia's Civil Conflict," Council on Foreign Relations, January 11, 2017, https://www.cfr.org/backgrounder/colombias-civil-conflict.

5. Chris Cook, *Dictionary of Historical Terms*, 2nd ed. (Camden: Palgrave Macmillan, 1998), 203.

6. The conflict in Colombia is the world's longest-running continuous civil war, spanning nearly six decades.

7. Some estimates show up to 260,000 casualties.

8. Felter and Renwick, "Columbia's Civil Conflict."

Department of State has listed the FARC and ELN as Designated Foreign Terrorist Organizations since 1997.[9] The United Nations (UN) has also criticized their actions and abuses on numerous occasions. The FARC and ELN have remained largely unpopular among the Colombian population yet have come to resemble opposition to the government and have evolved from a secondary concern to primary non-state actors on the political realm that are able to significantly pressure the Colombian regime.

The capacity and political impact of armed groups in Colombia can be conclusively demonstrated in a single occurrence: On Wednesday, November 6, 1985, another prominent left-wing guerilla group known as the April 19 movement, or M-19,[10] assaulted the Palacio de Justicia de Colombia[11] in the Plaza de Bolívar[12] for 27 hours over frustration of alleged government noncompliance with a negotiated cease-fire.[13] The Iván Marino Ospina Company[14] of M-19 "took the court with the goal of forcing the justices to try then-President Belisario

9. "Foreign Terrorist Organizations" U.S. Department of State, Bureau of Counterterrorism, https://www.state.gov/foreign-terrorist-organizations/.

10. The April 19 movement nickname stems from a date that the group claims as a fraudulent election.

11. The *Palacio de Justicia de Colombia* (Palace of Justice of Colombia) is located in the barrio (neighborhood) La Candelaria in central Bogotá and houses the *Corte Suprema de Justicia de Colombia* (Supreme Court of Justice) and the *Corte Constitucional de Colombia* (Constitutional Court of Colombia). The entrance is adorned with the words of General Francisco de Paula Santander: *Colombianos las armas os han dado la independencia, las leyes os darán la libertad* (Colombians, guns have given you independence, laws will give you freedom).

12. The *Plaza de Bolívar* (Bolivar Square) is located in downtown Bogotá and consists of the Palacio de Justicia to the north, and to the south is the *Capitolio Nacional* (National Capitol), where the *Congreso de la República* (Congress of the Repulic; Colombia's national bicameral legislature) meets, among other government and historical buildings such as the offices of the Mayor of Bogotá and the Cathedral of Colombia.

13. Christopher Woody, "33 Years Ago, Rebels Allegedly Backed by Pablo Escobar Stormed Colombia's Palace of Justice—Here's How the Terrifying Siege Went Down," Business Insider, November 8, 2018, https://www.businessinsider.com/colombia-palace-of-justice-siege-2016-11. It is rumored that Pablo Escobar paid the group a sum of $1 million for the attack, as they both opposed extradition to the US.

14. A group of M-19 guerillas named themselves the Iván Marino Ospina Company after an M-19 commander who was killed by the Colombian National Army in August of that year.

Betancur and his defense minister for violating a peace deal that the Colombian government had reached with the rebels a year and a half earlier."[15] Speaking internally over radio, an M-19 leader stated that the objective of the takeover was "to denounce a Government that has betrayed the Colombian people.'"[16] M-19 members exercising duplicity held hundreds of civilians hostage and requested forced negotiations with the government.

However, "multiple requests by the guerrillas for a dialogue went unanswered by Colombian authorities."[17] The government refused to cooperate or initiate dialogue despite pleadings for a ceasefire from Alfonso Reyes Echandia, the President of the Supreme Court, in broadcasted phone calls to a local radio station.[18] President Betancur authorized the execution of an all-out military offensive against the palace, effectively converting the historic downtown Bogotá area into a combat zone. Consequently, more than 100 people and 11 of 24 of the Justices, including the aforementioned Alfonso, were killed along with all involved M-19 guerillas.

The decision of the president not to back down was met with censure and scrutiny from international bodies and the Colombian people: "[Betancur] later was accused by his own attorney general of violating Colombian constitutional rights and the international rights of civilian hostages in the operation."[19] The Colombian military was additionally charged with abuses of its own citizenry involving forced disappearances, extrajudicial executions, and torture from various parties and a 2014 ruling by the Inter-American Court of Human Rights.[20] Mounting evidence eventuated in the 2010 conviction of Coronel Plazas, who

15. Woody, "33 Years Ago."

16. Joseph B. Treaster, "Colombian Troops End Court Siege; Dozens Slain," *New York Times*, November 8, 1985, https://www.nytimes.com/1985/11/08/world/colombian-troops-end-court-siege-dozens-slain.html.

17. Bradley Graham, "27 Hours That Shook Bogota," *Washington Post*, November 13, 1985, https://www.washingtonpost.com/archive/politics/1985/11/13/27-hours-that-shook-bogota/df179624-949a-4a89-8252-ad4ceae28c6f/.

18. "Colombia President Apologizes for Military Actions in 1985 Law Courts Assault," Reuters, November 16, 2015, https://www.reuters.com/article/colombia-palaceofjustice/colombia-president-apologizes-for-military-actions-in-1985-law-courts-assault-idINKCN0SV2NQ20151106.

19. "Colombia President Apologizes," Reuters.

20. "Colombia President Apologizes," Reuters.

led the military response, on grounds related to the incident.[21] In 2015, President Santos issued a public apology.

The aftereffects were arguably just as devastating as the events that unfolded. The relationship between the executive and judicial branches was severely "ruptured" as a result of the attack.[22] The legitimacy of the laws was shattered. "The siege crippled the Colombian legal system" and sank President Betancur's efforts to reach peace agreements with both M-19 and FARC rebels."[23] Eventually, M-19 disbanded in 1990 after accepting terms with the government. However, peace with the FARC remained in a tumultuous state for decades as three previous attempts at FARC peace negations dating back to the 1980s all failed. The resulting degradation of Colombian institutions fostered consensus for new ones.

The 1991 Constitutional Reform

One of the greatest attempts at actualizing peace occurred during the 1990 presidential elections in Colombia, in which four of the running candidates were assassinated. Those murdered were Jaime Leal and Bernardo Jaramillo, who both ran for the FARC's mid-1980s leftist political party Unión Patriótica (Patriotic Union); Carlos Pizarro, a former leader of the recently dispersed M-19; and Luis Carlos Galán, an "enormously popular Liberal politician."[24] In response to the death of Galán, private university students in Bogotá conducted a silent march a week later that sought to portray the public's disgust of indiscriminate violence. These acts exponentially strengthened public demand for a National Constituent Assembly in the form of a massive social movement "that saw institutional reform as the end of violence,"[25] which Aida Abella claimed was "between the State and the insurgency."[26] The séptima papeleta (seventh ballot) initiative cultivated widespread support and led to the broad passage of the May 27 referendum held on the same day as the presidential elections. The call for an Assembly was effectively a "reaction against terror and impunity" that was "given le-

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21. "Colombia Ex-Officer Jailed after Historic Conviction., BBC, June 10, 2010, https://www.bbc.com/news/10280727.
22. Graham, "27 Hours That Shook Bogota."
23. Woody, "33 Years Ago."
24. Lemaitre, "The Peace at Hand," 3.
25. Lemaitre, "The Peace at Hand," 3.
26. Lemaitre, "The Peace at Hand," 6.

gal existence by the Supreme Court's decision to allow the government to convene the Assembly through a martial law decree, with the argument this was justified by the possibility of peace."[27] This desire for potential peace is what encouraged those from "every ideological persuasion to believe and participate in the assembly"[28] as the "1991 Constitution represent[ed] an effort to reform many of the limitations of the Colombian political system."[29]

The Colombian Assembly initiated the five-month process on February 5, 1991, with the intention to create a new constitution that would provide extensive rights and establish legitimate institutions such as the Defensoría del Pueblo[30] as Colombia's National Human Rights Institution (NHRI) and the Constitutional Court. The Assembly convened on July 4, 1991, and promulgated the Constitución Política de Colombia de 1991,[31] which replaced the previous 1886 version[32] and converted Colombia into a decentralized state under a presidential system. In an attempt to address the armed conflict, the people and assembly were willing to prohibit extradition to appease illegal armed groups in hopes of achieving peace agreements. Extradition to the US was declared unconstitutional by the Colombian Constitutional Court in 1991, when the new constitution was adopted. The Assembly additionally aimed to render illegal activities irrelevant, thereby phasing them out.

> As a result of the new social pact, guerrilla movements became political parties: M-19 became AD-M-19—the base of today's Polo Democrático; and the Ejército Popular de Liberación EPL became Esperanza, Paz y Libertad EPL. Others simply disappeared and its members joined other political organizations or just decided to resume their normal lives.[33]

27. Lemaitre, "The Peace at Hand," 4.

28. Lemaitre, "The Peace at Hand," 4.

29. Farid Samir Benavides Vanegas, "Law as A Peace Treaty: The Case Of M-19 and the 1991 Colombian Constitution," University of Massachusetts, Amherst, n.d., http://www.umass.edu/legal/Hilbink/250/Benavides.pdf.

30. Equivalent to an Ombusdman Office.

31. Political Constitution of Colombia of 1991; also referred to as the Constitution of Human Rights.

32. The 1991 Constitution changed the official name from "The United States of Colombia" to "The Republic of Colombia." It is notable that Colombia has had an extensive history of constitutions and reforms.

33. Benavides Vanegas, "Law as A Peace Treaty."

Implementation of the Constitution gave hope for a short time and undoubtedly provided essential reform. Unfortunately, the newly founded constitution has not fully served its intended purposes as the violence has still persisted.

The Peace Process and Continuing Conflicts

Historically, the Colombian government has demonstrated a disposition to broker indulgent surrender pacts with problematic institutions. This is done particularly through the "surrender laws" introduced by President César Gaviria that allow "traffickers to surrender . . . and hand over their illicit gains in return for sharply reduced jail sentences."[34] Such can be seen in the flawed 1991 deal struck with Pablo Escobar that allowed him to build himself a luxury "prison," La Catedral, on the land of his choosing, employ his own guards, and enjoy zero police or governmental involvement whatsoever while serving his five-year sentence.[35] There he would continue operations safe from rivals like Los Pepes within the walls. The government was willing to turn a blind eye to his continued operations until 13 months into the sentence, in July 1992, when he had four of his associates murdered inside La Catedral over a financial dispute. In response, the government decided to transfer Escobar to a regular prison. Escobar refused the order and escaped after the Colombian National Army surrounded the facility.

The Colombians were humiliated and scorned internationally after Escobar organized bombings and police killings following his escape.[36] Another example is the Cartel de Cali, who "in an apparent effort to head off a government crackdown . . . offer[ed] to dismantle their multi-billion dollar business in exchange for judicial favors."[37] Despite the surrender laws being recently discredited by Escobar, President Gaviria

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34. "Colombian Cartel Considers Mass Surrender: Latin America: Leaders of Feared Cali Group Would Quit Drug Trafficking in Return for Lighter Sentences and Safety Guarantees," *Los Angeles Times*, Reuters, May 8, 1993, https://www.latimes.com/archives/la-xpm-1993-05-08-mn-32642-story.html.

35. Aleksandra Andonovska. "That Time Pablo Escobar Convinced the Colombian Government to Design a Prison for Himself," *The Vintage News*, June 11, 2016, https://www.thevintagenews.com/2016/06/11/that-time-pablo-escobar-convinced-the-colombian-government-to-design-a-prison-for-himself/.

36. "Colombian Cartel Considers Mass Surrender," *Los Angeles Times*.

37. Steven Gutkin, "Cali Cartel Offers to Disband, But Its Drug Empire Grows," AP News, June 26, 1993, https://apnews.com/article/f21f87cddde445f-d3a3122f1188dcb53.

and the Prosecutor General of Colombia approved of the potential deal. This may likely have come to fruition if it were not for the eventual capture of several leaders and internal betrayals. These select historical examples along with many that are unmentioned show a pattern of desperation on part of the Colombian state and people for secession of the plague of violence and elucidate the forgiving leniency towards the FARC in the peace process.

Recent long-sought peace negotiations with the FARC began again on August 26, 2012, in Havana, Cuba, which lasted several years and included more than 50 rounds of talks. While the initial years appeared to be yet another turbulent cycle yielding little progress, this time would prove to be different. On January 25, 2016, the UN Security Council approved Resolution 2261, which committed a UN mission to "monitor and verify" the definitive ceasefire and adherence to a peace agreement once reached.[38] The ceasefire was eventually signed on June 23, 2016, in Havana by President Juan Manuel Santos and FARC commander Rodrigo Londoño as a gesture of good will.[39] Under President Santos, the Colombian government reached a historic peace deal with leaders of FARC that sought to invite pacification in the country and to reintegrate former rebels into society through state-sponsored programs.[40] The deal received immense bipartisan support from the US Congress and world leaders and was signed in Cartagena, Colombia, on September 26, 2016. Santos would be awarded the Nobel Peace Prize for his "resolute efforts" in achieving the deal.[41]

Nonetheless, the Constitutional Court of Colombia required that agreement be adopted and legitimized by the formal public support of the Colombian people, who, surprisingly, rejected[42] the referendum in

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38. June S. Biettel, "Colombia's Peace Process Through 2016," Congressional Research Service, December 31, 2016, https://crsreports.congress.gov/product/pdf/R/R42982/16., 29.

39. Nick Miroff, "Colombia Announces Cease-Fire Deal to End 52-Year Conflict with Rebels," *The Washington Post*, June 23, 2016, https://www.washingtonpost.com/world/the_americas/colombia-announces-cease-fire-deal-to-end-52-year-conflict-with-farc/2016/06/23/3b85e53a-37ff-11e6-af02-1df55f0c77ff_story.html.

40. Biettel, "Colombia's Peace Process," 29.

41. "The Nobel Peace Prize for 2016," Nobel Prize, October 7, 2016, https://www.nobelprize.org/prizes/peace/2016/press-release/.

42. The final national vote count of approximately 13 million was 50.2% against and 49.8% in favor.

October, by a narrow margin, thereby failing it. This occurred because many felt the limited amnesty and special courts that would be created to try atrocities committed during the conflict would be too lenient and inadequately serve appropriate justice.However, the Court also stated that the people's decision was binding only to the executive branch. The Colombian Congress overrode the repudiation and ratified a senate-sponsored, 310-page revised plan in December 2016 despite oppositional outcry and the "No" campaign led by popular former President Uribe.[43] Per custom, the FARC would be allowed continued civic participation under the same acronym via transition into a left-wing political party dubbed Fuerza Alternitiva Revolucionaria del Común (Revolutionary Alternative Common Force), which would be guaranteed ten seats in Congress from 2018 until 2026.[44] However, implementation of the agreement has been slow and challenging, and large quantities of Colombians still disapprove of the deal and reintegration. In a recent effort to distance the party's association to the conflict and bloodshed, on January 24, 2021, following the conclusion of the party's second national assembly, the FARC announced that it would change its name to the Common People's Party, or Comunes for short.[45]

However, some fighters dismissed the accord and separated into smaller, less organized dissident groups. Other former FARC members who initially complied alleged that the government had not honored the conditions of the agreement and took up arms again as the agreement was no longer viewed as valid. The technical dissolvement and fracturing of FARC further complicates the security situation. As the FARC relinquishes formal control over territories per the peace deal, other guerilla groups such as the National Liberation Army (ELN) and smaller, less-famous associations such as the Ejército Popular de Liberación (Popular Liberation Army, or EPL)[46] have been capitalizing on

43. Mark Katkov, "Colombia's Congress Ratifies Second Peace Deal with Marxist Rebels," NPR, December 21, 2016, https://www.npr.org/sections/thetwo-way/2016/12/01/503950505/colombias-congress-ratifies-second-peace-deal-with-marxist-rebels.

44. Biettel, "Colombia's Peace Process," 29.

45. "Colombia's FARC Party Changes Name to Comunes," Reuters, January 24, 2021, https://www.reuters.com/article/us-colombia-farc/colombias-farc-party-changes-name-to-comunes-idUSKBN29T0SF.

46. The EPL was formed in 1967 under the Communist Party of Colombia and disbanded in 1991, forming the *Esperanza, Paz, y Libertad* (Hope, Peace, and Liberty) party, though a small amount of individuals continue operations today.

the power void and violently dispute new claims to the land in overlapping wars.

The contested land is primarily along the northeastern frontera, as "the Colombian–Venezuelan border is strategically important to armed groups due to the illegal economies that exist there, including contraband, drug trafficking, and human trafficking."[47] Armed groups and those practicing illicit activities have benefited greatly from the high tensions between Colombia and Venezuela, particularly from the lack of cooperation from limited law enforcement between the two countries along both sides of the 2,219-kilometer (1,378-mile) border. The political turmoil in the area has created lawlessness along the border that is exploited by criminal organizations. Utilizing the political boundaries and tensions, groups can conduct asymmetric operations or attack citizens or the government in Colombia and then cross into Venezuela for protection from Colombian security forces. This is a common practice as Ecuador and Venezuela are complacent to organizations such as the FARC or ELN and do not enforce measures against them.

Colombia has a weak border with Venezuela and, therefore, is unable to exert its authority in the rural northeast. Reinforcements sent to the area are still largely confined to urban municipalities, leaving authorities in the area powerless while the ELN maintains control. These organizations wield immense power and exercise a monopoly of violence over the areas and populations under their control. Locals have been forcibly displaced and threatened for "allegedly cooperating with competing armed groups or the government" or "refusing to join an armed group themselves."[48] These criminal entities have imposed strict official manuals of rules and conduct, including hefty taxation of the habitants residing in their territory.[49] Murders, rape, disappearances, and child recruitment have been on the rise. Additionally, former FARC fighters are being targeted in apparent "revenge killings" with suspicion falling upon other armed groups and even dissident FARC members.

47. Joe P. Daniels, "Armed Rebels Impose Brutal Rules in Venezuela–Colombia Border Region," *The Guardian*, January 22, 2020, https://www.theguardian.com/world/2020/jan/21/venezuela-colombia-border-region-human-rights-watch.

48. Tamara Taraciuk Broner, "The War at the Colombia–Venezuela Border," Human Rights Watch, August 29, 2019, https://www.hrw.org/node/333296/printable/print.

49. Daniels, "Armed Rebels Impose Brutal Rules."

Regional Tensions

The bilateral relationship between the two countries of Colombia and Venezuela has been historically troubled because of conflict and mutual suspicion of the other. As a recent example, Venezuela openly challenged Colombia after its forces conducted a night raid during March 2008 termed Operación Fénix (Operation Pheonix).[50] Crossing 1.8 kilometers (1.1 miles) into Ecuadorian territory via the Putumayo River, the Colombian military targeted FARC guerillas who were conducting operations from the safe haven of another sovereign state. In response, allies Venezuela and Ecuador temporarily severed diplomatic ties to Colombia and executed a "major military mobilization" to their respective borders with Colombia, causing concern for regional stability.[51] The Organization of American States[52] approved a resolution that concurred Colombia had breached international law and violated the sovereignty of the sister republic of Ecuador but stopped short of condemning the actions. The 2008 Andean diplomatic crisis was resolved when Colombia apologized a week later at the pre-scheduled Regional Summit.[53] While war was threatened, it was an unlikely outcome. Regardless, the aggressions illustrate the stiff regional tensions among the South American neighbors.

Notwithstanding, the nations are still at risk of current events escalating into further conflicts. Internal abuse of power by corrupt officials and economic mismanagement have obliterated the financial and institutional sustainability of neighboring Venezuela. The continuing situation has forced millions of refugees to migrate to Colombia in a crisis caused not by the typical conventional warfare or conflict, rather

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50. Ray Walser, "The Crisis in the Andes: Ecuador, Colombia, and Venezuela," The Heritage Foundation, May 2, 2008, https://www.heritage.org/americas/report/the-crisis-the-andes-ecuador-colombia-and-venezuela.

51. Brian Ellsworth, "Venezuela Mobilizes Forces to Colombia Border," Reuters, March 5, 2008, https://www.reuters.com/article/us-venezuela-colombia/venezuela-mobilizes-forces-to-colombia-border-idUSN0227633020080305.

52. The Organization of American States includes all 35 independent states of the Americas and "constitutes the main political, juridical, and social governmental forum in the Hemisphere" with a focus on democracy, human rights, security, and development. The OAS was founded in 1948 following the signing of the OAS Charter in Bogotá.

53. Juan Forero, "Latin American Crisis Resolved: Colombia Apologizes at Regional Summit," *The Washington Post*, March 8, 2008, https://www.washingtonpost.com/wp-dyn/content/story/2008/03/07/ST2008030703581.html.

by the systematic oppression and civil human rights violations exhibit-
ed via the arbitrary rule of their own government.[54] The influx has
placed a heavy burden on the state's resources and proven damaging
to the economy, thereby adding to xenophobic feelings among the
Colombian population. Various other tensions exist as the two have
not even been able to agree on the rightful sovereignty of certain areas.
They have been involved in a territorial dispute over the territorial seas
surrounding the Los Monges Islands and the "delimitation of the wa-
ter boundary" around the Guajira Peninsula in the Gulf of Venezuela
due mainly to potential petroleum deposits, which is simultaneously
under partial Venezuelan and Colombian control. This has been the
case essentially since the 1833 Pombo Michelena Treaty that liberated
Colombia as the Republic of New Grenada.[55]

This uneasy friction is exacerbated by the anti-US stance taken by
Venezuela and Bogotá's close association and readiness to cooperate
with Washington.[56] The US has long stood by Colombian–American
joint interests and three presidential administrations publicly supported
the Colombian regime through the Colombian-written "Plan Colom-
bia" that raised 10 billion in support from the US Congress.[57] The US
is the only nation in the western hemisphere to explicitly do so. Vene-
zuela resents this relationship, which it views as American imperialism.

Venezuelan officials have long opposed Colombia and the US
through activities that undermine our interests while enriching those
at the highest levels in Venezuela. President Nicolás Maduro, through
years of leadership in the Cartel de Los Soles (Cartel of the Suns), be-
trayed and corrupted the institutions of Venezuela and, in particular,
the judiciary and armed forces. Maduro was accused of collaborating
with Colombian rebels and military to "flood the United States with

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54. Dany Bahar and Meagan Dooley, "Venezuela Refugee Crisis to Become the
Largest and Most Underfunded in Modern History," Up Front (blog). Brookings,
December 9, 2019, https://www.brookings.edu/blog/up-front/2019/12/09/
venezuela-refugee-crisis-to-become-the-largest-and-most-underfunded-in-mod-
ern-history.

55. Arthur M. Birken, "Gulf of Venezuela: Border Dispute," *Lawyer of the
Americas* 6, no. 1 (Feb. 1974), http://www.jstor.org/stable/40175513.

56. Steven Boraz, "Case Study: The Colombia–Venezuela Border," in *Ungov-
erned Territories Understanding and Reducing Terrorism Risks*, ed. Angel Rabasa et al.
(Santa Monica: RAND, 2007), 245.

57. Biettel, "Colombia's Peace Process."

cocaine" and use the drug trade as a "weapon against America."[58] The United States Department of Justice released two documents in Manhattan federal court on March 26, 2020, formally indicting Maduro in addition to various current and former Venezuelan and FARC officials on narco-terrorism and related charges.[59] Typically, foreign leaders enjoy immunity from indictment. However, sixty countries, including the US, do not recognize Nicolás Maduro as the legitimate President of Venezuela. As such, he is afforded no immunity rights. The State Department also issued a 13-point plan for the removal of Maduro and a regime change for the country that seeks to establish regional political and economic stability.

Drug Trade

The narcotics issue in Colombia poses a domestic threat to national well-being and negatively affects the United States internationally. Profits from the drug trade provide funding to modern paramilitary cartels like Los Urabeños as well as the ELN and remaining FARC, who turned to the practice during the 1970s in addition to kidnapping, illegal mining, and extortion. The vast majority of the global cocaine supply is produced almost exclusively in Latin American countries with Colombia, Peru, and Bolivia being the main manufacturers, respectively.[60] Colombia has nearly double the combined output of both Peru

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58. Joshua Goodman and Scott Smith, "US Indicts Venezuela's Maduro on Narcoterrorism Charges," *AP News*, March 27, 2020, https://apnews.com/d82797206561db03851e47df125c243f.

59. United States Department of Justice, "Manhattan U.S. Attorney Announces Narco-Terrorism Charges Against Nicolas Maduro, Current and Former Venezuelan Officials, and Farc Leadership," March 26, 2020, https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-narco-terrorism-charges-against-nicolas-maduro-current. Supporting statements were provided by Attorney General William Barr, the U.S. Attorney for the Southern District of New York, Assistant Attorney General for the Criminal Division of the Department of Justice, Acting Administrator of the United States Drug Enforcement Administration (DEA), and the U.S. Immigration and Customs Enforcement Acting Executive Associate Director for Homeland Security Investigations (HIS).

60. Executive Office of the President, "Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2021," Federal Register, September 25, 2020, https://www.federalregister.gov/documents/2020/09/25/2020-21390/presidential-determination-on-major-drug-transit-or-major-illicit-drug-producing-countries-for.

and Bolivia, who are in second and third place worldwide.[61] Production in these three major producers has increased each year since 2012.[62] In the previous year, Colombia yielded an estimated 70% of cocaine consumed worldwide and continues to make more than ever. The Colombian department (equivalent to a state or province) of Nariño, located near the border of Ecuador, alone has more land dedicated to coca[63] cultivation than the entirety of Peru, yet Nariño is only about 2.9% of all land mass in Colombia. Sixty percent of Nariño's rural area is used for coca cultivation.[64] Nariño, Norte de Santander, and Putumayo are the primary producers within Colombia. However, the department of Antioquia had an increase in production of 95% in 2014 following a steady decline for a few years.[65] The areas along the pacific coast of Colombia are the most heavily cultivated, and 80% of coca has been grown in the same region for the last decade.[66]

US Drug Enforcement Agency (DEA) officials have stated that Colombian cocaine production is greater now than it was during the climax of the 1980s drug wars in Miami.[67] The State Department also acknowledged that production is at "record levels" in its 2017 annual report on the global narcotic trade. The UN also stated that an estimated 169,000 hectares (395,368 acres) of coca were planted in Colombia during 2018, which is enough to produce 1,120 tons of cocaine.[68]

61. Nick Miroff, "American Cocaine Use Is Way Up. Colombia's Coca Boom Might Be Why," *The Washington Post*, March 4, 2017, https://www.washingtonpost.com/news/worldviews/wp/2017/03/04/colombias-coca-boom-is-showing-up-on-u-s-streets/.

62. Executive Office of the President, "Presidential Determination on Major Drug Transit."

63. Coca leaves are the main ingredient used to produce cocaine.

64. Héctor Silva Ávalos, "Nariño, Colombia: Ground Zero of the Cocaine Trade," *The Vintage News*, June 7, 2017, https://www.insightcrime.org/investigations/narino-colombia-ground-zero-cocaine-trade/.

65. Jeremy McDermott, "Is Colombia Again the World's Top Cocaine Producer?" InSight Crime, May 6, 2015, https://www.insightcrime.org/news/analysis/colombia-again-world-top-cocaine-producer/.

66. "Colombia Coca Crop: Trump Tells Duque to Resume Spraying," BBC News, March 3, 2020, https://www.bbc.com/news/world-latin-america-51722456.

67. Ryan Van Velzer, "Cocaine Comes Roaring Back to South Florida—and Then Some," *Sun Sentinel News*, May 26, 2017, https://www.sun-sentinel.com/news/florida/fl-reg-cocaine-surge-fueling-overdoses-20170523-story.html.

68. AFP, "Colombia Destroys Record Amount of Coca Leaf Plantations," *New Straits Times*, January 9, 2020, https://www.nst.com.my/world/world/2020/01/555129/colombia-destroys-record-amount-coca-leaf-plantations.

The United States has the highest global demand for cocaine and is responsible for approximately a third (34%) of all consumption.[69] In comparison, Western Europe was responsible for 22%, while Canada claimed only 3% of global cocaine consumption.[70] The illicit trade is damaging to the US on several levels. The availability and usage of cocaine in the US is on the rise, and cocaine has become one of the most popular illegal recreational drugs in the country. In 2008, the rate of cocaine consumed in the US was 165 metric tons (363,762 lbs) a year.[71] To put this in perspective, the estimated value of the cocaine market in 2014 was 88 billion, or 3.5 times the combined revenue of the NFL, MLB, NBA and NHL.[72] Colombia is the main provider of cocaine to the US, with more than 90% of cocaine seized within US borders being directly traced back to origins in Colombia.[73] In comparison, only about 6% originated in Peru, the world's second largest producer.[74]

Understanding and curtailing the process of exportation to the United States is essential to combating the problem. In Colombia, cocaine is often transported to coastlines for sea travel or through land borders; only a small amount is trafficked via airports. On land, the cocaine is hidden in vehicles and driven across entry points into different countries. Rivers in dense jungles allow traffickers a perfect route to transport the product undisturbed; traffickers threaten and bribe locals and officials along the rivers to remain incognito. Once cocaine reaches the Caribbean and Pacific coast, it is loaded into ships or submarines and shipped to areas in Central America and Mexico, where affiliate partners and transnational crime groups such the Mexican Sinaloa Cartel receive them.[75]

69. Executive Office of the President, "Presidential Determination on Major Drug Transit."

70. Executive Office of the President, "Presidential Determination on Major Drug Transit."

71. Jeff Desjardins, "The Drug War's Impact on the American Economy," *Visual Capitalist*, June 9, 2014, https://www.visualcapitalist.com/drug-trades-impact-american-economy/.

72. Desjardins, "The Drug War's Impact."

73. Van Velzer, "Cocaine Comes Roaring Back."

74. Robert Valencia, "Is Cocaine Use on the Rise? DEA Says U.S. Consumption Is Rebounding as Colombian Coca Production Increases," *Newsweek*, October 24, 2017, https://www.newsweek.com/cocaine-use-rise-dea-says-us-consumption-rebounding-colombian-coca-production-692270.

75. "Colombia's Drug Trade," *Colombia Reports*, January 12, 2019, https://colombiareports.com/colombia-drug-trafficking/.

The US–Mexico border is a commonly acknowledged way that illegal drugs are smuggled into the United States. Underground tunnel networks are commonly used to smuggle drugs into the country. Engineers are sometimes kidnapped to construct these tunnels. The tunnels lead to rented warehouses next to busy freeways in the US, where the noise of traffic obscures the operations and connections to Mexico.[76] Border Patrol agents on the Tunnel Task Force continually search for new tunnels and seal them off to make them unusable. Federal Agents found 60 tunnels between 2001 and 2017,[77] including one nearly a half mile long near San Diego on March 19, 2020, containing 1,300 pounds of cocaine among a total of about 4,400 pounds of illicit drugs with a street value of $29.6 million.[78] A single tunnel may cost more than a million dollars for cartels to construct, but cartels can receive a return on their investment after just two successful operations.[79] While most smuggling attempts still occur at entry points into the US, the largest successful loads are through such tunnels in the San Diego area. There, the soil is soft enough to dig through yet solid enough to support tunnels without requiring internal infrastructure.[80]

However, other transportation routes, such as the ocean, are becoming more standard. According to Business Insider, the US Customs and Border Protection Agency reported a decline in narcotic seizures from the border with Mexico between 2011 and 2015, while seizures in other sectors and maritime borders have increased significantly. For example, US Coast Guard seizures increased to more than 416,000 pounds in 2016, breaking the 2008 record of 367,000 pounds.[81] Colombia is the second-most common area for cocaine seized outside of the US; the Pacific Ocean is the most common area.[82] In 2016, Colom-

76. Gustavo Solis, "Drug Smuggling, and the Endless Battle to Stop It," *USA Today*, 2017, https://www.usatoday.com/border-wall/story/drug-trafficking-smuggling-cartels-tunnels/559814001.

77. Solis, "Drug Smuggling."

78. David K. Li, "Nearly Half-Mile Tunnel Filled with Over 4,000 Pounds of Drugs Found Near San Diego," NBC News, March 31, 2020, https://www.nbcnews.com/news/us-news/half-mile-tunnel-filled-over-4-000-pounds-drugs-found-n1173526.

79. Solis, "Drug Smuggling."

80. Solis, "Drug Smuggling."

81. Valencia, "Is Cocaine Use on the Rise?"

82. Executive Office of the President, "Presidential Determination on Major Drug Transit."

bian security forces seized more cocaine than any other country on the continent. Colombian security forces also seized 434 tons of cocaine in 2019.[83] Raids are commonplace and nearly a daily occurrence.

In order to maintain sufficient production, illegal armed groups and cartels frequently force poverty-stricken populations residing in rural areas to cultivate coca. Peru has higher yields per hectare because their strains of coca having higher alkaloid content as the plants are older and better established. Coca in Colombia is younger because of constant eradication and produce less as a result, thereby necessitating more fields.[84] Others participate in coca production because of inability to make a living elsewhere and the generous profitability of the trade.

A Colombian coca farmer tending a mature quarter-hectare [0.62 acres] field realized some $1,200 in profits in 2016. This rise in potential profits provides the coca farmers with a strong economic incentive to grow more coca.[85]

Being a poor country with little opportunity or services for citizens in the countryside, these profits can be appealing to locals. At least an estimated 130,000 families live from farming coca.[86] The profit margin is even greater for the guerilla groups. To make one kilo (2.2 lbs) of finished cocaine, 125 kilos (275.58 lbs) of coca leaves are needed, which would cost a guerilla-run drug lab approximately $137.50 USD.[87] After processing the coca leaves into real cocaine, the new value of the product will be $2,269, with a street value around $60,000 in the US or up to as much as $235,000 in Australia.[88]

Eradication

A recent memo from the State Department said that "US counter-narcotics assistance to Colombia is one of [the US's] most effective investments. [Eradication] efforts have already demonstrated results as coca cultivation and cocaine production levels finally stabilized in 2018 and 2019 for the first time since 2012."[89] The two countries have a long

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83. AFP, "Colombia Destroys Record Amount."
84. McDermott, "Is Colombia Again the World's Top Cocaine Producer?"
85. Valencia, "Is Cocaine Use on the Rise?
86. "Colombia's Drug Trade," *Colombia Reports.*
87. "Colombia's Drug Trade," *Colombia Reports.*
88. "Colombia's Drug Trade," *Colombia Reports.*
89. Jeremy Kryt, "Trump Tells Colombia: Spray Coca Fields with Alleged Carcinogen—or Else." *Daily Beast*, March 9, 2020, https://www.thedailybeast.com/

history of working together on the war on drugs, and Colombia's new president has vowed to continue that fight.

Iván Duque was elected to the office of the Presidency in August 2018 on the campaign promise to fight drug trafficking, explaining that it is "the fuel of criminality and the fuel of terrorism,"[90] and he has repeatedly stated that he is dedicated to coca eradication. The US shares this vision, and Colombian leaders have been under increasing pressure from Washington to step up eradication efforts and produce results. "President Donald Trump at one point threaten[ed] to decertify Colombia as a partner in the war on drugs if it failed to reverse the surge in production."[91] Doing so could lead to a cutoff of most foreign aid to the country. President Duque is optimistic about removal efforts and has promised to cut production 50% by the end of 2023.[92] In 2019, Colombia destroyed a record 100,000 hectares (approximately 247,105 acres) of which about 94,000 hectares (232,000 acres) were removed manually with hand tools and equipment.[93]

Rebels and guerilla groups funded by narcotics are not keen to relinquish sources of revenue, and they use countermeasures to combat eradication. Among the tactics are "booby trapping" fields and stationing armed guards. Government crews composed of soldiers and paid civilians deal with buried anti-personnel landmines and sniper fire from drug gangs. Civilian workers are brought in from other regions of the country to minimize possible retribution attacks on locals from illegal armed groups.[94] Militant groups further slow operations by encouraging local farmers participating in social protests against eradication or

trump-tells-colombia-spray-coca-fields-with-alleged-carcinogen-glyphosateor-else.

90. Julia Symmes Cobb and Luis Jaime Acosta, "Coca Eradication Best Way to Fight Violence in Colombia, Duque Says," *Reuters*, January 15, 2020, https://www.reuters.com/article/us-colombia-peace/coca-eradication-best-way-to-fight-violence-in-colombia-duque-says-idUSKBN1ZE2MG.

91. "US Report: Colombia Coca Production Still at Record High," *AP, WTOP News*, March 5, 2020, https://wtop.com/world/2020/03/us-report-colombia-coca-production-still-at-record-high/.

92. "Colombia Aims to Eradicate 130,000 Hectares of Coca in 2020," Reuters, February 10, 2020, https://www.reuters.com/article/us-colombia-drugs/colombia-aims-to-eradicate-130000-hectares-of-coca-in-2020-idUSKBN2041XP.

93. AFP, "Colombia Destroys Record Amount of Coca Leaf Plantations."

94. Luis Jaime Acosta, "Pressured by U.S., Colombians Uproot Coca Plants, Wary of Landmines," *Reuters*, September 13, 2019, Emerging Markets, https://www.nasdaq.com/articles/feature-pressured-by-u.s.-colombians-uproot-coca-plants-wary-of-landmines-2019-09-13.

block routes. Illegal groups have also been suspected of using their vast financial resources to corrupt and buy public officials, further complicating the problem. Spotting coca fields in Colombia can be challenging, as farmers often conceal them under the jungle canopy or intermingle coca plants in a field of crops such as plantains or coffee. Such efforts make eradication a grueling challenge and demonstrate the need for effective alternative solutions.

Aerial fumigation is a much more efficient method to eradicate coca than manual removal. It involves spraying the US-invented herbicide glyphosate over a coca field that kills the existing flora, and residual leftovers leave new plants unable to grow. Areas being replanted after manual removal has been a continuing issue. Apart from its effectiveness, there are other benefits to aerial fumigation as well, such as safety. General Oscar Gomez, the regional commander of the National Police said that Colombia "would avoid the deaths of [its] soldiers, [its] police, and the civilians who collaborate in the task."[95]

However, aerial fumigation may work too well. Locals recall when it was called the "curse of the land" because it destroys everything it touches, including normal crops and vegetation.[96] The residues are suspected of having detrimental effects to humans and the environment, and aerial fumigation was banned by the Colombian Constitutional Court in 2015. The World Health Organization labeled glyphosate as a carcinogen despite pressure from US officials not to.[97] Studies show that exposure to the herbicide can increase the risk of developing cancer, specifically non-Hodgkin's lymphoma, by 41%.[98] Fumigation may also cause resentment towards the government among locals who feel it does not care about their needs. Critics further argue that it is a temporary fix, and eventually the land will be reusable for coca production. Nonetheless, Presidents Trump and Duque favor aerial fumigation and have attempted to legalize the practice under certain safety guidelines. President Trump had promised to double the budget for the war on drugs in Colombia if they returned to aerial fumigation.[99]

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95. Acosta, "Pressured by U.S."

96. Kryt, "Trump Tells Colombia."

97. Kryt, "Trump Tells Colombia."

98. Kryt, "Trump Tells Colombia."

99. Felipe Puerta and Maria Paula Chaparro, "A Death Foretold: Colombia's Crop Substitution Program," *InSight Crime*, April 1, 2019, https://www.insightcrime.org/news/analysis/a-death-foretold-colombias-crop-substitution-program/

Another promising effort is a crop substitution plan backed by the UN Office on Drugs and Crime that was implemented by former Colombian President Santos in the historic 2016 peace deal with the FARC. Under this plan, farming families that cultivate coca would voluntarily eradicate their fields and remain compliant to receive government funds in return. This would reduce the workload for the eradication teams, the coca leaf supply, and provide an alternative way of living to the farming community. Tens of thousands of hectares of coca fields have been voluntarily eradicated under this promise, with coca being replanted only at a rate of .6% under the substitution plan versus 35% for forced eradication, and nearly 100,000 farming families enrolled under the program.[100] It is a promising idea that initially gained traction. Unfortunately, the application of the program is lacking. Tens of thousands of those families still have not received payment yet while many others have only received partial payment, leaving families without the means to provide. It has also been noticed by involved parties that some farmers and individuals have planted coca just to remove it in order to receive payment from the program, raising questions to the approach. Whether or not the eradication efforts have been effective is still uncertain as coca production is greater now than it was when Duque took office.

Conclusion

Colombia is a diverse country with a unique people, culture, and history. As a developing country, it has unique promise and potential. However, it also struggles with overcoming narcotics, transnational criminal organizations, and diplomacy relations. If Colombia can gain control of its political issues and the armed conflict, it may be able to develop and progress more rapidly and effectively as a nation. The United States would also claim a major victory in a decades long war against drugs and feel a less profound internal impact from the negative repercussions. Our mutual interests would be served and protected, and Colombia would continue to be an example to its neighbors. Greater sustainability would be brought to the region and promote a better Colombia for all.

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100. Puerta and Chaparro, "A Death Foretold."

Where Should the United States Stand on the Nuclear Ban Treaty?

Camille Anjewierde

Abstract

This article is an analysis of options available to the United States in relation to the Nuclear Ban Treaty. The author concludes that the United States should reject the Nuclear Ban Treaty and propose a replacement treaty in its stead. Due to the peacekeeping role of the American nuclear arsenal worldwide, it would not be prudent for United States national security or the national security of those nations under the US nuclear umbrella if the United States were to agree to complete denuclearization in the current international circumstances. The United States should, however, demonstrate clear support for nuclear disarmament by proposing an alternative treaty. The alternative should strengthen the nuclear taboo and slowly begin the process of change in the international community to eventually allow for nuclear disarmament.

Background

The Treaty on the Prohibition of Nuclear Weapons (TPNW), or "Nuclear Ban Treaty," was negotiated by a select group of non-nuclear weapons states (NNWS) within the United Nations (UN) in 2017. The treaty outlines prohibited activities in relation to nuclear arms, such as developing, testing, producing, acquiring, possessing, stockpiling, using, or threatening to use nuclear weapons.[1] The treaty outlines that it will enter into force for participating nations once it is signed and ratified by 50 countries.[2] On October 24, 2020, the treaty received its 50th and final ratification by Honduras. The treaty will officially enter into

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1. UN General Assembly, Resolution 71/258 ODA, Treaty on the Prohibition of Nuclear Weapons, A/CONF.229/2017/8, United Nations, July 7, 2017, https://www.un.org/disarmament/wmd/nuclear/tpnw/.

2. A/CONF.229/2017/8.

force in January 2021.[3]

The Nuclear Ban Treaty stemmed largely from humanitarian concerns and the perceived ineffectiveness of the 1968 Nuclear Nonproliferation Treaty (NPT) among non-nuclear weapons states (NNWS). According to the United Nations, this decision to pursue a legally binding document that fully prohibited nuclear weapons derived from the promotion of "greater awareness and understanding of the humanitarian consequences that would result from any use of nuclear weapons."[4] The 1968 NPT was extended indefinitely in 1995. The NPT was signed by nearly all United Nations states including the original nuclear weapons states (NWS): the United States, France, the United Kingdom, Russia, and China. The NPT bound all signatories to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament."[5] Since the signing of the NPT there has been a widespread feeling—among NNWS in particular—that the NPT's goals of eventual total disarmament remain largely ignored by states who already possess nuclear weapons.[6] This feeling, while not unfounded, is a strong exaggeration as many Nuclear Weapons States did make efforts to reduce their arsenals. The collective number of nuclear weapons in the world decreased by almost 60,000 between the signing of the NPT and now.[7] However, many participating nations still perceive the Nuclear Ban Treaty as an attempt to bring attention to the insufficient urgency of nuclear-armed states to fulfil the obligation to disarm.

Despite this being one of the treaty makers' main aims, no states in possession of nuclear weapons have signed or become party to the

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3. Heather Williams, "What the Nuclear Ban Treaty Means for America's Allies," War on the Rocks, November 5, 2020, https://warontherocks.com/2020/11/what-the-nuclear-ban-treaty-means-for-americas-allies/.

4. A/CONF.229/2017/8.

5. Amy F. Woolf, Paul K. Kerr, and Mary Beth D. Nikitin, *Arms Control and Nonproliferation: A Catalog of Treaties and Agreements*, Congressional Research Service, March 26, 2020, https://apps.dtic.mil/sti/pdfs/AD1099624.pdf.

6. Rick Gladstone, "A Treaty Is Reached to Ban Nuclear Arms. Now Comes the Hard Part," *New York Times*, July 7, 2017, https://www.nytimes.com/2017/07/07/world/americas/united-nations-nuclear-weapons-prohibition-destruction-global-treaty.html.

7. Hans M. Kristensen and Matt Korda, "Status of World Nuclear Forces," Federation of American Scientists, March 2018, https://fas.org/issues/nuclear-weapons/status-world-nuclear-forces/.

TPNW thus far. Many nations in the world depend heavily on the nuclear arsenal of the NWS for their national security. The extended deterrence of some nuclear states, most notably the United States, creates a nuclear umbrella of safety which protects that nation and its allies from attack. The United States and its allies cannot join the Nuclear Ban Treaty without invalidating the principle of extended deterrence and therefore jeopardizing the national security of the United States and all nations that enjoy protection from US nuclear weapons.[8] Assistant Secretary for International Security and Non-Proliferation Christopher Ford explained that the United States refrained from endorsing the treaty because it would not "make nuclear weapons illegal or eliminate even a single nuclear weapon," it does not "provide [a] viable framework for bringing about or verifying the dismantlement of a state's nuclear weapons program," and it has the potential to enable authoritarian revisionism in Europe or Asia.[9] If the United States were to join the treaty, there would be no guarantee that other nuclear armed states would follow suit, leaving the United States and those under its nuclear protection defenseless to a nuclear attack. The vast majority of US government representatives feel that joining the treaty would be harmful to international peace and security.

Many nuclear weapons scholars further argued that the TPNW is not only impractical but also unethical because it ignores the security concerns surrounding the prohibition on nuclear weapons and weakens other efforts toward disarmament. Heather Williams, a lecturer at King's College in London, claims that the TPNW undermines "the credibility of the NPT and other multilateral non-proliferation and disarmament efforts."[10] Williams argues that the global community's focus on the TPNW distracts from other, more feasible disarmament efforts, and, therefore, it decreases the likelihood of eventual disarmament.

8. Brad Roberts, "Ban the Bomb? Or Bomb the Ban? Next Steps on the Ban Treaty," European Leadership Network, March 22, 2018), https://www.european-leadershipnetwork.org/wp-content/uploads/2018/03/180322-Brad-Roberts-Ban-Treaty.pdf

9. Christopher Ashley Ford, "The Treaty on the Prohibition of Nuclear Weapons: A Well-Intentioned Mistake," (speech, Reykjavik, Iceland, October 30, 2018), US Department of State, https://2017-2021.state.gov/remarks-and-releases-bureau-of-international-security-and-nonproliferation/the-treaty-on-the-prohibition-of-nuclear-weapons-a-well-intentioned-mistake/index.html.

10. Heather Williams, "Why a Nuclear Weapons Ban Is Unethical (For Now)," *The RUSI Journal* 161, no. 2 (2016), https://doi.org/10.1080/03071847.2016.1174481.

According to Williams, the United States and other NWS are justified in their hesitation to join a treaty that would completely do away with all nuclear weapons.

Nevertheless, treaty supporters cite the hope that widespread international acceptance of the treaty will put pressure on nuclear-armed states, including the United States, to reconsider their positions. Non-nuclear states also believe that the treaty will "delegitimize" nuclear arsenals and further develop norms against the use and possession of nuclear weapons.[11]

Due to its participation in the 1968 NPT, the United States is legally bound to continue pursuing nuclear disarmament in some form.[12] However, despite the hopes of Nuclear Ban Treaty signers, the United States is under no obligation whatsoever to accept or entertain the idea of the TPNW specifically.

International pressure on the United States to actively pursue nuclear disarmament is likely to increase as the Nuclear Ban Treaty gains more support. However, the United States is also facing pressure from the opposite direction, in particular those persons, organizations, and states who depend on the US nuclear arsenal for security. If the United States were to join the TPNW, the entire US nuclear umbrella would be exposed. There would not be any way to guarantee that other proliferated states—particularly rogue nations like North Korea—would be convinced to join just because the United States did. This would leave alarming potential for unchecked threats. These circumstances call for the authorization of further study on the Treaty on the Prohibition of Nuclear Weapons and current international attitudes surrounding it, as well as an examination of relevant US policy options for the near future. An analysis of three possible policy options may help to clarify the options available to the United States.

Overview of Options

The first possible option would involve the United States adopting the TPNW. The United States would be the first nuclear armed state to accept the terms of the treaty. Because it already received its needed 50 ratifications, the United States would be immediately bound to abide by the rules of the treaty, including active nuclear disarmament. Treaty

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11. Gladstone, "A Treaty Is Reached."
12. Woolf, Kerr, and Nikitin, *Arms Control and Nonproliferation*, 26.

acceptance in the United States would likely be a key endorsement for success in states that feel hesitant to join, including both NNWS and NWS. The treaty would gain a solid foundation. From the idealist perspective of states party to the TPNW, this would be an opportunity for the world to move forward on a safer course as states dismantle their nuclear arsenals. Many feel that the fewer states with nuclear arsenals, the less likely that those weapons are used against the world's population, particularly by unpredictable groups like terrorists or cyberhackers.[13] While it is undisputed that making the world safer is desirable, the question remains of whether or not this option is a feasible way of doing that. Based on current international circumstances, the United States adoption of this treaty would likely be a significant threat to the United States' national security. As discussed earlier, the national security of the United States and many of its allies are dependent on US nuclear deterrence. If this deterrence disappeared, it would leave the United States and its allies exposed, altering the global order.

The second option would be the United States choosing to reject the TPNW and propose an alternative treaty encouraging non-proliferation with terms that are acceptable to the United States and its allies. This would maintain American national security while still allowing the United States to retain moral authority by demonstrating commitment to denuclearization. US-nuclear sheltered nations would continue to be protected by deterrence, at least for the near future. The United States would be able to set some of the terms for its own eventual nuclear disarmament in a way that other NWS would follow suit. This alternative treaty would likely be supported by allies of the United States and thus would not represent a radical change to the global order, as joining the Nuclear Ban Treaty would.

This proposed alternative treaty could take various forms. The first is a phased reduction of nuclear arms over a period of time.[14] This treaty would propose a step-by-step reduction that would eventually lead toward complete elimination. The treaty would require designated timeframes throughout its duration for evaluating effectiveness and

13. "Open Letter: In Support of the Treaty on the Prohibition of Nuclear Weapons," Arms Control Association, (November 2020), https://www.armscontrol.org/act/2020-11/features/open-letter-support-treaty-prohibition-nuclear-weapons.

14. Kerry Kartchner (former US senior adviser, Strategic Communications), in discussion with the author, November 2020.

world circumstances to determine whether continuing with the out-lined policies still makes sense. For example, the treaty could span a 25-year period, but be up for re-evaluation every five years by partici-pating states and organizations. This style of treaty would allow for denuclearization without jeopardizing US national security or displac-ing the global order.

A second format for this alternative treaty could be for the United States, and possibly its allies, to make a "sole purpose declaration." This would consist of the US making it "a matter of policy not to use nucle-ar weapons except in defense against another nuclear weapon attack."[15] If the US or its allies were attacked conventionally, chemically, or bio-logically, they would not use nuclear weapons. However, in the event that the United States were attacked with nuclear weapons, they would retaliate in a nuclear manner. This type of policy imposes very strict limits on the US nuclear arsenal and would substantially strengthen the nuclear taboo. While a sole purpose declaration may have some under-mining influence on US nuclear extended deterrence, this influence would be far smaller than if the United States were to adopt the TPNW.

Either of these strategies would demonstrate to the international community that the United States is conscious of the importance of eventual worldwide disarmament and that at the same time the United States is also being practical in its decisions on how disarmament should be accomplished. The strategies would also serve as a direct message to the non-nuclear armed states involved in the TPNW that the United States is supportive of their efforts and is willing to meet them halfway despite the potential impact to US hegemony.

Obstacles similar to those outlined with the first option would con-tinue to exist, though to a lesser degree, given that the United States would be the one writing the terms. There would also be new challeng-es, such as the difficulty of creating a new treaty and making sure it would gain the support of other vital actors, particularly NWS. Writing a new treaty would be a lengthy process as treaty writers would be re-quired to please a wide variety of states with different needs and moti-vations. Such a decision would also be likely to face stiff domestic op-position from the US Department of Defense, making it uncertain whether the proposed treaty would gain the needed support within the US government. In short, compromises would be necessary within the

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15. Kartchner, discussion.

United States government and the international community, and compromises can be difficult to establish when so many actors are unwilling to yield.

The third option would be that the United States rejects the Treaty on the Prohibition of Nuclear Weapons without providing any kind of alternative or explanation to the international community. The ramifications of refusing to sign or ratify the treaty would essentially be the inverse of those for the first policy option discussed above. US-extended nuclear deterrence would be maintained, and American national security would be protected. The United States could be confident that other NWS would continue to align with US nuclear policy. The United States would avoid conflict with other NWS because these states would not feel that the United States was trying to get them to undermine their own national security by joining the Nuclear Ban Treaty—which no NWS is yet willing to do. American relationships with NATO countries and other allies would not be compromised and could even become stronger as these nations see a demonstration of US commitment to its extended nuclear deterrence despite international pressure to join the TPNW. The United States would also be able to solidly retain its leadership role in the global community.

On the other hand, the more proliferated states there are, the more capacity nuclear weapons could have to harm the world, even unintentionally. There is a similar argument to be made about keeping these weapons out of the hands of potential nuclear terrorists. There is little fear in the international arena that these terrorists could have the resources to make nuclear weapons on their own. However, if there were many states with nuclear weapons, these terrorist organizations could more easily obtain access to weapons that have already been produced.[16]

The expensive US nuclear program also uses up resources that could be allocated elsewhere.[17] For example, American debt has become substantial in recent decades, and cutting down on nuclear spending could do a great deal to decrease it were the funds to be reallocated in that way.

If the United States were to adopt this strategy, there would also be backlash from the NNWS. As discussed previously, one of the main reasons the TPNW was drafted in the first place is that the states

16. Kartchner, discussion.
17. "Open Letter."

involved felt that the NWS were not following through with all of their commitments from the NPT.[18] Costa Rica's ambassador to the United Nations, Elayne G. White Gomez, seemed to speak for all TPNW supporters when she said in a live broadcast: "The world has been waiting on this legal norm for 70 years."[19] This policy option would further alienate states such as Costa Rica and justify their perspective that the TPNW is desperately needed.

Pro/Con Assessment of Options

Option 1

In Option 1, the United States would adopt the Nuclear Ban Treaty by signing and ratifying it. The benefits of this option are as follows: It would be a clear signal to the international community that the United States is seriously committed to eventual nuclear disarmament and would increase the credibility of the United States government following through on treaty commitments. Objectively, the United States and other proliferated nations have a history of being perceived as hegemonic powers that do what they will at the expense of the rest of the world. An analysis of the 86 signatories to the TPNW shows that a significant proportion of these states are developing countries, many of which are in Africa or Latin America.[20] The United States would be likely to gain more trust from these non-nuclear weapons states and receive new opportunities to create alliances if the United States is perceived as acting for the good of the global community by honoring its promises to disarm.[21]

It is necessary to consider the benefits of an eventually nuclear-weapon-free world independent of the role the United States may play. Many feel that if these weapons of mass destruction did not exist as an option, the world in general would be safer than it is now. As voiced by a coalition of former leaders around the world, "There is no cure for nuclear war. Prevention is our only option."[22] The eventual elimination of all nuclear weapons would mean that there is no danger of nuclear accidents, which would detrimentally affect the world's population. A world free from nuclear weapons would mean that the United States no

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18. "Open Letter."
19. Gladstone, "A Treaty Is Reached."
20. A/CONF.229/2017/8.
21. Gladstone, "A Treaty Is Reached."
22. "Open Letter."

longer needs to focus on combating nuclear terrorism. The United States would not fear that the nuclear weapons of proliferated states could be commandeered and used against the United States, whether these acts of terrorism are conducted physically or with cyberterrorism—as is probably more likely today.[23]

The nuclear programs of the United States and other proliferated states are incredibly costly, with the United States spending approximately 6% of its annual Defense Department budget on nuclear weapons.[24] Were the United States to proceed with option 1, these funds could be reallocated to help alleviate the national deficit.

The drawbacks of option 1 are as follows: The United States' nuclear deterrence has been used as a threat to discourage nuclear and conventional attacks for decades. If the United States were to sign the TPNW, it would effectively undermine that deterrence and pose a huge national security risk. Similarly, all states that depend on US extended deterrence would be placed at risk of attack.

Though diplomatic efforts could be applied, there would be no way for the United States to fully guarantee that other nuclear armed states would follow American lead and accept the treaty. This would leave the United States with an obligation to disarm while potential threats such as Russia or China continue to amass nuclear weapons capable of destroying the United States. This treaty also does not provide any means of verification that states are meeting their commitments to disarm. It would be easy for a potentially threatening state to maintain their weapons while claiming they have been disarmed, which poses significant risks to the safety of the world. In summary, it would be very difficult to convince other states to sign onto the treaty, and even more complicated to persuade them to actually disarm their nuclear arsenal.

There is also the case of those states with significant political and cultural conflicts. Even the concept of states such as Pakistan, India, and Israel having nuclear arsenals continues to prevent calamitous wars between India and Pakistan, India and China, and Israel and Pakistan. How would the United States and other leaders of the international community prevent these conflicts from coming to a head if they were

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23. "Open Letter."
24. Office of the Deputy Assistant Secretary of Defense for Nuclear Matters, *Nuclear Matters Handbook 2020*, Federation of American Scientists (2020), 11, https://fas.org/man/eprint/nmhb2020.pdf.

all to disarm? The eventual outcomes would certainly be much more complex than they appear today.

Option 2:

In Option 2, the United States would reject the treaty but propose an alternative treaty encouraging non-proliferation. The benefits would be as follows: The United States would continue to be protected from a nuclear attack by another state due to the threat of retaliation with the US nuclear arsenal. States under the US nuclear guardianship would still be able to enjoy protection from nuclear attack via US extended deterrence. This option would also improve American credibility regarding its commitment to denuclearization without compromising its national security.

In this option, the United States may be able to set the terms for its eventual nuclear disarmament rather than simply follow direction given by other international actors. The United States would make fewer compromises and accomplish more of its goals, leading the way to a more practical solution to this issue. The United States would also be able to maintain a moral and political authority by setting an official goal to eliminate nuclear weapons and would be perceived more positively in the international arena. Further, the United States would be able to show the international community that it is conscious of the importance of eventual worldwide nuclear disarmament, but that it wants to accomplish the goal in a less precarious manner. According to former US senior advisor for Strategic Communications Kerry Kartchner, the United States would likely continue to be fully supported by its allies because this option would not represent a radical change to the global order.[25] The alternative treaty would also send a direct message to signers of the TPNW that the United States supports their efforts, but it recognizes certain issues with denuclearization that it is willing to address in full.

The drawbacks of option 2 would be as follows: It would still present more risk of lowering the effectiveness of US nuclear deterrence than choosing not to propose an alternative treaty. Nuclear war, nuclear terrorism, and nuclear cyberattacks would continue to be a real threat for the foreseeable future. Another major issue that was not specifically approached in this analysis is the difficulty of receiving approval

25. Kartchner, discussion.

within the United States for a new treaty with the goal of eventual denuclearization. This option would likely not be popular with the US Department of Defense or with many Republican Senators, creating barriers to the legislation. Even if the proposal were approved by the United States government, the international community would still be under no obligation to join the treaty. There would likely be strong resistance both from proponents of the TPNW and from NWS such as Russia and China.

Option 3:

In Option 3, the United States would completely reject the treaty, and would refrain from giving any explanation or alternative to the international community. The benefits of option 3 would be as follows: As is discussed above, nuclear deterrence would continue to protect American national security, and the American nuclear umbrella would remain protected. The United States' relationship with NATO and other allies would continue to be positive and could become stronger as the United States shows support for their safety.[26] The United States would also be sure to maintain its leadership role in the international community due to the strength of its nuclear arsenal.

The drawbacks of option 3 would be as follows: It could undermine the credibility of US commitment to eventual nuclear disarmament because it may be perceived as an outright refusal to move forward with other international actors toward the elimination of nuclear weapons. The continued existence of nuclear weapons would ensure that the world would continue to be at risk of the ramifications of a nuclear conflict, whether caused by a NWS or a terrorist group. The United States would continue to spend large sums of money on its nuclear program that could be reappropriated to other important matters.[27] This is particularly important with the COVID-19 pandemic so heavily impacting the economic state of the world. The risk of nuclear accidents would also remain, endangering the lives and health of billions of people worldwide. Finally, the United States would be likely to alienate NNWS that feel the United States will not follow through with NPT promises, harming the potential of ever having an alliance or agreement with these states.

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26. Kartchner, discussion.

27. Office of the Deputy Assistant Secretary of Defense, *Nuclear Matters Handbook 2020*.

Recommendation and Explanation

The United States must move forward with policy Option 2 by proposing an alternative treaty. Currently, the United States is trying to find a delicate balance of moral action and appeasing the international community while also limiting harm to its national security and that of its allies. If the United States were to accept the TPNW, it would compromise the safety of millions of Americans and non-Americans who depend on the US nuclear arsenal to discourage adversary states from violently attacking them. However, the United States did already commit to denuclearization decades ago with the NPT.

From the perspective of TPNW proponents, eliminating nuclear weapons is an indisputable moral goal appropriate for all nations. The use of nuclear weapons was responsible for indescribable atrocities that any responsible political leader would see as unacceptable.[28] Using nuclear weapons shows disrespect for human life. On the other hand, no informed actor could deny the homeostasis that the existence of nuclear weapons brings to the world, and the disaster that could follow if the looming threat of their presence simply disappeared. This is the scenario the TPNW seems to be proposing. The United States cannot morally accept the TPNW because of the ramifications that acceptance would have for the global community. The United States cannot possibly claim, however, that the use of nuclear weapons could ever be morally justified.

Therefore, the best policy would be for the United States to move forward on a path of gradual denuclearization but also show the rest of the world that America is serious about improving the quality of the world by eventually disarming all nuclear weapons worldwide. While proposing an American-supported alternative to the TPNW is not a perfect solution to this issue, it is clearly more prudent than either hazardously accepting or tactlessly rejecting the TPNW. This option would improve American credibility while protecting American interests and security. Either of the previously mentioned policies of a phased reduction or a sole purpose declaration would provide the world with more stability than if the United States were to simply reject or accept the TPNW. Making these types of changes in the world today can be difficult, but this option would allow the United States a slow and controlled movement toward a worthy goal.

28. "Open Letter."

Decolonization and Its Effects on the Conflict in Western Sahara

Jeremiah Heaton

The Western Sahara and Morocco are currently embroiled in a renewed conflict based on nationalism and territorial sovereignty by multiple powers. These powers have been in a state of ceasefire for 30 years. Now, with the renewal of tensions between Morocco and the Polisario Frente, the conflict between these two parties threatens to throw the region into a larger war. The question remains: what will the world do, and, more importantly, how should the United States handle the situation? In order to comprehend the basis of the conflict, exposition and historical interpretation is needed, as is understanding the various conflicts in the region and the "special" status of Morocco with regards to the United States. With the recognition of Western Sahara as a part of Morocco by the outgoing Trump administration, the question of Western Sahara and the ongoing conflict has become more complicated by the previous administration.[1] To understand this conflict in context, we must look at the history of decolonization and conflict.

Conflict and Nation Building in Northwest Africa (the Magreb)

During the last century, the region of North Africa has been an area of colonial and postcolonial struggles; one region, in particular, is still stuck in a quagmire between the wants of a people to build a nation and the political whim of a country that claims sovereignty over the land. North Africa throughout history has been mired in conflict between empires and global powers, such as the Ottoman to the Cold

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1. Stacy E. Holden, "Morocco Got the Best of President Trump as Part of Its New Agreement with Israel," *Washington Post*, December 13, 2020, https://www. washingtonpost.com/outlook/2020/12/13/morocco-got-best-president-trump-part-its-new-agreement-with-israel/.

War. The power vacuums left behind by these empires have left the region to fall into chaos, which recently culminated in the Arab Spring.

One region in North Africa that is still grasping the realities of postcolonialism is Western Sahara. The Western Sahara region has been under the control of one empire or another since the 11th century.[2] However, since the carving up of Africa during the Berlin Conference, Spain had laid claim to the region of Río de Oro, which includes the modern region we know as Western Sahara, and parts of what is now Mauritania to the border of Morocco.[3] Spain, dismayed at colonial losses in other parts of the globe, was increasingly eager to rebuild their foundering empire in the vast regions of Africa. North Africa seemed to be the perfect fit as it was right across the Mediterranean from the Iberian Peninsula.[4]

During the post-Berlin Conference years, France and Spain vied for continued power in the regions of Western Sahara and Morocco.[5] In 1912 France signed The Treaty of Fez, which created the French Protectorate in Morocco.[6] Soon after, Spain signed the Treaty of Madrid, claiming the Rif and southern areas as a Spanish Protectorate.[7] These treaties were instrumental in the future of Western Sahara and the ongoing conflict between Morocco and the Sahwari people. The eventual fighting between the Polisario Frente and Morocco is not the first time the region has been embroiled in the thralls of anticolonial resistance and nationalism. Two major conflicts against the colonial powers in the region give some historical context of the current regional crisis.

2. Anouar Boukhars and Jacques Roussellier, eds., *Perspectives on Western Sahara: Myths, Nationalisms, and Geopolitics* (Lanham: Rowman & Littlefield, 2014).

3. Boukhars and Roussellier, *Perspectives on Western Sahara*; G. R. C., "Reviews" [*The Berlin West African Conference*], *The Geographical Journal* 100, no. 3 (September 1942): 138, https://doi.org/10.2307/1789124.

4. C. R. Pennell, "How and Why to Remember the Rif War (1921–2021)," *Journal of North African Studies* 22, no. 5 (2017), https://www.tandfonline.com/doi/full/10.1080/13629387.2017.1361826.

5. "Right of Protection in Morocco," 22 Stat. 817; Treaty Series 246. https://www.loc.gov/law/help/us-treaties/bevans/m-ust000001-0071.pdf.

6. "Treaty Between France and Spain Regarding Morocco," The American Journal of International Law 7, no. 2 (1913), https://doi.org/10.2307/2212275.

7. Boukhars and Roussellier, *Perspectives on Western Sahara*; Jonathan Wyrtzen, *Making Morocco: Colonial Intervention and the Politics of Identity* (Ithaca, Cornell University Press, 2015).

One of the first anti-colonial movements was from the people living in the Rif, including Berber tribes and others who wished to build an independent nation. The fruit of conflict is the short-lived Republic of the Rif, which was created as a major counter to the Spanish colonial powers in Morocco. Founded by Abd el-Krim, the Rif Republic was short lived and lasted only for the duration of the war. The war is notable because Abd el-Krim was able to bring together the fractured Rif people and Berber tribes into a cohesive confederation that had the goal of independence from Spain.[8] In 1921, Abd el-Krim and Berber tribes from the Rif mountains began an organized assault on Spanish colonial territory in Spanish Morocco.[9]

Spain began the war against the separatists and Abd el-Krim by losing some costly battles, including one notable battle remembered by the Spanish as the Disaster of the Annual.[10] The battle is important in the overall scheme as it was a watershed moment seen as an abject failure of Spanish forces in the colony; it also led to a weakening of the Spanish crown, though Spanish influence lingered in the region for the next 50 years.[11]

Were it not for eventual assistance from France, Spain might have eventually bowed out completely.[12] Working with the French, the combined European forces managed to bring back much of the territorial losses suffered during the Rif War. The Rif War is important in the greater scheme of anticolonialism in the region and has given credence to other independence movements within Morocco and the greater Western Sahara region.

The Rif War was not the last time anti-colonial sentiment would leave its mark on the region.[13] After World War II, while dictator Francisco Franco controlled Spain, the Spanish government began a vain attempt to keep control over its possessions in Morocco and Western

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8. Frédéric Danigo, "France and the Rif War: Lessons from a Forgotten Counter Insurgency War" (master's thesis, Marine Corps University 2006), https://apps.dtic.mil/dtic/tr/fulltext/u2/a603341.pdf.

9. Pennell, "How and Why to Remember the Rif War."

10. Jesus Calvo, "La Guardia Civil en el Desastre de Annual," Ministerio del Interior, 2004, https://web.archive.org/web/20040906124936/http://www.guardiacivil.org/revista/result.jsp?id=77.

11. Calvo, "La Guardia Civil en el Desastre de Annual."

12. Pennell, "How and Why to Remember the Rif War."

13. Pennell, "How and Why to Remember the Rif War."

Sahara. Spain eventually combined colonial possessions such as the enclave of Cape Juby, Spanish Sidi Ifni, and the area of modern Western Sahara into what became Spanish Sahara. This area continued to be a Spanish province from 1958 to 1976.[14] However, the change in control did not stop Morocco from beginning to expand its territory into what it claimed as Moroccan historical territory. This territorial expansion and claim led to the eventual Ifni War between Morocco and Spain.

The Rif War brought various tribes together to attempt to force out a larger and more powerful colonizer. The tribes felt that they needed to forge their own path forward for their nation. This sentiment was repeated during the post-World War II years in the Ifni War, and conflict between the Polisario Frente and Morocco became the most significant—a conflict that remains ongoing. Anti-colonial struggles became the normal state of affairs in this region and remained so for the 80 years following the Rif War.

After gaining independence from French and Spanish rule after World War II, the Moroccans turned their attention toward Spanish Sahara. This area was also claimed by its native tribes and became the flashpoint for our contemporary crisis.[15] Historically, the region has been claimed to be part of Morocco and has been seen as a natural continuation of the Moroccan state. The end of colonial rule and change in the power structure began the Ifni War.[16] In 1956–1957 the people in the Sidi Ifni began clamoring for independence from Spain. Seeing their northern cousins in Morocco gain independence from French and Spanish control, Sidi Ifni wanted the same. In order to take on Spain, the Sahwari and other tribes in the region joined together with the goal of gaining independence from Spanish colonial rule. The Ifni people also allied themselves with Moroccan nationalists, which created an interesting dichotomy. The Ifni saw themselves as nation builders and forgers of their own destiny and planned to make themselves independent from not just Spain but also the Moroccan state.[17] Moroccan nationalists retained their position that Sidi Ifni and Spanish Sahara are all part of the Kingdom.

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14. Boukhars and Roussellier, *Perspectives on Western Sahara.*

15. Wyrtzen, *Making Morocco.*

16. Joan Pastrana, "Sidi Ifni, la última guerra de Franco," *La Vanguardia,* October 10, 2019, https://www.lavanguardia.com/historiayvida/historia-contemporanea/20191010/47861883496/sidi-ifni-marruecos-guerra-colonias.html.

17. Boukhars and Roussellier, *Perspectives on Western Sahara.*

During their initial conflict with Spain, Morocco brought the native Sahwari peoples under the flag of the kingdom. Under a common banner, the tribes were eager to fight as one and push Spain out. After removing Spain and France, the alliance between the tribes and nationalists was not to last. In 20 years, they would rise up against what they saw as Moroccan colonialism and began a new intifada. These wars, struggles, and skirmishes are important in the overall understanding of the fight for independence in the area and will be used by the Sahwari people and eventually the Polisario Frente as historical exposition for their claims on the region.[18]

The Beginning of the Sahrawi Democratic Republic

After fighting an insurgency off and on for nearly 20 years and losing Sidi Ifni in 1969, Spain left the Maghreb. The last remaining European colonial possession on the African continent fell in 1975.[19] The fall came from both internal struggles of the Spanish government and continued external pressure levied by Morocco militarily; also contributing were the United Nations and rulings by the International Criminal Court.[20] An interesting note of historical and judicial context is that both Morocco and the Polisario Frente saw the ruling of the International Court of Justice in their respective favor. Morocco believed so much in the ruling that King Hassan II of Morocco declared,

> The opinion of the Court can only mean one thing: The so called Western Sahara was part of Moroccan territory over which the Sovereignty was exercised by the Kings of Morocco and the populations of this territory considered and were considered Moroccans. . . . Today Moroccan demands have been recognized by the legal advisory organ of the United Nations.[21]

With this ruling as justification, King Hassan II in November 1975, approved the "Green March," which intended to promote the purposeful settlement of Moroccan citizens in Western Sahara. Spain, seeing the writing on the wall, took the easy way out and signed the Madrid

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18. Boukhars and Roussellier, *Perspectives on Western Sahara.*
19. Boukhars and Roussellier, *Perspectives on Western Sahara.*
20. UN General Assembly, Resolution 1720, Question of Ifni and Spanish Sahara, S/RES/2072 (December 16, 1965), https://www.refworld.org/docid/3b00f05d34.html; Boukhars and Roussellier, *Perspectives on Western Sahara.*
21. Boukhars and Roussellier, *Perspectives on Western Sahara.*

Accords between Mauritania, and Morocco. The Madrid Accords offi-cially end Spanish Colonial rule in Northwest Africa and ceded control of the region back to Morocco and Mauritania.[22]

Conflict over the Western Sahara continued. During the next 30 years, the Polisario Frente, backed by neighboring allies and a desire to create something out of nothing, began a new anticolonial war against Morocco. Morocco's former allies against Spanish and French rule were about to become an internal and persistent enemy. This was the early beginning of the Polisario Frente.

The Polisario Frente did not recognize the Madrid Accords as they were written. The Madrid Accords gave Morocco and Mauritania areas that the Sahwari and Polisario Frente believed to be rightfully their own. They set out to drive Morocco and Mauritania from the Western Sahara by force. The first move was to create the Sahrawi Democratic Republic (the SADR) in an attempt to gain international recognition. The plan for the republic was that it would become the homeland for the Sahwari people.

The Polisario, not able or strong enough to fight the Moroccans' needed allies, started reaching out for support and recognition of their new country and found sympathy for their cause in Algeria, and Alge-ria, unhappy with the way the Madrid Accords worked out, supported the Polisario Frente. The Algerians began working with the Polisario Frente and helped them politically, financially, and with their military for years.

To show force and solidarity, Algerian troops invaded Western Sa-hara in January of 1976. The invasion was an abject military failure, and the Algerians were summarily defeated by Moroccan forces and forced to retreat, having made no gains. Nonetheless, it showed that Algeria would aid their brothers in the fight for an independent Western Sahara. The Polisario Frente continued to be benefactors of Algerian assis-tance for decades to come.[23] Even with the backing of outside sources, Morocco was a much more resilient foe for the Polisario Frente.

Another piece on the board against the Polisario was Mauritania,

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22. Boukhars and Roussellier, *Perspectives on Western Sahara.*

23. Boukhars and Roussellier, *Perspectives on Western Sahara*; János Besenyő, "Guerrilla Operations in Western Sahara: The Polisario versus Morocco and Mauritania," *Connections: The Quarterly Journal* 16, no. 3 (2017), https://doi.org/10.11610/Connections.16.3.02.

which also gained what it viewed as historical territory in Western Sahara. Mauritania, for its part in the drama, eventually relented to the Polisario and was forced out of Western Sahara. Mauritania was considerably weaker than its neighbor Morocco, and the Polisario had a much easier time handling the Mauritanians. In 1979, because of its own internal weakening, Mauritania gave up all claims to any territory in the Western Sahara.[24] The defeat of Mauritania by the Polisario was short lived, as Morocco took advantage of the situation and immediately moved into the suddenly defunct Mauritania territory. Now with only one enemy to face, the Polisario and Morocco turned their entire military operations against one another.

During the 1980s the Polisario made the greatest strides against the Moroccan military, and with options limited the Moroccan government began to build a wall separating the Moroccan-controlled zone and the so-called free zone claimed by the Polisario. With the wall and militarized border in place, Morocco was able to cut off the Polisario from mineral rich areas. Doing so kept the Polisario and SADR from a source of economic support and wealth. With his wall in place King Hassan II was motivated to further seek United Nations (UN) assistance with the question of what to do with the Polisario and the Western Sahara.[25]

The Creation of MINURSO and Renewed Conflict

Having contained the Polisario, Morocco asked the UN to officiate a referendum of self-determination for Sahwari people. By 1991 the United Nations Security Council supported the creation of the United Nations Mission for the Referendum in Western Sahara (MINURSO). The referendum of self-determination was not the only mission of MINURSO; the other mission was to also support and enforce the ceasefire between Morocco and the Polisario.[26] Sadly, the main mission of performing a referendum on the future of Western Sahara has stalled with no clear action having been taken.[27] Throughout the years, MINURSO has been continuously renewed, and its mission scope has

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24. Boukhars and Roussellier, *Perspectives on Western Sahara.*

25. Boukhars and Roussellier, *Perspectives on Western Sahara.*

26. UN Secretary-General. "The Situation Concerning Western Sahara," S_22464, April 19, 1991, https://digitallibrary.un.org/record/112220?ln=en.

27. Boukhars and Roussellier, *Perspectives on Western Sahara*; Ferdinando Cotugno, "The Long Wait for Home," *Geographical* 92, no. 6 (June 2020).

been expanded to keep peace in the region.[28]

MINURSO, while unable to end the stalemate on the referendum process, has been more capable in keeping the relative peace in the area. Unfortunately, with 2020 continuing to take its respective toll on global norms, the Polisario Frente began new protests and reignited simmering tensions. In November of 2020, the Polisario, in an attempt to gain sympathy or notoriety, blocked one of the main trade routes between Mauritania and Morocco. In response, Morocco sent armed forces to break up the protestors and reopen the road. This led to an inevitable clash among the Polisario, protestors, and the Moroccan army. The skirmish gave the head of the Polisario what they always wanted—a reason to openly declare war on Morocco. The skirmish also allowed them to place blame on breaking the ceasefire completely at the feet of the Moroccan government. With the end of the ceasefire by the Polisario, conflict threatened to take the whole of Northwestern Africa into a state of open war if a renewed peace option were not found. The United States had the diplomatic and economic capability of its long-standing trade and military partnership with Morocco to its advantage to bring about a detente between the two sides.[29]

US Response and Relationship

The United States had a special relationship and capability in order to bring the region back to peace and the status quo of the 1991 ceasefire limits. The United States could leverage its massive free trade agreement and military partnership to exercise an amount of control over the situation. Historically, the United States' response had been to follow the mission of MINURSO and see the Western Sahara as an entity separate but not entirely independent from Morocco. The United States had traditionally used compromise between the factions and had been able to keep a semblance of peace.[30]

With the fall of the United Soviet Socialist Republic (USSR) and a new unilaterally led world headed by United States hegemony, Morocco

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28. UN General Assembly, Resolution 1720, A/RES/2017.

29. US Department of State, "U.S. Relations with Morocco," November 5, 2020, https://www.state.gov/u-s-relations-with-morocco/.

30. Yahia H. Zoubir and Karima Benabdallah-Gambier, "The United States and the North African Imbroglio: Balancing Interests in Algeria, Morocco, and the Western Sahara," *Mediterranean Politics* 10, no. 2 (2005), https://doi.org/10.1080/13629390500124333.

and the Western Sahara became a problem for the United States. US Secretary of State James Baker III is the first in the post-Cold War era to work to solve the crisis on behalf of the United States and its interests. In 1997 as special envoy to the United Nations Secretary General, Baker was able to bring the two sides to the negotiating table for an agreement that became known as the Agreements of Houston.[31] This agreement on the voting referendum was a failure as neither side could agree on determining the eligibility requirements regarding who could vote and when.[32] With the failings of the first agreement known as Baker I, 2003 saw a new plan rolled out by Baker to establish a three-year provisional government at the end of which the people would vote on whether to integrate with Morocco or become an autonomous region within greater Morocco.[33] Of course, while the initiative had been recognized by the United Nations Security Council, Morocco outright denied Baker II, especially the clause of independence for Western Sahara. Both his plans having failed, Baker resigned his position and left the Western Sahara question unanswered.[34] The Western Sahara was left to linger in ambiguity after Baker's plan dissolved.

US response remained moribund throughout the early 2000s. In 2009, when then Secretary of State Hillary Clinton was asked about the ongoing Morocco 2007 initiative question, she remarked about

> a plan that originated in the Clinton administration. It was reaffirmed in the Bush administration and it remains the policy of the United States in the Obama administration. . . . I don't want anyone in the region or elsewhere to have any doubt about our policy, which has remained the same.[35]

Clinton's remarks affirm the stagnant nature of American policy on the subject, one in which plans exist but a hurry-up-and-wait mentality by US officials is common. Just wait for the next person to try and answer the question of what to do; it is easier to keep the same policy of supporting a referendum but not putting forth effort to make it happen.

The stagnancy of American policy made the Western Sahara question seem more convoluted and shrouded in complexity until recently.

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31. G. R. C., "Reviews."
32. Boukhars and Roussellier, *Perspectives on Western Sahara*; Zoubir and Benab-dallah-Gambier, "The United States and the North African Imbroglio."
33. Boukhars and Roussellier, *Perspectives on Western Sahara*.
34. Boukhars and Roussellier, *Perspectives on Western Sahara*.
35. Boukhars and Roussellier, *Perspectives on Western Sahara*.

As of this writing, US policy has been much the same, a return to the status quo. Even as declarations of war have erupted on the two sides, the US has been quiet on the subject. In fact, only the European Union (EU) decided to make a statement regarding the renewed conflict this year. European Union foreign policy chief Josep Borrell, stated that he hoped for a return to the UN-supported talks and the need of a new envoy to Western Sahara. The EU wants to see compliance with the ceasefire agreements set forth by the UN and a return to peace.[36]

What should the appropriate response be by the United States? Self-determination should be a given right by all free peoples of the world, especially those seeking this inalienable right. Continued violence and terrorism ended up being highly counterproductive towards this process, and the Polisario Frente's seeking a renewed conflict will only potentially damage the path towards the goal of self-determination.

Conclusion

As conflict and fighting threaten to upend any chances for peace in Western Sahara, the Trump administration decided n a quid-pro-quo decision that if Morocco agreed to the Abraham Accords and recognized Israel, then the United States will recognize Moroccan territorial claims. This is a complete 360 on United States policy concerning Western Sahara. As of this writing it is now official US policy that the area of Western Sahara is part of greater Morocco.[37]

With a renewed conflict in the region and a historical context that has shown successful armed resistance to colonizers, it is possible that the Polisario Frente will continue armed resistance towards Morccocan claims in the region. It is near impossible to know the future, and with hindsight being what it is, we can hope that the region will not fall into further chaos.

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36. "Borrell Urges Return to Talks Following Renewed Western Sahara Tensions," *Euractiv*, November 15, 2020, https://www.euractiv.com/section/global-europe/news/borrell-urges-return-to-talks-following-renewed-western-sahara-tensions/.

37. Donald Trump, "President Donald J. Trump Has Brokered Peace Between Israel and the Kingdom of Morocco," December 11, 2020, https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-brokered-peace-israel-kingdom-morocco/.

Cyber Warfare and International Law

Tim Cosgrove

Abstract

Cyberwarfare is an increasingly common front for international conflict, and as the world becomes more connected, that war will only become deadlier. Compounding this danger is the fact that nations cannot seem to agree on how the laws of armed conflict apply to cyberwarfare. The sooner nations can agree to an acceptable application of laws of warfare to the cyber front, the better we can minimize the harm done in cyberspace.

Cyber Warfare and International Law

There are 26 treaties in place around the world regarding nuclear weapons.[1] It can be argued that computer warfare is the 21st-century equivalent of the atom bomb. It is a new technology; it is an equalizer between nations small and large, and while we have not seen its full destructive possibilities yet, it has the potential to cripple nations. So why is it then, that the only treaties for cyberspace I could find address cybercrime rather than cyberwarfare?[2] This paper will be written to address the concerning lack of meaningful international laws around cyberwarfare. While the laws of armed conflict do apply to cyberwarfare, the ever-changing nature of the tools used to fight it, plus the ambiguities of exactly how the law applies, mean that international law is woefully unprepared for regulating war on this new and all too interconnected front.

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1. Nuclear Threat Initiative, "List of Biological, Chemical, and Nuclear Treaties," 2020, https://www.nti.org/learn/treaties-and-regimes/treaties/.

2. "International and Foreign Cyberspace Law Research Guide: Treaties & International Agreements on Cyber Crime," 2020, https://guides.ll.georgetown.edu/c.php?g=363530&p=4821478.

Part I: Destructive Potential

Before we talk about the laws around cyberwarfare, we need to outline its abilities and its potential. Nearly every aspect of modern society is computerized. Hospitals, power plants, gas pipelines, and even infrastructure like traffic lights are connected to the internet and therefore vulnerable.[3] And as the ICRC (International Committee of the Red Cross) notes, US defense systems and civilian systems use the same cyberspace (this will be expanded upon later).[4] One of the best examples of the damage a cyberattack can do comes from Russia's attack on Estonia, where botnets launched a DDoS (an attack where systems are overwhelmed by artificial requests) on multiple Estonian government servers. Damian McGuinness wrote that

> the result for Estonian citizens was that cash machines and online banking services were sporadically out of action; government employees were unable to communicate with each other on email; and newspapers and broadcasters suddenly found they couldn't deliver the news.[5]

Russian special forces would end up launching a similar attack on the nation of Georgia in 2019, affecting 2,000 Georgian websites and disrupting two television stations.[6] These attacks, while not causing as much loss of life and property as a bombing or land invasion, caused massive societal disruption and immeasurable demoralization to the Georgian populace.

But cyberattacks are absolutely capable of causing physical damage to property too. A virus developed by the US and Israel known as Stuxnet infiltrated the Iranian nuclear program around 2010. It sped up

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3. BBC News, "Ransomware-Hit US Gas Pipeline Shut or Two Days," February 19, 2020, https://www.bbc.com/news/technology-51564905; Ms. Smith, "Hacking Traffic Lights with a Laptop Is Easy," CSO Online, August 20, 2014, https://www.csoonline.com/article/2466551/hacking-traffic-lights-with-a-laptop-is-easy.html.

4. "What Limits Does the Law of War Impose on Cyber Attacks?" International Committee of the Red Cross, June 28, 2013, https://www.icrc.org/en/doc/resources/documents/faq/130628-cyber-warfare-q-and-a-eng.htm.

5. Damien McGuinness, "How a Cyber Attack Transformed Estonia," BBC News, April 27, 2017, https://www.bbc.com/news/39655415.

6. Pompeo, Michael R., "The United States Condemns Russian Cyber Attack Against the Country of Georgia," US Department of State, February 20, 2020, https://2017–2021.state.gov/the-united-states-condemns-russian-cyber-attack-against-the-country-of-georgia/index.html.

centrifuges while fooling the monitoring software into reporting everything as normal. It was originally intended to shorten the lifespan of centrifuges by creating unnecessary amounts of wear on them. Instead, it wound up destroying one fifth of Iran's nuclear centrifuges by causing them to spin out of control.[7]

Another successful cyberattack was the breach on the US Office of Personnel Management (OPM), which was hacked in 2015. The OPM estimates that more than 21 million social security numbers of current and former employees had been stolen, along with interview findings from background checks and 5.6 million fingerprint records.[8] According to CSO Online, "While no 'smoking gun' was found linking the attack to a specific perpetrator, the overwhelming consensus is that OPM was hacked by state-sponsored attackers working for the Chinese government."[9] The data harvested by the OPM breach was of incalculable value to the Chinese. The CIA had to cancel multiple assignments for undercover officers in China, in addition to compromising information uncovered in federal background checks. Worth noting is that later, when four Chinese Army officials were indicted for hacking Equifax, the FBI identified the Equifax breach and the OPM breach as different parts of the same operation.[10] It would be very easy for Chinese intelligence to simply determine which American employees had the worst credit ratings and most potential for compromise, and then make them offers.

Even the political fabric of our nation is not invulnerable to cyberattack. The Senate Select Committee on Intelligence, when asked about Russia's interference in the 2016 election (up to and including hacking the DNC's emails), said, "The Committee found that the Russian government engaged in an aggressive, multifaceted effort to influence, or

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7. Michael B. Kelley, "The Stuxnet Attack on Iran's Nuclear Plant Was 'Far More Dangerous' Than Previously Thought," *Business Insider*, November 20, 2013, https://www.businessinsider.com/stuxnet-was-far-more-dangerous-than-previous-thought-2013-11.

8. "What Happened," Office of Personnel Management: Cybersecurity Resource Center, https://www.opm.gov/cybersecurity/cybersecurity-incidents/.

9. Josh Fruhlinger, "The OPM Hack Explained: Bad Security Practices Meet China's Captain America," CSO Online, February 12, 2020, https://www.csoonline.com/article/3318238/the-opm-hack-explained-bad-security-practices-meet-chinas-captain-america.html.

10. Fruhlinger, "The OPM Hack Explained."

attempt to influence, the outcome of the 2016 presidential election."[11] The hacking of John Podesta (Hillary Clinton's campaign manager) likely altered the outcome of the election, according to the Committee.

Another example of Russia interfering on the political front is their nation hosting the servers for 8kun, a spinoff website of 8chan, which is a message board known for inspiring mass shootings, publishing the manifestos of shooters, and radicalizing young men to extremism.[12]

Part II: A Hypothetical Attack

Fortunately, the International Committee of the Red Cross (ICRC) has determined that International Humanitarian Law (IHL) applies to cyber operations.[13] Unfortunately, the rules that the ICRC outlines seem to just be the generic rules against targeting civilians or harming them indiscriminately or disproportionally. This, in my opinion, is not enough. The interconnected nature of cyberspace, coupled with how cyberwarfare can open an enemy up to third party attack, lead me to believe that cyberwarfare requires new rules: To highlight this, I will create a hypothetical cyberattack that, while disastrous, would comply with the Law of Armed Conflict (LOAC). Worth noting is that this is not a threat assessment. I am not saying any nation is currently capable of bringing America to its knees in the way I will describe, but if they were, this is how they could do it without breaking international law:

> This cyberattack would be difficult to respond to for two reasons: the first is that, to legally respond to an attack, imminence must be demonstrated. With cyber, there is no real sign that an attack is about to happen until it does. There are no missiles to see on the radar, no troops to see crossing the border. Unless you have a strong intelligence apparatus, you will not see a cyberattack until it is too late. Even then, cyberattacks can often masquerade as malfunctioning equip-

11. Senate Committee on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 U.S. Election Volume 5: Counterintelligence Threats and Vulnerabilities*, S. Rep. No. 116-XX (August 18, 2020).

12. Antholy Cuthbertson, "8Chan Returns as Far-Right Extremists Find New Online Home," *The Independent*, November 5, 2019, https://www.independent.co.uk/life-style/gadgets-and-tech/news/8chan-qanon-8kun-russia-trump-a9186336.html.

13. International Committee of The Red Cross, "International Humanitarian Law and Cyber Operations during Armed Conflicts," November 28, 2019, https://www.icrc.org/en/document/international-humanitarian-law-and-cyber-operations-during-armed-conflicts.

ment to the untrained eye.[14]

To begin, I would hit facilities that supply power to military bases, and target the Defense Information Systems Agency (DISA), an agency that gives information support to warfighters and serves as the communications backbone of the Department of Defense.[15] In addition, I would likely target one of the civilian ISPs used by the military.[16] An argument can be made about the doctrine of proportionality, which states:

> an attack on a legitimate target may cause civilian casualties or damage to civilian objects does not necessarily make the attack unlawful under the LOAC. However, such collateral civilian damage must not be disproportionate to the concrete and direct military advantage anticipated from the attack.[17]

Despite this, it could be reasonably argued that with many cyberattacks, physical damage is not caused. Systems often are not destroyed, merely locked. Civilians are not killed; they are only inconvenienced. And as Talinn Manual (a collection of expert opinions on how LOAC applies to cyberwarfare) co-author Eric Jensen says, "Inconvenience is not unlawful."[18] After all, most essential services like hospitals and police stations have backup generators (though great care would have to be taken to ensure that those backups were enough to keep essential services running), and the internet is not considered an essential service under the LOAC, meaning that if civilians lose access to it, it may not even fall under a proportionality-based war crime. Of course, essential infrastructure could not be shut down for too long before causing civilian casualties, especially if there were extenuating circumstances like extreme weather or pre-existing civil unrest. But if you only shut down the power for a day or two, and do so during temperate weather, then

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14. David E. Graham, "Cyber Threats and the Law of War," *Journal of National Security Law & Policy* 4, no. 1 (2010).

15. Defense Information Systems Agency, "Our Work/DISA 101," 2020, https://disa.mil/About/Our-Work.

16. Eric Talbot Jensen, (co-author of Tallinn manual), in discussion with the author, October 2020.

17. International Committee of The Red Cross, "Practice Relating to Rule 14. Proportionality in Attack," 2020, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_ca_rule14.

18. Eric Talbot Jensen, in discussion.

you could hypothetically not break any laws of armed conflict. With the internet down, and with military bases without power, American forces would be unable to communicate, or even to efficiently notify the public of what was happening. In a scenario such as this, it would not take long for both states and non-state actors, both domestic and foreign, to take advantage of our compromised position. It would be no stretch of the imagination to assume that, if America's defense system were compromised, terror groups and rival nations would exploit our weakness and cause untold damage. And if these forces simply acted on the opportunity with no connection to the attacking party, the attacking party would not be held responsible for their actions (unless they knew of attacks already planned and facilitated them).

In addition to the above problems, cyberattacks can be routed through servers in different countries without being a technical violation of perfidy (camouflage) laws. As the Tallinn manual states, "The International Group of Experts concluded that customary international law prohibits only those perfidious acts intended to result in death or injury."[19] Essentially, this means that if you want to launch a cyberattack that does not cause injury or death (not unlike the ones I have described), one could route the attack through another country to mask its origin (or worse still, present the illusion of multiple attackers).

Finally, the biggest issue with a country attacking America through cyber is that it may not even constitute a war. International Humanitarian Law states that a war starts through a use of force. If done properly, an attack on our nation, one that could temporarily lock up civilian systems, render our defense systems powerless, and open us up to attack from nearly anyone who would care to take a shot at the US, would be completely legal in the eyes of international humanitarian law.

Part III: Why We Have Not Reformed Yet?

If cyberattacks are such a threat, and if international law is clearly not equipped to deal with them, then why have there been no adjustments to how we approach cyber conflict? There are several reasons.

The first is simple: cyber weaponry evolves quickly, and branches into new fields just as quickly. With nuclear weapons, we could expect

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19. Michael N. Schmitt, et al., eds., *Tallinn Manual on the International Law Applicable to Cyber Warfare* (New York: Cambridge University Press, 2013), https://doi.org/10.1017/CBO9781139169288.

development to move in two directions: size of the blast, and delivery mechanisms. As the Internet of Things expands, and as more of society becomes connected, cyberattacks will keep getting new mechanisms of delivery, and be able to affect more aspects of society. Experts have argued that in the future, automobiles, defibrillators, and even pacemakers could one day be vulnerable to hackers.[20] Moore's Law, commonly cited by tech experts, states that computer processing ability roughly doubles every year.[21] These factors mean that it is hard to say what cyberwarfare will look like even a decade from now. With these considerations, international laws on cyberwarfare would have to be written in broad strokes, not about specific weapons or abilities, but about the effects they will have. In addition, if there were cyber arms control treaties in place, enforcement would be nearly impossible. With atomic arms control treaties, it is easy to verify compliance. Nuclear reactors and atomic testing facilities are difficult to conceal, and International Atomic Energy Agency inspections are quite thorough. But with cyberwarfare, it is far more difficult to do official checks on whether a country is complying.

Another reason why cyberwarfare is not regulated is that many civilians are not overly concerned with it. Bureaucracy moves at glacial speeds, and one of the few things that can accelerate it is civilian demand, which currently does not exist for cyber warfare (despite the ample evidence of its capabilities).

> Imagine if the FBI announced that it had arrested dozens of Chinese government agents running around the country strapping C4 explosive charges to those big, ugly high-tension transmission towers and to some of those unmanned step-down electric substation transformers that dot the landscape. The nation would be in an outrage,

opines author Richard Clarke, "Yet when the *Wall Street Journal* announced a headline in 2009 that China had planted logic bombs [a type

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20. Lisa Rapaport, "Pacemakers, Defibrillators Are Potentially Hackable," Reuters|Health, 2020, https://www.reuters.com/article/instant-article/idUK-KCN1G42TB; Jane LeClair, "Should We Be Worried about the Hacking of Autonomous Vehicles?" Thomas Edison State University, January 10, 2020, https://blog.tesu.edu/should-we-be-worried-about-the-hacking-of-autonomous-vehicles.

21. *Encyclopedia Britannica Online*, Academic ed., s.v. "Moore's Law|Computer Science," accessed 2020, https://www.britannica.com/technology/Moores-law.

of computer virus] in the U.S. grid, there was little reaction."[22] In fairness to the civilian populace, it is unlikely many people in the western world worried about Islamic terrorism prior to 9/11. Leon Panetta seemed to share these views when he was Secretary of Defense in 2012. He warned that one day there would be a cyber equivalent to Pearl Harbor, an attack that, in his words, "would paralyze and shock the nation and create a new, profound sense of vulnerability."[23] In fairness, governments tend to project apathy towards cyberattacks as well. "Very few cyberattacks have been publicly condemned, and most have gone without a response of any kind," explains Noah Simmons.[24] Finally, even when there is cyber warfare, most civilians do not really think about the consequences. Pop culture has primed society to expect a cyberattack to look like the movies, where hackers in high-tech facilities can make things explode merely by typing frantically. In the real world, it looks a lot more like 404 screens turning up on your bank, your government's websites, and even local news.

The lack of international discussions around cyberwarfare leads to one more reason why the international community has not restricted cyberwarfare yet: restrictions could interfere with the extremely lucrative intelligence gathering operations countries regularly undertake against one another. "The first few months of 2014 alone saw the single largest cyberattack occur, a 'cyber-war' between pro-Russian and pro-Ukranian forces, and discussions within the United States government over waging full-scale cyber-war in Syria."[25] Though there have not been many cyberattacks designed to lock systems or damage military property, attacks designed to gather intelligence (and plant back doors for future conflicts) happen every day. When it came to regulating the atom bomb, the international community was talking about a nuclear war that might happen one day. With cyberwarfare, legislators are trying to rein in a war that is already happening around us. Author Brian Mazanec examined several serious cyberattacks, and pointed out some troubling norms already emerging. He pointed out that most of

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22. Richard A. Clarke and Robert Knake, *Cyber War: The Next Threat to National Security and What to Do About It* (New York: Ecco, 2010).

23. BBC News, "Leon Panetta Warns of 'Cyber Pearl Harbour,'" October 12, 2020, https://www.bbc.com/news/av/technology-19923046.

24. Noah Simmons, "A Brave New World: Applying International Law of War to Cyberattacks," *Journal of Law & Cyber Warfare* 4, no. 1 (Winter 2014): 42–108.

25. Simmons, "A Brave New World," 46–47.

the attacks he examined were aimed at civilian targets.[26] Second, he observed that the attacks that did limit themselves to military targets were launched by western nations (chiefly the US and Israel), suggesting that the norms adhered to by participants in cyberwarfare depended heavily on the bloc the nation was associated with.[27]

Part IV: Solutions

So now that we know that the LOAC is not properly equipped to deal with cyberwarfare, we know that civilians are not clamoring for new regulations around cyberwarfare, and we know that the "wild west" status quo is beneficial to countries, how do we go about fixing it? How do we create realistic, enforceable laws and treaties around cyberwarfare? Well, some argue that new and beneficial norms are being created around us right now. Mazanec ends his analysis of cyberattacks on a hopeful note, saying "No known deaths or casualties have yet resulted from cyberattacks, and the physical damage caused, while impacting strategically significant items such as Iranian centrifuges and Soviet gas pipelines, has not been particularly widespread or severe . . . the lack of such attacks may allow space for a constraining norm to emerge."[28] While he adds that the lack of fatalities may be as much a matter of current capability as anything else, it is still encouraging to see constraining norms around cyberwarfare taking shape. After all, what is customary international law if not elevated norms? Additionally, multiple NATO countries including the Netherlands have adopted the Tallinn Manual I previously mentioned as a key document of reference, another sign that norms are being developed.[29]

But norms alone are not enough to have proper regulations around cyberwarfare. We must start establishing concrete definitions, the first of which being whether a cyberattack constitutes an "armed attack." Author David E. Graham proposed three analytical models that could be used to determine whether a cyberattack could qualify as an "armed attack." The model that most intrigued me was the "effects-based approach." wherein he stated that "the consideration would be the overall

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26. Brian M. Mazanec, *The Evolution of Cyber War: International Norms for Emerging-Technology Weapons* (Lincoln: Potomac Books, 2015).

27. Mazanec, *The Evolution of Cyber War.*

28. Mazanec, *The Evolution of Cyber War.*

29. Eric Jensen, in discussion.

effect of the cyberattack on the victim state."[30] For example, Graham says, an attack on America's financial systems would be considered an armed attack because it would cause damage to the country on par with a physical bombing. America, he says, seems to be following this model, and I personally think it is good enough to be codified under international law.[31] Not only does it protect vital infrastructure, but it also means that the information gathering operations happening today would still be legal, making governments more likely to back a treaty that incorporates this model.

Another aspect of cyberwarfare that needs to be addressed is the attribution of attacks. Tracking a cyberattack to its country of origin can be done easily with a decent intelligence apparatus, but determining whether it came from a state or non-state actor can be quite difficult. "The smoke screen of a state attributing cyberattacks exclusively to private individuals within a state may often serve as a convenient cover for states that might be either directing or knowingly tolerating such attacks," warns Graham.[32] This is why he suggests that states have an imputed responsibility to prevent cyberattacks from private organizations from occurring within their borders.[33] This is certainly one of the more radical propositions (both from his paper and mine), but I believe that without this provision, the other ones will not matter. Regulations on state actors will not matter if they simply outsource their cyberweapons to state-sponsored groups. I believe that it is fair to hold nations accountable to attacks that emerge within your borders. As Graham states,

> Following the September 11 attacks, state responsibility for the actions of non-state actors can be said to result from a state's failure to meet its international obligation to prevent its territory from being used by such actors as a as a base from which to launch attacks on other states.[34]

This imputed responsibility (or due diligence, as it is known), would obviously not apply to *any* cyber malfeasance, but merely to that which seriously inconveniences another state. As Eric Jensen puts it, "States are not required to remedy all transboundary harm; only that harm

30. Graham, "Cyber Threats and the Law of War."
31. Graham, "Cyber Threats and the Law of War."
32. Graham, "Cyber Threats and the Law of War."
33. Graham, "Cyber Threats and the Law of War."
34. Graham, "Cyber Threats and the Law of War."

resulting in serious adverse consequences. Some level of harm is assumed to be below the threshold that would trigger the due diligence principle."[35]

In addition, I believe that the perfidy loophole of routing attacks through other countries to conceal attribution should be outlawed under international humanitarian law. Lawful camouflage, as it exists now, is designed to make the enemy blend in with the background. Soldiers disguise themselves as rocks and trees because if the enemy shoots a rock or a tree, that is not collateral damage. But if a cyberattack is routed through another nation, it runs the risk of the target misattributing the attack to the nation it was routed through and perhaps even retaliating against that nation, there is serious potential for innocents to be harmed in the crossfire. To me, routing a cyberattack through another country is less "camouflage" and more of a false-flag operation.

I also believe that a treaty regarding cyberwarfare should include some kind of pact between nations that promises to provide aid to one another, in the form of humanitarian aid, help with attribution, or even just agreements for mutual defense. Such treaties have been drafted thousands of times before, it seems that it should not be difficult to draft one for cyber between allied nations (especially if it does not cover espionage).

Finally, I believe that the last loophole in this paper that needs to be addressed is accountability for kinetic attacks that happen because the victim is in a compromised state due to a cyberattack. The simple truth is that if you render someone extremely vulnerable to attack by crippling their defense structure through a cyberattack, foreign entities taking advantage of that compromised state is practically a given. There needs to be international law that considers this. I believe that if war crimes are committed by a third party towards a nation you damaged with a cyberattack, the nation that launched the cyberattack is legally liable. Since nations obviously do not want to fall victim to terrorists or criminals when compromised by a cyberattack, this should not be a difficult thing to ask for.

The Tallinn Manual is a good start, but when all is said and done, it is a collection of opinions. The international community needs more,

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35. Eric Talbot Jensen, "The Tallinn Manual 2.0: Highlights and Insights," *Georgetown Journal of International Law* 48 no. 3 (March 2017), 735, https://ssrn.com/abstract=2932110.

it needs established law. We need to make sure that cyberattacks can be properly attributed, that they do not remove the internet (a vital economic service) from civilians, and that nations do not merely outsource their attacks to state-sponsored actors. War is changing. As combat systems become more integrated and more complex, they also become more vulnerable. Cyberwarfare is becoming increasingly prevalent, but the laws of war are woefully inadequate for dealing with it. Cyberwarfare is a new class of conflict, and requires a new set of laws built around it, lest we enter a new dimension of warfare with limitless destructive potential and no rules to govern it.

Chinese Naval Stragegy in the South China Sea

Chris Bishop

Abstract

The People's Republic of China (PRC) has designated the United States as their chief competitor and adversary, with their goals and methods often challenging our own. A close examination of China's actions and naval strategy in the South China Sea will show a need for action and will help identify useful counters to PRC tactics. The region is ripe with strategic significance, which has contributed to a history of competing claims. China has made great use of diplomatic, economic, informational, and military power in subtle ways to pursue regional objectives. Some examples of this are China using its naval forces, and other strategies like economic strong-arming to further its regional objectives. An analysis of these methods shows two things. First, despite sugary rhetoric, China's actions show they cannot be trusted and will infringe on the sovereignty of other states when it suits the PRC. Second, success in their objectives for the region would pose serious security threats to the other states around the Sea, the United States, and the international order as a whole. Clear, specific action by both the United States and the international community is needed to address the PRC threat in the South China Sea.

The South China Sea

What is important about the South China Sea? Economically, it is one of the most important locations in the world. It houses vast resources of oil and natural gas, with values ranging anywhere between $2 and $23 trillion, depending on the organization.[1] The Sea is also

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1. Anders Corr, "Introduction," in *Great Powers, Grand Strategies: The New Game in the South China Sea*, ed. Anders Corr (Annapolis: Naval Institute Press, 2018), 15.

home to valuable fishing stock that amounts to almost 10 percent of fish caught across the world.[2] These fisheries not only aid local nation economies but also feed the local populations. Some of the busiest shipping lanes in the entire world also run through the South China Sea. In 2016, it was estimated one-third of the world's shipping, around $3.4 trillion in value, was carried through these shipping lanes.[3]

The numerous reefs, shoals, and islands in the South China Sea can be largely grouped together into two island chains: the Spratly and Paracel Islands. These islands remained mostly uninhabited until the 1950s when many of the countries in the region, such as the Philippines, Vietnam, and China, began to claim and set up installations on them. Naturally, this caused disputes between the nations and included small but violent skirmishes from time to time in which the PRC forcibly took control of islands from other states. However, these tensions in the Sea took on a more diplomatic and less violent nature during the early 2000s.[4] For example, after China took the Scarborough Shoal from the Philippines in 2012, the latter turned to a UN tribunal to return the shoal to them. The tribunal ruled China's seizure of the shoal illegal and denied much of the PRC's claims in the South China Sea, but China has blatantly ignored it.[5]

Politically, the South China Sea is bordered by six nations all of which have overlapping claims in the sea that contribute to the tensions. The Sea holds vital sea lines of communication (SLOCs) for all of them. For some nations such as the Philippines, their sovereignty has been undermined by China's seizing territory inside their Exclusive Economic Zone (EEZ), as in the aforementioned Scarborough Shoal incident. For the world in general, the legitimacy of international law is also at stake. China's claims and actions violate the United Nations Convention on the Law of the Seas (UNCLOS) EEZ laws and have ignored the results of the UN tribunal. This could lead the nations threatened by or committing these acts to stop trusting, and thus stop

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2. Corr, "Introduction," 16.

3. Marvin Ott, "The South China Sea in Strategic Terms," The Wilson Center, May 14, 2019, https://www.wilsoncenter.org/blog-post/the-south-china-sea-strategic-terms.

4. Sean Mirski, "The South China Sea Dispute: A Brief History," Lawfare, June 8, 2015, https://www.lawfareblog.com/south-china-sea-dispute-brief-history.

5. Council on Foreign Relations, "China's Maritime Disputes," https://www.cfr.org/interactives/chinas-maritime-disputes.

following, these international laws. For China, the issue also impacts the legitimacy of their communist government. They have created strong public support domestically for their actions through false claims of historical sovereignty over the South China Sea and through a powerful nationalist ideology. Failure to secure the Sea, especially in the face of democratic nations, could damage the view of the Chinese Communist Party (CCP) in the eyes of Chinese citizens.[6] Additionally, it can serve as a means for their forces to move and project power globally and to defend homeland China by controlling what ships can enter the Sea.[7]

China's Endstates

Chinese Objectives

What are China's ends—their goals and objectives? On a national level, the CCP has said it seeks "the great rejuvenation of the Chinese nation."[8] It defines this broad vision as a state of being nationally "prosperous, strong, democratic, culturally advanced, and harmonious."[9] Further insight into this still-broad definition can be drawn from the ends the CCP has set to achieve this grand vision. These include becoming a global leader in the international community, reforming international institutions to reflect and favor its socialist principles, building a completely modern "world-class" military capable of securing Chinese national interests at home and abroad, unifying China's break-away territories such as Taiwan, and increasing all aspects of national power.[10]

China has remained officially vague as to its desired end-state in the South China Sea. For years, it has circulated and claimed rights to the area within its "nine-dash line," which says that China has historic claim to extend its EEZ to nearly the entire Sea. However, the CCP has never officially clarified what it means by this claim, whether it refers to access to the resources in those waters or actual political sovereignty over them. This lack of an official stance has been helpful in buying China

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6. Corr, "Introduction," 15–16.

7. Corr, "Introduction," 16.

8. Office of the Secretary of Defense, *Military and Security Developments Involving the People's Republic of China 2020: Annual Report to Congress*, August 21, 2020, 2, https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/1/2020-DOD-CHI-NA-MILITARY-POWER-REPORT-FINAL.PDF.

9. Office of the Secretary of Defense, *Military and Security Developments*, 4.

10. Office of the Secretary of Defense, *Military and Security Developments*, 2–4.

time to gather means and implement whatever strategies it sees fit since its opponents do not know what exactly it wants and therefore have difficulty preparing for whatever ways it will employ to accomplish them.[11] So far, the resistance the PRC has encountered in pursuing its claim has come from the UN tribunal, attempts to regulate international encounters in the South China Sea, military stand-offs, US Freedom of Navigation Operations and military exercises, and the condemning words of other nations. Nearly all these actions have been taken in response to a specific incident, usually one instigated by China. The PRC has failed to address both their the strategy as a whole and the ambiguous agenda behind it. However, regardless of whether the issue is one of sovereignty or rights to resources, China's national objectives, its claims in the South China Sea, and its actions in the Sea all point to seizing control.

Establishing Control

From the viewpoint of China's national objectives, control of the South China Sea would automatically give China a much more significant position internationally via the sheer amount of natural resources and trade that pass through those waters. Regionally, this would grant China control of and leverage over vital portions of their neighbor's economies and a very real, close physical presence. Control over those same trade resources could extend China's economic leverage and ability to seek reformation of international organizations beyond Southeast Asia. Control of the Sea itself would help this objective by undermining the legitimacy of the laws of the sea and the international community's ability to resolve conflicts between nations by legal means such as the Permanent Court of Arbitration.[12] The natural resources and islands in the Sea could be used to bolster China's military strength, and control would give China's People's Liberation Army (PLA) a strategic advantage in controlling ingress and egress of the South China Sea and, by extension, the Pacific and Indian Oceans. Controlling the region would also enable China to deploy forces more rapidly to intervene in neighboring countries, grant them a vast reserve of resources

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11. Marina Tsirbas, "What Does the Nine-Dash Line Actually Mean?" *Diplomat*, June 2, 2016, https://thediplomat.com/2016/06/what-does-the-nine-dash-line-actually-mean/.

12. John Burgess et al., eds., "The South China Sea Tribunal," in *Law of the Sea: A Policy Primer* (Medford: Tufts University), https://sites.tufts.edu/lawofthesea/chapter-ten/.

in the case of attempted blockade or a large-scale conflict,[13] and provide a large buffer in the case of attempted attacks or interventions by foreign powers. This buffer would be especially helpful in assisting China to cut off Taiwan from help should it move to take control of the island.

All of the ways and means employed by China point towards the objective of control. On numerous occasions, China has wrested control of physical territory from its neighbors; harassed, seized, or attacked ships and installations in the Sea; taken resources from within neighboring EEZs; and fabricated a nationalist idea that the South China Sea has always belonged to China. While many of these tactics could point to attempting to control the natural resources and deny foreign powers access to them, they could also point towards an attempt at sovereignty over the Sea. This nationalist idea is particularly poignant for sovereign control. As China has taught its public that the Sea belongs to them, made assertions of sovereignty over the Sea to the public such as claiming it on passports,[14] and ignored the international tribunal ordering them to drop the claim, the CCP has tied the public's view of the party to exercising sovereignty over the South China Sea. If they do intend to seek something less than this, China will have to create another situation such as the tribunal in order to stop short of sovereignty and still save face domestically.[15] This path could still carry the benefit of strengthening the desire and effort for international reform by uniting Chinese citizenry against whatever international decision was made.

Strategies and Tactics

Diplomatic and Economic Strategies

In addition to military power, it is important to examine the other ways, or strategies, China employs to work in tandem with its use of the PLA in the Sea. Prime examples of this are China's Belt and Road Initiative (BRI) and debt-trap diplomacy. The BRI is China's ambitious plan to establish a new silk road of sorts that travels overland and by sea throughout Asia, the Middle East, and into Europe. This plan focuses on increasing trade and building infrastructure in nations along

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13. Corr, "Introduction," 16–17.
14. Corr, "Introduction," 15.
15. Corr, "Introduction," 15–16.

the route, particularly in poorer countries. While this may seem all well and good, these win-win projects are often set up to greatly benefit China over other nations. These projects and investments are often set up to benefit specific politicians and businessmen in the host countries who will favor Chinese ties and policies.[16] For various reasons, some BRI projects seem questionable as to whether or not they would actually bring the economic boost promised. One such project is the massive, yet isolated, Dara Sakor project in Cambodia.[17] This BRI project to build a mega-resort was secured with concessions three times the amount allowed under Cambodian law. Its location is isolated and has attracted very few tourists. Local attendance is also unlikely, as the project displaced hundreds of Cambodian villagers. The lack of revenue generated from this $3.8 billion project could lead Cambodia down a path of unsustainable debt.[18] Additionally, this and other projects can be dual-use facilities that can serve the overt economic purposes and be utilized by military forces simultaneously. Often, these projects are even built to PLA standards.[19]

China can choose to favor friendly governments with more investments and, in the case of the South China Sea, the increased trade and critical infrastructure grant the PRC leverage over its neighbors: it can threaten to withdraw funds and abandon projects if they do not comply with its aims. This also enables the use of "debt-trap diplomacy." Because of the large amounts of debt that nations trading with China incur, especially compared to their smaller economies, the PRC can use this debt to seize territory or sway decisions of their trading partners. Examples of this include Sri Lanka which, unable to pay the large amounts of debt owed to China, was forced to turn over Hambantota

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16. Corr, "Introduction," 27–28.

17. Drake Long, "Cambodia, China and the Dara Sakor Problem," *Diplomat*, October 21, 2020, https://thediplomat.com/2020/10/cambodia-china-and-the-dara-sakor-problem.

18. Radio Free Asia, "US Treasury Sanctions Chinese Developer for Land Seizure, Graft in Cambodia Project," *American Military News*, September 17, 2020, https://americanmilitarynews.com/2020/09/us-treasury-sanctions-chinese-developer-for-land-seizure-graft-in-cambodia-project.

19. Daniel Russel and Samuel Locklear, "China Is Weaponizing the Belt and Road. What Can the US Do About It?" *Diplomat*, October 22, 2020, https://thediplomat.com/2020/10/china-is-weaponizing-the-belt-and-road-what-can-the-us-do-about-it.

port to a company owned by the Chinese government.[20] While nothing of this scale has occurred yet in the South China Sea, China has already used this debt to disrupt efforts by the Association of Southeast Asian Nations (ASEAN) to unite against its claims in the Sea.[21]

Much like their economic uses of power, China uses a diplomatic "take and talk" strategy.[22] China uses its businesses and diplomats to engage ASEAN countries in discourse with the hope and aim to find peaceful and diplomatic solutions to the tensions in the South China Sea. While engaging in these diplomatic discussions, China simultaneously uses its military to further its claims in the Sea. Additionally, it attempts to pursue bilateral talks with its neighbors, allowing for it to use its greater power to bully or intimidate smaller countries without the interference of a third party such as the UN or the US.

Military Strategies

China also conducts military exercises in contested waters of the South China Sea to assert their control over the region.[23] Often, these exercises have been in direct response to US freedom of navigation operations in the South China Sea to uphold the freedom of international waters. However, the People's Liberation Army Navy (PLAN) uses the exercises to intimidate its neighbors by demonstrating its combat abilities. Conducting these exercises in contested waters with no real repercussions also points to China's de facto control of the area.

Land reclamation and shore-based defenses give the PRC significant abilities to project power throughout and to secure the Sea. Land reclamation is a practice of dumping sand onto reefs, rocks, and islands in order to create new land. Upon creating these new islands, China has traditionally followed a pattern of literally cementing their sovereignty over them by establishing military installations that have included

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20. Nyshka Chandran, "China's Using Cheap Debt to 'Bend Other Countries to Its Will,' Academic Says," CNBC, December 22, 2017, 1:32 p.m. EST, https://www.cnbc.com/2017/12/22/one-belt-one-road-china-loans-are-debt-bondage-says-brahma-chellaney.html.

21. Brahma Chellaney, "China's Debt-Trap Diplomacy," The Strategist, Australian Strategic Policy Institute, January 24, 2017, https://www.aspistrategist.org.au/chinas-debt-trap-diplomacy.

22. Corr, "Introduction," 27.

23. Sam LaGrone, "U.S., Chinese Navies Hold Dueling Exercises in the South China Sea," *USNI News*, July 6, 2020, https://news.usni.org/2020/07/06/u-s-china-navies-hold-dueling-exercises-in-the-south-china-sea.

wharfs, runways, aircraft hangars, radar sites, and anti-aircraft systems. By building such outposts, the PLAN has gained valuable bases for resupply and rapid deployment around the Sea. The presence of anti-air and anti-ship weapon systems on the islands, especially combined with similar systems on PLAN vessels, helps China secure the Sea by denying other powers, particularly the US, freedom of travel through the air generally and denial of air superiority in the case of conflict. The presence of aircraft doubles in helping to control the air and allowing China to rapidly project power beyond the South China Sea. Especially when combined with their affinity for missile systems, the bases in the Spratly and Paracel islands can encircle the South China Sea with a dangerous ring of shore-based defenses, threatening any unwelcome ship in those waters and giving China the ability to rapidly attack unfriendly forces before reaching the Sea.

Historically, military conflict in the South China Sea involving the PRC has been very limited, and this has been due to the Chinese strategy of brinkmanship, which involves taking a situation to the brink of where military action is required and using it to make small gains.[24] This works because China claims it does not want armed conflict, and the typically weaker neighbors are unable to fight or they determine that whatever China is gaining is not worth going to war over. The benefit of this strategy is since the gains are so small, and often long spans of time occur between incidents, it does not provoke a major military response that could be expected with a sudden and swift seizure of the entire Sea. This is evident in several small conflicts which have occurred between China and its ASEAN neighbors. A prime example is the Scarborough Shoal incident mentioned earlier, when China seized the shoal within the Philippines' EEZ, and both sides sent military forces into the area. After a tense standoff, China and the Philippines agreed to withdraw, but only the latter held up their end of the agreement. More recently, in 2019, China used this strategy by deploying naval forces to disrupt or discourage drilling efforts and construction undertaken by other countries in their own EEZs but also within China's claimed nine-dash-line.[25]

Power and Positioning

China also fields the largest navy in the world, which has split up

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24. Corr, "Introduction," 25.
25. Office of the Secretary of Defense, *Military and Security Developments*, 100.

into three fleets, and assigned one each to its Northern, Eastern, and Southern Theater Commands.[26] The fleet assigned to the Southern Theater operates mainly within Southeast Asia and the South China Sea. While its current priorities include defending China's SLOCs in the Sea, sending vessels to intervene in unapproved foreign activities within the nine-dash-line, and counteracting US freedom of navigation operations, this fleet would also be crucial in securing the Sea in the event of an invasion of Taiwan.[27] Should an armed conflict occur that involved enemy forces moving up through the South China Sea, the outposts on the Spratly Islands would act as China's first line of defense. However, despite their anti-ship and anti-air defenses, the islands would not last long on their own, especially against a major power such as the US.[28] The fleet would be crucial in supporting this line of defense and could be forward deployed to the islands to conduct actions against hostile forces. Additionally, with an increased capability of the Spratly Islands to sustain and support naval operations, China could use the fleet to secure the Sea and begin denying entry, and, when the CCP deems China ready to do so, it can project power and conduct operations beyond the Sea.[29]

A critical resource for implementing Chinese strategy is its naval fleet. China produces more ships by tonnage than any other nation in the world. In fact, its ship-building capabilities are almost self-sufficient.[30] This makes sense given that China's navy of 350 or more ships is the largest in the world. Of those 350, over 130 are considered to be "major surface combatants."[31] Such a large navy is crucial in achieving China's objectives at home and in projecting power beyond the South and East China Seas. The fleet assigned to the Southern Theater itself consists of 1 aircraft carrier, 20 submarines, 11 destroyers, 18 frigates, 20 corvettes, 4 amphibious transport docks, 21 landing ships, and 22 missile patrol craft.[32] They also utilize coast guard vessels and marine

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26. Office of the Secretary of Defense, *Military and Security Developments*, 49.

27. Office of the Secretary of Defense, *Military and Security Developments*, 99.

28. Ian Forsyth, "Old Game Plan, New Game: China's Grand Strategy in the South China Sea," in *Great Powers, Grand Strategies: The New Game in the South China Sea*, ed. Anders Corr (Annapolis: Naval Institute Press, 2018), 84.

29. Forsyth, "Old Game Plan, New Game, 84.

30. Office of the Secretary of Defense, *Military and Security Developments*, 143–44.

31. Office of the Secretary of Defense, *Military and Security Developments*, ii.

32. Office of the Secretary of Defense, *Military and Security Developments*, 49.

militia for law enforcement and disrupting foreign activity in internationally contested waters.

The outposts in the Paracel and Spratly Islands also serve as means for China to try to legitimize its claims in the South China Sea. Due to their ability to support and house ships, they support and enable the use of brinkmanship and China's navy. The presence of anti-ship, anti-air, and other missile systems on the island can serve to help deny aircraft and vessels access to the Sea without Chinese permission.[33] When combined with aircraft on the islands, they can also serve as platforms from which China can project power beyond the Sea.

Assumptions and Implications

In military affairs, some level of assumption is always necessary as no entity can ever know everything, especially when at least two actors are constantly trying to outdo one another. As they color our perceptions of the situation, it can be strategically grievous if the assumptions are incorrect. This is especially true with China, which increases the number of assumptions that must be made via misinformation and ambiguous purposes.

The first assumption made here is that China is seeking first de facto control of the South China Sea and will eventually pursue sovereignty over it. The ambiguousness of China's official position regarding its nine-dash-line requires us to make an assumption on the subject. The evidence for this assumption comes from China's claims to the Sea and tying those claims with public opinion of historical ownership over it, the strategic benefits of sovereignty over the Sea, and China's numerous actions to seize territory and drive other nations' activities from those waters.

Second, despite its use of flowery rhetoric, "mutually" beneficial agreements, soothing claims to pursue peaceful resolutions, and global idea of "a community with a shared future for mankind,"[34] China's actions show it cannot be trusted. Its use of debt-trap diplomacy, brinkmanship, power projection goals, BRI dual-use facilities, disregard of international law, and creation of its own international organizations to

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33. James Holmes, "How America Can Sink China's Aircraft Carriers in a War," *National Interest*, November 25, 2020, https://nationalinterest.org/blog/reboot/how-america-can-sink-chinas-aircraft-carriers-war-173355.

34. Office of the Secretary of Defense, *Military and Security Developments*, 3.

challenge existing systems point to a nation that will do whatever it takes to accomplish its goals, regardless of the cost.[35]

Third, as China grows in all aspects of national power: diplomatic, informational, military, and economic (DIME), it may become increasingly belligerent, though not necessarily to the point of initiating or provoking military conquest. China has skillfully used the elements of DIME, including military power short of full-scale war, to exercise control of other nations. It seems unlikely that China would use conventional warfare unless in the direst of circumstances if any other less risky option remains. That said, China has demonstrated a disturbing pattern of increased belligerence over the last few years. For decades, incidents in maritime disputes involving China in the South China Sea were, though more violent, often years apart. However, the number of incidents in the South China Sea have increased dramatically in the last eight years. For example, between 1970 and 2010, three incidents occurred in the Sea between China and other nations that became violent and deadly. However, between 2010 and 2020, at least fifteen smaller and less violent incidents involving China have occurred in the South China Sea.[36]

US Consequences

Chinese success in the South China Sea would bring dire consequences for the US, its allies, and the international community at large. To start, success would deal a significant blow to the legitimacy of the current international order and particularly international law. China's success would indicate these laws are meaningless and could lead other nations to flock toward China's alternatives,[37] especially in areas of Asia where China has the greatest control. While other nations have ignored or undermined international rule of law, the difference here is in scope and purpose. When other nations have ignored the law, it is usually for the purpose of pursuing their own national interests, possibly to the detriment of a few neighboring states. However, the PRC seeks to remake the entire current international order into one that supports

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35. James Fanell, "China's Maritime Sovereignty Campaign: Scarborough Shoal, the 'New Spratly Islands,' and Beyond," in *Great Powers, Grand Strategies: The New Game in the South China Sea*, ed. Anders Corr (Annapolis: Naval Institute Press, 2018), 115–17.

36. Council on Foreign Relations, "China's Maritime Disputes."

37. Fanell, "China's Maritime Sovereignty Campaign," 116–17.

authoritarian and communist principles. To this end it has even estab-
lished other international organizations that serve the same function as
already existing ones. Economically, China would gain a huge advan-
tage over the international community in controlling, being able to tax,
and potentially denying the vital shipping lanes that run through the
Sea. Gaining control of the natural resources and fishing in the Sea
would grant China further control over the economies of the sur-
rounding nations and give itself a vast reserve to power military opera-
tions abroad and defense at home in case of an attack.[38] For US allies
in both the South China and East China Seas, opposing Chinese agen-
das would become even more dangerous as they could withhold or
blockade vital natural and economic resources.

Worldwide Consequences

Militarily, China would be in a better position to intervene in and
further intimidate Vietnam and the Philippines. Taiwan would be in
particular danger, being cut off from aid from the south if China in-
vaded. Any intervention by an unwelcome third party into the South
China Sea would have to first defeat the line of defense on the Spratly
Islands, then cross the Sea while battling the Chinese fleet in the South-
ern Theater and facing attack by aircraft and missile systems in the
Paracels and on mainland China. Significantly, for China, control of the
Sea would increase the PRC's ability to extend military operations and
project power abroad. If its actions here are to be any kind of a tem-
plate, one can reason that China would then use its strategy of brink-
manship beyond Southeast Asia, perhaps first with India. While the
summer 2020 skirmish with India is likely to result in a firmer and more
prepared India, success in the South China Sea could give the PRC
sufficient power in other elements of DIME to assist it in effectively
implementing brinkmanship again. Additionally, as China grows in
power and, having named the US as its main strategic competitor,[39] it
can reasonably assume that China will begin to counteract US actions
across the globe, such as sending forces to the Persian Gulf or Gulf of
Oman to aid Iran, and change the balance of power in the region
against the United States. Such acts, especially if successful, can begin
to diminish US soft power and influence abroad.

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38. Corr, "Introduction," 16–17.
39. Office of the Secretary of Defense, *Military and Security Developments*, v.

Recommendations

The last thing to examine before offering courses of action is the desired ends of the United States. What, exactly, does the US want to see happen in the South China Sea? In the 2017 *National Security Strategy*, President Donald Trump highlighted strategic competition with China and outlined political, economic, and military objectives for the Indo–Pacific region.[40] The broadest of these include deepening relationships with new and existing allies; encouraging free seas, fair commerce, and peaceful dispute resolution; and maintaining a presence capable of deterring and defeating any opponent.[41]

The United States should seek to bolster its current allies in the South and East China Seas. China is rising to meet the US in every military capacity and has already surpassed it in some respects, such as shipbuilding capacity and in size, type, and range of ballistic missiles.[42] However, the United States still remains militarily superior, but its forces are spread across the globe. Allies are essential in helping the US to check China. The US can do this by fostering budding diplomatic relationships with nations such as Vietnam and the Philippines, offering economic alternatives from China's BRI loans and infrastructure projects, and bolstering allied militaries—possibly through training, sale of military equipment, and aiding in technological development. For example, the US could offer increased foreign aid or assistance in building infrastructure for countries under the BRI if they agree to withdraw from or decrease BRI participation. Private business and non-governmental organizations could also be given incentives to step in to replace economic deals with China that pose a potential threat of Chinese strong-arming.

Another recommended action is the US should amend its code of conduct agreements with China. Brinkmanship is most effective when there are no codes regulating actions of nations when conflicts arise, giving a sense of unpredictability that enables the intimidation sought by the stronger party.[43] ASEAN has pursued such agreements with

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40. Donald J. Trump, *National Security Strategy of the United States of America*, December 2017, 2–3, 46–47, https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf.

41. Trump, *National Security Strategy*, 47.

42. Office of the Secretary of Defense, *Military and Security Developments*, vii.

43. Corr, "Introduction," 25.

China, such as the "2002 Declaration on the Conduct of Parties in the South China Sea,"[44] and negotiations are ongoing for additional agreements. However, China has ignored the declaration, as is evident by its actions in the Sea since then. China has similar agreements with the US that make the latter's actions more predictable.[45] Logic would dictate that as China becomes stronger and more confident, it picks and chooses when to follow those agreements as well. The US should amend current agreements and add conditions to any future such agreements to make them contingent on China refraining from any aggressive actions against another nation in free waters or in the latter's own EEZ.

Finally, a message must be sent to China that even its small expansionism will not be tolerated. Action taken so far apparently does not bother China much, as it has continued exercising its South China Sea policies. In addition to seeking closer ties with nations such as the Philippines and Vietnam, the US shall seek to establish a physical military presence by these states. This presence will be most effective if US forces are deployed and stationed in the areas of EEZs where China has continued to intrude. Due to the threat to the legitimacy of the international order, the United States should seek to persuade other United Nations Member States of the seriousness of the issue and to contribute forces of their own in like manner. This can be done in a similar method to the US approach of Huawei. In the case of Huawei, the US sent envoys to many allied and friendly nations, encouraging them not to participate in Huawei's 5G technology.[46] Likewise, the US can send envoys or hold summits to discuss the situation in the South China Sea. However, as with Huawei, it is likely many states will be reluctant to upset their trade deals with China. Here the US can point to the PRC's abuse of ASEAN neighbors and argue that the international community must work together to ensure China obeys international law in order to prevent such abuse of those unsure states in the future. China and the world must be shown that disobedience of international law is unacceptable. This could lead to either the upholding of China's programs or to a pre-World War II international environment if the words of established international organizations are empty.

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44. Fanell, "China's Maritime Sovereignty Campaign," 116.

45. Corr, "Introduction," 26.

46. Sean Keane, "Huawei Ban Timeline: Follow the Saga of the Chinese Telecommunications Giant," CNET, March 16, 2021, https://www.cnet.com/news/huawei-ban-full-timeline-us-sanctions-china-trump-biden-5g/.

Taking the recommended actions will strengthen free trade in the region and diminish China's power over South China Sea neighbors. It will prevent Chinese manipulation of agreements with the US and better motivate the PRC to uphold its international agreements. These courses of action will also send a message to states in the South China Sea that the US will come to their aid. A message will also be sent to China that even its most subtle infringements on others' sovereignty will not be tolerated. For the world at large, it will be shown that international law will be upheld. These actions, especially the last, do carry the risk of deepening conflict with China and the costs associated with it. It is a risk that must be taken. Continuity of the status quo and current levels of action will only allow China to achieve its goals, undermine the international order, and ultimately gain a victory for authoritarianism over democracy. The United States must lead the way in taking bolder action against these underhanded tactics for the preservation of peace, democracy, and the rule of law.

Limited Intervention in Libya:
An Exercise of Futility

Dallas Allred

Military intervention with the goal of safeguarding human rights fails consistently regardless of scale. Deliberately avoiding large-scale intervention in the form of large military operations and subsequent deployment of large occupation forces does not ultimately reduce long term-costs or dissipate conflict in a region. Limited intervention is a red herring of foreign policy. Limited intervention does not succeed in solving humanitarian crises, and, in the case of intervention in Libya, it only exacerbated human rights violations. Successful intervention and nation building occurs under two conditions. First is a military campaign of such scale that the nation's population has its will to resist occupation entirely erode. Only after such a campaign will the occupying force be able to proceed with nation building, sans civilian resistance. Unfortunately, a campaign this expansive will often, by its very nature, violate the very human rights that the intervention is supposed to be protecting. Alternatively, the occupying forces can attempt to gain favor from the occupied population, but if this does not occur rapidly, the occupation is doomed to fail. Under very few circumstances can genuine humanitarian intervention be deployed because successful intervention strategy necessitates a violation of human rights or very specific scenarios that cannot be guaranteed.

Introduction

In January of 2011, protests in multiple Libyan cities broke out over accusations of government corruption.[1] The anti-government protests continued into February, which boiled into violent demonstrations as

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1. Matthew Weaver, "Muammar Gaddafi Condemns Tunisia Uprising," *The Guardian*, January 16, 2011, https://www.theguardian.com/world/2011/jan/16/muammar-gaddafi-condemns-tunisia-uprising.

government buildings and security forces were attacked. In February, after the initial protests, the anti-government group called the National Front for the Salvation of Libya called for nationwide protests entitled the "Day of Rage." These protests also turned violent, and protestors took control of Benghazi after security forces withdrew. James Siebens, a Fellow with the Defense Strategy and Planning program and an editor of *Military Coercion and US Foreign Policy: The Use of Force Short of War*, summarizes these protests.

> The "Day of Rage" on February 17th resulted in the burning of the police headquarters, clashes between pro-Qaddafi and anti-Qaddafi mobs, and reports of police shooting into crowds of anti-government protesters, resulting in numerous civilian deaths across Libya.[2]

From that point, demonstrations escalated into a civil war led by the National Liberation Army against pro-government forces until March 17, when United Nations Security Council Resolution 1973 was passed, allowing limited intervention in Libya through an air campaign. In response to UNSC Resolution 1973, NATO forces launched Operation Unified Protector, in which the multinational coalition enforced the arms embargo and the no-fly zone imposed on Libya. Later, NATO forces conducted airstrikes against pro-government forces, destroying armored elements and attacking key pro-government positions.[3] The civil war in Libya continued until October 2011, when Muammar Ghaddafi was captured and killed by rebel forces on October 20 during the Battle of Sirte. Soon after, the war was officially ended on October 23 by Mustafa Abdul Jalil in Benghazi. By October 31, NATO operations in Libya were declared over.

All was not well, however. Muammar Ghaddafi may have been deposed, but he was hardly the exclusive threat to human rights in Libya. The composition of rebel forces was diverse and included radical Islamist groups who oppose the creation of democratic institutions and western influence. The Obaida Ibn Jarrah Brigade and the Okbah Ibn Nafih Brigade were two brigades in the National Liberation army that

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2. James Siebens and Benjamin Case, "The Libyan Civil War: Context and Consequences," *THINK International and Human Security* (August 2012): 14, http://citeseerx.ist.psu.edu/viewdoc/summary?doi=10.1.1.462.690

3. Chris McGreal et al., "Allied Strikes Sweep Libya as West Intervenes in Conflict," *The Guardian*, March 19, 2011, https://www.theguardian.com/world/2011/mar/19/libya-air-strikes-gaddafi-france.

had radical Islamist influence.[4] Radical Islamist influence significantly hampered the postwar peace process and undermined the democratic Government of National Accord set up after the end of the civil war. Dr. Alan J. Kuperman, whose research focuses on ethnic conflict, military intervention, and nuclear nonproliferation, characterizes radical Islamist influence in postwar Libya:

> Islamists came to dominate the postwar parliament. . . . Meanwhile, the new government failed to disarm dozens of militias, . . . especially Islamist ones. By May 2014, Libya had come to the brink of a new civil war between loose coalitions of more liberal forces and Islamists.[5]

The tensions between Islamists and liberals and the decentralization of military power into the hands of loosely controlled groups destroyed any hopes of a peaceful reconstruction. Conflict in Libya continues to this day.

NATO's original purpose of intervention—to safeguard human rights—turned out to be based on faulty information. Early reports indicated that thousands of protesting civilians were being killed by the regime. NATO intervention was justified under the "responsibility to protect," which is a United Nations political commitment to prevent human rights violations and atrocities. From the perspective of NATO policy makers, Libya presented an opportunity to enforce this international commitment. Additionally, Libya had limited capacity to respond to an intervention. The Libyan military posed an inconsequential threat to the overwhelming power of NATO forces. Several decades earlier, Libya had even suffered a humiliating defeat against the poorly equipped forces of the Republic of Chad.[6] Ghaddafi's only power to stop an intervention lay in diplomatic efforts; however, Ghaddafi lacked international support. Pressure for an intervention came not only from NATO but also from regional actors, such as many African states and the Arab

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4. "Islamist Militia 'Shot Libya Rebel Abdel Fattah Younes,'" BBC News, July 30, 2011, https://www.bbc.com/news/world-africa-14352662; "Okba Ibn Nafaa Brigade," TRAC. Terrorism Research & Analysis Consortium, accessed December 14, 2020, https://www.trackingterrorism.org/group/okba-ibn-nafaa-brigade.

5. Alan J. Kuperman, "Obama's Libya Debacle: How a Well-Meaning Intervention Ended in Failure," *Foreign Affairs* 94, no. 2, (March/April 2015): 68, https://www.foreignaffairs.com/articles/libya/2019-02-18/obamas-libya-debacle.

6. G. L. Simons, *Libya and the West: From Independence to Lockerbie* (London: I.B. Tauris, 2003), 58.

League. The adoption of United Nations Security Council Resolution 1973 gave NATO legal justification for limited intervention in Libya. At the start, Libya presented a prime opportunity to achieve liberal objectives in the geopolitical arena. Libya, a country led by a tyrant who allegedly had no regard for human rights and international support for limited intervention, provided NATO with the opportunity to enforce humanitarian law. In addition, NATO would not be conducting a full-scale invasion, opting to offer support to an ongoing rebellion.

The real extent of human rights violations from the Ghaddafi regime was limited. According to early reports from journalists, Muammar Ghaddafi had, in response to the popular uprisings and protests, employed violent crackdowns that led to the deaths of thousands of civilians. Francis E. Ramoin, in his paper arguing in favor of the intervention, describes these crackdowns: "Between February 15th & March 5th, two weeks before the NATO bombing campaign took place, some 6,000 civilian casualties had been killed."[7] However, it was later discovered that these reports were inaccurate and exaggerated. Dr. Alan J. Kuperman describes the intelligence failure of NATO forces:

> Although an Al Jazeera article touted by Western media in early 2011 alleged that Ghaddafi's air force had strafed and bombed civilians in Benghazi and Tripoli, "the story was untrue." . . . Indeed, striving to minimize civilian casualties, Ghaddafi's forces had refrained from indiscriminate violence.[8]

Additionally, a report from the Human Rights Watch in Misurata "found that of the 949 people wounded there, only 30 (just over three percent) were women or children, which indicates that Ghaddafi's forces had narrowly targeted combatants."[9]

NATO's Faulty Casus Belli

NATO's original goal to safeguard human rights was undermined by exaggerated or incorrect reports of human rights violations. Libya, under Ghaddafi, restricted the rights of its citizens through extensive media censorship and lack of democratic processes. However, Ghaddafi was not violating human rights on the scale that NATO believed at the

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7. Francis E. Ramoin, "Why Intervention in Libya Was Justified," E-International Relations, January 25, 2012, https://www.e-ir.info/2012/01/25/why-intervention-in-libya-was-justified/.

8. Kuperman, "Obama's Libya Debacle," 70.

9. Kuperman, "Obama's Libya Debacle," 70.

time of the intervention. This was further complicated by the failure to respond to significantly worse violations in other states, such as the People's Republic of China or the Democratic People's Republic of Korea. These countries were ignored, in large part, because they were stronger than Libya was at the time.

The sad reality is that NATO intervention had inadvertently caused more human rights violations in Libya than had been occurring under Ghaddafi. NATO removed an authoritarian but comparatively stable regime and replaced it with disorganized regional militias, creating an instable region with growing hostilities between radical anti-democratic Islamists and moderate pro-democratic liberals. Human rights violations increased as a result of NATO intervention. Kuperman writes:

> Immediately after taking power, the rebels perpetrated scores of reprisal killings, in addition to torturing, beating, and arbitrarily detaining thousands of suspected Ghaddafi supporters. The rebels also expelled 30,000 mostly black residents from the town of Tawergha and burned or looted their homes and shops, on the grounds that some of them supposedly had been mercenaries. Six months after the war, Human Rights Watch declared that the abuses "appear to be so widespread and systematic that they may amount to crimes against humanity."[10]

Human rights violations continue in Libya to this day. The United Nations International Childrens Emergency Fund (UNICEF) describes recent violations in human rights in Libya:

> Women and children are often exposed to violence, abuse, exploitation and neglect. Following an intensification of conflict in southern Tripoli, Tarhuna and Sirte in June 2020, nearly 28,000 people (5,550 families), including 11,000 children, were forced to flee their homes to various municipalities in Eastern Libya.[11]

In addition, the strategy of limited intervention reduced NATO's capacity to prevent these human rights violations. NATO's reluctance to put significant ground forces in the region reduced their ability to

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10. Kuperman, "Obama's Libya Debacle," 68.

11. United Nations International Children's Emergency Fund, "Humanitarian Situation Report No. 3 July–September 2020," Reliefweb, November 27, 2020, https://reliefweb.int/report/libya/unicef-libya-country-office-humanitarian-situation-report-no-3-july-september-2020.

prevent the violent aftermath of the conflict. President Barack Obama constantly reinforced the limited aspect of intervention in Libya: "The United States is not going to deploy ground troops into Libya, and we are not going to use force to go beyond a well-defined goal—specifically, the protection of civilians in Libya."[12] Ironically, the failure to deploy ground troops impeded NATO's ability to protect Libyan civilians. If NATO had deployed significant security forces in Libya to assist the new government, the disarming process would have likely succeeded. Instead, NATO used air power to give the rebel forces, including the various anti-democratic radical Islamist factions the advantage to win the war. Had NATO wished to stop the growing radical Islamist movement, NATO would have had to implemented a more extensive intervention and started attacking some of the groups they had just helped overthrow Ghaddafi. Unfortunately, NATO policy makers realized too late that radical Islamist influence in Libya had grown out of the removal of Ghaddafi. The United States was forced to postpone the training of Libyan troops due to concern over radical Islamist influence in the Libyan government.[13]

The Allure of "Limited" Intervention

Limited intervention restricted NATO's ability to achieve their original goals and opens the question of why it was employed in the first place. The failures of Operation Iraqi Freedom had made NATO policy makers reluctant to go beyond limited intervention. The war against Saddam Hussain's regime involved a large deployment of troops and was not a limited intervention. Iraq's military was decimated by coalition forces, and the country was officially occupied for eight years. Ultimately, such an extensive intervention and subsequent occupation was expensive, cost the lives of many soldiers, hurt the public image of responsible policy makers, and damaged the US global image. Aware of negative aspects of the Iraq War and its failure to achieve objectives, NATO policy makers chose limited intervention.[14] Reducing the extent of intervention could lower costs, reduce combat losses, and work with

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12. Barack Obama, "Remarks by the President on the Situation in Libya," (speech, Washington DC, March 18, 2011), https://obamawhitehouse.archives.gov/the-press-office/2011/03/18/remarks-president-situation-libya.

13. Kuperman, "Obama's Libya Debacle," 68.

14. Judi Atkins, *Conflict, Co-operation and the Rhetoric of Coalition Government* (London: Palgrave Macmillan, 2018):109, https://doi.org/10.1057/978-1-137-31796-4.

the rebel forces to establish a stable government without years of occupation and nation building from NATO. Unfortunately, this strategy failed to accurately identify the root causes of the failure in Iraq.

The reluctance to deploy ground troops and instead to rely on the rebel forces was a major flaw in NATO policy. Limited intervention gave NATO powers limited say in the democratic nation building afterwards. Policy makers were working with incorrect assumptions about the intentions of many anti-government forces and, unfortunately, created a breeding ground for new conflict in Libya. The lack of any significant NATO forces in Libya left power in the hands of the anti-Ghaddafi forces, many of which were radical Islamists. NATO's desire for a liberal democratic government in Libya conflicted with the fundamentalist interests of the Islamist forces that wished to expel western influence and promote adherence to Islamic principles and Sharia Law.

This was not the first time the United States armed non-state actors with dubious long-term goals. The Viet Cong were trained and armed by the Office of Strategic Services to fight against Imperial Japan during World War II. The same Viet Cong later fought against the United States using the same tactics employed against Japan. The Mujahideen in Afghanistan is another prime example.

The unreliability of non-state groups should not be taken as a recommendation to never employ them; depending on the circumstances, they can be remarkably valuable. Instead, policy makers should exercise immense caution, analyzing with great scrutiny the end goals of a non-state group and determining whether or not said group's long-term interests coincide with the goals of the policy makers.

NATO policy makers assumed that the extensive military campaign in Iraq was the component that made the occupation and nation building more difficult. Because policy makers operated under the mantra of "you break it you buy it," it is unsurprising the policy makers logically wanted to avoid excessive destruction. However, such a policy still comes at a cost even if the bill were not immediately paid by NATO. The reality is that the United States has defeated nations in a major military campaign and subsequently successfully occupied them.

Lessons from Historical Cases

The occupation of Japan provides an insight into some of the factors that make occupation successful. By eroding the will to fight of the

Japanese people, the United States met little resistance during the occupation. A nearly indiscriminate bombing campaign of the Japanese mainland crippled wartime industry and Japanese morale. The United States had conducted a bombing campaign of such magnitude that it left approximately 30% of Japan's urban population homeless.[15] The destruction of Japan's industrial centers was more complete than in Nazi Germany.[16] In addition, the United States had employed napalm to great effect against traditional Japanese homes, which were often constructed with paper. The scale of destruction Japan suffered was immense, but the occupation was not plagued by constant challenges.

At first glance, this seems counterintuitive. The United States had destroyed and dismantled the government of Imperial Japan as well as the Zaibatsu, Japan's major business conglomerates and war time industrial companies and other underlying power structures, which created a large power vacuum. However, rather than leave Japan in a dismantled state, the United States opted to fill that power vacuum itself. This occupation was rather short—only six and a half years.

The United States has been conducting intervention operations in the Middle East periods of time substantially longer than it did in Japan at the end of a world war. This begs the question of why the occupation of Japan went so well compared to the occupation of Iraq. Japan still had some will left to fight in the military itself, as was demonstrated during the Kyujo incident in which particularly zealous officers in the Japanese military attempted to overthrow the Imperial Japanese government once word got out that Japan was surrendering to the Allies. The attempt had little support outside of a select few officers in the military and was crushed.[17] There was little, if any civilian support for the continuation of the war, and this is the reason why the occupying forces faced little opposition.

The key to the successful occupation of Japan depends mostly on the erosion of the Japanese people's will to fight. The occupation of Japan was seen by some citizens as a protection against fatality. Because of the scale of the destruction in Japan during the war, the end of the

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15. United States Strategic Bombing Survey, *United States Strategic Bombing Survey Summary Report (Pacific War)*, (Washington: US Government Printing Office, 1946), 90, https://www.anesi.com/ussbs01.htm#pagei.

16. US Strategic Bombing Survey, *United States Strategic Bombing Survey*, 12.

17. Edwin Palmer Hoyt, *Japan's War: The Great Pacific Conflict* (New York: Copper Square Press, 2001), 409.

war brought psychological relief. John Dower provides an insight regarding the state of mind the Japanese public was experiencing during the occupation and the impact the strategic destruction of Japan had on the population:

> The immediate meaning of liberation for most Japanese was not political but psychological. Surrender—and, by association, the Allied victory, the American army of occupation itself—liberated them *from death*. Month after month, they had prepared for the worst; then abruptly, the tension was broken. In an almost literal sense they were given back their lives.[18]

Japan, which had suffered an extensive strategic bombing campaign, including the deliberate napalming of residential areas and two nuclear bombs, had no will left to fight. Occupation brought with it some degree of uncertainty but also relief from the nightmare of the present. The terrible bombing campaign they had suffered through and a pending invasion from Allied forces that would leave potentially millions more dead left the Japanese population in a pit of despair.

The Iraq War, on the other hand, provides us with an example of a faulty problematic occupation caused by the Iraqis' strong will to resist occupation and the occupation coalitions inability to effectively combat this will. An occupying force has two methods they can utilize to erode a population's will to fight. The first method is fear, in which an occupying force is tolerated because the occupied population is afraid of continuing conflict and death. The second method revolves around maintaining a positive image for the occupying force and winning over the hearts and minds of the occupied population. The latter method is more difficult to establish, however, and must be accomplished as soon as possible. The longer an occupation lasts, the more the image of the occupying force will erode. Insurgencies that have to be put down with force will erode that image even further as the occupation persists.

Both methods can compounding on each other to create a snowball effect, which was seen in Iraq. Great care was taken to avoid destroying civilian targets. Only combatants and infrastructure directly assisting Iraqi forces were targeted. At the start of the conflict, the

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18. John W. Dower, *Embracing Defeat: Japan in the Wake of World War II* (New York: W.W. Norton 1999), 88.

people of Iraq suffered relatively little. Infrastructure was left intact, the creation of a large homeless population was avoided, and the specter of death did not loom over the populace. Coalition forces did not employ fear to control the occupying forces, nor did they successfully win over the hearts and minds of the Iraqi population. Iraqi military personnel killed during the conflict had friends, family, and tribal ties. These connections created feelings of resentment and hostility in the Iraqi population.[19] This population would, in time, take up arms against the occupiers, mobilizing various non-state actors in Iraq and the surrounding region. These groups eventually grew to such size that the stability of the entire region became threatened.

To further compound the problems in Iraq, the military equipment that would have greatly assisted any burgeoning government in maintaining control over the region was entirely destroyed, and what was left of Iraq's professional military was dissolved. Armored vehicles, military aircraft, etc. were all destroyed during Operation Iraqi Freedom, rendering the country particularly vulnerable to attacks from non-state actors, who no longer needed the expensive military hardware required to deal with these threats. John Pike, the director of GlobalSecurity.org, details the extent of the dismantling of the Iraqi military:

> Most of Iraq's ground forces were destroyed during Operation Iraqi Freedom during early 2003, and all remaining equipment was junked in the immediate aftermath of the war. None of the military equipment acquired during Saddam's time remained in service.[20]

Japan, in comparison, had their professional military dismantled, but they still had a large amount of ground equipment—primarily because they were preparing for an allied invasion that did not happen. In addition, Japan had a healthy indigenous military industry that was restructured by the United States during the occupation but was left intact. Postwar Iraq, on the other hand, had to rely on inferior foreign exports and untrained personnel.

The occupation in Japan was aided somewhat by Japan's geograph-

19. Carl Conetta, "Vicious Circle: The Dynamics of Occupation and Resistance in Iraq," Project on Defense Alternatives, *Research Monograph*, no. 10 (Spring 2005): 5.

20. John Pike, "Baath Ground Forces Equipment," Global Security, September 7, 2011, https://www.globalsecurity.org/military/world/iraq/ground-equipment-intro.htm.

ical nature as an island. Unlike Iraq, Japan's professional military could be dismantled without large concern that bad actors would flood into the country through unsecured borders, which is what happened in Iraq.[21] Even if bad actors wanted to go through the effort to cross the ocean to enter Japan, they would have to contend with the massive, battle-hardened United States Navy. Iraq's lack of a security force and the complacency of the occupying coalition allowed untracked movement across the borders, which helped create the militias that plague Iraq. Lieutenant Colonel Steven Oluic, US Army, details the consequences of Iraq's insecure borders:

> Iraq's border security is vital to the ability of the state to exercise its sovereignty and to prevent violence from destabilizing and terrorizing its population. Iraq's boundaries have numerous border regions that are porous, both on the Iraq–Iran and the Iraq–Syria borders. In the south along the Shatt al-Arab, illegal land and waterway crossing points provide access to smugglers bringing lethal aid into Basra Province. The lack of armored patrol craft has hindered the CBG in countering rocket smuggling from Iran into the Basra region. The intermittent rocket attacks on British forces in the Basra region are a result of the lack of Iraqi capacity to interdict waterborne smuggling routes.[22]

The failure of the occupying forces to secure Iraq's borders led to smuggling operations that helped arm opposition to occupying forces. Libya experiences the same problems with insecure borders, which has created numerous problems such as smuggling, human trafficking, terrorist movements, and militia activity.[23] A military attempting to occupy a state should not ignore border security.

Conclusion

The examples of Japan, Iraq, and finally Libya represent a negative conclusion to humanitarian intervention. The Japanese experience shows that intervention and the establishment of a democratic government is possible, but that one required a morally dubious strategic

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21. Conetta, "Vicious Circle," 5.

22. Steven Oluic, "Iraq's Border Security," *CTC Sentinel* 2, no.1 (January 2009), https://www.hsdl.org/?abstract&did=232153.

23. "North Africa Regional Border Security Assessment," Strategic Capacity Group, September 2019, 32, https://www.strategiccapacity.org/publications.

bombing campaign. The war in Iraq shows that a strategic military invasion is not sufficient to successfully rebuild a state, especially when the population's opposition to foreign occupation persists. If policy makers wish to avoid an unethical campaign of indiscriminate destruction, they can attempt to win over the hearts and minds of the occupied population, but this can be especially challenging. The limited intervention in Libya shows that limited military involvement often works against the goal of protecting human rights by destabilizing the structure and order of a state and region. Policy makers should be especially cautious when employing military intervention in the name of protecting human rights unless absolutely exceptional circumstances appear, such as extreme violations of human rights. When it is essentially impossible for intervening forces to surpass an oppressive regime or to use military force to free a nation from another occupying force, it is unlikely any military intervention will lead to a reduction of suffering.

Contributors

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Limited Intervention in Libya: An Exercise of Futility

    Dallas is a senior majoring in National Security with a certificate in Criminal Justice at Utah Valley University. Dallas focuses his studies on intelligence analysis and military history. Upon graduation he hopes to start a career in military intelligence analysis that provides policy makers with the necessary and factual information needed to make important policy discissions. In his free time Dallas enjoys cooking, reading, and fencing.

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    Hunter is currently a senior at Utah Valley University, majoring in National Security Studies. He is very active in many different activities on campus, including being a member of the National Security Society and previously serving as part of the editorial staff for the *UVU Security Review*. He recently competed on a team in the Atlantic Council Cyber 912 Strategy Challenge representing UVU and took home first place for UVU. Upon graduation, he intends to attend graduate school ,seeking a degree in Strategic Intelligence Studies.

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    Dallas is a junior Political Science student at UVU with an emphasis in Public Law and Political Philosophy, and minors in Constitutional Studies and Spanish Professional Translating and Interpreting. He aspires to attend law school and earn his Juris Doctorate degree; and particularly enjoys constitutional law. Dallas served in the LDS mission

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Camille is a Political Science major at Brigham Young University. She developed a great love for the world and variety of cultures at a young age. She has loved learning over the last several years about international relations and how states interact. She has a wonderful and supportive family who push her to succeed. She is looking forward to graduating three semesters early in June 2021, and plans to attend BYU Law School in the fall.

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Jeremian is a senior and a first-generation college student currently working towards his degree in Integrated Studies with emphases in Biology, Business Management, and Community Health. His contribution to the journal was written as part of a final paper for his Topics in Integrated Studies Course that focused on the North Africa region because of an interest in the tensions broiling in the region. Jeremiah has

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Christopher Ryan Bishop

Chinese Naval Strategy in the South China Sea

Christopher is a junior at Utah Valley University, where he is pursuing a degree in national security studies. Christopher was awarded a spot on the fall 2020 CHPS Dean's List. He has experience in the law enforcement and security fields, having served in the Utah Army National Guard and worked as a Corrections Officer for the Utah Department of Corrections as well as contracting for private security. Upon graduation from the program, Christopher intends to pursue a Master's degree in Military Defense and Strategic Studies with the aim to assist in developing and implementing US defense policy.