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## Letter From the Editor

Stepping from one milestone to another, the publishing process of this third issue again draws from the experiences the editorial team of the *Global Politics Review* had drawn from the previous issue. Our team of advisors, editors and reviewers is improving their workflow more and more, and each step that was a first only a year ago is becoming streamlined. But this routine does not keep us from constantly improving ourselves. For this issue, we have for the first time relied on former contributors to peer-review the majority of contributions, which we believe adds to the academic rigor and quality of the journal. Furthermore we were again able to augment the ranks of our editorial team by an additional member, Lilith Isa Sammer, who has already done a tremendous job with Cesare Scartozzi in editing and designing this issue. On behalf of the *Global Politics Review*, I would again like to formally welcome Lilith to our team.

In this issue, we publish five papers and one essay on a wide array of issues in international security, diplomatic history, international law and anthropology.

Dr. Jeffrey William Lewis examines in his article how insurgencies over the past decades have been able to counter the technological superiority of nation states through the deployment of humans as a cost-effective precision technology in modern warfare. He concludes that strategists in the Western world have become excessively reliant on automated, technological advancement, which does not accurately reflect the asymmetric nature of the realities of today's modern insurgencies.

Kathryn Botto conducts a thorough analysis of Chinese dissident Fang Lizhi's memoir as well as diplomatic cables and first person accounts to reevaluate the incident at George H.W. Bush's 1989 banquet in Beijing. She finds that a number of unintended events and miscommunication between the American Embassy and the Chinese Government led to the complications of that evening, and that Fang's emergence as Chinese dissident, although there may have been better options, roots back to that day.

Kyung Suk Lee examines South Korea's middle power foreign policy and assesses to what extent South Korea, accounting for structural constraints within the Northeast Asian security infrastructure, uses its full potential to contribute to peace and stability not only in Asia, but in the global arena. He finds that South Korea's foreign policy, albeit ambitious, still predominantly concentrates on Asia, mostly through ODA activities tied to its own economic interests abroad. As a solution, Lee advocates increased global agenda setting for South Korea to become a credible responsible middle power.

Sunwoo Vivian Lee provides a reevaluation of the visits of Kissinger and later Nixon to Beijing in the early 1970s through a comprehensive research of a number of primary sources, including diplomatic cables and memoranda of conversations. Lee shows the prominent role that the good offices of Pakistan played as intermediaries in facilitating the

U.S.-China rapprochement of 1972.

Max D. Passey provides in his paper evidence that in the UNICITRAL Model law on International Commercial Arbitration there has recently been increasingly a willingness by arbitral tribunals to extend the arbitration agreement to third parties who were not signatories to it.

In her essay “Jihadi brides: Why do Western Muslim girls join ISIS?” Maren Hald Bjørgum provides an answer to that very pressing question. By drawing from a range of literature from sociology and gender studies, and by analyzing the online and print propaganda material of ISIS, Hald Bjørgum counters the narrative that young women that seek to subdue themselves to a misogynistic society, and establishes that the young women who join ISIS have agency of their own in the jihadi struggle. This finding will certainly be able to inform any measures that seek to stop the continuing number of women that follow the call of the Caliphate.

On behalf of the Editorial Board of *Global Politics Review*, I would like to express my deepest gratitude and appreciation to the authors who have made this issue possible with their outstanding contributions. I also would like to thank our academic advisors for their generous support. Last but not least, I want to thank our editor in chief and our formidable group of editors, who yet again have made this issue possible through their outstanding, meticulous work.

I hope that all readers of this issue find its contents enlightening and entertaining, and gain from it a deeper understanding of *Global Politics*.

Maximilian Ernst,  
Managing Editor

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# About the Journal

Global Politics Review (GPR) is a peer-reviewed journal of international studies published twice a year by the Association for Research, Innovation and Social Science (ARISS). The Journal was founded in 2015 by the Association through a sponsorship of the University of Turin. GPR publishes high quality research papers, interviews and essays that survey new contributions to the field on international studies, with a focus on alternative and non-western theories of international relations.

The Journal aspires to achieve a two-pronged goal: to provide the opportunity for distinguished scholars and graduate students to publish unconventional and innovative researches, and to be a vehicle for introducing new ideas while encouraging debate among the academic community. Global Politics Review aims to make a distinctive contribution to the field of international studies and serve the academic community as a whole.

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# The Human Use of Human Beings: Suicide Bombing, Technological Innovation, and the Asymmetry of Modern Warfare

*Jeffrey William Lewis*

**ABSTRACT:** Suicide bombing remains by far the most lethal weapon readily available to terrorist groups. The systematic means by which organizations pressure individuals into becoming living bombs demand that we understand suicide bombing as a technology, an alternative and relatively inexpensive means by which militants have been able to approximate the electronic control systems of states. Such an analysis of suicide bombing is consistent with the history of technology, in which human beings have repeatedly been used as data processing units. By recognizing how and why alternative technologies such as suicide bombing have become so effective we can begin to understand why the expensive and complex weapons deployed by states are sometimes ineffective for combating insurgency resulting in a tremendous mismatch in costs incurred by the two sides. To begin closing this gap state forces must recognize that complex machinery is not necessarily superior to simple devices, and should whenever possible pursue simple, robust solutions to the challenges of modern combat rather than selecting the most expensive and complex option by default.

**Keywords:** suicide bombing, terrorism, technology, history, modern warfare.

## Introduction

Fifteen years after the devastating 9/11 terrorist attacks against the United States, suicide bombing remains by far the most lethal weapon available to terrorist and insurgent groups.<sup>1</sup> A recent analysis of data compiled by researchers at the University of Maryland's START Center reveals that after a brief decline between 2007 and 2011, the global number of suicide attacks has increased dramatically, reaching a historical high in 2015.<sup>2</sup> Significantly, while suicide bombings comprise a small percentage (less than

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1 The ideas in this essay have been drawn from the Introduction to Jeffrey William Lewis, *The Business of Martyrdom: A History of Suicide Bombing* (Annapolis: Naval Institute Press, 2012). I am grateful to NIP for allowing me to republish, in revised form, key ideas from the book.

2 Institute for Economics and Peace, "Global Terrorism Index 2014: Measuring and Understanding the Impact of Terrorism" 32, [http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014\\_0.pdf](http://www.visionofhumanity.org/sites/default/files/Global%20Terrorism%20Index%20Report%202014_0.pdf); also see the revised report with data for 2014, "Global Terrorism Index 2015," <http://economicsandpeace.org/wp-content/uploads/2015/11/Global-Terrorism-Index-2015.pdf>,

Dr. Jeffrey William Lewis received his doctorate in European History from Ohio State University in 2002. He is the recipient of a Fulbright grant and in recent years has worked with the START Center (Studies on Terrorism and Responses to Terrorism) located at the University of Maryland. Since 2002 he has been a lecturer in the Undergraduate International Studies Program at Ohio State University, where he teaches courses on technology and national security.

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five) of overall terrorist attacks, this relative rarity is offset by suicide bombing's lethality: since 2000 the average suicide bombing has killed 11 people, 4.5 times the number killed by any other form of terrorist violence.

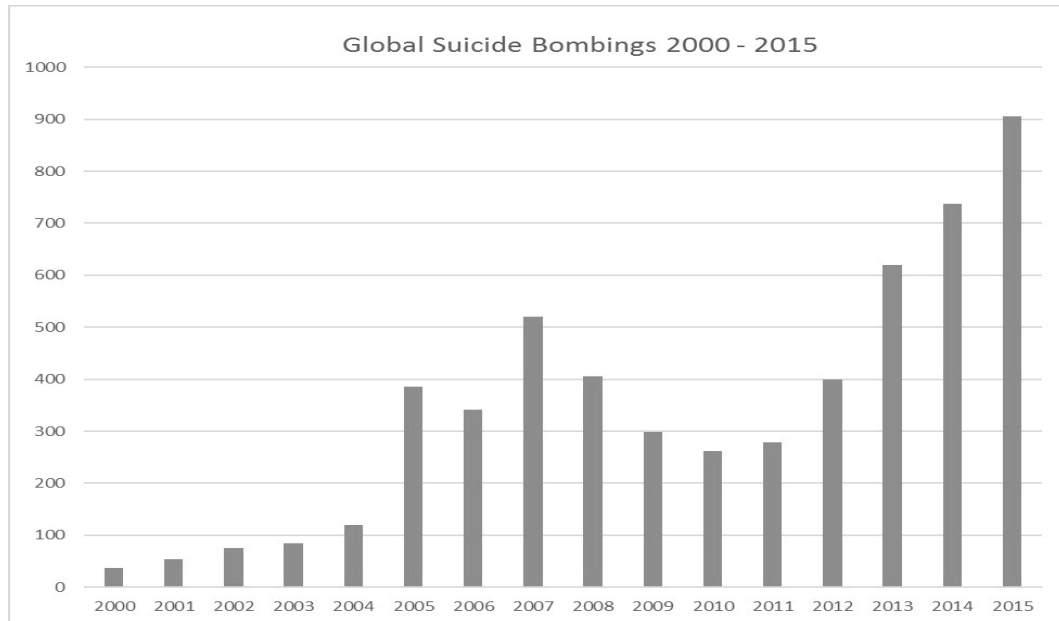


TABLE 1: Global Suicide Bombings, 2000-2015<sup>3</sup>

Suicide bombers are exceptionally lethal because they are able to affect the exact placement and timing of a bomb interactively, during the course of the mission, which greatly improves accuracy and impact. By concealing explosives either on their bodies or in vehicles, suicide bombers are also able to introduce their weapons into extremely vulnerable populations, while traditional bombers have been faced with the challenge of planting a bomb, leaving the area, and then detonating the weapon reliably via some form of remote control.

Nevertheless, understanding the nature of suicide bombing remains problematic. When radical groups such as Hizballah first began using suicide bombing, analysts tended to seek understanding by focusing on the psychology and radicalization of individual bombers. However, it is now very clear that the mindset of suicide bombers can vary immensely, from the willing volunteers who travel to the Middle East to be suicide attackers for Daesh to the young women abducted by Boko Haram and forced into becoming unwilling suicide attackers. Instead, we now recognize that the most important common factor in nearly all instances of suicide bombing is the role played by organizations.<sup>4</sup> Suicide bombing is therefore the organizational use of human beings as control systems for bombs.

The “suicide bomber as smart bomb” metaphor that we hear so often can therefore be taken literally and we should indeed understand suicide bombing as a form of technology. It is an alternative path toward developing control systems that approximate

<sup>3</sup> For a detailed discussion of the sources for this graph, see “Appendix: Open Source Statistics on Suicide Bombing” at the end of this article.

<sup>4</sup> Bruce Hoffman and Gordon H. McCormick, “Terrorism, Signaling, and Suicide Attack,” *Studies in Conflict and Terrorism* 27 #4 (2004), 243-281; see esp. 255.

the capabilities of the electronic guidance systems produced by states. Suicide bombers are thus representative of a trend in the development of technology by non-state actors such as guerrilla and terrorist groups—the development of simple, robust, and inexpensive weapons that make up for in effectiveness what they lack in material sophistication. This alternative technological strategy has contributed significantly to the asymmetry in modern combat in which relatively poor insurgents have been able to challenge the multi-million (and in some cases multi-billion) dollar weapon systems of their state adversaries.

### **“Blind Spot”**

In July 2001, FBI agent Ken Williams filed an electronic memo with his superiors in which he suggested that Osama bin Laden was making a sustained effort to send his followers to the United States to learn to fly commercial airliners at civil aviation colleges. The memo was based on fieldwork through which Williams had determined that an unusual number of individuals who were of “investigative interest” for the Bureau had registered for flight schools in Arizona.<sup>5</sup> In the aftermath of the 9/11 attacks, this report appeared to be prophetic, prompting inquiries into exactly why the FBI had not acted on the “Phoenix Memo.” The Bureau’s defense was that the memo had been little more than a hunch; Williams himself did not think in terms of hijacking, but rather believed that al Qaeda was planning a long-term infiltration of the civil aviation industry. Thus, even when presented with this information, the American intelligence community was unable to anticipate the nature of the threat posed by passenger aircraft used as weapons, despite the fact that al Qaeda had already repeatedly made use of suicide bombers for its most spectacular attacks. In its evaluation of the situation, the National Commission on Terrorist Attacks upon the United States (commonly known as the 9/11 Commission) attributed this lack of foresight to an overall lack of imagination on the part of intelligence agencies when dealing with the threat of terrorism.<sup>6</sup> This explanation is only partially true.

Analysts did indeed have difficulty imagining something along the lines of the 9/11 attacks, but this does not imply that they were not applying their imaginations to the world of terrorism and mass casualty attacks. Indeed, their imaginations were running wild, but down all the wrong paths. Since the second Bill Clinton administration, analysts had been certain that terrorists were on the verge of carrying out mass casualty attacks using so-called weapons of mass destruction—nuclear, biological, and chemical weapons. This obsession became so deeply ingrained in the thinking of the security community that analysts could no longer imagine the use of any other type of weapon for such a scenario. Timothy Naftali writes that as of 2001 “No one assumed that al Qaeda would press forward with a mass casualty event that required only conventional weapons.”<sup>7</sup> This despite the

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<sup>5</sup> *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*. Authorized Edition (New York: W.W. Norton and Company, 2004), 272.

<sup>6</sup> *Ibid*, 339-48.

<sup>7</sup> Naftali, *Blind Spot*, 318; George Friedman suggests that it was the inability of security officials in the

fact that al Qaeda had repeatedly used suicide bombers to carry out mass casualty attacks against the United States and had *never* used chemical, biological, or nuclear weapons.

Analysts in the American security community tended to be locked into a style of thinking which equated military power with technology, very narrowly defined. From this perspective technology consisted entirely of material devices independent of human context. Since technology could be understood exclusively in material terms, newer and more complex systems, understood as “high-tech,” were taken to be inherently superior to less complex technological systems.<sup>8</sup> Analysts therefore projected their own thinking and biases regarding technology onto their adversaries, imagining that terrorist groups, like states, would need complex technologies to carry out high consequence operations. The 9/11 attacks proved all of these assumptions wrong.

Since American security officials tended to think of technology in terms of devices rather than people they could not recognize suicide attackers as a sophisticated form of guidance technology because physically there is little resemblance between a human suicide attacker and a satellite-guided bomb. Both systems nevertheless perform the exact same task—they both allow human intelligence to affect guidance and detonation of an explosive interactively in real time. In technology this is the yardstick that really matters—how well a particular system does a given job—not whether or not different approaches to the same job resemble one another physically.<sup>9</sup> Thus the tendency to understand technology in material terms that hampered analysts prior to the 9/11 has since blinded them to the true nature of suicide bombing.

### Solving Problems

From a historical perspective equating technology with physical devices is relatively recent in comparison with a much longer tradition of understanding technology as knowledge. The root of the word is the Greek *tekhne*, meaning art, craft or skill. For centuries people understood technology as knowledge or doing, which was perfectly sensible since throughout much of human history the tools and devices at hand really were relatively simple and it was human skill that made them useful. By the nineteenth century, European users of the term still emphasized description or teaching about the arts, especially the practical arts. By the turn of the twentieth century this meaning began to change somewhat, and Europeans took to differentiating between *technique*, meaning procedures of working with material culture, including engineering, and *technology*, the

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United States to understand how terrorists would solve the problem of guidance that prevented them from seeing aircraft as cruise missiles prior to September 11. George Friedman, *America's Secret War: Inside the Hidden Worldwide Struggle between America and its Enemies* (New York: Doubleday, 2004), 95.

8 Timothy D. Hoyt, “Technology and Security,” in Michael E. Brown (ed.), *Grave New World: Security Challenges in the 21<sup>st</sup> Century* (Washington: Georgetown University Press, 2003), 26.

9 Steven Johnson, *Where Good Ideas Come From: A Natural History of Innovation* (New York: Riverhead Books, 2010), 16.

study of such activities.<sup>10</sup>

In the twentieth century, as tools and machines have become progressively more complex, and more important, as human skill has been transferred to machines as a consequence of mechanization and automation, machines came to be seen as technology whose purpose is to replace rather than to complement human skill. Despite the advances in machinery, automation, and control, however, the abilities of machines remained task specific and limited vis-à-vis human flexibility and creativity. Seeing machines as the sum total of technology, therefore, limited very dramatically how many people think about technology.<sup>11</sup>

There is, however, a well-established tradition in which technology is understood much more broadly. Leaders in the business world often define technology as an activity or a mode of problem-solving that involves the mutual interaction of ideas and material devices. Peter Drucker, an iconic figure in the study of business management, drew comparisons with human biology to conclude that technology was about human activity, not physical things.<sup>12</sup> Joel Mokyr began his highly regarded analysis of the modern information economy by writing: “Simply put, technology is knowledge, even if not all knowledge is technological,” and continues “Hence useful knowledge...deals with natural phenomena that potentially lend themselves to manipulation, such as artifacts, materials, energy, and living beings.”<sup>13</sup> Thomas Hughes, a widely respected historian, defined technology as “the *effort* to organize the world for problem-solving so that goods and services can be invented, developed, produced, and used.”<sup>14</sup> This definition holds that much of technology—people and ideas—is intangible.

One of the most widely read texts about technological innovation in the business world, Everett M. Rogers’ *Diffusion of Innovations*, takes a similar approach. Rogers’ definition of technology incorporates Hughes’ insight that technology is an idea or process with another important theme for the current analysis, control. Rogers argues that “A *technology* is a design for instrumental action that reduces the uncertainty in the cause-effect relationships involved in achieving a desired outcome.”<sup>15</sup> This short definition links what technology is (i.e. ideas), with what technology is for (i.e. solving problems).

## The Mechanization of Man

Throughout history human beings have been integrated into technological systems with

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10 Eric Schatzberg, “Technik comes to America: Changing Meanings of *Technology* before 1930” *Technology and Culture* 47 # 3 (June 2006), 486-512, here 488-90.

11 Harvey Brooks, “Technology, Evolution, and Purpose,” *Daedalus* 109 #1 (1980), 65.

12 Peter F. Drucker, *Technology, Management, and Society* (New York: Harper Colophon, 1977), 45.

13 Joel Mokyr, *The Gifts of Athena: Historical Origins of the Knowledge Economy* (Princeton: Princeton University Press, 2002), 2-3.

14 Thomas P. Hughes, *American Genesis: A Century of Innovation and Technological Enthusiasm* (New York: Viking, 1989), 6.

15 Everett M. Rogers, *Diffusion of Innovations* Fifth Edition (New York: Free Press, 2003), 13.

the most common human use of human beings being slavery. Although its precise form has varied from time to time and from culture to culture, slavery—the use of involuntary human labor—is a technology whereby some human beings are used by others because of their ability to work, think, or otherwise act on materials and assist in creating goods, products, or services for human consumption. No less a figure than Aristotle said: “A slave is property with a soul,” a “living tool.” He compared human slaves directly with draft animals, and concluded that “the use of domestic animals and slaves is about the same; they both lend us their physical efforts to satisfy the needs of existence.”<sup>16</sup> The technology of slavery resulted from a mental rather than a physical innovation—the perception that different human groups were not equal. This mental construct, racism, made slavery possible by allowing one group of humans to understand another group as being less than human and therefore subject to use by full humans.<sup>17</sup> Once this step was taken, the forced domestication of humans proved to be no more troubling to the conscience of the slaveholder than the domestication of animals had been to the farmer.

It is not only human physical labor that has been exploited in technological systems, but human mental labor as well. For nearly two and a half centuries, from the first recorded use of the term computer in 1646 until 1897, the tedious, repetitive calculations known as scientific computation, or as we would call it today, data processing, were done by human beings who were called computers.<sup>18</sup> The Oxford English Dictionary still defines computer first as “One who computes; a calculator, reckoner; *spec.* a person employed to make calculations in an observatory, in surveying, etc.” The term was first applied to a mechanical calculating device in 1897. Only in 1946 was the term applied to ENIAC, the first large-scale, general-purpose electronic computer.<sup>19</sup>

By the late 1800s, people were being used as components within extremely sophisticated computational systems. Teams of people were used as living calculating machines to carry out the numerical computations increasingly required by scientific and military projects. Managers broke tasks down into discrete steps and then presented these steps to the “computers” who carried out repetitive mathematical computations by hand, eventually providing management with tables of processed data. In the years before electronic computers, human beings interfaced with mechanical devices in an increasingly professionalized and mechanized bureaucracy.<sup>20</sup> By the Second World War

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16 Quoted in Donald Cardwell, *Wheels, Clocks, and Rockets: A History of Technology* (New York: W.W. Norton and Company, 1995), 18.

17 Alan Beyerchen, “Rational Means and Irrational Ends: Thoughts on the Technology of Racism in the Third Reich,” *Central European History* 30 #3 (1997), 386-402.

18 David Alan Grier, *When Computers Were Human* (Princeton: Princeton University Press, 2005), 5.

19 Walter Isaacson, *The Innovators: How a Group of Hackers, Geniuses, and Geeks Created the Digital Revolution* (New York: Simon and Schuster, 2014); Chapter 2 (35-86) covers the development of ENIAC while Chapter 3 (87-130) covers the ongoing importance of human programmers as part of the overall system in a way that is consistent with this argument.

20 James R. Beniger, *The Control Revolution: Technological and Economic Origins of the Information Society* (Cambridge: Harvard University Press, 1986) esp. 390-425; Martin Campbell-Kelly, William Aspray,

human and machine elements were integrated into hybrid control systems in which both elements, human and machine, were engineered and modified to improve system performance. Harold Hazen, an engineer at the Massachusetts Institute of Technology, summed up this approach in a memo to Warren Weaver, at that time on the National Defense Research Council. Hazen wrote “This whole point of view of course makes the human being...nothing more or less than a robot, which, as a matter of fact, is exactly what he is or should be.”<sup>21</sup>

By the 1960s human beings were still being used in sophisticated control and computational systems, but they were increasingly becoming redundant design elements, that is, backups to be used in case the electronic computers failed, not primary computational elements. NASA engineers thought in these terms.<sup>22</sup> Their counterparts in the Soviet Union went further and began to use machine terms to evaluate potential cosmonauts and to engineer people through conditioning to fit mechanical systems. A Soviet cybernetics specialist, Igor Polatev, asserted that repetitive training was the key to mechanizing people and thereby avoiding human error. He wrote: “The less his various human abilities are displayed, the more his work resembles the work of an automaton, the less [the human operator] debates and digresses, the better he carries out his task.” For their part, Soviet cosmonauts protested the “excessive algorithmization” of their behavior.<sup>23</sup>

### A Behavioral Compression Algorithm

Recognizing suicide bombing as a form of control technology, therefore, draws on a long history of the human use of human beings as the data processing elements in technological systems. Although in many contexts, silicon-based electronics guided by software have innumerable advantages over people, in certain contexts human “liveware” can still offer an advantage relative to silicon-based hardware. This is especially true in suicide bombing, for by substituting human beings for electronic computers suicide bombing provides a dramatic increase in efficiency by charging its human computers with tasks for which they are very well suited, such as visual recognition, discrimination and decision making. Computers still lag behind people in these regards.<sup>24</sup>

The organizations that deploy suicide attackers obviously must restrict the bombers’

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Nathan Ensmenger, and Jeffrey R. Yost, *Computer: A History of the Information Machine* Third Edition (Boulder: Westview Press, 2014), 21-40.

21 Quoted in David A. Mindell, *Between Human and Machine: Feedback, Control, and Computing Before Cybernetics* (Baltimore: Johns Hopkins University Press, 2002), 283-4.

22 Stephen B. Johnson, *Secret of Apollo: Systems Management in American and European Space Programs* (Baltimore: Johns Hopkins University Press, 2002), 125.

23 Slava Gerovitch, “Human-Machine Issues in the Soviet Space Program,” Ch. 4 of Steven J. Dick and Roger D. Launius, eds., *Critical Issues in the History of Spaceflight* (Washington, DC: NASA Office of External Relations, 2006), 107-140; quote from 122.

24 Peter W. Singer, *Wired for War: The Robotics Revolution and Conflict in the Twenty-first Century* (New York: Penguin Press, 2009), 76-7.

behavior in significant ways to ensure that they will carry out their missions as planned. Limiting the freedom of the individual involves stripping away alternatives and leaving only a narrow mission scenario as the socially acceptable action for an individual or individuals. This behavioral compression is the true technological innovation of suicide bombing—restricting the behavior of certain human beings so that they can be used reliably by other human beings.

There is ample precedent for understanding a set of routines that transforms the behavior of an agent to be a form of technology, even if the set of routines itself is completely immaterial. Brian Arthur mentions digital compression algorithms as such a form of technology.<sup>25</sup> Digital compression algorithms, the best known of which is probably the MP3 format that compresses audio files without noticeable distortion, are a significant part of the technology of digital music and video storage and transmission. Without such algorithms, much of the consumer electronics market could not exist, yet by necessity these algorithms are invisible, executing their operations without altering the content of their subject files in any perceivable way.

Whereas the purpose of the MP3 format is to compress the size of audio files, the purpose of suicide bombing is to compress the space of behavioral possibilities available to individuals or small groups of individuals. Organizations that deploy suicide attackers have therefore developed a wide range of training procedures that allow them to control the behavior of prospective bombers in a systematic manner. These training strategies range from exploiting the enthusiasm of willing volunteers to compelling the acquiescence of unwilling victims.

### **The Spectrum of Self-Sacrifice**

Since 2013 the most discussed national security story in the United States has been the growing power of the militant group Daesh (also referred to as ISIS, ISIL, or the Islamic State). In May 2015 the group captured the city of Ramadi, capital of Iraq's Anbar province, after nearly 17 months of conflict. The most important weapon in Daesh's arsenal during this offensive was the car bomb, with those driven by suicide attackers being especially devastating.

During the first three weeks of May 2015 alone Daesh deployed no fewer than 57 car bombs (vehicle borne improvised explosive devices—VBIEDs).<sup>26</sup> These bombs killed and injured hundreds. Many of Daesh's vehicular bombs were captured Humvees that had originally been given to the Iraqi military by the United States. Trucks deployed by

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25 W. Brian Arthur, *The Nature of Technology: What It Is and How It Evolves* (New York: Free Press, 2009), 28; also see Jonathan Sterne, *MP3: The Meaning of a Format* (Durham and London: Duke University Press, 2012).

26 For a detailed analysis of recent attacks with links, see "Aftermath of the Fall of Ramadi in Iraq," Musings on Iraq blog, May 25, 2015, <http://musingsoniraq.blogspot.com/2015/05/aftermath-of-fall-of-ramadi-in-iraq.html>.



Daesh carried massive payloads—some of the blasts unleashed in Anbar province were as powerful as the Oklahoma City bomb detonated by Timothy McVeigh in 1995.<sup>27</sup> In addition to their power, vehicular bombs are very difficult to anticipate and intercept. According to Brian Castner, an American Explosive Ordnance Disposal officer in Iraq in the early 2000s, car bombs were the single most challenging weapon to stop. During his two full tours in Iraq Castner’s team was only able to disarm one car bomb safely, and then only after they had killed the driver.<sup>28</sup> The combination of armored vehicles and jihadi suicide bombers has become so effective that JIEDDO (Joint Improvised Explosive Device Defeat Organization), the unit created by the Pentagon in 2006 to combat IEDs, is now hurrying to develop appropriate countermeasures.<sup>29</sup>

Like the drivers behind Daesh’s car bombs, the majority of suicide bombers have been suicides in the truest sense, having been both willing and able to take their own lives. The willingness to die, however, need *not* be present in order for an organization to make successful use of human bombers, as demonstrated by the systematic use of child suicide bombers by the Nigerian radical group Boko Haram. In 2015 Boko Haram carried out 151 suicide attacks in Nigeria and surrounding countries. Of these attacks, roughly 20 percent were carried out by teenagers or children, 75 percent of whom were girls. The great majority of these child bombers were abducted by the organization and forced against their will to deliver bombs, in some cases against the children’s own families or communities. To turn young children into human bombs the organization utilizes a range of vicious procedures, including physical coercion, intimidation, rape, and drugs, all of which are meant to destroy the freedom of the child so that he or she will carry out the will of the group’s leaders.<sup>30</sup>

While shocking in its ruthlessness, the behavior of Boko Haram in this respect is consistent with the history of suicide bombing. Already in the 1980s Ariel Merari realized that at least some “suicide” attacks were really nothing of the sort.<sup>31</sup> Instead, drivers had been directed to deliver a bomb to a target, after which time the bomb was detonated by remote control without the bombers’ consent. The Provisional IRA even tried a variation of this type of attack in 1990. In this instance, the IRA held the family of a 54-year-old man named Patsy Gillespie hostage in order to force Gillespie to drive a truck carrying

27 For detail on the different types of vehicular bombs deployed by Daesh, see 333 Malcolm Nance, *Defeating ISIS: Who They Are, How They Fight, What They Believe* (New York: Skyhorse Publishing, 2016), 325-30.

28 Brian Castner, *The Long Walk: A Story of War and the Life that Follows*. (New York: Doubleday, 2012), 87.

29 Sean D. Naylor, “The Islamic State’s Best Weapon Was Born in the USA,” [http://foreignpolicy.com/2015/06/04/hell-on--heels/?utm\\_source=Sailthru&utm\\_medium=email&utm\\_term=\\*Situation%20Report&utm\\_campaign=SitRep0605&wp\\_id\\_n=479522379](http://foreignpolicy.com/2015/06/04/hell-on--heels/?utm_source=Sailthru&utm_medium=email&utm_term=*Situation%20Report&utm_campaign=SitRep0605&wp_id_n=479522379).

30 Dionne Searcy, “Boko Haram turns Female Captives into Terrorists,” *New York Times* 7 April 2016, [http://www.nytimes.com/2016/04/08/world/africa/boko-haram-suicide-bombers.html?\\_r=3](http://www.nytimes.com/2016/04/08/world/africa/boko-haram-suicide-bombers.html?_r=3); “Boko Haram Crisis: ‘Huge Rise’ in Child Suicide Bombers,” BBC Online 12 April 2016, <http://www.bbc.com/news/world-africa-36023444>.

31 Ariel Merari, “The readiness to kill and die: Suicidal Terrorism in the Middle East,” in Walter Reich, ed. *Origins of Terrorism: Psychologies, Theologies, Ideologies, States of Mind* (Washington DC: Woodrow Wilson Center Press, 1990), 192-207; here 194-5.

a 1,000 pound bomb to a British Army checkpoint. When Gillespie was stopped by soldiers, IRA members detonated the bomb by radio remote control, killing Gillespie and five British soldiers.<sup>32</sup> Insurgents in Iraq used mentally disabled young women to similar effect in late 2007.<sup>33</sup>

Although Patsy Gillespie's psychological motivation differed enormously from those of Boko Haram's child bombers or Daesh's voluntary suicide bombers, they played the exact same functional role in their respective attacks. In all cases the bombers were merely components—the control systems—of a larger weapon whose complete destruction was a necessary and anticipated consequence of a successful mission. This weapon was in turn used by other actors—the leadership of the responsible organizations—who were not even physically present at the site of the attack. This relationship, the organizational use of human intelligence for purposes of weapon guidance and control, is the defining characteristic of suicide bombing and is therefore the key to understanding it.

Suicide bombing as a technology must therefore be understood in terms of the *function* of the human bomber—how the individual is used by the organization responsible for planning the attack. Such an emphasis on function reveals that suicide bombers are not agents of violence, nor can they be considered users of the weapons they transport. Instead, they are control systems—human liveware trained specifically to carry out the tasks for which most militaries use hardware and software. It is their intelligence—their ability to recognize and respond to the environment in real time, to discriminate and to make decisions—and not their fighting ability that contributes to the effectiveness of the weapon and to the potential success of the mission.

### **“Their Answer”**

In recent decades the American government has invested billions of dollars into a host of artificial intelligence systems to replicate human powers of cognition. For example, research into artificial intelligence sponsored by the US Department of Defense has led to the creation of autonomous vehicles that can navigate unfamiliar terrain without human guidance in order to remove American military personnel from combat and therefore from harm. Unmanned aerial vehicles (UAVs), commonly called drones, have become commonplace on the modern battlefield. Both autonomous and remotely operated vehicles represent efforts to minimize casualties inflicted by relatively low tech insurgents. In the words of US Navy researcher Bart Everett, “To me, the robot is our answer to the suicide bomber.”<sup>34</sup>

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32 Jamie Dettmer and Edward Gorman, “Seven dead in IRA ‘human bomb’ attacks” *The Times* October 25, 1990, and David McKittrick, “IRA’s new tactic breaches security forces’ defenses” *The Independent* October 25 1990. Also see discussion in Mia Bloom and John Horgan, “Missing their Mark: The IRA’s Proxy Bomb Campaign,” *Social Research* 75 #2 (2008), 579-614.

33 Steven R. Hurst, “2 mentally disabled women blown up,” *Associated Press* 2 February 2008.

34 Quoted in Singer, *Wired for War*, 62.

Everett's words seemed strikingly prescient early on the morning of July 8, 2016. At that time, officers from the Dallas Police Department deployed a bomb disposal robot against a suspect who had killed five officers and injured seven others. The suspect, now identified as Micah Xavier Johnson, had barricaded himself in a building, refused to negotiate, and continued to fire on police officers. Given the danger of the situation, the officers decided to deploy the robot not to disarm a bomb, but instead to deliver a bomb. They attached an improvised explosive bundle to the robot's extension arm and then detonated the device by remote as soon as it was close to the shooter.<sup>35</sup> The use of a robot to kill a suspect was unprecedented in American law enforcement history, but is very much consistent with the use of automated lethal systems on the modern battlefield in that the motivation was to use machines to remove people from the risks of combat.

It is ironic that robots represent "our" answer to suicide bombing since suicide bombing itself was originally "their" answer to the high technology systems deployed by western nations and their allies. Indeed, terrorist groups have justified the use of suicide bombers for precisely this reason. In the context of the Israeli-Palestinian struggle, a member of Hamas' Izz al-Din al Qassam Brigades told the journalist Nasra Hassan: "We do not have tanks or rockets, but we have something superior—our exploding Islamic human bombs. In place of a nuclear arsenal, we are proud of our arsenal of believers."<sup>36</sup> Similarly, signs in the classrooms of Al-Najah University in Nablus in and the Islamic University of Gaza read: "Israel has nuclear bombs, we have human bombs."<sup>37</sup>

Technology—whether "their" answer or "our" answer—is thus the physical manifestation of cultural values.<sup>38</sup> When technologically advanced states employ their most sophisticated weapons they are carrying out military operations and at the same time they are also legitimizing their own societies and value systems. Airpower in particular has come to be nearly synonymous with Western military power not only because it allows the states that employ it to project force while suffering relatively little harm in return, but also because the technically sophisticated platforms of modern airpower are understood by their users to be evidence of a superior educational, research, and manufacturing capability—from this perspective they are embodiments of progress.<sup>39</sup> Their use affirms

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35 Andrea Peterson, "In an apparent first, Dallas police used a robot to deliver bomb that killed shooting suspect" *Washington Post* 8 July 2016, <https://www.washingtonpost.com/news/the-switch/wp/2016/07/08/dallas-police-used-a-robot-to-deliver-bomb-that-killed-shooting-suspect/>; Cyrus Farivar, "Dallas deployment of robot bomb to kill suspect is 'without precedent,'" <http://arstechnica.com/tech-policy/2016/07/is-it-ok-to-send-a-police-robot-to-deliver-a-bomb-to-kill-an-active-shooter/>.

36 Nasra Hassan, "An Arsenal of Believers: Talking to the 'Human Bombs,'" *The New Yorker*, 19 November 2001, 38.

37 Reuven Paz, "Programmed Terrorists? Analysis of the letter of instructions found in the September 11<sup>th</sup> attack," PRISM (Project for the Research of Islamist Movements) Article, available at <http://www.e-prism.org/projectsandproducts.html>.

38 Martin van Creveld, *Technology and War: From 2000 B.C. to the Present* Revised and Expanded Edition. (New York: Free Press, 1991), 232.

39 Understanding technology as the embodiment of progress has characterized the interaction of Western states and the non-Western world since the colonialism of the 1800s. Michael Adas, *Machines as the*

the perceived superiority of the culture that produced them and is, therefore, a form of psychological as well as physical warfare.

Suicide bombers therefore represent much more than a desperate effort to “throw bodies” at the mechanized forces of their adversaries. Their use allows their groups to invert roles, empowering themselves by portraying the mechanized forces of their adversaries as efforts to substitute machines for human values such as courage, faith, and the willingness of the individual to sacrifice for the community. A senior Hizballah official writes that one purpose of the group’s so-called “self-martyrdom” operations is “the exposure of the Israeli soldier as one who hides in the safety of his military machines, afraid of direct military conflict.” When the journalist Barbara Victor asked a group of Palestinian children why they were not afraid of the Israelis, one replied: “Because Israeli soldiers are cowards. They have tanks and guns. They hide behind their big machines.”<sup>40</sup>

### Conclusion: Just Good Enough

*“[We] would be nowhere without Radio Shack.”*

-Richard Clark Johnson, IRA bomb maker<sup>41</sup>

Richard Clark Johnson was an American electronics expert who tackled some of the most daunting technological issues, particularly remote detonation systems, for the Provisional IRA. The candor he demonstrates above, revealed in a snippet of a conversation recorded by authorities, reveals that he was very conscious of one of the key advantages that militant groups possessed—their ability to appropriate and re-use, in novel and unanticipated ways, the readily available consumer technologies produced by the very societies that they were attacking.

American forces in Iraq learned the extent to which commercially available electronics had benefited their adversaries in 2006 when they confiscated several specially modified suicide vests. In addition to the necessary explosives, these vests also included webcams intended to transmit video footage from the attack to the bombers’ handlers in real time. The vests were also equipped with a remote detonation capability, giving the support team the ability to detonate the bomber when and where *they* saw fit, particularly if it seemed as though the bomber was having second thoughts.<sup>42</sup> Collectively, this hybrid

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*Measure of Men: Science, Technology, and Ideologies of Western Dominance* (Ithaca: Cornell University Press, 1989) and Daniel R Headrick, *The Tools of Empire: Technology and European Imperialism in the Nineteenth Century* (New York: Oxford University Press, 1981), esp. 130.

40 Naim Qassem, *Hizballah: The Story from Within* trans. Dalia Khalil (London: Saqi, 2005) 50; Barbara Victor, *Army of Roses: Inside the World of Palestinian Women Suicide Bombers* (New York: Rodale, 2003), 185.

41 Toby Harnden, *Bandit Country: The IRA and South Armagh* (London: Hodder and Stoughton, 1999), 356-74; quote from 367.

42 Spencer Ackerman and Adam Rawnsley, “Wheelbarrow Rockets, Remote-Control Suicide Vests and Captured Drones: Wikileaks Eposes Insurgent Tech,” <http://www.wired.com/dangerroom/2010/10/wheelbarrow-rockets-remote-control-suicide-vests-and-captured-drones-wikileaks-exposes-insurgent-tech/>.

of innovations—explosives, consumer electronics, and a radicalized sub-culture that glorified self-sacrifice—provided militants, at minimal expense, similar capabilities to those provided by UAVs for their American adversaries.

The use of webcams to provide oversight of suicide bombing missions, the use of Humvees as precision guided munitions, and the use of passenger airliners as cruise missiles on 9/11 are all examples of the innovative means by which terrorist groups appropriate readily available technology for their own purposes. Overall, the effectiveness by which terrorist groups have repurposed existing technological systems suggests that the high-technology endeavors of the developed world may have actually eroded, rather than enhanced, the capabilities of states relative to non-state forces.<sup>43</sup> Historian Martin van Creveld observed this trend many years ago, writing: "...many modern weapons tend to act as parasols. Whereas their own electronically supported firepower is wasted in antiguerrilla operations, they allow guerilla warfare and terrorism to take place below the sophistication threshold that they themselves represent."<sup>44</sup>

Importantly, this high "sophistication threshold" comes at a much higher monetary cost that limits the number of weapons that can be deployed and reliably maintained. After an exhaustive statistical analysis of American military programs in the 1970s, Franklin C. Spinney found that ever increasing defense budgets were *not* leading to higher levels of military readiness but instead were contributing to a self-perpetuating cycle of ever-increasing complexity in weapon systems that outpaced improvements in operational effectiveness. The data, he found, suggested "a general relationship between increasing complexity and decreasing material readiness."<sup>45</sup> His insights have been borne out time and again over the last fifteen years as a global struggle to deal with the challenge of terrorism has come to cost trillions of dollars. These lessons challenge the assumption that when it comes to international security, newer, more technologically advanced, and (inevitably) more expensive weapon systems are inherently better.

In contrast, some of the most effective weapons deployed by states in recent years have been the result of a similar, relatively low-tech process of improvising and re-purposing existing technologies. For example, the UAVs that have come to dominate battlefield skies around the world resulted from the fusion of two existing technologies—remotely piloted vehicles and high bandwidth wireless communications. The combination resulted in a platform that provides reliable intelligence and surveillance—as well as a degree of military capability—at a fraction of the cost of manned aircraft. UAVs can linger for hours providing much needed situational awareness of an environment in a way that manned aircraft simply cannot. Because UAVs do this with relatively simple technology, they

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43 Thomas X. Hammes, *The Sling and the Stone: On War in the 21<sup>st</sup> Century* (St. Paul, MN: Zenith Press, 2004), 204-9.

44 van Creveld, *Technology and War*, 304.

45 Franklin C. Spinney, *Defense Facts of Life: The Plans/Reality Mismatch*, edited with a commentary by James Clay Thompson (Boulder: Westview Press, 1985), 37.

comprise a technological approach that is effective without being “high” tech. Instead, UAVs can be understood as “good enough” tech.<sup>46</sup>

Technically sophisticated, expensive, and complex weapon platforms dominated the state level conflict of the Cold War era. The conflicts of today, many of which operate below the state level, necessitate a different approach toward technology. Terrorist and guerrilla groups have already made this shift to very devastating effect. Countries like the United States should learn to appreciate this approach and should endeavor to complement their “high-tech” approach with increasing doses of “good-enough-tech” in order to provide themselves with the broadest range of tools for managing conflicts around the world.

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<sup>46</sup> The problems that UAVs have raised, including violations of territorial sovereignty and civilian casualties resulting from UAV strikes, are a consequence of *how* they have been used by the United States—secretly, without consultation with allies or oversight into targeting decisions—rather than being inherent in the technology. For an overview of the impact of UAVs, see Chris Woods, *Sudden Justice: America's Secret Drone Wars* (New York/Oxford: Oxford University Press, 2015), esp. 6-7; Robert Capps, “The Good Enough Revolution: When Cheap and Simple is Just Fine,” <http://www.wired.com/2009/08/ff-goodenough/>.

## APPENDIX

### *OPEN SOURCE STATISTICS ON SUICIDE BOMBING*

One of the most significant challenges facing researchers who are interested in terrorism as a global phenomenon is that there is no one continuously operational open source database from which to draw reliable, consistent data. This leaves the researcher with two possibilities. The first is to attempt to compile the data on his or her own, which would necessitate extensive resources. The other option, which I have followed, is to try to understand the differences in the available databases in order to merge their data in such a way that the result is consistent with the reality of terrorist violence.

The two databases that I have utilized for my own research on suicide bombing are the Global Terrorism Database, maintained by the START Center at the University of Maryland, and the Worldwide Incident Tracking Center, which was maintained by the American Countering Terrorism Center from 2004-2011. To arrive at an accurate picture of the global incidence of suicide bombing since 2000 I have utilized GTD data for the years 2000-2004 and then again for 2012-2014, and WITS data for 2005-2011. My reasoning is as follows. For 2000-2004, the GTD is currently the best existing database, although it has its flaws. Most significantly, data collection was outsourced and overall manpower devoted to the project was insufficient to collate and evaluate the full number of terrorist attacks throughout the world, and it tended to under-report attacks during this time period. WITS, during its time of operation, was more thorough and consistent in data collection; after a bit of a shaky start in 2004, it provided the best overall statistical record from 2005 until it was de-funded after 2011.

This left the GTD as the default database for statistical information on global terrorism from 2012 to the present day. Leaders at the START Center decided to use the opportunity to improve greatly data collection and coding for the GTD so that it would be both more comprehensive and more reliable. For example, the database currently surveys approximately 1.3 million articles every single day from 55,000 sources that seem likely to contain information about terrorism or other forms of political violence. Articles are sorted, filtered, duplicates discarded, and the remainder turned over to human coders for data entry and coding in the database. Thus START as it currently stands probably offers the best statistical picture with regard to global terrorism that we have had to date.

Even considering these factors there are additional challenges to consider. WITS filtered data through a definition of terrorism that excluded attacks on military targets. In the case of suicide bombing, the database tended to exclude attacks on combatant targets (an appreciable number) in order to focus more narrowly on what was considered to be "suicide terrorism." The total number of suicide bombings in WITS is therefore somewhat lower than the total number of suicide bombings that took place during the years in which WITS was operational. The GTD definition is broader, including attacks

against combatant targets, and is more consistent with my own definition of suicide bombing, which is based on the function of the bomber in the attack rather than the target of the attack. As a consequence of the GTD's decision to include suicide attacks against combatant targets and its more thorough overall process of data collection, some—but not all—of the increase in attacks in the past four years in my table is a consequence of the shift from WITS to GTD after 2011. Nevertheless the overall pattern of suicide bombing since 2000—a steady, dramatic increase from 2000-2007, followed by a decline from 2008-2011, followed by a significant increase—is consistent.

Sources: Ariel Merari, personal communication, 9/11/2014; for GTD, Erin Miller, personal communications 12/1/2014 and 12/2/2014 and Michael Jensen, "Discussion Point: The Benefits and Drawbacks of Methodological Advancements in Data Collection and Coding: Insights from the Global Terrorism Database (GTD)," <http://www.start.umd.edu/news/discussion-point-benefits-and-drawbacks-methodological-advancements-data-collection-and-coding>, accessed 12/2/2014; for WITS, see John Wigle, "Introducing the Worldwide Incident Tracking System (WITS)," *Perspectives on Terrorism* 4 #1 (March 2010) 3-23.



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# The Origins of Chinese Dissidents in American Foreign Policy

*Kathryn Botto*

**ABSTRACT:** Although figures such as Liu Xiaobo and Chen Guangcheng are frequently invoked as human rights champions by American politicians today, this was not always the case. The use of human rights advocates abroad as political tools was reserved for Soviet dissidents prior to 1989, and thus Chinese dissidents were largely ignored. This remained the status quo until the Tiananmen Square protests, after which prominent dissident Fang Lizhi became the first Chinese dissident to receive as high profile attention from the American public and executive branch as Soviet dissidents had previously. Through analysis of Fang’s memoir, diplomatic cables, and first person accounts, this paper argues that the Fang Lizhi incident at President George H.W. Bush’s 1989 banquet in Beijing was the event that eventually led Bush to reluctantly support Chinese human rights champions, which made Fang the first in a long line of Chinese dissidents to be entangled in the US-China relationship.

**Keywords:** diplomatic history, China, U.S.A., Fang Lizhi, George H.W. Bush.

## Introduction

In February, 1989, President George H.W. Bush made a 40-hour visit to China which culminated in what Winston Lord, then the US Ambassador to the People’s Republic of China, would later refer to as “a dinner party that turned out to be a revolution.”<sup>1</sup> In crafting the guest list for Bush’s state dinner in China, Lord and members of three sections of the American embassy in Beijing suggested that astrophysicist Fang Lizhi be invited. However, the embassy intended Fang’s presence to represent more than his background as a renowned scientist.<sup>2</sup> Rather, the thinking went, Fang’s status as a prominent political reformer would allow the President to allude to an overall concern with human rights without upsetting the Chinese Communist Party (CCP) too much. This thinking proved flawed; as Fang himself put it, President Bush’s “brain trust forgot (or perhaps never knew) about the Chinese traditions of political banqueting ... Everytime Peking opera comes to the line ‘Let there be wine and feast!’ you know that the climax is around the corner.”<sup>3</sup>

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1 Chris Sibilla, “A Dissident for Dinner – George H.W. Bush’s Ill-Fated Banquet in China,” *Association for Diplomatic Studies and Training*. <http://adst.org/2015/09/a-dissident-for-dinner-george-h-w-bushs-ill-fated-banquet-in-china/>.

2 Ibid.

3 Fang Lizhi, *The Most Wanted Man in China*, trans. Perry Link (New York: Henry Holt and Company,

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Indeed, on his way to the banquet, Fang Lizhi was repeatedly blocked from attending by Chinese police, an incident that proved embarrassing for the Bush administration.

The explosive reaction that Fang predicted was not similarly anticipated by Lord and others at the American embassy, much to the Bush administration's *chagrin*. The significance of this lack of foresight was then amplified by the events of June 4, 1989, which the CCP attempted to blame on Fang. Fang's role as a prominent scapegoat in the Tiananmen massacre, and subsequent stay at the American embassy made Fang an unavoidable topic for the Bush administration. This sequence of events led Fang to become an instrumental part of the US public diplomacy strategy after Tiananmen, and the first in a long line of Chinese dissidents to have an impact on US-China relations.

The focus on Fang in 1989 set the tone for the prominent role of later Chinese dissidents in American foreign policy and public diplomacy. Before Fang, high profile events like Congress' attempt to rename the road in front of the Chinese Embassy in Washington "Liu Xiaobo Plaza," or the publicity given to Chen Guangcheng after his escape from house arrest to the American Embassy in Beijing, were bits of political theater reserved for Soviet Dissidents. These Chinese dissidents, and many others like them, are an integral part of the US-China relationship today. They serve as attractive and convenient vessels for politicians and officials to convey the US's stance on human rights to the American Public and Chinese government. This paper will argue that dissidents were not a part of US-China relations until the incident at Bush's banquet, and that the subsequent and transformative involvement of Fang in the relationship was the product of a diplomatic miscalculation and unavoidable circumstances rather than a conscious decision on the part of the Bush administration.

### **Double Standard: 1970 – 1989**

In 1987, after Fang Lizhi was expelled from the Communist Party for the second time, many foreign journalists and scholars began referring to him as "China's Sakharov."<sup>4</sup> The comparison was apt in many ways - both were prominent scientists who turned to activism and were persecuted by their governments - but in terms of their treatment in US foreign policy prior to 1989, their cases differed greatly. While dissidents played an important part in US strategy towards the Soviet Union, Chinese dissidents were often overlooked. In 1990, after Fang was permitted to leave China, he prominently accused the Bush administration of having a "double standard" for dissidence and human rights in the Soviet Union and China - being much softer on the latter than the former. Bush denied Fang's claim, but Fang was indeed correct - it was not until 1989 that Fang became the first Chinese dissident to play a role in American foreign policy, after a long line of Soviet

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2016), 277.

4 Orville Schell, "China's Andrei Sakharov," *The Atlantic*, May 1988.

dissident *causes célèbres*.<sup>5</sup>

In Bush's defense, by 1989 human rights did not yet have a long history in US policy. Although the principle of human rights has ostensibly been a part of the American consciousness since the country's founding, it did not become a formally integrated aspect of foreign policy until Jimmy Carter's Presidency. Even before President Carter famously articulated his support for human rights abroad in his 1977 inaugural address, Congress was attempting to elevate the defense of human rights as a policy objective. Amidst anger over American handling of the Vietnam War and controversy over Kissinger's affinity for Realpolitik, which resurged during his confirmation hearing for Secretary of State, many members of Congress such as Donald Fraser (D-MN), Henry M. Jackson (D-WA), Dante Fascell (D-FL), and Harold Hughes (D-IA), began referring to themselves as the "New Internationalists" and publicly questioning the amoral and perhaps immoral direction of American foreign policy. From August to December 1973, the Senate Committee on Foreign Affairs' (SCFA) Subcommittee on International Organizations and Movements held 15 landmark meetings on the role of human rights in American foreign policy.<sup>6</sup> In 1974, the Subcommittee - also known as the Fraser Committee after its chair Donald Fraser - issued a report entitled *Human Rights in the World Community: A Call for US Leadership*. The report was a thinly veiled critique of Nixon-Kissinger foreign policy and called for human rights to be elevated as a concern in diplomacy. After its publication, both liberals and conservatives in Congress began fighting an "out and out war" with the Executive branch for integration of human rights concerns into foreign policy.<sup>7</sup> In a moment representative of his attitude towards Congress's newfound conscience, Kissinger went so far as to refer to the New Internationalists' concerns as "'sentimental nonsense.'"<sup>8</sup>

Nevertheless, Congress continued to push the human rights agenda through a number of initiatives, including the creation of a human rights bureau within the state department, towards which Kissinger's disposition "fluctuated between wholly uninterested and completely hostile."<sup>9</sup> Human rights initiatives were supported by both Republicans and Democrats in the house and senate, but for different reasons. Liberals and the new internationalists saw creating a more human rights-focused foreign policy as an opportunity for "transcending the Cold War and developing a new, global foreign policy," while conservatives saw it as a means to "overcome détente and to reinforce the containment of the Soviet Union."<sup>10</sup> For both camps, elevation of the human rights agenda

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5 "President Bush's Response On Fang Lizhi, 1990," USC US-China Institute. <https://www.china.usc.edu/president-bushs-response-fang-lizhi-1990>

6 Joe Renouard, *Human Rights in American Foreign Policy: From the 1960s to the Soviet Collapse* (University of Pennsylvania Press, 2015), 76.

7 Roberta Cohen, "Integrating Human Rights in US Foreign Policy: The History, the Challenges, and the Criteria for an Effective Policy," *Project on Internal Displacement, The Brookings Institute, University of Bern* (2008): 3.

8 Ibid.

9 Renouard, *Human Rights in American Foreign Policy*, 85.

10 Umberto Tulli, "'Whose rights are human rights?' The ambiguous emergence of human rights and the

had Cold War motivations and implications.

As the Fraser Committee convened, conservatives against the Kissinger-Nixon détente turned their attention to Soviet and Eastern European dissidents. Senator Henry Jackson (D-WA) in particular pushed this initiative. He proposed a \$250 million program to resettle Soviet Jews in Israel, and introduced an amendment to the 1972 trade agreement between the USSR and the United States that would require trade relations with non-free market states to be contingent upon free emigration policies. The apex of Jackson's dissident defense strategy came when Alexander Solzhenitsyn was expelled from the USSR in 1974, a move which the administration was reluctant to condemn. Additionally, when Solzhenitsyn was invited to speak at the American Federation of Labor and Congress of Industrial Organizations dinner by the strong anti-communist George Meany in 1975, President Ford declined to attend. Jackson publically reprimanded the administration for its inaction, stating "that the administration has narrowed its conception of détente to exclude issues of human rights." Conservatives and liberals alike joined him in his campaign against Ford's treatment of Solzhenitsyn. The backlash against the administration was so large that it is often credited as a factor in the downfall and discrediting of the détente strategy.<sup>11</sup> Solzhenitsyn's case was one of the first high-profile appearances of a foreign dissident in American political discourse.

It was not until Jimmy Carter's election in 1977 that Congress' agenda was finally met with a cooperative attitude from the executive branch. When Jimmy Carter became president, he embraced the human rights policy advocated in *Human Rights in the World Community*, rejected Kissinger's "linkage" argument that promoting human rights would jeopardize other foreign policy goals, and began to use public statements and private diplomacy to promote human rights as an international norm.<sup>12</sup> One of his early actions after taking office was to send a letter to Andrei Sakharov, in which he stated: "you may rest assured that the American people and our government will continue our firm commitment to promote respect for human rights not only in our own country but also abroad."<sup>13</sup>

But even after Carter's elevation of the human rights agenda, application of criticism remained uneven on many dimensions, including dissidence. Carter and Reagan both continued their support for Soviet dissidents, as Congress had set precedence for that norm. However, Chinese dissidents were more or less ignored by both administrations.<sup>14</sup> This was not due to a lack of active dissidents in China that could have been human rights champions in the US, a prominent example being Wei Jingsheng. Wei was the face of the

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demise of Kissingerism," *Cold War History* 12 (2012): 585.

11 Renouard, *Human Rights in American Foreign Policy*, 85.

12 Cohen, "Integrating Human Rights in US Foreign Policy," 4-5.

13 Christopher S. Wren, "Sakharov Receives Carter Letter Affirming Commitment on Rights," *New York Times*, Feb. 18, 1977.

14 Mark P. Lagon, "Promoting Human Rights: Is U.S. Consistency Desirable or Possible?," *Council on Foreign Relations*, 2011.

Democracy Wall Movement from 1978 to 1979, in which thousands of people posted “Big Character Posters” pointing out political and social issues in China on a wall on Xidan Street in Beijing. Wei authored the essay “The Fifth Modernization,” which referred to the inability of Deng’s and Zhou’s four modernizations to create progress without a fifth modernization - democracy.<sup>15</sup> He spoke to many foreign reporters during the movement and eventually was arrested on charges of giving state secrets for supposedly leaking military secrets to a foreign journalist, for which he received a sentence of 15 years imprisonment.<sup>16</sup> Despite Wei’s predicament, he did not receive any attention from the US administration. Even the media, engagement with which sent Wei to jail, hardly mentions him. A search of Time Magazine’s archive for his name yields only two articles in which he is mentioned pre-1989. Sakharov, in contrast, was mentioned in 36 articles.

The reluctance to address human rights issues in China publicly during the Carter and Reagan administrations grew out of the needs of the US and China’s recently established strategic cooperation. Nixon’s visit to China was a huge step towards normalizing relations with Beijing, but it was not the end of the battle. Nixon’s visit established China and the US’s mutual interests against the Soviet Union, but it was not until 1979 when the US officially transferred diplomatic recognition from the Republic of China to the PRC that embassies were actually established in Beijing and Washington. The acceptance of a US embassy in China and the increased contact with Chinese people that it provided was an important factor in the US being able to develop a well-informed public diplomacy strategy towards China. However, the primary threat to both countries continued to be the Soviet Union rather than each other, leaving little incentive for the US to criticize China’s human rights record publically. As such, both the Carter and Reagan administrations focused on cultivating a friendly rather than adversarial relationship with China.<sup>17</sup>

### **Unavoidable Circumstances: Bush and 1989**

Bush became president at a time when relations with China were warming. Human rights had hardly been publicly addressed in the relationship, and he saw no reason to change that - Bush was far from a human rights champion.<sup>18</sup> After years of moral progress in US foreign policy, Bush seemed to be reverting somewhat to a realpolitik foreign agenda of which Kissinger would approve.<sup>19</sup> This reluctance to inject morals into foreign policy concerns was potent, from his statements urging Eastern Europeans not to break ties with

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15 Orville Schell and John Delury, *Wealth and Power: China’s long march to the twenty-first century* (Hatchet UK, 2013), 286.

16 Ibid, 288.

17 Geoffrey Wiseman, *Isolate or Engage: Adversarial States, US Foreign Policy, and Public Diplomacy* (Stanford: Stanford University Press, 2015), 70.

18 “Assignment China: Tiananmen Square,” USC US-China Institute. <http://china.usc.edu/calendar/assignment-china-tiananmen-square-and-%E2%80%9C25-years-tiananmen-then-and-now%E2%80%9D>.

19 Lagon.



Moscow in the 1991 “Chicken Kiev” speech, to refusing to support the military ouster of Saddam Hussein during the US occupation of Iraq after the dictator had gassed his own Kurdish citizens.<sup>20</sup>

Bush’s comments on and actions towards these two incidents are very telling of his opinions of human rights in foreign policy. The horrors of the Tiananmen massacre are often spoken about in the context of the government’s use of military force on its own citizens. However, this was historically not a very moving incentive for Bush to criticize a nation on its human rights record. Stalin’s Massacre in Ukraine killed millions,<sup>21</sup> and Saddam Hussein murdered at least 5,000 Kurds in the Halabja chemical attack and about 180,000 more over the course of the two years of the genocidal Anfal campaign against Kurdish civilians.<sup>22</sup> The report from the Secretary of State that Bush received on the morning of June 4, 1989 estimated the death toll in Beijing to be between 180 to 500 persons.<sup>23</sup> If Bush failed to strongly condemn the loss of life at the hands of authoritarian regimes totaling in the hundred thousand and millions, it is difficult to imagine that he would have cared to address publically 180 to 500 people dead in Beijing.

Fang described Bush in 1989 as having to “decide whether to treat Soviet and Chinese human rights in the same way, thereby risking offense to the Chinese government, or for now, to apply different standards, side-stepping China’s human rights issues and preserving the “old friend” relationship between the government that Bush himself had helped to establish during his stint as Chief of The United States Liaison Office in Beijing in 1974-75.”<sup>24</sup> This was probably a generous reading of Bush’s attitudes at the time. Rather than deciding whether or not to treat Chinese dissidents the same as those in the Soviet Union, Bush seemed to be looking for ways to avoid doing so. There was no precedent in US foreign policy for involving Chinese dissidents on the same level as the Soviets - it had never been done before, and Bush was not willingly going to be the one to change that. However, the CCP’s reaction to the treatment of Fang by the US Embassy was so explosive that, despite Bush’s efforts to the contrary, his administration did see the first instance of a Chinese dissidence significantly impacting US-China relations. Why was it Fang that changed the pattern?

Fang’s impact on the US-China relationship began early in 1989 when he was invited to a farewell banquet to be held on February 26 culminating Bush’s trip to China. By this time in 1989, Fang was a seasoned dissident. He had twice been expelled from the CCP, sent down to the countryside for re-education four times, and lost his position as Vice

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20 Ibid.

21 “Holodomor: Memories of Ukraine’s silent massacre,” *BBC*, November 23, 2013. <http://www.bbc.com/news/world-europe-25058256>.

22 “Halabja Genocide,” Kurdistan Regional Government in Iraq. <http://www.us.gov.krd/aboutkurdistan/halabja-genocide/>.

23 Secretary Morning Summary for June 4, 1989. <http://nsarchive.gwu.edu/NSAEBB/NSAEBB16/documents/13-01.htm>

24 Fang, “Open Letter to Deng Xiaoping,” 277.

President of The University of Science and Technology of China after supporting student movements there. On top of all this, just one month prior to receiving his invitation, Fang had authored an open letter to Deng Xiaoping asking him to grant amnesty to all political prisoners, including Wei Jingsheng.<sup>25</sup> As a result, he had been issued a warning and put on surveillance.

Fang was savvy enough to know that, given his status and recent events, he should accept the banquet invitation cautiously. He commented that from the moment he received the invitation, he could “sense that the stakes were high.”<sup>26</sup> To find out whether the authorities would disapprove of his attendance, Fang contacted the Chinese Academy of Sciences to let them know that he and his wife, Li Shuxian, had received invitations. He contacted the CAS for this purpose because the CCP had used the institution to communicate their wishes to him before, such as when they wished to ban him from foreign travel.<sup>27</sup> However, no prohibitions arrived from the CAS, and the CCP authorities at the Beijing Observatory even offered to provide a car for Fang and Li to travel to the banquet.<sup>28</sup> Although Fang still maintained a healthy level of suspicion about the event, commenting that it felt “a bit eerie,” he nevertheless decided to attend.<sup>29</sup>

Ambassador Lord was confident that Fang’s attendance at the banquet would go unopposed. He commented that Fang was selected for the guest list because “although clearly pushing the envelope on political reform, he was not some wild-eyed radical trying to overthrow the government, but obviously was someone of some controversy. At the same time, he was a widely respected scientist, a world-class astrophysicist. Three different sections of our embassy individually recommended Fang be on the list.” However, when the guest list was sent to the Foreign Ministry for approval, Lord was surprised to find that they vehemently rejected to Fang being present. At one point, the Chinese leadership, including President Yang Shangkun, refused to attend the dinner unless Fang was disinvited. Nevertheless, after assuaging tensions the leadership in Washington and Beijing both agreed to have Fang attend the banquet, and Lord and others at the American Embassy proceeded planning with Fang still on the guest list, albeit seated at a table far from the president.<sup>30</sup> For 48 hours before the banquet, Lord “didn’t hear anything from the Chinese,” and “began to feel pretty good and figured this wasn’t going to be a problem.”<sup>31</sup>

Lord’s complacency reveals a major misreading of the situation. Lord failed to notice a sign given by the CAS that Fang would not be welcome at the dinner. Short on time, the embassy had relied on the CAS to orally invite its employees, including Fang, to

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25 Ibid, 274.

26 Ibid.

27 Ibid, 278.

28 Ibid.

29 Ibid.

30 U.S. Embassy Beijing Cable, “*President’s Banquet – Chinese Guest List*,” February 18, 1989. <http://nsarchive.gwu.edu/NSAEBB/NSAEBB47/>

31 Sibilla, “A Dissident for Dinner.”

the banquet before getting physical invitations to the guests. The CAS was supposed to issue the oral invitations on February 21st, but on the 22nd Lord says that the embassy received “some confused report about somebody saying Fang wasn’t actually on the list.”<sup>32</sup> Lord mistook this as an error, perhaps administrative but in reality someone from the Foreign Ministry had contacted the CAS and told them that Fang wasn’t invited.<sup>33</sup> This explains why, although invitations were supposed to be received on February 21st, Fang did not receive his invitation until it was hand delivered to him on February 22nd.<sup>34</sup> This disconnect, if identified at the time, could have potentially corrected the pattern of events to avoid the diplomatic debacle that ensued. Perhaps, knowing that the CAS had received word that he was not invited, Fang would have chosen not to attend.

It is difficult to explain, however, why the CAS did not inform Fang that he had been disinvited. Perhaps the Chinese leadership felt that they had already made their objection to Fang’s attendance clear, as they had strongly objected many times, and that the US’s persistence in inviting him had crossed a line which they needed to correct. It is impossible to know what the thought process truly was. In my findings, there were no Chinese primary sources that referenced Fang’s invitation to the banquet. Whatever the authorities’ opinion on the matter was, their next action was, according to Fang, so severe that “no person of normal intelligence could ever have anticipated.”<sup>35</sup> When Fang and Li departed for the banquet with Perry Link, an academic and friend of Fang’s, they were blocked by “five stunning counter measures” from attending the banquet.<sup>36</sup> Their car was blocked by hundreds of police and they were surrounded by more police when attempting to travel to the banquet on foot, public transportation was stopped, they were tailed by police when attempting to continue on foot for the second time, and were again followed after deciding to seek out journalists to explain what was happening.<sup>37</sup>

It is clear from the severity of these measures that some authority was absolutely opposed to Fang attending the banquet. While there are no sources on the authorities’ opinions of Fang in February, The Tiananmen Papers reveal a bit about what Chinese officials were thinking about Fang during the student movement a few months later. At a Politburo Standing Committee meeting on April 28th, Politburo member Song Ping commented that “it’s really true that there are a few people who want to exploit the student movement in order to oppose the party and socialism. On the twenty-fifth, Fang Lizhi told the *Asian Wall Street Journal* that if China’s human rights situation doesn’t improve, foreign companies should pull out their capital. This is nothing but brazen, naked treason.”<sup>38</sup> Chen Xitong goes on to describe Fang and his wife as “the backstage

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32 Ibid.

33 Ibid.

34 Fang, “Open Letter to Deng Xiaoping,” 277.

35 Ibid, 278.

36 Ibid.

37 Ibid, 279-280.

38 Liang Zhang, et al., *The Tiananmen Papers* (Public Affairs, 2008), 88.

directors of the democracy salon at Peking University” and as having a “big influence on the student movement.”<sup>39</sup> These statements reveal an acute sense of paranoia in the highest levels of the Chinese leadership over Fang’s power to inspire, going as far back as the beginning of the democracy salons at Peking University in late 1988. It’s likely that the paranoia surrounding Fang was already present when he received his invitation to the banquet, and very acute after his open letter to Deng was beginning to prompt other intellectuals to write letters as well. Fang indeed had a gift for inspiring and organizing people that he had demonstrated many times before, and that was a major concern for the Politburo. The Bush administration, on the other hand, was outraged by the incident at the banquet, though more so at what they perceived as the embassy’s poor handling of the situation than the Chinese reaction. Bush was so angry at Lord for the debacle that he was not even invited to subsequent meetings discussing how to handle it.<sup>40</sup>

The events that unfolded in the next four months would make any attempts by the Bush administration to recover from the Fang Lizhi affair impossible. When Fang and his wife began appearing at the top of China’s most wanted lists in April, it became clear that authorities were attempting to blame Fang as the mastermind behind the student movement in a “justification in-waiting for the moment when an order to crush the movement might arrive from the top.”<sup>41</sup> At this point, Fang and his wife needed protection, and the American embassy was ready to provide it. The sources are unclear on who exactly offered the Fang’s asylum in the embassy, attributing it only to “the staff” and mentioning that Perry Link and CBS Television helped to coordinate.<sup>42</sup> The vague attributions of this indicate that it was likely a broadly supported initiative, and Fang Lizhi had become so entangled in the US-China relationship after the banquet that the US had no choice but to protect him, lest they risk the uprising being pinned on Fang and by some extension, the United States.<sup>43</sup>

## Conclusion

The establishment of the US’s diplomatic ties with China came at a time when the American public and congress were beginning to rethink the morality of their involvement in world affairs, which would lead human rights to become an important aspect of the American world view. However, it took 15 years from the New Internationalists’ elevation of the human rights agenda for this concern to enter US-China relations. Human rights is a major source of conflict in the US-China relationship today, and the role that dissidents play in it began with Fang Lizhi.

Fang had an amazing mind and a knack for inspiring the masses, but he was not the

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39 Ibid.

40 Sibilla, “A Dissident for Dinner.”

41 Fang, “Open Letter to Deng Xiaoping,” 284.

42 Ibid, 290.

43 Wiseman, *Isolate or Engage*, 73.

only prominent dissident in China at the time of Bush's visit to Beijing. Many members of the Democracy Wall Movement, including Wei Jingsheng were imprisoned at the time, and student leaders were already involved in popular protests in Beijing. A few dissidents were even invited to the banquet along with Fang. Author Ma Bo in particular would later flee China after actively participating in the Tiananmen Square protests, in which Fang and his wife were never actually involved.<sup>44</sup> Needless to say, had the Bush administration wished to, there were many dissidents that could have been transformed into human rights champions and presented to the American public prior to 1989. However, the Bush administration's association with Fang via the banquet incident, and the amplification of his endangerment after being blamed for the Tiananmen protests, made Fang the only dissident sufficiently and publically entangled in the US-China relationship so as to make him impossible for the executive branch to ignore.

It is, of course, true that the gravity of the massacre in Beijing was such that, with or without Fang Lizhi, it would have been condemned by the Bush administration. Whether dissidents had become a concern or not, Tiananmen would still have marked the first time since the normalization of relations with China that human rights concerns prevented US-China cooperation.<sup>45</sup> The strong presence of foreign media in China during the massacre thanks to the coincidence of the timing of Gorbachev's visit made sure that the entire world watched as the CCP sent tanks into the city and ordered the army to attack civilians, regardless of Bush or Fang.<sup>46</sup> The Bush administration's response was even seen by many as forgiving of China, as he "dispatched senior aides to reassure and toast Beijing's leaders shortly after the Tiananmen Square massacre."<sup>47</sup> However, it likely would have been more forgiving if not for the misreading of the political context within which Bush's farewell banquet occurred, which led to the administration's reluctant association with Fang, and subsequently first inclusion of a Chinese dissident in US foreign policy, even before Tiananmen's student leaders. The advent of high-profile inclusion of Chinese dissidents in US foreign policy and public diplomacy towards China was, therefore, likely a product of unavoidable circumstances rather than a conscious decision by the Bush administration.

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44 U.S. Embassy Beijing Cable, "President's Banquet – Chinese Guest List," February 18, 1989.

45 Ibid, 75.

46 "Assignment China: Tiananmen Square."

47 Lagon, "Promoting Human Rights."

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# New Approach of South Korea's Middle Power Diplomacy: Focusing on Global Agenda Setting

*Kyung Suk Lee*

**ABSTRACT:** In an altering global power architecture, South Korea has the national capacity to contribute to resolving transnational issues and has the potential to support a global common good. But in the discourse of South Korea's role, the pivotal question has always been "how" to be a responsible middle power. Until now, South Korea has implemented its middle power in four different aspects: (1) Balancing Act in Northeast Asia; (2) ODA policy; (3) UN PKO; and (4) Global agenda setting. However, among the four, South Korea's focus on balancing in Northeast Asia and ODA policy has been disproportionately concentrated in Asia due to national interests. This paper argues that in order to be a responsible middle power, South Korea should avert from a myopic Asian standpoint and concentrate more on global agenda setting through international institutions and the G20 platform. South Korea's inherent structural constraints hamper a more proactive engagement in UN PKO. Therefore, global agenda setting is a more appropriate sphere to contribute to the world as a responsible middle power.

**Keywords:** South Korea, middle power diplomacy, global agenda setting, ODA policy, peacekeeping, international institutions.

## Introduction

In the contemporary era, global power architecture is gradually altering. The most powerful global power, the U.S., has been losing its preponderant hegemonic position in the early twenty-first century. After wars in Iraq and Afghanistan, and the global economic crisis in 2008, the U.S. has experienced substantial capacity loss in national economy and military. In contrast, China has become a striking regional power in Asia and has emerged as a formidable global power threatening the U.S. The reshaping of global power architecture has not only resulted from China, but also from the ascent of Brazil in Latin America and India in South Asia which has propelled, the crafting of a new global order.<sup>1</sup>

The economic growth of BIC (Brazil, India, and China) in the twenty-first century is one of the most seminal factors leading the alteration of global power architecture. After

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<sup>1</sup> Andrew F. Cooper and Jongryn Mo, "Middle Power Leadership and the Evolution of the G20," *Global Summitry Journal* 1, no. 1 (2013): 1.

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the emergence of Deng Xiaoping, who led China's economic reforms called "Socialism with Chinese Characteristics," China has maintained stunning double-digit economic growth and has gradually altered the holistic backdrop of global politics. In 2010, China became the second-largest economy and many pundits predict that China's economy will surpass that of the U.S. by 2030. India and Brazil's economic growths are also outstanding. According to the World Bank, India has maintained almost eight percent annual economic growth from 2000 to 2015 and Brazil has developed as a top-10 global economy. Even more notable is BIC's global GDP share in the twenty-first century. In 2015, the three countries' GDP accounted for one-fifth of the global economy which is almost the same proportion of the U.S. In addition, the U.S.-led global institutions have been challenged by China-led institutions. The Asian Infrastructure Investment Bank (AIIB) and the One Belt One Road Initiative are expanding their influence not only to Asian countries but also to European countries. The conventional U.S. allies such as England, Germany, France, and Australia, among others, have decided to join these institutions that are part of the new China-led economic order.

The U.S.-led unipolar global order since the collapse of the Soviet Union has been gradually moving to a multipolar system. Acharya argues that the American world order has ended and the globe is altering to a multiplex world. He depicts the multiplex world as "a world of diversity and complexity, a decentered architecture of order management, featuring old and new powers, with a greater role for regional governance."<sup>2</sup> Goh also mentions the decline of the U.S. hegemony and that the global and regional order have become more convoluted and layered.<sup>3</sup> In addition, in the twenty-first century, a variety of transnational issues have challenged the U.S.-led global order. Transnational terrorism, environmental issues, refugee problems, and energy security issues have required more collective action among diverse nation-states. It has become more axiomatic that one global hegemon cannot effectively handle these transnational issues.

In this vein, this paper investigates the role of middle powers - especially South Korea's middle power - in the multiplex world that Acharya describes. With a certain extent of economic capacity and military might, as well as diplomatic influence on the international community, the roles of middle powers have become more seminal in the multiplex world. Cooper argues that the middle powers are pivotal in terms of proffering alternative sources in order to fully capture the evolving complexity in global affairs.<sup>4</sup> Structural leadership by global powers is no longer the most crucial vehicle for coping with transnational global issues. The collaborations among global powers and middle

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<sup>2</sup> Amitav Acharya, *The End of American World Order* (Cambridge: Polity Press, 2014), 5.

<sup>3</sup> Evelyn Goh, *The struggle for order: Hegemony, Hierarchy and Transition in Post-Cold War East Asia*. (London: Oxford University Press, 2013), 212.

<sup>4</sup> Andrew F. Cooper, *Niche Diplomacy: Middle Powers After the Cold War* (New York: St. Martin's Press: 1997), 1.

powers have been addressed gradually.<sup>5</sup> Chun maintains that “middle powers in particular can help to transform the current balance of power style relations to that of collaboration among great powers, which promotes a collective mechanism of dispute settlement and multilateralism.”<sup>6</sup> In line with the requirement of a new type of global governance, the South Korean government established a grouping called MIKTA - an association of the five major middle powers Mexico, Indonesia, South Korea, Turkey, and Australia - in order to strengthen their roles as middle powers in the future. Based on the collaborations of these middle powers, the South Korean government has attempted to play a more responsible role in the multiplex global order. Through MIKTA, South Korea will implement a “Glue Diplomacy” and contribute to the international community in terms of enhancing a common good. Nonetheless, how South Korea can or should exert a more striking and significant role as a middle power are contested questions.

This paper claims that South Korea's middle power diplomacy ought to concentrate more on global agenda setting through international institutions and G20 platforms. So far, South Korea has mainly implemented its middle power diplomacy in the Asian region. In order to become a responsible middle power at the global level, South Korea should avert from the myopic Asian standpoint and extend its influence to the global level through global agenda setting. Using realism and institutionalism as a theoretical lens, this paper investigates how global agenda setting in the international arena will help and support South Korea's middle power diplomacy.

### **Theoretical Tools**

This paper will utilize realism and institutionalism for explicating how middle powers can implement their national capacities in international arenas. First, using the realist standpoint to explain middle powers diplomacy, this paper focuses on middle powers' diplomacy as a pipeline for maximizing their national interests. Offensive realists maintain that states maximize their national interests in terms of security and economy. In the traditional realist viewpoint, national interests have been mainly related to security. Mearsheimer claims that states can seek their security and national interests based on military might;<sup>7</sup> Kenneth Waltz also contends that states seek interest primarily by their own military power.<sup>8</sup> In terms of pursuing economic interests, realists consider economic interests as byproducts from dominant military might. Thucydides viewed war as a place for increasing economic wealth.<sup>9</sup> Also, Keohane describes in his hegemonic stability

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5 Sook-Jong Lee, Chaesung Chun, HyeekJung Suh, and Patrick Thomsen, “Middle Power in Action: The Evolving Nature of Diplomacy in the Age of Multilateralism,” *East Asia Institute* (April 2015): 6.

6 Chaesung Chun, Middle Power Diplomacy Forum. 10/18/2014, Seoul. Korea

7 John J. Mearsheimer, *The tragedy of Great power politics* (New York: W.W. Norton & Company, 2001)

8 Kenneth N. Waltz, *Man, the State and War: A theoretical Analysis* (New York: Columbia University Press, 2001)

9 Mazhid Kat, “A conceptual Analysis of Realism in International Political Economy.” *E-International Relations Students* (2015)

theory that states pursue economic interests through the dominant hegemonic economic order.<sup>10</sup>

This paper, however, defines the national interest of middle powers as a soft power in the international arena, which does not have a direct connection to national security or economic interest. In this vein, the concept of soft power created by Nye gives an important insight. Nye describes soft power as “the ability to establish preferences tends to be associated with intangible assets such as attractive personality, culture, political values and institutions, and policies that are seen as legitimate or having moral authority.”<sup>11</sup> Nye also depicts soft power as the second face of power, as well as an attractive power, which leads countries to follow. But he distinguishes soft power from influences, because influences can be exerted through hard power like military threats or economic payment.<sup>12</sup> What is noteworthy is that Nye addresses the role of international institutions in projecting soft power. Nye argues that international institutions can increase a country’s soft power and the resources of soft powers come largely from the values of international organizations.<sup>13</sup> “If a country can shape international rules that are consistent with its interests and values, its action will more likely appear legitimate in the eyes of others.”<sup>14</sup>

Another important school of thought is from Keohane who lays a robust foundation in terms of a synthesis of realism and institutionalism. Keohane utilizes the term “international regimes” in which states can project their national interests to maximize their self-interest. He depicts “international regimes as decentralized institutions.” Here, decentralization means that individual members enact any sanctions for violations of regime principles and rules.<sup>15</sup> Keohane argues that “[i]nternational regimes should be comprehended chiefly as arrangements motivated by self-interest: International regimes will be shaped largely by their most powerful members, pursuing their own interests.”<sup>16</sup>

According to Mearsheimer, who explores international institutions primarily based on the realist standpoint, international institutions or international regimes are a space where nation-states project their powers. He maintains that international rules which are incorporated into a formal international organization are the tools to compel other states to obey such rules.<sup>17</sup> Mearsheimer also argues that “States in the international system aim to maximize their relative power positions over other states.”<sup>18</sup> Some realists claim that the

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10 Robert O. Keohane, *After hegemony: Cooperation and Discord in the World Political Economy* (Princeton: University Press, 1984)

11 Joseph S. Nye, *Soft Power: The Means to Success in World Politics* (New York: Public Affairs, 2004), 6.

12 Ibid.

13 Ibid., 5.

14 Ibid., 10-11.

15 Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (New York: Princeton University Press, 1984), 98.

16 Ibid., 62.

17 John J. Mearsheimer, “The False Promise of International Institutions,” *International Security* 19, no. 3 (Winter 1994/1995), 9.

18 Ibid., 11.

norms and rules of international institutions mirror the state calculations of self-interests and also reflect the international distribution of power. They regard the international institutions as an “arena for acting out power relationship.”<sup>19</sup> Young also agrees that states employ international institutions and international regimes for maximizing net benefit for themselves.<sup>20</sup> Therefore, considering the viewpoints of scholars, this paper applies realism and institutionalism as theoretical instruments for exploring South Korea’s middle power diplomacy in the international arena.

### **South Korea as a Responsible Middle Power: Background**

Compared to traditional middle powers such as Australia, Canada, Norway and Sweden, South Korea has recently developed its status as a middle power. South Korea had initiated its middle power diplomacy from the Roh Moo-hyun administration (2003-2008) entitled “South Korea as a balancer in Northeast Asia.” During the Lee Myung-bak administration (2008-2013), the slogan was ‘Global Korea’ and during the current Park Geun-hye administration (2013-Present), South Korea set up the slogan “responsible middle power contributing to world peace and prosperity.” Established in 2013, MIKTA is one of the fruits borne from the Park Geun-hye administration intending to implement more responsible middle power diplomacy. Nevertheless, how South Korea should exert a more striking and significant role as a middle power is still a contested issue.

The implementation of South Korea’s middle power diplomacy can be categorized mainly in two different dimensions. The first dimension of South Korea’s middle power diplomacy was suggested by the Roh administration as a balancing role in Northeast Asia. Considering the geopolitics in Northeast Asia, South Korea’s initial middle power diplomacy has focused on managing great powers for peace and prosperity in Northeast Asia. Therefore, in its balancing role, South Korea attempted to bridge great powers in Northeast Asia. The other dimension is through Official Development Assistance (ODA), which is the means through which South Korea supports underdeveloped countries. By disseminating South Korea’s successful experiences in economic development to the third world, South Korea has become the first country to shift its status from a recipient country to a donor country. Therefore, South Korea has sufficient experience and national capacity in terms of ODA.

However, when taking a broader perspective, it is noteworthy that South Korea’s middle power diplomacy has tended to be lopsided, as it has been bound to Asia thus far. In the initial stages of middle power diplomacy, South Korea’s balancing act had only targeted Northeast Asia. In addition, most of the recipient countries in South Korea’s ODA have been also disproportionately concentrated on Asian countries. Like President

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19 Tony Evans and Peter Wilson. “Regime Theory and the English School of International Relations: A Comparison,” *Millennium: Journal of International Studies* 21, no. 3 (1992) : 330.

20 Oran R. Young, “International Regimes: Toward a New Theory of Institutions,” *World Politics* 39, no. 1 (1986), 119.

Park said, if South Korea is to become a responsible middle power contributing to world peace and prosperity, South Korea has to implement its middle power diplomacy more at the global level, averting from a subordinated Asian standpoint. Therefore, this chapter deals with South Korea's myopic Asian viewpoint and suggests that South Korea should focus more on agenda setting at the global level.

### *Conventional Middle Power Diplomacy: Bound to Asia*

#### **Middle Power Diplomacy: Balancing Act in Northeast Asia**

First and foremost, the main focal point of South Korea's middle power diplomacy has been Northeast Asia. North Korea's security issues and unification policies have always been the top priorities of the South Korean government. Thus, to manage and bridge countries involved with Northeast Asian issues, South Korea has primarily focused its efforts on China, Japan, Russia, and the U.S. The geopolitical position of South Korea has been reflected through South Korean middle power diplomacy during the Roh administration. Based on the geopolitical environment, the Roh administration labeled the middle power policy as "South Korea as a balancer in Northeast Asia." A variety of opinions have been set forth to evaluate the Roh administration's middle power diplomacy,<sup>21</sup> and the general assessments of South Korea's balancing act were a failure.<sup>22</sup>

In this vein, several fundamental questions must be posed again. Should South Korea still concentrate on being a responsible middle power in Northeast Asia despite having been assessed as a failure? What factors have been limiting South Korea from expanding beyond Northeast Asia as a middle power? To answer these questions, looking at Indonesia's case as an emerging middle power in Southeast Asia will help for probing this question. Indonesian Foreign Minister Marty Natalegawa addressed "dynamic equilibrium" as Indonesia's middle power diplomacy in 2011. "Dynamic equilibrium" connotes that Indonesia attempts to build a regional structure where a win for one great power does not necessarily mean a defeat of another great power and Indonesia will play a role as balancer of powers.<sup>23</sup> Similarly, Acharya argues that "Indonesia seeks to influence the relationship among the major global powers of the twenty-first century through its role in

21 See Brad Glosserman and Scott Snyder, "Confidence and Confusion: National Identity and Security Alliance in Northeast Asia." *Pacific Forum CSIS Issues & Insights* 8, no. 16 (2008): 1-42; Hyeong Jung Park, "Looking Back and Looking Forward: North Korea, Northeast Asia, and the ROK-U.S. Alliance." *The Brookings Institution for Northeast Asian Policy Studies* (2007): 1-64.; Choong Nam Kim, "The Roh Moo Hyun Government's Policy towards North Korea." *East-West Center Working Papers* 11 (2005): 1-28.; Zhiqun Zhu, "Small Power, Big Ambition: South Korea's Role in Northeast Asia Security under President Roh Moo-hyun." *Asian Affairs* 34, no. 2 (2007): 67-86.

22 Yul Sohn, "The Evaluation and Assignment of the Park Guen-hye administration's Middle Power Diplomacy." *The Korean Journal of International Studies* (2014): 67. Sohn, especially, contends that the middle power diplomacy during the Roh administration did not reflect the substance of the altering global order in twenty-first century. He argues that the Roh administration misapplied the 19th century European balancing policy to South Korea

23 Gregory B Poling, "Dynamic Equilibrium: Indonesia's Blueprint for a 21st Century Asia Pacific." *Center for Strategic and International Studies* 4, no. 5 (2013) : 1-16.

the Asia-Pacific region.”<sup>24</sup> Indonesia’s middle power diplomacy as balancing great powers has been assessed so far as less skeptical and more feasible compared to the middle power policy of South Korea’s balancing act. Such difference is because Indonesia is not trapped in the power games of great powers and has maintained its independent position and non-alignment policy. As Acharya contends, “after gaining independence from the Dutch, Indonesian leaders characterized their foreign policy as independent and active.”<sup>25</sup> Thus, Indonesia did not rely on global powers to resolve the various international predicaments and had attempted to maintain its non-alignment policy. This historical background had provided the backdrop for Indonesia to form a more neutral and independent position in the present day and had granted more legitimacy in balancing in Southeast Asia.

South Korea, however, experienced a completely different pathway after the Second World War which inherently constrains South Korea’s balancing act in Northeast Asia. Conventionally, the strong security alliance with the U.S. is the key component which has bolstered South Korea’s foreign policy. After the U.S. and South Korea reached a mutual defense agreement in 1953, the U.S. has been South Korea’s strongest military ally, and the U.S. has also been the most influential country to South Korea’s foreign policy for more than half a century. Even at the present time, the U.S.-South Korea alliance is the most significant condition for the South Korean government in terms of implementing its foreign policy. However, recently on the economic front, with the rise of China in the twenty-first century, South Korea has gradually developed a warm relationship with China. In 2003, China became South Korea’s largest receiver of exports, surpassing economic ties between the U.S. and South Korea. In addition, due to shared bitter historical memories with Japan in the early 20<sup>th</sup> century, South Korea and China have developed their relationship in a more constructive manner. Therefore, South Korea’s balancing act in Northeast Asia has been gradually addressed. The balancing act in Northeast Asia has been combined with South Korea’s middle power diplomacy and has consistently been suggested as a manner to be a responsible middle power.

However, this paper maintains that the issue of North Korea and Northeast Asian security extremely limits the sphere in which South Korea’s balancing act in Northeast Asia can operate. As Mearsheimer mentions, national security is an uncompromising issue. To protect the national security threat from North Korea, South Korea should reinforce its relationship with the U.S., despite the warm relationship with China. Therefore, South Korea is highly unlikely to achieve its desire as a neutral and independent middle power in Northeast Asia. In addition, the current U.S. policy “pivot to Asia” cuts South Korea’s sphere as a neutral middle power. The U.S. has attempted to reinforce its alliances with South Korea and Japan and thus balancing the rise of China. From the U.S. perspective,

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<sup>24</sup> Amitav Acharya, *Indonesia Matters: Asia's Emerging Democratic Power* (Singapore: World Scientific, 2014), 10.

<sup>25</sup> *Ibid.*, 5.

the two major blocs in the Northeast can be summed up as South Korea-U.S.-Japan and North Korea-China-Russia. An axiomatic point is that the power confrontation between the U.S. and China in Northeast Asia constrains South Korea's role as a middle power.

Here, the concept of Cooper and Henrikson in terms of middle power puts forth an important insight for the future of South Korea's middle power diplomacy. Cooper depicts the notion of middle power as "linchpins" or "bridges" between blocs,<sup>26</sup> and Henrikson describes "middle powers, being geographically scattered and heterogeneous, never developed a group or bloc of their own."<sup>27</sup> Considering Cooper and Henrikson's explanations of middle powers, South Korea cannot contribute to Northeast Asia as a neutral middle power and enhance a common good in this region before unification of the Korean peninsula. South Korea has to protect its own population from North Korea's threat, and thus, South Korea ought to select its own bloc in terms of security. Therefore, to become a responsible middle power contributing to global peace and prosperity, South Korea should avert from the Northeast Asian standpoint and seek a more autonomous sphere at the global level.

### **Middle Power Diplomacy: Official Development Assistance (ODA)**

Secondly, ODA is one of the main pillars, which has blustered South Korean middle power diplomacy. After the destruction of the Korean War until the 1970s, foreign aid from the international community was a significant economic pipeline for South Korea's economic development. Having relied on foreign aid, South Korea become one of the Asian Tigers and accomplished revolutionary economic success. In 2014, South Korea's total GDP was the 13<sup>th</sup> largest<sup>28</sup> and international trade 6<sup>th</sup> largest in the world.<sup>29</sup> Furthermore, South Korea had the tenth highest GDP per capita among the G20 members.<sup>30</sup> This tremendous economic success has led South Korea to become the first country in the world to shift its national status from a recipient country to a donor country. ODA has been regarded as a pipeline for contributing to global peace and prosperity, as well as a tool for interacting with the international community.

South Korea's ODA activism has emerged as crucial middle power diplomacy under the banner of "contribution diplomacy" during the Lee administration. This ODA activism has continued to the current Park administration's middle power diplomacy as well.<sup>31</sup> During

<sup>26</sup> Cooper, *Niche Diplomacy*, 8.

<sup>27</sup> Henrikson, Alan K. "Middle Powers as Managers: International Mediation within, across, and outside Institutions." in *Niche Diplomacy: Middle Powers after the Cold War*, edited by Andrew F. Cooper, 46-72 (New York: St. Martin's Press, 1997), 66.

<sup>28</sup> "World Development Indicators," The World Bank, accessed September 1, 2016, <http://databank.worldbank.org/data/reports.aspx?source=2&country=&series=NY.GDP.MKTP.CD&period=#>

<sup>29</sup> "Korea Statistics," Korea International Trade Association, accessed September 1, 2016, <http://stat.kita.net/stat/world/major/KoreaStats01.screen>.

<sup>30</sup> "GDP per capita," The World Bank, accessed September 1, 2016, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

<sup>31</sup> Brendan Howe, "Development Effectiveness: Charting South Korea's Role and Contributions." in *Middle-Power Korea: Contributions to the Global Agenda*, edited by Scott A. Snyder et al., 21-43. (New

the two administrations, South Korea has put a significant amount of national capacity to ODA. As a result, on November 25, 2009, South Korea became the 24<sup>th</sup> member of the Organization of Economic Cooperation and Development's Development Assistance Committee (OECD DAC). Moreover, South Korea has consistently increased its budget even after the global financial crisis. Howe points out that South Korea increased the budget of ODA among the DAC at 17 percent in 2012 under conditions of financial crisis, far ahead of Australia's 9.2 percent, the next largest increase. Most DAC members decreased their ODA that year.<sup>32</sup> In fact, in 2014, South Korea provided \$1.9 billion in net ODA, which represented 0.13 percent of gross national income (GNI) and a 0.8 percent increase in real terms from 2013. South Korea is the 23<sup>rd</sup> largest Development Committee donor in terms of its ODA by percentage of GNI, and the 16<sup>th</sup> largest donor by volume. The South Korean government is firmly committed to achieving its national ODA and GNI target of 0.25 percent in 2015.<sup>33</sup>

However, South Korea's ODA project as a tool for responsible middle power has a fatal drawback which is that it has predominantly been focused mainly on Asian countries. According to the OECD statistics and South Korea's Economic Development Cooperation Fund (EDCF) statistics database, during the last decade on average 65.5 percent of South Korea's total ODA budget has been invested in Asia. Africa and Latin America were the next regions for investment at 13 percent and 8.1 percent, respectively.<sup>34</sup> Howe mentions that "South Korea has closer ties to Asian countries due to geographical proximity and cultural familiarity."<sup>35</sup> Therefore, South Korea's top fifteen ODA recipient countries are mainly located in Asia except for Angola in Africa.<sup>36</sup>

As a responsible middle power, South Korea ought to diversify its ODA regions. In reality, however, diversifying South Korea's ODA budget from Asia to other regions is not an easy task because South Korea's ODA project to Asia is closely linked to the economic cooperation with Asian countries. According to the Korea International Trade Association, South Asian countries such as Vietnam, Indonesia and India have become the top ten South trading partners of South Korea since 2008. In 2014, Vietnam was the 6<sup>th</sup> largest, India was the 8<sup>th</sup> largest, and Indonesia was the 9<sup>th</sup> largest trading partner.<sup>37</sup> Since 2010, the trading volume has been steadily increasing, and in 2014, the trading volume with the main three recipient countries accounted for 8.1 percent of the total trading

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York: Council on Foreign Relations Press, 2015), 25.

32 Ibid., 26.

33 OECD, *Development Co-operation Report 2015: Marking Partnerships Effective Coalitions for Action* (Paris: OECD Publishing, 2015), 235.

34 "Statistics," Korea Official Development Assistance, accessed September 2, 2016, [http://www.odakorea.go.kr/ODAPage\\_2012/T02/L03\\_S01\\_03.jsp](http://www.odakorea.go.kr/ODAPage_2012/T02/L03_S01_03.jsp).

35 Howe, "Development Effectiveness."

36 Howe (2015), op. cit., 35.

37 "Korea Statistics," Korea International Trade Association, accessed September 1, 2016, <http://stat.kita.net/stat/world/major/KoreaStats06.screen>.



volume of South Korea. In 2008, the trading volume accounted for less than 4 percent.<sup>38</sup>

A noteworthy fact is that these countries are also the main recipient countries of South Korea's ODA project. In 2012 and 2013, Vietnam, India, and Indonesia ranked among the top five countries in which South Korea invested ODA budget based on bilateral aid.<sup>39</sup> Hyuk-Sang Sohn, advisor of the Korea International Cooperation Agency (KOICA), argues that the fact that South Korea's ODA has been implemented relied upon economic cooperation. South Korea's ODA has been disproportionate to Asian countries, in particular to Vietnam, Indonesia, India, and Thailand in which South Korea's Foreign Direct Investment (FDI) has been increasing. Therefore, Sohn also maintains that South Korea's ODA has emphasized more economic cooperation rather than development cooperation.<sup>40</sup>

In addition, South Korea's ODA type, which is mainly based on bilateralism, depicts how South Korea has used the ODA project more for its own national interest rather than enhancing a common good in recipient countries. The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action recommend building inclusive partnerships for development. Partnerships based upon "bilateral and multilateral donor, global funds, CSOs, and the private sector."<sup>41</sup> The OECD's Development Cooperation Report 2015, however, points out "in 2013, 76 percent of South Korea's ODA was provided bilaterally. South Korea allocated 24 percent of its total ODA as a core contribution to multilateral organizations. It channeled an additional 11 percent of its bilateral ODA for specific projects implemented by multilateral organizations."<sup>42</sup>

Bilateralism is likely to reflect more the donor country's interest in lieu of the recipient country's need. Moreover, bilateralism can be implemented on the basis of relative lack of understanding of the recipient country which reduces the substantial effectiveness of aid. With regards to South Korea's ODA policy, South Korea has to ponder how it can further contribute to the global level instead of clinging to a specific region. To develop into a responsible middle power, South Korea must contemplate how to implement middle power diplomacy which is not directly linked to its national interest. However, restructuring the sweeping nature of South Korea's ODA policy concentrated on Asia cannot be achieved in a short period. South Korea's ODA project has undoubtedly played a significant role to support underdeveloped countries. The predicament still lies, however, that South Korea's ODA policy has been excessively focused on the Asian region. Gradually diversifying the recipient countries at the global scope, South Korea ought to avert from the Asian standpoint and contemplate an additional new dimension

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38 Ibid

39 "Statistics," Korea Official Development Assistance.

40 Hyuk-Sang Sohn and Jengho Choi. "South Korea's ODA Policies toward ASEAN: A Duet of Economic and Development Cooperation." *The Southeast Asian Review* 18, no. 2 (2008): 158.

41 OECD, *The Paris Declaration on Aid Effectiveness and the Accra Agenda for Action* (Paris: OECD Publishing, 2005), 17.

42 OECD, *Development Co-operation Report 2015*, 235.

for contributing to the international community as a responsible middle power.

*New Middle Power Diplomacy, Averting from a Myopic Asian Standpoint:  
Concentrating on Global Agenda Setting*

As Patience points out, concrete understanding or definition in terms of middle power is still a contested issue.<sup>43</sup> However, the role of middle powers is axiomatic in the way that the middle powers should play a role in the international arena not to increase their self-interests but to contribute worldwide through enhancing a common good. With a reshaping of global power architecture as well as emerging transnational issues, additional close cooperation and collaboration among great powers and middle powers have become necessary. With such changes and trends, South Korea should become a responsible middle power.

Therefore, this paper maintains that to be a more responsible middle power in the contemporary era, South Korea ought to focus on global agenda setting through international institutions and the G20 platform. Higgott argues that “international institutions function as pipelines for agenda-setting for facilitating rationalization of the technical and political dimensions of a given problem and provide the location for inter-governmental negotiation on a given agenda.”<sup>44</sup> Thus, using international institutions for global agenda setting is more effective for middle powers, which have relatively less national capacities compared to the great powers.<sup>45</sup> Great powers based upon preponderant economic capability and military might are able to implement their foreign policy agendas more directly to the individual countries or in the international community. However, countries like South Korea which have limited national resources should effectively distribute their national capabilities.

In this sense, global agenda setting through international institutions can tacitly distribute the national resources because the rules or norms in international institutions are not organized *per se*, but can reflect the nation-states’ intentions and policies.<sup>46</sup> Nonetheless, the most significant point in terms of agenda setting is that South Korea must suggest and create entrepreneurial agendas, which can contribute to the international community. Young utilized the term “entrepreneurial leader and intellectual leader.”<sup>47</sup> He mentions that the entrepreneurial leader and intellectual leader “relies on negotiating skills to frame issues in ways that foster integrative bargaining and to put together deals

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43 Allian Patience, “Imagining Middle Powers.” *Australian Journal of International Affairs* 68, no. 2 (2014) : 210–224.

44 Richard Higgott, “Issues, institutions and middle-power diplomacy: action and agendas in the post-Cold War era.” in *Niche Diplomacy: Middle Powers after the Cold War*, edited by Andrew F. Cooper, 46-72. (New York: St. Martin’s Press, 1997), 32.

45 John Ravenhill, “Cycles of Middle Power Activism: Constraint and Choice in Australian and Canadian Foreign Policies.” *Australian Journal of International Affairs* 52, no. 3 (1998) : 311.

46 John J. Mearsheimer, “The False Promise of International Institutions,” 9.

47 Oran R. Young, Political Leadership and Regime Formation: On the Development of Institutions in International Society. *International Organization* 45, no. 3 (1991) : 293.

that would otherwise elude participants and produces intellectual capital or generative systems of thought that shape the perspectives of those who participate in institutional bargaining.”<sup>48</sup>

Applying this concept of an entrepreneurial leader, South Korea had a valuable experience as the flagship regarding Global Green Growth which it can apply in its process towards becoming a responsible middle power. The Lee administration established the Presidential Committee on Green Growth in 2009 and put forth Green Growth as a centerpiece of his administration’s policy agenda. President Lee proclaimed the Green Growth policy to be the new locomotive of South Korea and gradually disseminated the Green Growth policy into the international arena.<sup>49</sup> According to the South Korean Ministry of Strategy and Finance, the motto for Green Growth was “seeking the means to sustain the environment.” Describing this further, Green Growth agenda is meant to turn the current climate change crisis into an opportunity. Beyond the green economy, the focus is eco-friendliness; Green Growth pursues job creation and technology innovation leading to sustainable growth. With these principles, South Korea was the leading country in terms of Green Growth and in 2012, a new international organization called Global Green Growth Institute (GGGI) was founded in Seoul, aiming to support and promote strong, inclusive and sustainable economic growth in developing countries and emerging countries.<sup>50</sup> Therefore, South Korea’s Global Green Growth agenda setting is a striking precedent how South Korea can expand its role to be more responsible as a middle power.

Also, South Korea ought to utilize the new global governance platform G20. Like Acharya and Goh point out, the contemporary era is shifting towards a multiplex world. In line with the reshaping of global power architecture, roles and impacts of the new global system G20 have been replacing the conventional global governance platform. G20 cannot be described as an inclusive association of solid great powers; rather, it is better described as a more flexible international networking regime.<sup>51</sup> After the global financial crisis in 2008, countries have attempted to craft international norms and rules rather than competing outside international regimes.<sup>52</sup> International regimes have thus played as a pipeline for reacting effectively to global issues. Therefore, South Korea should actively utilize this new craft global governance system to reinforce its status as a responsible middle power.

In the G20 framework, each country attempts to reflect its own national interest because

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48 Ibid., 298.

49 See, Lamia Kamal-Chaoui et al. “The Implementation of the Korean Green Growth Strategy in Urban Areas.” *OECD Regional Development Working Papers 2011/02* (2011): 1-88.; Jill Kosch O’Donnell, *The Global Green Growth Institute: On a Mission to Prove Green Growth Green Growth Quarterly Update II-2012*. New York: Council on Foreign Relations, 2012.

50 “Overview,” Global Green Growth Institute, accessed September 3, 2016, <http://gggi.org/about-gggi/background/organizational-overview/>

51 Yul Sohn et al. “Toward a New Global Governance: Korea and the G20.” *EAI Special Report* (2010): 6.  
52 Ibid., 15.

the decided international norms and rules will be the future international standards. In this vein, South Korea should be a rule-setter rather than a rule-taker. A responsible middle power means implementing more contributing roles in the reshaping global order. But in order to become a rule-setter within the G20, South Korea must be an entrepreneurial and creative leader, especially in terms of global agenda setting. Therefore, South Korea should invest its national capacity to analyze and investigate rapidly changing transnational issues and repercussions, as well as explore alternatives for bridging the G20 members and the non-G20 members in special global agendas.

Coalition-building among middle powers is highly pivotal to South Korea for its responsible middle power diplomacy. Ravenhill argues that middle powers have to formulate coalitions of 'like-minded' states because they are relatively less powerful if they impose their agendas individually.<sup>53</sup> Based on such coalitions, middle powers can more effectively suggest and impose their own agendas to the international community, as they can complement the shortcomings of one another. In this vein, the establishment of MIKTA led by South Korea lends more support and legitimacy in agenda setting. Here, a noteworthy claim is that coalition-building can be often conducted within multilateral institutions.<sup>54</sup> Such is the reason why South Korea ought to focus more on global agenda setting and extend its role among international institutions.

### **Alternative Explanation: UN Peacekeeping Operations (PKO)**

UN PKO is an alternative explanation as to how South Korea can avert from the Asian standpoint and contribute more at a global level. UN PKO has been assessed as one of the most effective tools for assisting countries in mitigating conflict and sustaining peace. The significance of the UN PKO in understanding South Korea's role as a middle power is that the aims of the UN PKO and middle power activism are geared to the same purpose: enhancing a common good and resolving transnational issues.

In fact, South Korea has a relatively long history participating in the UN PKO. After becoming a member of the UN, South Korea has been engaged in UN PKO for international security and peace. In 1993, South Korea began the first UN PKO in Somalia sending the *Evergreen Unit* for providing humanitarian assistance. Since 1993, South Korea has sent approximately 11,000 peacekeeping personnel to seventeen different countries.<sup>55</sup> According to South Korea's Ministry of National Defense, as of September 2014, South Korea has engaged in eight different UN PKO activities.<sup>56</sup> In Lebanon and South Sudan,

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53 John Ravenhill, "Cycles of Middle Power Activism," 312.

54 *Ibid.*, 311.

55 Terence Roehrig, "South Korea, Foreign Aid, and UN Peacekeeping: Contributing to International Peace and Security as a Middle Power." *Korea Observer* 44, no. 4 (2013): 634.

56 ROK Ministry of National Defense 2014, 296: In Lebanon and South Sudan, South Korea has deployed specific units and individuals, but in other regions South Korea has only deployed individuals: 7 individuals in UN Military Observer Group in India and Pakistan (UNMOGIP); 2 individuals in UN Mission in Liberia (UNMIL); 7 individuals in UN Mission in the Republic of South Sudan (UNMISS);

in particular, South Korea has deployed *Donmyeong Unit* (317 combatants) and *Hanbit Unit* (289 combatants) respectively.<sup>57</sup>

However, South Korea cannot become a proactive middle power through UN PKO at the global level. First, as Hwang points out, South Korea's UN PKO has been affected by the South Korea-U.S. military alliance which constrains South Korea's autonomous UN PKO.<sup>58</sup> For example, South Korea's decision to deploy UN PKO combatants in Iraq from 2004 to 2008 had been decided due to American pressure. Even though the public poll in South Korea was antagonistic in terms of deploying UN PKO to Iraq, the South Korean government decided to deploy troops because of the South Korea-U.S. military alliance. The U.S. had been enmeshed in the Iraqi War and needed military support from its military ally.

Second, South Korea's current military confrontation against North Korea is likely to constrain South Korea from taking a more proactive role in UN PKO. Because of the primary threat in the Korean peninsula, South Korea cannot fluidly deploy its combatants outside its territory. Snyder states, "if the situation in North Korea were to become unstable, South Korea leaders might have to refocus their attention on Korean mission only."<sup>59</sup> The two aforementioned rationales are the key factors which constrain South Korea's proactive middle power activism in UN PKO. In contrast, global agenda setting through international institutions, even at a nascent level, can provide more autonomy to South Korea in its independent implementation of 'Glue diplomacy.' Lastly, through global agenda setting, by way of international institutions or the G20, South Korea could simultaneously address a variety of transnational issues and diverse regions.

## Conclusion

The discussion of a responsible role of South Korea as a middle power has always been a contested issue. In the present changing global order, South Korea has the national capacity to contribute to resolving transnational issues and contribute to enhancing a global common good. But the lasting questions return to the means through which South Korea can exhibit such roles as a middle power. This paper has explored four different aspects of South Korea's middle power activism: (1) Balancing act in Northeast Asia; (2) South Korea's focus in ODA policy; (3) whether South Korea should be active in the UN PKO; and (4) the importance of South Korea in global agenda setting.

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2 individuals in UN-African Union Mission in Darfur (UNAMID); 4 individuals in UN Interim Force in Lebanon (UNIFIL); 2 individuals in UN Operation in Côte d'Ivoire (UNOCI); 4 individuals in UN Mission for the Referendum in Western Sahara (MINURSO); 2 individuals in UN Stabilization Mission in Haiti (MINUSTAH)

<sup>57</sup> Ibid.

<sup>58</sup> Balbina Hwang, "Korea and PKO: Is Korea Contributing to Global Peace." in *Global Korea: South Korea's Contributions to International Security*, edited by Scott A. Snyder et al., 13-27 (New York: Council on Foreign Relations Press, 2012), 17.

<sup>59</sup> Scott Snyder, "South Korea's Emerging Global Security Role." *World Politics Review* (2010): 1-3.

During the Roh administration, South Korea's middle power diplomacy and South Korea's foreign policy had largely overlapped. The slogan entitled "South Korea as a balancer in Northeast Asia" had aimed at bridging and managing Northeast Asian countries for maintaining peace and prosperity. From the Lee administration to the current Park administration, South Korea has expanded its contributing role worldwide through the ODA policy. However, South Korea's ODA policy has been criticized due to its disproportionate focus on Asian countries. Combined with economic development, South Korea's ODA policy has been lopsided in favor of emerging Asian countries with great economic potency. Exploring the balancing act in Northeast Asia and the ODA policy, South Korea's middle power diplomacy has been tied down with its national interests primarily in the Asian region. Therefore, in order to become a more responsible and leading middle power at the global level, South Korea ought to avert from the myopic Asian standpoint and contribute more to enhance a common good.

Next, in order to contribute to a new global governance platform, South Korea must be an entrepreneurial and creative country in global agenda setting. President Lee's Green Growth agenda is a striking precedent that South Korea must continue to develop. Global Green Growth directly touches upon transnational environment issues and has been implemented through the international institution, GGGI. In lieu of its own self-interest, South Korea has applied this agenda globally and its impact has not been restricted to a certain region. Moreover, South Korea has laid a robust foundation for mounting its influence into the global agenda-setting which exemplified how it could take on the role of an entrepreneurial leader. MIKTA is a remarkable coalition among other middle powers which is intended to suggest and implement other productive global agendas for increasing a common good.

Lastly, after the 2008 global financial crisis, the key global governance's platform has been shifting towards G20. Such shift indicates that South Korea has a larger forum to implement its role as a responsible middle power. Following this reasoning, UN PKO activity is an alternative sphere through which South Korea can expand its middle power diplomacy outside of Asia. Nonetheless, as this paper has explored, numerous constraints hamper South Korea from embracing a more proactive role in UN PKO. Therefore, South Korea should concentrate more on global agenda setting in terms of resolving transnational issues to be a responsible middle power in the changing dynamic of global powers in the modern contemporary era.

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# Road to Rapprochement: Establishment of the 1972 United States' Visit to the People's Republic of China through the Pakistani Channel

*Sunwoo Vivian Lee*

**ABSTRACT:** This short paper examines President Nixon's approach to the People's Republic of China (PRC) using Pakistan as the channel of communication during Nixon's early years of presidency. The paper first explores the Eisenhower, Kennedy and Johnson administrations' attitudes towards the PRC then discusses Pakistan's relationship and position between the United States and the PRC between the first and second Indo-Pakistani War. With the introduction of Nixon's "grand objective" to bring Communist China inwards, Nixon's efforts to establish formal relations with the PRC is highlighted. This effort later contributed to the US-PRC normalization on January 1, 1979, through the Joint Communiqué.

**Keywords:** rapprochement, Nixon, normalization, Pakistan, communication channel, grand objective.

## Introduction

On February 21, 1972, Richard Nixon became the first president of the United States to visit the People's Republic of China (PRC)<sup>1</sup>. During this weeklong<sup>2</sup> visit, Nixon met with PRC Chairman Mao Zedong, and Premier Zhou Enlai. Both sides clarified and understood each nation's interest, and these discussion points later became the Shanghai Communiqué.

There were several significant details that the PRC and the United States indicated during the discussion. The Chinese leadership assured the United States that "China will never be a superpower and [that] it opposes hegemony and power politics of any kind."<sup>3</sup> This clear message expressed that China was not seeking any aggression to overtake the leadership of world power. This statement could also be understood as a reference to the

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1 "China" will be referred to as the "People's Republic of China (PRC)" in this research paper to specify China since the leadership of the Chinese Communist Party (Period after Oct. 1, 1949 when Mao proclaimed and renamed Beiping to Beijing as the capital of the PRC as a victorious outcome from the Chinese Civil War).

2 The visit was from February 21- 28, 1972.

3 "203. Joint Statement Following Discussions With Leaders of the People's Republic of China." (Foreign Relations of the United States, 1969-1976, Volume XVII, China, 1969-1972).

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Soviet Union; China was not seeking a hegemonic contest with the United States, unlike the Soviet Union.<sup>4</sup> In addition, China expressed its firm support of those nations under oppression for freedom and liberation while emphasizing that foreign troops “should be withdrawn to their own countries.”<sup>5</sup> Although it is likely that this was a reference to the United States’ presence in Taiwan, in a different context, it can also insinuate China’s acknowledgment of the Nixon Doctrine.<sup>6</sup> In turn, the United States showed a clear understanding that “Taiwan is a part of China” and that the United States “affirms the ultimate objective of the withdrawal of all US forces and military installations from Taiwan.”<sup>7</sup> In other words, this visit affirmed the absence of the Chinese intention to become the second Communist hegemonic state at the time. Furthermore, the United States also affirmed its willingness to cooperate with the PRC by stating that the US recognized China as a single nation and confirmed its goal to completely withdraw from Taiwan in time.

Although China and the US continued to discuss the “Taiwan Question” for another ten years,<sup>8</sup> the two nations were able to see eye to eye on several terms that later became the stepping stone for the official normalization on January 1, 1979, during Deng Xiaoping and Jimmy Carter’s leaderships. Without this establishment, normalization in 1979 may have been at a later date.<sup>9</sup>

This momentous visit took at least three years of meticulous planning. Before the visit in 1972, as the previous Vice President under Eisenhower and the Republican presidential nominee against John F. Kennedy, Nixon studied China and the implications of China’s strength in the future. When he became the President of the United States on January 20, 1969, he immediately put his plans into action and initiated sending signals to China with the assistance of Henry Kissinger, the National Security Advisor. Nixon considered two close friends of China - Romania and Pakistan - as the communication channel. Ultimately, Pakistan, under the leadership of Yahya Khan, became the main bridge between the United States and China.

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4 In today’s context, some scholars may find China’s intentions have changed.

5 “203. Joint Statement Following Discussions With Leaders of the People’s Republic of China.”

6 In sum, the Nixon Doctrine, along with Nixon’s plan of “Vietnamization,” stated that it will not “undertake all the defense of the free nations of the world” even if it would assist in the defense and developments of allies and friends under the nuclear umbrella. “The Nixon Doctrine Is Announced - Jul 25, 1969,” History.com, accessed June 08, 2016, <http://www.history.com/this-day-in-history/the-nixon-doctrine-is-announced>.

7 “203. Joint Statement Following Discussions With Leaders of the People’s Republic of China.”

8 The Taiwan question has been continuously discussed in the US Congress even after US-China normalization in 1979. The Taiwan question is still referred to in the 21<sup>st</sup> century when the topic of US weapon aid is discussed.

9 If Nixon’s visit and the Sino-Soviet split had not happened, the PRC may have taken over the Soviet Union’s position of the Cold War after the Soviet collapse.

## The US Presidents' Foreign Policy Towards China before Nixon

The United States presidents before Nixon maintained some distance with the Chinese Communist Party.<sup>10</sup> In the Eisenhower years (1953-1961), the Secretary of State, John Foster Dulles strongly advised Eisenhower's foreign policy decisions. As a "staunch anti-communist,"<sup>11</sup> Dulles divided the world into two parts: the "free world" and the Soviet bloc.<sup>12</sup> The PRC was indubitably categorized under the "Soviet bloc of Asia" and as a result, the containment policy extended to Communist China.<sup>13</sup> In fact, Dulles was also "mistrustful"<sup>14</sup> of Chiang Kai-Shek. Since 1949, Chiang was keen on regaining control of the mainland, while Eisenhower and Dulles did not want to get the United States involved in another warfare in Asia after the Korean War.<sup>15</sup> As a strategic way to delay the US involvement, Dulles stalled the US response on the mutual defense agreement with Taiwan. Until the end of his presidency, Eisenhower maintained an aloof foreign policy towards both the PRC and Taiwan.

Similarly, Kennedy and Johnson (1961-1969) also did not make special efforts to mend the distant relations with China. Kennedy's administration was rather short-lived due to the assassination on November 22, 1963. Yet, Kennedy may have had a closer relationship to Taiwan than Eisenhower and Dulles. When the question of Communist China's potential seat in the United Nations Security Council was raised in December 1961,<sup>16</sup> "Kennedy secretly promised Chiang that he would use the veto if the United Nations voted to seat Mao's China in the Security Council."<sup>17</sup> This was an unofficial commitment made by Kennedy. Nevertheless, it could be suspected that Kennedy supported Taiwan behind the scenes while keeping the PRC distant. However, the Kennedy administration's hands were full with other foreign policy problems. The United States was under "brinkmanship" against the Soviet Union and the tension of the Cold War had reached its peak due to the failed Bay of Pigs operation and the Cuban Missile Crisis. Evidently, abridging the distance between the US and the PRC was not the utmost priority of Kennedy.

Johnson's foreign policy was more relevant to China as he started out his administration when the French recognition of the PRC in January 1964 and the PRC's successful nuclear test in October of the same year took place. The United States and its allies called for

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10 This section will only examine the leadership years of President Eisenhower, Kennedy and Johnson.

11 "Foreign Policy Under President Eisenhower - Short History - Department History," Office of Historian, accessed June 08, 2016, <https://history.state.gov/departmenthistory/short-history/eisenhower>.

12 "For this Secretary of State there was no grey area—nations were either part of the "Free World" or part of the Soviet bloc; he had little time for neutralism or non-alignment." In *ibid*.

13 *Ibid*.

14 "The United States and China during the Cold War," The Gilder Lehrman Institute of American History, accessed June 01, 2016, <http://www.gilderlehrman.org/history-by-era/seventies/essays/united-states-and-china-during-cold-war>.

15 *Ibid*.

16 Michael Lumbers, "The Irony Of Vietnam: The Johnson Administration's Tentative Bridge Building To China, 1965–1966" *Journal Of Cold War Studies* 6 (2004): 68-114.

17 "The United States and China during the Cold War."

“urgency of reaching an accommodation with the region’s ascendant power,”<sup>18</sup> and were immediately conscious about Communist China’s diplomatic growth and technological advancement. The PRC’s admission to the United Nations Security Council was also an ongoing, heated debate. Dean Rusk was one of Johnson’s most influential<sup>19</sup> foreign policy advisors and he was the Secretary of State under both Kennedy and Johnson. He warned Johnson that, “Such actions as the recognition of China by France or its future admission into the UN would be very bad... it would persuade the Chinese that they were being successful. Unless other things demonstrate to the Chinese that they are not on the right track, we will be faced with much greater danger in the future.”<sup>20</sup> Concurring with Rusk and other advisors’ caution against Communist China, Johnson proclaimed his decision to maintain the previous hardline approach towards the PRC in April 1964: “So long as the Communist Chinese pursue aggression . . . [and] preach violence, there can be and will be no easing of relationships... It is not we who must re-examine our view of China. It is the Chinese Communists who must reexamine their view of the world.”<sup>21</sup> Consequently, the tension between the United States and China was not eased during Johnson’s presidency. When Johnson committed to the Vietnam War in August 1964 after the Gulf of Tonkin Resolution, the justification stated for the US involvement was “in part to contain the Chinese expansionism.”<sup>22</sup> When Johnson spoke at Johns Hopkins University on April 7, 1965, he insisted, “The rulers in Hanoi are urged on by Peiping<sup>23</sup>...the contest in Vietnam was part of wider pattern of aggressive purposes.”<sup>24</sup> Johnson was especially determined not to lose the Vietnam War against the communist forces, including the PRC, although the war itself did not involve any direct territorial claims of the US or China.<sup>25</sup> Throughout his presidency, Johnson maintained this hardline approach towards China and left the office with no effort to communicate with the leaders of the PRC.

These seventeen years of inflexible approach towards China took a different form on July 15, 1971. On this date, President Nixon made an official statement on national television that he would “become the first president ever to visit the People’s Republic of China, the nation which had remained isolated from the West since the Communist revolution in 1949.”<sup>26</sup>

18 Lumbers, “The Irony of Vietnam,” 70.

19 “Johnson’s most influential foreign policy advisers—Rusk, Secretary of Defense Robert McNamara, and National Security Adviser McGeorge Bundy —...” in *ibid*, 73.

20 *Ibid*, 74.

21 Remarks on Foreign Affairs at the Associated Press Luncheon in New York City. Public Papers of the Presidents: Lyndon B. Johnson, 1963–1964, Vol. 1, p. 499, 20 April 1964.

22 Lumbers, “The Irony Of Vietnam” 68.

23 Peiping was the Nationalist Chinese name for Peking; this usage was considered as an insult to the Chinese Communist Party. Henry Kissinger and Clare Boothe Luce, *White House Years* (Boston: Little, Brown, 1979): 168.

24 *Ibid*, 167-168.

25 China and the US also combated against each other during the Korean War without any territorial claims.

26 “PBS: General Article: Foreign Affairs of Nixon,” American Experience: TV’s Most-watched History

### **Pakistan's Search for Aid in the Second Indo-Pakistani War of 1965**

As a result of the Indian Independence Act of 1947 on July 18<sup>th</sup>, Great Britain left colonial India in the hands of two incompatible religious groups. On October 22, 1947, the first Indo-Pakistani War, also known as the First Kashmir War, broke out between India and Pakistan. This was a territorial conflict concerning the land between Northern India and Western Pakistan – Kashmir and Jammu. Although this first war was inconclusive,<sup>27</sup> by 1948, India had occupied about two-thirds of Kashmir and Jammu.<sup>28</sup>

In 1965 the second edition of this conflict occurred under the leadership of Ayub Khan. He was the first military dictator and the second president of Pakistan as the result of 1958 Pakistani coup d'état.<sup>29</sup> In August 1965, Khan launched "Operation Gibraltar," an infiltration plan on Jammu and Kashmir against India. The operation ordered Pakistani troops to cross over the ceasefire line between Indian and Pakistan by the Kashmir Valley and launch guerrilla attacks and to destroy bridges, tunnels, and highways.<sup>30</sup> Unfortunately, this operation quickly fell apart. "Operation Gibraltar" was seen as "a clumsy attempt"<sup>31</sup> and a miscalculation of the people of Kashmir. The Pakistani Army initially expected that Kashmiri people resented Indian leadership. Thus, before the Operation, Pakistan had informed Kashmiris about the infiltration plan anticipating Kashmiris to support the plan by revolting against the Indian Army simultaneously. However, Indian leadership was well informed of the plan by Kashmiri people and was able to quickly fight back.<sup>32</sup> This combat soon escalated into the second Indo-Pakistani War of 1965.

This second clash also terminated as neither a loss nor a victory on both sides. The United States had been supporting Pakistan and India with military aids with the hopes of democratization on both sides. However, the second war left Pakistan with five hundred million losses of US military aid, a severe economic depression, and mentally and physically wounded people on both Pakistan and India. As a response to this elongated conflict and the uncertainty of compromise between the two states, the United States enforced a military aid embargo at the end of 1965 on both sides. Dean Rusk expressed opposition on further aid quite clearly, "Well if you are going to fight, go ahead and fight, but we are not going to pay for it."<sup>33</sup>

Nevertheless, Ayub Khan did not give up so easily. In 1966, Pakistan turned to the PRC for aid. China and Pakistan had established official diplomatic relations on May 21,

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Series, accessed June 02, 2016, <http://www.pbs.org/wgbh/americanexperience/features/general-article/nixon-foreign/>.

27 There were a total of four Indo-Pakistani Wars. 1<sup>st</sup>: 1947, 2<sup>nd</sup>: 1965, 3<sup>rd</sup>: 1971, and 4<sup>th</sup>: 1999.

28 Hoontrakul Pongsak, Christopher Balding, and Reena Marwah, *The Global Rise Of Asian Transformation* (Palgrave Macmillan, 2014), 37.

29 "Profile of Ayub Khan," Pakistanherald.com, accessed June 08, 2016, <http://www.pakistanherald.com/newprofile.aspx?hofid=1180>.

30 Pervaiz Iqbal Cheema, *The Armed Forces Of Pakistan* (New York: New York University Press, 2002).

31 Devin T Hagerty, *South Asia in World Politics* (Lanham, Md.: Rowman & Littlefield Publishers, 2005).

32 Dinker Rao Mankekar, *Twentytwo Fateful Days: Pakistan Cut To Size* (Bombay: Manaktalas, 1967).

33 Nikhat Ekbal, *Great Muslims of Undivided India* (Delhi: Kalpaz Publications, 2009), 122-23.

1951 when Pakistan recognized the PRC instead of the Republic of China hoping that the PRC would align with Pakistan against India.<sup>34</sup> Although Prime Minister Jawaharlal Nehru had recognized China in 1950, earlier than Pakistan, the border between China and India developed into a territorial tension.<sup>35</sup> Using this period of Sino-Indian tension as an opportunity to solidify the relationship between China, on October 13, 1962, Khan proposed the Sino-Pakistani Frontier Agreement and ceded “over 13,000 square miles of territory”<sup>36</sup> known as the Trans-Karakoram Tract, an area of Jammu and Kashmir that had been occupied by Pakistan at the time. Khan did not consider Trans-Karakoram Tract as significant because it is one of the most inhospitable mountains in the region covered by glaciers.<sup>37</sup> Instead, he chose to use it as a diplomatic strategy to improve the Sino-Pakistani relationship.

Khan’s strategic diplomatic choice did provide Pakistan with much economic and military aid from China over the years. After the US embargo on military aid, Khan received military equipment for “two divisions of the army and MIG aircrafts for the air force”<sup>38</sup> immediately. Throughout 1966, China aided Pakistan with much military aid until the end of the Second Indo-Pakistani War.

Ayub Khan’s health quickly started to deteriorate and by the end of 1968 he decided to resign from the presidency. Khan wrote to his General, Yahya Khan asking him to take over the leadership of the country. On March 26, 1969, Army Commander Yahya Khan declared martial law and became the third President of Pakistan and announced this news on national television. He claimed, “I will not tolerate disorder. Let everyone remain at his post.”<sup>39</sup> He marked his intention to uphold the continuation of the leadership and structure that Ayub Khan had established and continued the intimate relationship with China as a committed ally.

### Nixon’s Grand Objective

Richard Nixon had carefully considered the dangers and implications behind Communist China’s isolation before his presidency. However, Nixon was not questioned during the Red Scare, widely known as the period of “McCarthyism.” Nixon had maintained a strong reputation as an anti-Communist since his term as the Senator of California during the Korean War. This strong rightist identification “protected him from the charge of being ‘soft on communism.’”<sup>40</sup> Therefore, when he wrote a piece for *Foreign Affairs* magazine

34 Jamal Afridi, and Jayshree Bajoria, “China-Pakistan Relations,” *Council On Foreign Relations* (2010).

35 This tension later results in the Sino-India War in 1962.

36 Formal statement of Jawaharlal Nehru in the Parliament of India on March 5, 1963.

37 Hagerty, *South Asia in World Politics*.

38 “Pak-China Defense Collaboration since 1947 till 2014,” Pakistan-China Institute, accessed April 11, 2016, <http://www.pakistan-china.com/article-detail.php?id=MjA>.

39 Peter R. Blood, *Pakistan* (Washington, D.C.: Federal Research Division, Library of Congress, 1995).

40 “He had the political base on the right, which protected him from the charge of being ‘soft on Communism’,” in Kissinger and Luce, *White House Years*, 163.

in 1967, Nixon unrestrictedly expressed that “we simply cannot afford to leave China outside the family of nations” as a presidential candidate.<sup>41</sup>

Nixon’s article, “Asia after Viet Nam”<sup>42</sup> discussed the financial, physical and emotional atrocities of the Vietnam War and the problem with the foreign policy strategy of “containment.” Nixon underlined the importance of establishing inclusive diplomatic relations with China and claimed that containing China would “not only place an unconscionable burden on our own country, but it would heighten the chances of nuclear war while undercutting the independent development of the nations of Asia.”<sup>43</sup> He believed that containing China would create another Soviet Union and wanted to bring China “inwards.” The time was also running out according to him – “In this race we cannot afford to wait for others to act, and then merely react. And the race in Asia is already under way.”<sup>44</sup> Nixon felt the urgency to act upon China’s growth and to reach out to Communist China promptly.

However, bringing China inwards was not the end goal. Nixon had a much larger plan in mind. He envisioned a “future in which more cordial relations among the major world powers – the United States, the Soviet Union, China, Western Europe and Japan – would allow for ventures profitable to all.”<sup>45</sup> Nixon was convinced that this consortium of cooperative regions would be the solution to “reduce revenue-draining defense expenditures”<sup>46</sup> and the way to prevent a costly, potential Third World War. In line with his “Vietnamization,” Nixon visualized putting an end to these ongoing world conflicts through multinational cooperation – and pursuing relations with the PRC was the first step towards this grand objective.

### **Communication with Romania**

When Nixon took office as the President of the United States on January 20, 1969, he immediately acted towards his goal of building relations with China. In February 1969, the Secretary of State, William Rogers, publicly announced the United States’ interest in increasing cultural and scientific exchanges with the PRC. Then, Nixon started to send underhanded signals to China through two third-party players – Romania and Pakistan.

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41 “Although Nixon had publicly condemned the Chinese Communists, he had proposed a more relaxed attitude toward the People’s Republic as early as 1954. In 1967, as a presidential candidate, he had written in the magazine *Foreign Affairs*, ‘We simply cannot afford to leave China outside the family of nations.’ Nixon envisioned a future in which more cordial relations among the major world powers -- the United States, the Soviet Union, China, Western Europe, and Japan -- would allow for ventures profitable to all. Through international cooperation, these nations might reduce revenue-draining defense expenditures and prevent the occurrence of costly Third World conflicts such as the Vietnam War.” in “WGBH American Experience. Nixon | PBS,” accessed June 01, 2016, <http://www.pbs.org/wgbh/americanexperience/features/general-article/nixon-foreign/>.

42 Richard M. Nixon, “Asia After Viet Nam,” *Foreign Affairs* 46 (1967): 111.

43 Ibid.

44 Ibid.

45 Ibid.

46 Ibid.



Nixon started his world trip on July 21, 1969, to visit friends and potential friends of the United States. From August 2-3, he visited Romania. Nixon met with the Romanian Communist Party's Secretary General, Nicolae Ceaușescu during this visit. Romania was a state that had established an official diplomatic relationship with China as early as October 5, 1949 – only a few days after Mao proclaimed Beijing as the capital of the People's Republic of China.<sup>47</sup> Ceaușescu became the leader of Romania on March 22, 1965, sixteen years after the establishment of the PRC. By this time, Ceaușescu had already visited China, North Korea, Mongolia and North Vietnam. As a fervent Communist, Ceaușescu took an interest in North Korea's *juche* system as well as China's Cultural Revolution. He admired Mao and Kim Il-sung's leadership as they used "totalitarian methods coupled with generous shots of ultra-nationalism mixed in with communist ideologies to make both China and North Korea into major world powers."<sup>48</sup> Ceaușescu had studied the two East Asian leaderships very carefully from its establishment to "success"<sup>49</sup> and had maintained a positive relationship and respectful outlook towards China and North Korea.

Nixon was aware of Ceaușescu's dedicated relationship with China and Romania's status as an independent state from Moscow since 1968.<sup>50</sup> Accordingly, Nixon had thought that "the Chinese might prefer to deal with the United States through Communist intermediaries," such as Romania,<sup>51</sup> a fellow Communist state. During his first meeting with Ceaușescu in Bucharest, Nixon indicated that "the United States could do little to establish effective communications with China until the Vietnam war was ended,"<sup>52</sup> hinting that the US was in a difficult position to pursue relations with China. Then, Nixon added that there is a strong necessity to bring China out of isolation and into the international community for the sake of stability in an increasingly multipolar world. He argued that "In twenty-five years, China would have a billion people...if isolated by others, it might turn into an explosive force."<sup>53</sup> Nixon insinuated that Romania should become the "messenger" between the United States and China, and Ceaușescu accepted.

However, the Romanian channel "turned out to be one-way" due to the suspicion of the Chinese. The Chinese were "fearful of Soviet penetration of even a country as fiercely independent as Romania."<sup>54</sup> Nixon accepted this existing obstacle and quickly moved on to his other passage of communication – Pakistan.

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47 Mao proclaimed Beijing as the capital of the People's Republic of China on October 1, 1949.

48 Edward Behr, *Kiss The Hand You Cannot Bite*, (New York: Villard Books, 1991).

49 To Ceaușescu, China and North Korea had achieved a successful form of Communism. Behr, *Kiss The Hand You Cannot Bite*.

50 Kissinger and Luce, *White House Years*, 181.

51 Ibid.

52 "Nixon's Opening to China: The Misleading Apotheosis of Triangular Diplomacy," International Relations, accessed June 02, 2016, <http://www.e-ir.info/2013/06/28/nixons-opening-to-china-the-misleading-apotheosis-of-triangular-diplomacy/>.

53 Kissinger and Luce, *White House Years*, 181.

54 Ibid.

### Pakistan as the Communication Channel

On August 1 of 1969, President Nixon flew to Lahore, Pakistan to visit the newly elected President Khan<sup>55</sup> and to re-establish relations with Pakistan. Nixon was “well aware of Pakistan’s unique historical position *vis-à-vis* China.”<sup>56</sup> He understood that Pakistan felt abandoned by the United States due to Dean Rusk’s military embargo in the Second Indo-Pakistani War, yet Pakistan was an excellent strategic partner to link the United States with the PRC. Nixon had visited Pakistan several times when he was serving as Eisenhower’s vice president. Hence, Nixon’s visit to Lahore was welcomed by Pakistan.<sup>57</sup>

In Lahore, Nixon and Khan held a confidential<sup>58</sup> meeting with only a few people present in the room other than the two. Nixon quite straightforwardly suggested that, “the US will welcome accommodations with Communist China and would appreciate it if President Yahya would let Zhou Enlai know this.”<sup>59</sup> Khan and Nixon thoroughly discussed China’s position in Asia. Khan expressed that China felt “surrounded by hostile forces – India, Soviet Union, and the United States in Southeast Asia.” China was concerned with strong countries surrounding the mainland with no particular strong allies. Nixon and Khan both agreed, “Asia can not move forward if a nation as large as China remained isolated,”<sup>60</sup> and Khan decided to become the bridge between the United States and the People’s Republic of China.

The 1969 Lahore visit was a clear affirmation for Nixon that Pakistan was on the same page in terms of bringing China into the circle of trust of the international realm. However, building relations with Communist China, putting Nationalist China (Republic of China; Taiwan) aside, was very difficult to negotiate in American domestic politics. Nevertheless, Nixon did not give up on building relations with the PRC.<sup>61</sup> More than a year later, Nixon approached Khan’s administration again on October 25, 1970.

Khan had visited the United States on the occasion of the twenty-fifth anniversary of the United Nations. Nixon invited Khan to the Oval Office and asked Henry Kissinger to

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55 From here on, reference to “Khan” will be Yahya Khan.

56 Yukinori Komine, *Secrecy in US Foreign Policy: Nixon, Kissinger and the Rapprochement with China* (Aldershot, England: Ashgate Pub., 2008), 95-100.

57 Ibid, 95.

58 Even Kissinger was not present at this talk. However, the former Foreign Secretary of Pakistan, Sultan Mohammed Khan, and the US Ambassador to Pakistan, Agha Hilaly, were present in this meeting.

M.M. Ali, “Former Pakistani Foreign Secretary Sultan Mohammed Khan’s Colorful Life Parallels His Country’s History,” WRMEA, accessed April 11, 2016. <http://www.robinsonlibrary.com/history/asia/pakistan/history/yahyakhan.htm>.

59 Komine, *Secrecy in US Foreign Policy: Nixon, Kissinger and the Rapprochement with China*, 95.

60 Nixon does not go in depth in his own memoir, *The Memoirs of Nixon*, of this 1969 secret meeting with Khan. However, the two other present members of the United States meeting were Agha Hilaly and Harold M. Saunders. Hilaly was the US Ambassador to Pakistan at the time and Saunders was a National Security Council staff to the President’s Assistant for National Security Affairs. These quotes were taken from the memorandum of conversations of Hilaly and Saunders in Komine, *Secrecy in US Foreign Policy: Nixon, Kissinger and the Rapprochement with China*.

61 Domestic political debate on the “Taiwan Question” is omitted for the purpose of the paper’s focus on Nixon’s foreign policy goal of rapprochement.

also be present at the meeting. Nixon asked Yahya Khan's next date of visit to Beijing<sup>62</sup> and added that he is "willing to send a representative to some third party capital to open communications with Beijing,"<sup>63</sup> expressing his fervent desire to establish US relations with China.

Khan, in his most recent visit to Beijing, had discussed with Mao about the meaning engraved in China's new revolution and China's perspective of the United States. Khan assumed that "the Chinese are going to change with affluence,"<sup>64</sup> once they would hear about Nixon's aspiration to establish US relations with China. According to Khan, Mao had said, "the Americans hope we will die out, but no, I will teach every child from the day he is born to be a revolutionary."<sup>65</sup> Khan then added that Mao did keep his word in the Cultural Revolution by showing that the PRC will survive and maintain Mainland China as the ruling regime.

Khan noted that there is an unclear notion between the United States and China. Mao's China considered the United States as a nation that longed for the PRC's fall.<sup>66</sup> Nixon clarified this misunderstanding, and once again, emphasized that he was willing to send ambassadors and establish high-level contact with China. Nixon also added that even Kissinger, who was present in the room, could go.<sup>67</sup> In the end, Khan assured Nixon that he would clarify and explain Nixon's intentions to the Chinese counterpart.

On December 10, 1970, Nixon's office made concrete steps to establish a rapprochement with China. Henry Kissinger was asked to submit the "Chinese Communist Initiative"<sup>68</sup> on this date. This report was a summary of the trilateral conversations of the United States, Pakistan and the PRC in regards to prospective rapprochement.<sup>69</sup> The report also included extracted comments from Zhou Enlai, the Premier of the PRC, through President Yahya Khan.

The Initiative included Zhou's comments such as, "the United States knows that Pakistan is a great friend of China and therefore we attach importance to the message."<sup>70</sup> Zhou had made this remark after hearing about the United States' hope to build relations with the PRC through Khan. This important piece of information affirmed Nixon's decision to utilize Pakistan as the main communication channel. The report also included a small section regarding the Taiwan question – the question that later became one of

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62 "Getting to Beijing: Henry Kissinger's Secret 1971 Trip," US-China Institute, accessed June 06, 2016, <http://china.usc.edu/getting-beijing-henry-kissingers-secret-1971-trip>.

63 Memorandum of Conversation. Meeting between the President with Pakistan President Yahya, October 25, 1970, The Oval Office, E012958, 1-3/3, 05-09-01.

64 Ibid.

65 Ibid.

66 Komine, *Secrecy in US Foreign Policy: Nixon, Kissinger and the Rapprochement with China*, 98-99.

67 Memorandum of Conversation. Meeting between the President with Pakistan President Yahya, October 25, 1970.

68 Chinese Communist Initiative. October 25, 1970, E012958, 1-4/4, 01-03-02.

69 Kissinger and Luce, *White House Years*, 168.

70 Chinese Communist Initiative. October 25, 1970.

the main obstacles of US-PRC relations after rapprochement. Zhou indicated to Khan in this report that the “Taiwan question is central and there has been no progress made in resolving it. The Chinese leaders welcome Nixon’s envoy to Beijing to discuss the removal of US troops from Taiwan,”<sup>71</sup> showing a strong opposition against the US troops presence in Taiwan.

Following Kissinger’s submission of this initiative, on the same day, Nixon spoke at a press conference. Nixon claimed, “We are going to continue the initiative that I have begun, an initiative of relaxing trade and travel restrictions while attempting to open channels of communication with Communist China, having in mind the fact that looking long toward the future we must have some communication and eventually relations with Communist China.”<sup>72</sup> Like Zhou, Nixon showed strong means to continue building relations with China regardless of some opposition at home due to the “Taiwan Question.”

On April 14, 1971, an American table tennis team was sent to China and Nixon announced that Chinese nationals could obtain visas to visit the United States. However, Nixon still had not heard back from both Pakistan and China regarding to the details of the US visit to China. During a phone call with Kissinger, also dated April 1971, Nixon reminded himself and Kissinger that “the American public’s opinion is still against Communist China.”<sup>73</sup> The two continued to discuss the reactions in Taiwan and at home about the announcement of the Communist China Initiative. As a response to Nixon’s momentary reality check, Kissinger stood firm and said, “It is a tragedy that it has to happen to Chiang at the end of his life but we have to be cold about it.”<sup>74</sup> In turn, Nixon responded, “We have to do what’s best for us.” He confirmed Kissinger’s comment on continuing the plan of Communist China Initiative regardless of the opposition and absence of definite response from China regarding the visit.

### **A Handwritten Message to Nixon**

On April 29,<sup>75</sup> 1971, two weeks after the abovementioned phone conversation between Nixon and Kissinger, the Pakistani Ambassador to the United States brought in a handwritten message to Henry Kissinger.<sup>76</sup> This message, addressed to President Nixon, was written by Zhou Enlai on April 2.

Zhou first conveyed a deep gratefulness towards President Yahya Khan for bridging the two countries together. He then vaguely explained the long silence of China by briefly

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71 Chinese Communist Initiative. October 25, 1970.

72 “Getting to Beijing: Henry Kissinger’s Secret 1971 Trip.”

73 The President/Mr.Kissinger. Telcon(tape), April 14<sup>th</sup>, 1971.

74 Ibid.

75 In the national archives transcript, which was classified until January 8 2002, the date that Kissinger received the message was noted as April 27, 1971 at 6:15 PM. However, in Kissinger’s *On China*, the date that he received the message was noted as April 29, 1971 in Henry Kissinger, *On China* (New York: Penguin Press, 2011).

76 Henry Kissinger, *On China* (New York: Penguin Press, 2011): 233.

stating, “Owing to the situation of the time it has not been possible to reply earlier to the message from the President of the USA to the Premier of People’s Republic of China,”<sup>77</sup> without explaining what “the situation” had been for China. According to Sultan Mohammed Khan, the former Foreign Secretary of Pakistan, the delay could have been due to “the cultural revolution and Zhou’s own position, which was under a serious threat by a faction of the Red Guards.”<sup>78</sup>

After giving an unspecified reason for the delay, Zhou went straight to the point by conveying China’s willingness to receive envoys from the United States. He stated, “The Chinese Government reaffirms its willingness to receive publically in Peking a special envoy of the President of the US, for instance, Mr. Kissinger, or the US Secretary of State or even the President of the US himself for direct meeting and discussions. Of course, if the US President considers that the time is not yet right the matter may be deferred to a later date... it is believed that it is entirely possible for public arrangements to be made through the good offices of President Yahya Khan.”<sup>79</sup> With this green light from Zhou, Nixon and Kissinger proceeded to organize a visit to China.

### **First Envoy to the People’s Republic of China**

As his name was specifically mentioned in the note that had been written by Zhou, Kissinger was the first envoy sent to China by Nixon. Nixon told Kissinger to be strong and “not to indicate a willingness to abandon much of our support for Taiwan until it was necessary to do so...discussions with the Chinese cannot look like a sellout of Taiwan.”<sup>80</sup> Nixon also warned Kissinger that it should be made clear to the Chinese that “they should not meet with other US political figures before meeting with Nixon”<sup>81</sup> besides Kissinger, who was scheduled to meet with the Chinese leaders on July 10.

Kissinger first flew to Islamabad, Pakistan on July 9. He met with Yahya Khan and extensively asked Khan “how to handle the Chinese in the toast, how to treat them, and how to respond to them.”<sup>82</sup> Kissinger wanted to understand “the Chinese technique of talking to foreigners, and how much one should withhold” when talking to the Chinese leaders.<sup>83</sup> Kissinger left Islamabad the following day and flew to Beijing.

Kissinger was not able to meet with Mao, but meeting with Zhou had not disappointed Kissinger at all. In 2011, Kissinger noted that he had never seen a “more compelling

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77 Message from Premier Chou Enlai (delivered to Mr. Kissinger – 6:15 PM). April 2, 1971.

78 “PBS: General Article: Foreign Affairs of Nixon,” American Experience: TV’s Most-watched History Series, accessed June 02, 2016, <http://www.pbs.org/wgbh/americanexperience/features/general-article/nixon-foreign/>.

79 Message from Premier Chou Enlai.

80 The President’s Files. Meeting between President, Dr. Kissinger and General Haig, Thursday, July 1, 1971, The Oval Office, National Archives, E01295, 06-08-09.

81 “Getting To Beijing: Henry Kissinger’s Secret 1971 Trip | US-China Institute.”

82 Khan, “On: Dr. Kissinger’s Journey to China.”

83 Ibid.

figure than Zhou Enlai”<sup>84</sup> in about sixty years of his public life. During his visit, Kissinger discussed two main topics with Zhou – Vietnam and Taiwan.<sup>85</sup> And most importantly, they agreed to establish Nixon’s visit to China and describe it as an “extended invitation” along with Mao’s presence. Nixon accepted this invitation “with pleasure.”<sup>86</sup>

Kissinger returned with Islamabad after two days of visit to Beijing on the 11. According to Mohammed Khan, as soon as he landed in Pakistan, Kissinger showed extreme excitement “and said what a wonderful visit he had. He discussed in general terms about Zhou Enlai: What a great statesman he is and how different from other world leaders he was – kind, hospitable, and willing to listen to the other point of view.”<sup>87</sup> This positive first contact with China was a reassuring indication to both Pakistan and Nixon that the United States will be able to further advance in having discussions with China.

### Concluding Words

Several days after Kissinger’s return to the United States, on July 15, Nixon publicly announced that he had sent Kissinger to China and that an agreement for the US presidential trip to China had been established. Nixon explained his objective of rapprochement with China in this announcement. He claimed, “I have taken this action because of my profound conviction that all nations will gain from a reduction of tensions and a better relationship between the United States and the People’s Republic of China.”<sup>88</sup> Months after this announcement, Nixon marked the historical visit to the PRC from February 21-28, 1972.

Nixon understood the importance of opening up to China and to include it in the existing international system. He had learned this lesson earlier after having analyzed the outcomes and failures of the United States’ involvement in the continuous warfare in Asia against the Communist powers. With three years of unceasing effort, Nixon shrewdly befriended Pakistan as the main communication channel to China. After the last meeting with Kissinger during his visit to China, Zhou asked Kissinger to take a stroll outside with him and commented, “Let us not forget the bridge which made this meeting possible, Pakistan has played a crucial role...it is a bridge between us and we should never forget it.”<sup>89</sup> If it had not been Pakistan that played this important role of linking China and the US, the outcome of Nixon’s plan may have been different.

With careful planning and sharp analysis of every move that the Chinese took, Nixon was able to establish relations with the PRC for the first time in the United States’ history. This effort would later become the building blocks of the official US-China normalization

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84 Henry Kissinger, *On China*, 241.

85 For the focus of this paper, the bridging of US-China rapprochement, the details of Vietnam and Taiwan dialogue is omitted.

86 Henry Kissinger, *On China*, 254-255.

87 Khan, “On: Dr. Kissinger’s Journey to China.”

88 “Getting to Beijing: Henry Kissinger’s Secret 1971 Trip.”

89 Khan, “On: Dr. Kissinger’s Journey to China.”

on January 1, 1979, through the US-China Joint Communiqué.

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# The Shortcoming of Arbitration in the Modern World: the Third Parties Limitation

Max D. Passey

**ABSTRACT:** Arbitration offers a unique and practical tool for solving private disputes between commercial parties. International commercial arbitration has traditionally been considered a creature of consent. Generally, arbitration is only able to compel willing parties, or those privy to the contract, to arbitrate. Therefore, arbitral tribunals have been unwilling to entertain claims by a non-signatory to arbitrate which leads some critics to consider the lack of extension to third parties a major short-coming of arbitration in the modern world. This paper concludes that the general consensus has become increasingly more willing to extend the arbitration agreement to third parties who were not signatories of the main contract. This conclusion is drawn from recent case law and amendments to the UNCITRAL Model Law on International Commercial Arbitration. The paper also highlights the utilisation of common law principles derived from agency and contract law as a means of facilitating a more inclusive approach from arbitral tribunals, with heavy focus on the five common theories first identified in the Thomson case and their further development in later cases.

**Keywords:** international commercial arbitration, third-party problem, commercial law.

## Introduction

Within the legal world, arbitration offers a unique and practical tool for resolving private disputes between commercial parties.<sup>1</sup> Traditionally, consent is considered the most essential characteristic within arbitration disputes.<sup>2</sup> A potential major benefit of arbitration, therefore, is that it is chosen consensually by contracting parties.<sup>3</sup> Arbitration can then best be described as a “creature of consent not coercion.”<sup>4</sup> Furthermore, the preservation of legal certainty and the res judicata are also fundamentally important within arbitration and therefore the extension of the res judicata lies at the heart of the third party problem, as the preservation of a decision’s authority alongside maintaining legal certainty are tantamount to upholding the rule of law.

Arbitration purports to only compel willing parties to arbitrate, or parties that are privy to the contract. Therefore, only those parties within the agreement can generally be

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1 Margaret L. Moses, *The Principles And Practice Of International Commercial Arbitration* (Cambridge University Press 2010), 32.

2 Ibid.

3 Richard Bamforth, et al. “Joining non-signatories to an arbitration: recent developments,” *The In-House Perspective* 3, no. 3 (2007): 17-24.

4 *Volt Informational Sciences, Inc., v. Stanford*, 489 U.S. 468, 479 (1989)

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obliged to arbitrate, or in converse, those outside of the arbitration should not be able to compel signatories within the contract to arbitrate.<sup>5</sup> Until recently arbitral tribunals would not entertain any claim by a non-signatory to arbitrate,<sup>6</sup> leading critics to suggest that one of the major limitations of arbitration is that it is unable to be extended to include non-signatory third parties. As a consequence of globalization and the international nature of companies and commercial transactions in recent years, the issue of third parties within commercial arbitration has become increasingly important.

This paper aims to tackle the third party problem within international commercial arbitration. Traditionally, a company that had not signed the arbitration agreement in writing would be unable to arbitrate. However, this paper proposes that this is no longer the case. Recent case law suggests arbitral tribunals are more and more likely to extend the arbitration agreement to third parties who were not signatories of the main contract. Furthermore, recent changes to the UNCITRAL Model Law on International Commercial Arbitration<sup>7</sup> effecting the New York Convention<sup>8</sup> demonstrate a shift towards a more inclusive approach focusing more on the substance of the circumstances, rather than the formal written requirements.<sup>9</sup> To achieve this goal, tribunals and courts have borrowed principles from contract and agency, as well as utilized doctrines from other areas of law to help facilitate the process.<sup>10</sup> However, because of the international nature of commercial arbitration, problems with certainty and uniformity arise. This paper aims to highlight the common principles and theories which allow the extension of the arbitration agreement to third parties, through recent case law and tribunal decisions.

This paper first explores the contextual background of the third party problem. The consensual nature of arbitration will be considered, alongside the importance of the arbitration agreement. The section titled ‘Third Party Problem’ will also attempt to define the term third party non-signatories for the purpose of this paper, before considering the theoretical and practical implications surrounding the extension of the arbitration agreement. After establishing the relevant background information, the section titled ‘extending the arbitration agreement’ will consider the five common theories first identified in the case of Thomson<sup>11</sup>: Incorporation by reference, assumption, agency, estoppel and alter ego. As well, as the “group of companies doctrine” created in the case

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5 Marcia Ashong, “International arbitration agreements and non-signatories: The challenges going forward for the globalised petroleum industry” University of Dundee, Centre for energy Petroleum and Mineral law policy, accessed January 3, 2015, [www.dundee.ac.uk/cepmlp/gateway/files.php](http://www.dundee.ac.uk/cepmlp/gateway/files.php).

6 *Ibid.*, 2.

7 UNCITRAL Model Law on International Commercial Arbitration (1985).

8 The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, New York.

9 James M. Hosking, “The Third Party Non-Signatory’s Ability to Compel International Commercial Arbitration: Doing Justice Without Destroying Consent,” *Pepperdine Dispute Resolution Law Journal* 4, no. 3 (2004), 480.

10 *Ibid.*, 481.

11 *Thomson-CSF S.A. v. Am. Arb. Ass’n*, 64 F.3d 773, 776 (2d Cir. 1995).

of Dow Chemical.<sup>12</sup> This section will also highlight any common themes present between the theories. In the final section, this paper will consider the recent changes in the laws governing arbitration, although due to word constraints, will only offer a brief overview.

### **The ‘Third Party Problem’**

This section of the paper aims to develop an understanding of the principles behind the extension of the arbitration agreement to include third party non-signatories. Beginning with an overview of arbitration as a whole, this section will subsequently consider in more detail, the importance of consent, the arbitration agreement and the definition of a third party non-signatory within the remit of this paper. Finally, this section will consider the reasoning behind the shift to a more inclusive approach towards third parties, while considering the consequential theoretical and practical implications.

#### *Consent: the Heart of Arbitration*

Arbitration offers a private form of dispute resolution, in which parties are able to settle their disputes through an arbitration tribunal, rather than pursue a claim through the court system.<sup>13</sup> There are numerous benefits in utilizing arbitration to settle commercial disputes.<sup>14</sup> Arbitration offers an autonomous, efficient and a relatively cost-effective alternative to litigation in the courts.<sup>15</sup> The parties can agree on almost every aspect of the process, from the nationality of the arbitrations, to the location of the proceedings in a neutral country and language.<sup>16</sup> Furthermore, the parties are able to ensure the award will be enforced through the New York Convention, which is upheld through its ratification in the vast majority of countries.<sup>17</sup> The popularity of arbitration in recent years is often assigned to the rising number of international commercial transactions.<sup>18</sup> Arbitration offers a solution to companies looking for certainty, as its potential for bespoke provisions and uniform enforcement offers a helpful place to solve difficult international contractual disputes between parties.<sup>19</sup>

In choosing arbitration, the parties voluntarily waive their rights to pursue litigation in the court systems.<sup>20</sup> “Litigation is a fundamental, inherent right granted to all legal entities, and in essence, arbitration is a deprivation of this fundamental right.”<sup>21</sup> Therefore,

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12 Dow Chemical v Isover Saint Gobain ICC No. 4131/1982

13 Moses, *The Principles And Practice Of International Commercial Arbitration*, 33.

14 Ibid.

15 Ibid., 34.

16 Nigel Blackaby et al., *Redfern and Hunter on International Commercial Arbitration* (5th edn, Oxford University Press, 2009), 101.

17 The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958

18 Nigel Blackaby et al., *Redfern and Hunter on International Commercial Arbitration*, 24.

19 Ibid., 25.

20 Moses, *The Principles And Practice Of International Commercial Arbitration*, 34.

21 Clint A. Corrie, “Challenges in International Arbitration for Non-Signatories,” *Comparative Law Yearbook of International Business* 29 (2007): 45-74.

where a dispute is submitted to arbitration, it must be entirely clear that the parties are aware of their rights, and have willfully agreed.<sup>22</sup> Consequently, many commentators consider consent is the fundamental premise on which arbitration is based.<sup>23</sup> Some have even suggested “like consummated romance, arbitration rests on consent.”<sup>24</sup> To determine whether there is consent between the parties, courts and tribunals have traditionally considered whether there is an agreement to arbitrate between the parties.<sup>25</sup>

### *The Arbitration Agreement*

Generally, parties will express their consent to submit to arbitration to settle any future dispute through an arbitration agreement.<sup>26</sup> This arbitration agreement is normally included during the formation of the contract between the parties.<sup>27</sup> Within the arbitration agreement, the parties stipulate the provisions from which they hope to settle any future disputes arising from the contract. “In essence, the parties create their own private justice system.”<sup>28</sup> Generally, the arbitration agreement is considered in isolation from the rest of the contract.<sup>29</sup> The doctrine of separability grants the arbitration agreement autonomy “from the underlying contract in which it appears.”<sup>30</sup>

The arbitration agreement represents the relinquishment of the right to have the dispute resolved judicially.<sup>31</sup> As previously stated, arbitration is a “matter of consent not coercion.”<sup>32</sup> Unless the two parties have agreed to arbitrate, they should not otherwise be compelled to do so. Therefore, the arbitration agreement is of the utmost importance. To determine whether the parties have actually consented to arbitrate, national laws as well as the New York Convention state certain requirements for the arbitration agreement to be valid<sup>33</sup>. Traditionally, the arbitration agreement will be in writing and signed by both parties<sup>34</sup>. The rigidity of the New York Convention and in the past the UNCITRAL Model Law on International Commercial Arbitration demonstrate the paramount importance of consent to the arbitral procedure<sup>35</sup>.

In recent years following the growing trend of international commercial transactions

22 Ibid., 55.

23 Ibid.

24 William W. Park, “Non-Signatories and International Contracts: An Arbitrator’s Dilemma,” *The Leading Arbitrators’ Guide to International Arbitration*, accessed January 3, 2015, [http://events.whitecase.com/people/akomninos/International\\_Dispute\\_Resolution\\_Newsletter\\_June\\_06.pdf](http://events.whitecase.com/people/akomninos/International_Dispute_Resolution_Newsletter_June_06.pdf).

25 Moses, *The Principles And Practice Of International Commercial Arbitration*, 37.

26 Moses, *The Principles And Practice Of International Commercial Arbitration*, 37.

27 Tae Courtney, “Binding Non-Signatories to International Arbitration Agreements: Raising Fundamental Concerns in the United States and Abroad,” *Rich. J. Global L. & Bus.* 8 (2008): 581.

28 Moses, *The Principles And Practice Of International Commercial Arbitration*, 36.

29 Ibid.

30 *Peterson Farms Inc v C&M Farming Ld* [2004] All E.R. (D) 50.

31 Moses, *The Principles And Practice Of International Commercial Arbitration*, 36.

32 Edward Ho Ming Tang, “Methods to extend the scope of arbitration to third party non-signatories,” (2009) Hong Kong School of Law, Research Paper.

33 New York Convention Article II.

34 New York Convention Article II(II).

35 Tang, “Methods to extend the scope of arbitration to third party non-signatories,” 56.

and technological advances, contracts are more often completed orally or in non-traditional means.<sup>36</sup> Consequently, public opinion has shifted towards promoting a less rigid approach to the formal writing requirement under the New York Convention.<sup>37</sup> Promoting a harmonious interpretation of any amendment to the international convention would be difficult, as there are over 145 contracting states under the New York Convention.<sup>38</sup> To rectify this issue, the UNCITRAL Model Law on Arbitration revised Article VII of the act. Recommending that Article II of the New York Convention should recognize “the circumstances described therein are not exhaustive.”<sup>39</sup> Nevertheless, courts still have justified reservations about requiring a party to arbitrate, if it appears that the party did not agree to do so.<sup>40</sup> The importance of the changes to Model Law will be further considered in the section titled ‘Institutional rules, Laws and Conventions dealing with third parties’.

### *Third Parties and Non-signatories*

At this juncture it would be important to distinguish between a non-signatory and a third party. A non-signatory is someone who has not physically signed the agreement within which the arbitration clause is contained.<sup>41</sup> The term non-signatory is potentially misleading as it implies a signature is necessary to complete an arbitration agreement, however as previously discussed this is no longer a necessity as many courts and tribunals will accept an agreement to arbitrate that has not been signed.<sup>42</sup> The term “third party” is used to refer to someone who is not a named party in such an agreement. Generally a third party will also be a non-signatory.

### *Practical Issues With Extending the Arbitration Clause*

Extending the arbitration clause to include third party non-signatories is often referred to as one of the most contentious issues within international commercial arbitration.<sup>43</sup> The rigidity of the courts in the past to extend the arbitration agreement to third parties, has been criticized as the most significant shortcoming of modern commercial arbitration. However, binding parties outside of the arbitration agreement is not without consequence. Extending the arbitration agreement imposes a duty outside of those who have agreed to arbitrate.<sup>44</sup> Therefore, extending the arbitration agreement could be considered at a juxtaposition to the consensual nature at the heart of arbitration.<sup>45</sup> Yet a balance must

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36 Moses, *The Principles And Practice Of International Commercial Arbitration*, 37.

37 Ibid.

38 Ibid.

39 UNCITRAL Model Law on Arbitration Article 7 .

40 Gregson v. Creative Artists Agency, 210 F.3d 524, 528 (5<sup>th</sup> Circuit, 2000).

41 Hosking, “The Third Party Non-Signatory’s Ability to Compel International Commercial Arbitration,” 480.

42 Moses, *The Principles And Practice Of International Commercial Arbitration*, 35.

43 Hosking, “The Third Party Non-Signatory’s Ability to Compel International Commercial Arbitration,” 480.

44 Park, “Non-Signatories and International Contracts: An Arbitrator’s Dilemma,” 322.

45 Ibid.

be reached between consent and the maximization of the practical effectiveness of the arbitration award.<sup>46</sup>

Extending the arbitration agreement becomes complicated because any extension to third parties is not currently governed by any international treaties on arbitration, such as the Model law or the New York Convention.<sup>47</sup> Consequently, any attempt by a court or tribunal to extend the arbitration agreement to a third party may potentially face issues, once the award has been rendered, and may be potentially set aside by a national court or refused recognition and enforcement.<sup>48</sup> As a result, commercial parties may be deterred from arbitration as it could lack legal certainty.

In recent years following the growing trend of complex international commercial transactions, where the “true” party to the dispute is initially unclear, courts and tribunals are more frequently extending the arbitration agreement to be more inclusive of third parties.<sup>49</sup> However, unsurprisingly this has not been completed in a uniform manner, with jurisdictions adopting different approaches to deal with this issue. To demonstrate how arbitration has become more accommodating to the notion of extension or joinder, the next section of this essay attempts to examine the different theories and principles used by the courts and tribunals.

### **Extending the Arbitration Agreement**

This section will consider recent arbitral precedent and case law to explore the different methods in which an arbitration agreement can be extended to include third party non-signatories. As previously discussed, there is currently no uniform approach offered by either the New York Convention or the UNCITRAL Model Law in regards to extending the arbitration agreement. However, the amount of cases involving the extension of the arbitration agreement in recent years has risen drastically.<sup>50</sup> As a result, there is a substantial body of jurisprudence available to help identify the common themes between the different approaches taken to join non-signatory third parties.<sup>51</sup>

#### *When can the Arbitration Agreement be Extended?*

Consent, as already established, is essential to the arbitral process. The courts have therefore asserted that “arbitration agreements applies to non-signatories only in rare circumstances.”<sup>52</sup> However, in recent years there is a growing trend among tribunals

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46 Ibid.

47 Corrie, “Challenges in International Arbitration for Non-Signatories,” 45.

48 Ibid.

49 Tang, “Methods to extend the scope of arbitration to third party non-signatories.”

50 Corrie, “Challenges in International Arbitration for Non-Signatories,” 45.

51 Ibid., 46-47.

52 *The Rice Company (Suisse), S.A. v. Precious Flowers Ltd.* 523 F. 3d 528, 536 (5<sup>th</sup> Cir. 2008), *citing* *Bridas SAPIC v Turkmenistan*, 345 F.3d 347, 358 (5<sup>th</sup> Cir.2003).

and courts to extend the obligation to arbitrate to non-signatories.<sup>53</sup> The most common occurrence of issues surrounding third parties to the arbitration is the binding of a parent company to an agreement made by its subsidiary.<sup>54</sup> Another common example is when a company or another entity appears to be state controlled.<sup>55</sup>

Generally, express or implied consent is required to arbitrate. If there is a lack of an express agreement, the courts will consider the conduct of the parties to determine whether the parties displayed implied consent.<sup>56</sup> The courts have taken many different approaches to determining whether there is implied consent from the parties.<sup>57</sup> The court in *Thomson* identified five principles under which a non-signatory may be compelled to arbitrate: incorporation by reference, assumption by obligation, agency, veil-piercing (alter ego/group of companies) and estoppel.<sup>58</sup> Other doctrines which have been utilized to bind non-signatories include *inter alia* guarantee, assignment, succession, novation and third party beneficiary.<sup>59</sup> The following subsections of this essay will attempt to examine some of these theories to extract any common themes in conjunction with recent arbitral precedent.

### *Incorporation by Reference*

Utilizing contractual principles, non-signatories have been compelled to arbitrate when they are parties to a contract that either incorporates the arbitral agreement into their agreement, or the arbitral agreement incorporates the non-signatory by reference.<sup>60</sup> The underlying principle of binding non-signatories through incorporation by reference relates back to the previously discussed notion of consent.<sup>61</sup>

This approach was identified in *Thomson*<sup>62</sup> and courts have for a long time accepted incorporation by reference as a process by which non-signatories are able to be bound.<sup>63</sup> However, the courts have taken different approaches in applying this theory. In the case of *Import Export Steel Corp. v Mississippi Valley Barge Line Co.*,<sup>64</sup> a bill of lading was executed, which directly incorporated by reference other agreement between the parties that included mandatory arbitration clauses. One of the parties attempted to claim it was

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53 Carolyn B. Lamm and Jocelyn A. Aqua, "Defining the Party-Who Is a Proper Party in an International Arbitration Before the American Arbitration Association and Other International Institutions," *Geo. Wash. Int'l L. Rev.* 34 (2002): 711.

54 Moses, *The Principles And Practice Of International Commercial Arbitration*, 36.

55 *Dallah Real Estate and Tourism Holding Company v. Ministry of Religious Affairs, Government of Pakistan* [2010], UKSC 46 (Nov, 3 2010)

56 *Ibid.*, 36-37.

57 Tae, "Binding Non-Signatories to International Arbitration Agreements," 44.

58 *Thomson-CSF S.A. v. Am. Arb. Ass'n*, 64 F.3d (2d Cir. 1995), 776.

59 Nigel Blackaby et al., *Redfern and Hunter on International Commercial Arbitration*, 122.

60 Moses, *The Principles And Practice Of International Commercial Arbitration*, 33.

61 Bamforth et al., "Joining non-signatories to an arbitration," 20.

62 *Thomson-CSF S.A. v. Am. Arb. Ass'n*, 64 F.3d (2d Cir. 1995).

63 Jeffrey MacHarg and Albert Bates, "Non-Signatories and International Arbitration: Understanding the Paradox," *Comparative Law Yearbook of International Business* 29 (2007): 3-22.

64 *Import Export Steel Corp. v Mississippi Valley Barge Line Co.*, 351 F.2d 505 (2d Cir., 1965).



not compelled to arbitrate, as it had not signed the arbitration clause.<sup>65</sup> The courts however, found that the party had conveyed its intent to be bound, as it had signed an agreement expressly incorporating another which included an arbitration agreement.<sup>66</sup>

Within the UK, issues have arisen on whether there is a necessity to explicitly reference the arbitration agreement, for incorporation by reference to be applicable.<sup>67</sup> US case law offers some insight on the matter. In the case of *Grundstad v Ritt*, the seventh circuit found there was no express intention of the parties to be bound by arbitration, as there was no explicit reference in the other documents to the arbitration clause.<sup>68</sup> *Grundstad* demonstrates the intention of the parties is vital in determining whether to bind a third party and re-emphasizes the importance of consent to arbitration. However, the courts demonstrated a more lenient approach in *Weatherguard Roofing, Co v D. R. Ward Constr. Co.*<sup>69</sup> The decision of the courts rested on the language used by the parties within the subcontract and found that it demonstrated enough intention to apply incorporation by reference.<sup>70</sup> Therefore it is possible to surmise, that in deciding upon whether to invoke the theory of incorporation by reference the courts will rest primarily on the intentions of the parties.

### *Agency*

The doctrine of agency may also be invoked to extend the arbitration agreement to bind a third party.<sup>71</sup> There is a unanimous acceptance from courts and tribunals that agency principles are applicable within arbitration.<sup>72</sup> However, the application has differed between jurisdictions. Therefore it is important to consider the different jurisdictional approaches in conjunction with the issues that arise through applying agency principles.

Agency can be defined as a “fiduciary relationship created by an express or implied contract or by law, in which one party (the agent) acts on behalf of another party (the principal) and binds the other party by words or actions.”<sup>73</sup> The most frequent, occurring form of this relationship, is a representative of a company signing an arbitration agreement on its company’s behalf.<sup>74</sup> Therefore, the arbitration agreement concluded by the agent would effectively bind the principal in any future dispute.<sup>75</sup> Whether the agent is also bound to arbitrate is dependent on whether the principal was disclosed or undisclosed at

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<sup>65</sup> *Ibid.*, 352.

<sup>66</sup> *Ibid.*, 352.

<sup>67</sup> *Aughton Ltd v M.F. Kent Service Ltd* (1991) 57 B.L.R.

<sup>68</sup> *Grundstad v Ritt* 106 F.3d 201 (1997).

<sup>69</sup> *Weatherguard Roofing Co v D.R. Ward Construction Co.* 152 P.3d 1227 (Ariz. Ct. App. 2007).

<sup>70</sup> *Ibid.*, 1229.

<sup>71</sup> *Thomson-CSF S.A. v. Am. Arb. Ass’n*, 64 F.3d (2d Cir. 1995).

<sup>72</sup> James J Senter, “Who is bound by arbitration agreements? Enforcement by and against non-signatories” *International Business Law Review* 55, no.6(2005): 57-59.

<sup>73</sup> Black’s Law Dictionary, 7<sup>th</sup> ed., s.v “Agency.”

<sup>74</sup> UNIDROIT Principles of International Commercial Contracts 2010 Article 2.2.3.

<sup>75</sup> Fouchard, Philippe et al. *Fouchard, Gaillard, Goldman on International Commercial Arbitration* (The Hague; Boston: Kluwer Law International, 1999), 330.

the time the contract was entered into. An agent for a disclosed principal is generally not bound to the contract.<sup>76</sup>

When invoking agency principles to bind a principal, issues arise dependent on the authority of the agent. An agent's authority depends on whether the relationship was demonstrated through "written, or spoken words, or conduct, by the principal, communicated either to the agent (actual authority) or the third party (apparent authority)."<sup>77</sup>

Actual authority requires the agent to have acted within the scope of their power to bind the principal.<sup>78</sup> In Germany and France, there are no requirements for the principal to have granted the agent power in any particular form.<sup>79</sup> In contrast, Swiss law dictates that the principal must expressly authorize the agent to sign any arbitration agreement.<sup>80</sup> Austrian law adopts an even stricter approach, requiring the authorization to be in writing.<sup>81</sup>

In certain circumstances, a principal may also be bound, if the agent had "apparent authority."<sup>82</sup> Unlike actual authority, it is the impression made by the principal to the third party, which is of the utmost importance.<sup>83</sup> The principal must have induced the third party into believing the agent had authority to act on his behalf.<sup>84</sup>

Interocean Cayman Co. demonstrated the importance of the facts of the case in determining whether the principal had induced a third party.<sup>85</sup> This paper proposes that the utilization of agency theory to bind the principals of agents facilitates the maximization of the practical effectiveness of any award rendered, without necessarily threatening the consensual heart of arbitration.

### *Assumption*

A further theory used to bind third parties is assumption, inferring consent from the conduct of the parties.<sup>86</sup> To extend the arbitration agreement to bind a non-signatory under assumption, there is a requirement of conduct demonstrating an intent to be bound by the assumed arbitral agreement.<sup>87</sup> The necessity for intent was highlighted in *Caribbean SS. Co., SA v Sonmez Denizcilik Ve Ticaret AS*.<sup>88</sup> Within this case the third party was not required to arbitrate because he had no intention of being bound by the arbitration clause.<sup>89</sup> Furthermore, in *Thomson*, the recent purchasing of a subsidiary did not manifest

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76 Senter, 57.

77 *Hester Inter. Corp. v Federal Republic of Nigeria*, 879 F.2d 170, 181 (5<sup>th</sup> Circuit 1989).

78 *Bridas S.A.P.I.C. v Turkmenistan*, 345 F.3d 347, 358 (5<sup>th</sup> Circuit 2003).

79 Tang, "Methods to extend the scope of arbitration to third party non-signatories," 87.

80 *Ibid.*

81 Moses, *The Principles And Practice Of International Commercial Arbitration*, 34.

82 *Ibid.*, 34.

83 *Bridas S.A.P.I.C. v Turkmenistan*, 345 F.3d 347, 358 (5<sup>th</sup> Circuit 2003).

84 *Ibid.*, 370.

85 *Interocean Shipping Co. v. National Shipping and Trading Corp. and Hellenic International Shipping*, S.A., 523 F.2d 527 (2<sup>nd</sup> Circuit 1975).

86 Bamforth, "Joining non-signatories to an arbitration," 334.

87 Corrie, "Challenges in International Arbitration for Non-Signatories," 123.

88 *Caribbean SS. Co., SA vs. Sonmez Denizcilik Ve Ticaret AS*, 598 F.2d 1264 (2<sup>d</sup> Cir., 1979).

89 *Ibid.*, 610.

an intention of the parent company to be bound by the obligations of its subsidiary. If a third party's conduct could be construed to have waived any objection to being bound to arbitration, the theory of assumptions will also apply compelling the third party to arbitrate.<sup>90</sup>

The rationale behind invoking the principles of assumption is to avoid non-signatories expressing intent to arbitrate, before subsequently asserting the arbitral award is invalid.<sup>91</sup> Similar to agency theory, the intention of the parties is paramount in determining whether the arbitration agreement should be extended to a third party.

### *Piercing the Veil and the Doctrine of Alter Ego*

Traditionally, a corporate relationship between two companies, would not bind a non-signatory to an arbitration agreement.<sup>92</sup> Courts are also reluctant to pierce the corporate veil and hold one corporation legally accountable for the actions of another.<sup>93</sup> However, when a relationship is so close between a parent company and its subsidiary then the courts will no longer view them as separate legal entities, but consider one "the alter ego" of the other.<sup>94</sup> When this occurs, the signing of an arbitration agreement by one party, will essentially bind the other. This doctrine may also be interpreted to bind governments to state-owned enterprises in a similar manner.<sup>95</sup>

It is important at this juncture to distinguish the principles of agency theory and the doctrine of alter ego. In *House of Koscot v American Line Cosmetics*, the courts applied the two theories as if they were interchangeable.<sup>96</sup> However, the theories derive their applicability from different sources.<sup>97</sup> Agency theory is based on contractual principles, whereas the alter ego doctrine is based on the notion of equity.<sup>98</sup> Therefore, regardless of the agreements structure, under the alter ego doctrine, a third party may still be compelled to arbitrate.<sup>99</sup>

Piercing the corporate veil is not a common occurrence, however on the rare occasion when two affiliated entities demonstrate a corporate relationship that is so close, they may effectively lose their distinct judicial identities.<sup>100</sup> The courts consider a variety of factors in determining whether to apply the alter ego doctrine.<sup>101</sup> The case of *Bridas S.A.P.I.C v Government of Turkmenistan*, found that the alter ego doctrine applies when the parent

<sup>90</sup> Tae, "Binding Non-Signatories to International Arbitration Agreements," 123.

<sup>91</sup> *Ibid*, 123.

<sup>92</sup> Moses, *The Principles And Practice Of International Commercial Arbitration*, 34.

<sup>93</sup> Hosking, "The Third Party Non-Signatory's Ability to Compel International Commercial Arbitration," 110.

<sup>94</sup> Moses, *The Principles And Practice Of International Commercial Arbitration*, 35.

<sup>95</sup> *Ibid.*, 35.

<sup>96</sup> *House of Koscot Dev't Corp. vs. American Line Cosmetics, Inc.*, 468 F.2d 64 (5th Cir., 1972).

<sup>97</sup> Corrie, "Challenges in International Arbitration for Non-Signatories," 190.

<sup>98</sup> *Harell v DCS Equip Leasing Corp.*, 951 F.2d 1453, 1458 (5<sup>th</sup> Circuit, 1992).

<sup>99</sup> Thomson); Corrie, "Challenges in International Arbitration for Non-Signatories," 191.

<sup>100</sup> Thomson; Moses, *The Principles And Practice Of International Commercial Arbitration*, 32.

<sup>101</sup> Corrie, "Challenges in International Arbitration for Non-Signatories," 191.

company completely controls the subsidiary and “commits a fraud or wrong that injured the party seeking to pierce the corporate veil.”<sup>102</sup> The notion of control and dominance of the parent over the subsidiary was further emphasized in the Second Circuit case of *Gartner v Snyder*.<sup>103</sup> Unlike the previously discussed contractual theories of incorporation by reference, agency and assumption, the alter ego doctrine draws from the economic relationship between the parties involved, to reach a fair and just result.<sup>104</sup>

### *The Group of Companies Doctrine*

The “group of companies doctrine” attempts to compel affiliated companies, not of all which are signatories to a particular contract that contains an arbitration clause.<sup>105</sup> The rationale behind the doctrine supports the notions of equity and maximizing the effectiveness of any rendered award, by ensuring the correct party is bound to arbitration.<sup>106</sup> Under the “group of companies doctrine,” provided any non-signatory was in some way involved in the performance, termination or conclusion of the agreement, then they may be compelled to arbitrate.<sup>107</sup> However, as demonstrated in the other theories discussed, the presence of intent or consent to arbitrate remains an absolute necessity.<sup>108</sup>

The doctrine was first introduced in *Dow Chemical v Isovex Saint Gobain*.<sup>109</sup> The case involved a claim being brought by a parent company and a second subsidiary, in addition to the parties which had signed the arbitration agreement.<sup>110</sup> Despite technically being separate entities, the tribunal considered the companies of “one and the same economic reality”<sup>111</sup> and therefore extended the arbitration agreement to include all of the parties.<sup>112</sup> The tribunal cited the importance of the two previously discussed requirements of, participation and intention.<sup>113</sup>

Globally, the use of the doctrine has been both limited and contentious.<sup>114</sup> Commentators consider the doctrine ambiguous and insufficiently grounded in legal reasoning to bind a non-signatory.<sup>115</sup> Many states including the US prefer the use of more traditional theories,

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102 *Bridas; Moses, The Principles And Practice Of International Commercial Arbitration*, 32.

103 *Gartner v. Snyder*, 607 F.2s 582, 586 (2nd Circuit. 1979); Tang, “Methods to extend the scope of arbitration to third party non-signatories,” 19.

104 Corrie, “Challenges in International Arbitration for Non-Signatories,” 192.

105 *Moses, The Principles And Practice Of International Commercial Arbitration*, 32.

106 *Stavros L. Brekoulakis, Third Parties in International Commercial Arbitration*, Oxford International Arbitration Series (New York: Oxford University Press, 2010), 85.

107 *Stephan Wilske, Laurence Shore, and Jan-Michael Ahrens, “The ‘Group of Companies Doctrine’—Where Is It Heading?,” Am. Rev. Int’l Arb.* 17 (2006): 74.

108 *Bamforth, “Joining non-signatories to an arbitration,”* 444.

109 *Dow Chemical v Isovex Saint Gobain ICC No. 4131/1982* .

110 *Blackaby et al., Redfern and Hunter on International Commercial Arbitration*, 101.

111 *Mohit Saraf and Luthra & Luthra: “Who is a party to an arbitration agreement - Case of the non-signatory” Institutional Arbitration in Asia [2007].*

112 Tang, “Methods to extend the scope of arbitration to third party non-signatories,” 77.

113 *Ibid.*

114 *Ibid.*, 78.

115 *Blackaby et al., Redfern and Hunter on International Commercial Arbitration*, 102 cited in *Moses, The Principles And Practice Of International Commercial Arbitration*, 38.

such as estoppel or the alter ego doctrine.<sup>116</sup> The English courts have taken a rigid stance on the application of the “group of companies” doctrine.<sup>117</sup> Initially in *Capara group Ltd v Fagor Arrastate Sociedad Cooperativa*<sup>118</sup> and later in *Peterson Farms Inc v C&M Farming Ltd*<sup>119</sup> the English courts adopted a narrow approach, asserting the doctrine was non-existent under English law.<sup>120</sup> The Swiss courts have also followed a similar approach to England.<sup>121</sup>

### *Equitable Estoppel*

Generally, the concept of equitable estoppel is applied most frequently to parties within the US.<sup>122</sup> The doctrine of equitable estoppel represents the extension of the arbitration agreement to create a right based on conduct which resembles the undertaking of contractual obligations.<sup>123</sup> The doctrine was recently explained in *Meyer v WMCO-GP L.L.C.*<sup>124</sup> In this case the court stated that any “person (including a non-signatory) claiming a benefit from a contract containing an arbitration agreement is equitably estopped from refusing to arbitrate.”<sup>125</sup> The rationale behind estoppel in arbitration was highlighted in *Grigson*, where estoppel was invoked to prevent the signatory plaintiff having it both ways.<sup>126</sup>

Alternatively estoppel may also be utilised to bind a third party following by intertwined issues.<sup>127</sup> A signatory to a contract including an arbitration agreement will be estopped from refusing arbitration to a non-signatory, when allegations are raised of substantial interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract.<sup>128</sup>

Estoppel has been considered to offer “a potential alternative” to the requirement of consent, as the foundation for binding a non-signatory, although, this notion is strongly criticised.<sup>129</sup> Nevertheless, the doctrines of estoppel, alter ego and group of companies all share one common element. The application of the doctrines are essential, as if only the formal requirements for binding a party to an arbitration agreement were applied, then justice would not be served.<sup>130</sup>

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116 Moses, *The Principles And Practice Of International Commercial Arbitration*, 38.

117 *Caparo Group Ltd v Fagor Arrastate Sociedad Cooperativa* Commercial Court, QBD, 7th August 1998; *Peterson Farms Inc v C&M Farming Ld* [2004] All E.R. (D) 50.

118 *Ibid.*, 50.

119 *Ibid.*, 110.

120 *Ibid.*, 100.

121 Blackaby et al., *Redfern and Hunter on International Commercial Arbitration*, 102.

122 Moses, *The Principles And Practice Of International Commercial Arbitration*, 37.

123 Bamforth, “Joining non-signatories to an arbitration,” 330.

124 *Meyer v WMCO-GP L.L.C.*, 211 S.W.3d 302, 305 (Tex. 2006).

125 *Ibid.*, 310.

126 *Grigson vs. Creative Artists Agency, LLC*, 210 F.3d 528 (5th Cir., 2000); Corrie, “Challenges in International Arbitration for Non-Signatories.”

127 Moses, *The Principles And Practice Of International Commercial Arbitration*, 37.

128 Meyer, 401.

129 Bamforth, “Joining non-signatories to an arbitration,” 331.

130 *Ibid.*, 331.

### *Institutional Rules, Laws and Conventions Dealing With Third Parties*

In the previous section, the theories and principles which govern when an arbitration agreement is able to be extended to a third party non-signatory were discussed. However, international arbitration is governed by a wide variety of regulations dependent on the arbitration agreement of the parties. Therefore, it is necessary to consider how regulatory bodies deal with this issue.

The New York Convention is of the utmost importance in enforcing foreign arbitration awards, as it is ratified by other 145 states.<sup>131</sup> Therefore, any arbitration award must ensure that it adheres to the terms of the convention to ensure it is able to be upheld.<sup>132</sup> Previously, this paper discussed the writing requirement set out in Article II of the Convention. However, recent changes to the UNCITRAL Model Law demonstrate a potential trend towards leniency in regards to the formal writing requirement, Article VII states “recognizing that the circumstances described therein are not exhaustive”. Recent academic commentary have also suggested that the form requirement, is being “liberally applied.”<sup>133</sup> Further, Article 7(I)’s “more favourable right” provision, allows any party who is attempting to enforce an award or an arbitration agreement to take advantage of the local laws of the enforcing jurisdiction if it is more favourable to them.<sup>134</sup>

Generally, within the arbitration agreement the parties will stipulate which institutional rules they wish to be governed by.<sup>135</sup> In recent years, institutional rules which the parties may choose to govern their arbitration have begun to address the issue of binding a non-signatory. For example, the London Court of International Arbitration Rules: Rule 22.1 allows the joining of third parties to an arbitration who have consented in writing to be bound.<sup>136</sup> Therefore, demonstrating that alongside a mounting body of jurisprudence binding third parties regulatory bodies seem to be moving in the same direction, adapting to increasing complex commercial transactions and situations. Furthermore, as arbitration is a voluntary dispute resolution technique, ensuring the relevant laws are up to date with the current commercial climate, is imperative to ensuring it remains a viable choice to parties.

## **Conclusion**

In the past, courts and tribunals have followed a strict approach in determining who is and is not a party to an arbitration agreement. Pressure from the international business community compelled regulators to make arbitration more accessible to third party non-

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131 Hosking, “The Third Party Non-Signatory’s Ability to Compel International Commercial Arbitration,” 135.

132 Corrie, “Challenges in International Arbitration for Non-Signatories,” 187.

133 Hosking, “The Third Party Non-Signatory’s Ability to Compel International Commercial Arbitration,” 134.

134 Moses, *The Principles And Practice Of International Commercial Arbitration*, 34.

135 *Ibid.*, 12.

136 London Court of International Arbitration Rules: Rule 22.1.

signatories, representing the complex nature of international commercial transactions. This paper attempted to argue the extension of the arbitration agreement to third parties is no longer the shortcoming of modern arbitration, but that a strong body of jurisprudence is building up and demonstrating more and more frequently courts and tribunals are willing to join non-signatories. Moreover, recent changes to the UNCITRAL Model Law further demonstrate the willingness in arbitration to permit a little leniency and value substance over form.<sup>137</sup>

The theories discussed were first highlighted in the US case of *Thomson*, with the addition of the “group of companies doctrine.”<sup>138</sup> It is possible to draw some conclusions from recent arbitral case-law<sup>139</sup> and to infer some common themes from the theories considered. Extension under contract-based theories, generally link the third party to the signatory of the arbitration agreement (agency or assumption), or to the agreement itself (incorporation by reference). Furthermore, the contract-based theories are generally governed by contractual or agency law. In contrast to the contractual based theories, courts and tribunals using legal doctrines to extend the arbitration agreement, consider the “economic reality” and whether extension would be equitable.<sup>140</sup> The circumstances surrounding the potential applicability of the any doctrinal approach will generally also consider the economic relationship between a signatory and a third party, as well as any derived benefit from the contract.<sup>141</sup> Nevertheless, identifying whether the parties “consented to arbitrate” remains vital, regardless of whether doctrinal or contractual theories are applied.<sup>142</sup>

The current trend of allowing third parties to arbitrate more frequently, demonstrates the flexibility of arbitration to facilitate the changing demands of the business community. The ability of arbitration to be able to effectively adapt to the needs of the business community is inherent to its survival, as it is through the commercial sector arbitration was created and as a useful tool in international business that it continues to remain a relevant dispute resolution option.

In regards to the recent changes, it is evident from the arbitral precedent and case law that judges and arbitrators are exhibiting significant caution in throwing open arbitration to non-signatories.<sup>143</sup> Overall it remains a question of balance, on the one hand, there is a necessity for flexibility to ensure the maximization of the practical effectiveness of the award, while on the other legal certainty and the consent of the parties must remain of paramount importance. Therefore, extending the arbitration agreement to include third party non-signatories, must only occur when it is definitively necessary to do so.

137 Tang, “Methods to extend the scope of arbitration to third party non-signatories,” 370.

138 Thomson.

139 Park, “Non-Signatories and International Contracts: An Arbitrator’s Dilemma,” 120.

140 Ibid., 120.

141 Corrie, “Challenges in International Arbitration for Non-Signatories,” 432.

142 Hosking, “The Third Party Non-Signatory’s Ability to Compel International Commercial Arbitration,” 10.

143 Tang, “Methods to extend the scope of arbitration to third party non-signatories,” 371.

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# Jihadi Brides: Why do Western Muslim Girls Join ISIS?

*Maren Hald Bjørgum*

**ABSTRACT:** This paper deals with the issue of why young Western women from stable families and egalitarian, female-friendly states, are choosing to leave their family and country behind to join IS' misogynistic society. Since the outbreak of the civil war in Syria in early 2011, and increasingly with the growth of IS in the region, European men and women have travelled to the area to join the fighting. According to the International Centre for the Study of Radicalisation and Political Violence almost 4000 Western European citizens had joined Sunni militant organizations fighting in Syria or Iraq as of January 2015. A surprisingly large number of these migrants are women. This paper examines the reasons for how these women get radicalized and why. Whether warrior or victim, or neither, the women who migrate to the Islamic State are searching for a meaning in their lives that did not exist in the Western world.

**Keywords:** jihadi brides, ISIS, Middle East, Europe, foreign fighters, gender identity.

## Introduction

It was 10 o'clock on a Friday night in spring 2014 and I was sitting on the sofa in my one-bed Paris apartment when I received a message from a French terrorist based in Syria: "Salaam alaikum, sister. I see you watched my video. It's gone viral – crazy! Are you Muslim? What do you think about mujahideen?"<sup>1</sup>

In May 2015, French journalist Anna Erelle published an article based on her two-year-long work to uncover why young French women were increasingly leaving a stable life in the suburbs to join IS as so-called "Jihadi brides." Posing as a young woman named Mélodie, she was exploring how the terrorist group known as the Islamic State, ISIS, ISIL or Daesh, was recruiting young Muslim Europeans through social media.

Since the outbreak of the civil war in Syria in early 2011, and increasingly with the growth of IS in the region, Western men and women have traveled to the area to join the fighting. According to the International Centre for the Study of Radicalisation and Political Violence almost 4000 Western European citizens had joined Sunni militant

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<sup>1</sup> Anna Erelle. "Skyping with the enemy: I went undercover as a jihadi girlfriend," *The Guardian*, May 26, 2015, accessed October 16, 2015, <http://www.theguardian.com/world/2015/may/26/french-journalist-poses-muslim-convert-isis-anna-erelle>

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organizations fighting in Syria or Iraq as of January 2015, making up approximately one-fifth of the total number of foreign fighters.<sup>2</sup> While we traditionally view these as men, lone wolves joining jihadist groups in the search of an adventure, respect or the promise of martyrdom and its rewards, a surprisingly large number of these migrants are women.

They call themselves muhajirin, female migrants, and speak of the need for completing Hijrah, or migration in Arabic, to join the land of Islam.<sup>3</sup> They are active on social media and blog about their life in the Islamic State as a utopian dream in contrast to the narrative served by Western media. The last couple of years, journalists, government agencies and researchers have been trying to document who these women, or in some cases girls, are, and how they are persuaded into going. And more recently, some journalists and researchers are trying to figure out why. This article addresses the two last questions: the how and the why. Why are young Western women from stable families and egalitarian, female-friendly states choosing to leave their family and country behind to join IS' misogynistic society?

Before exploring the historical background of the topic at hand, I would like to clarify my definition of a couple of key concepts that will be tackled in this paper. When talking about jihadist groups I am referring to fundamentalist and extremist groups preaching militaristic jihad, and not groups using peaceful means to promote the Islamic struggle (jihad). Furthermore, while the Islamic State is a group known by many names, it will be referred to as IS for the remainder of this paper for reasons of simplicity.

### **Race, Gender and the Islamic State (IS)**

In June 2014, the IS proclaimed itself a “worldwide caliphate” controlling a vast area of Syria and North-west Iraq. Originally formed in 1999 under the name Jama’at al-Tawhid wal-Jihad with a pledged allegiance to the terrorist group Al Qaeda, the group has grown into what many consider the most prominent threat to international security today, controlling a territory that contains a population of 8 million people.<sup>4</sup> Using social media to scare as well as recruit, IS has successfully managed to draw more than 50,000 foreign fighters to their cause as of January 2015.<sup>5</sup> One of the things that make the Western world terrified and also vilified by the growing popularity of IS, is a reaction to what Mino Moallem calls “modernity’s claim of being a post-religious and post-traditional world.”<sup>6</sup>

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2 Peter R. Neumann, “Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s”, ICSR, Department of War Studies, King’s College London, 2015, accessed October 16, 2015, <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s>.

3 Umm Sumayyah Al-Muhajirah, “The Twin Halves of the Muhajirin,” *Dabiq*, March 1, 2015.

4 Mah-Rukh Ali, “ISIS and Propaganda: How ISIS exploits women,” *Reuters Institute Fellowship Paper*, 2015.

5 Neumann, “Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s.”

6 Mino Moallem. *Between Warrior Brother and Veiled Sister: Islamic Fundamentalism and the Politics of Patriarchy in Iran*, Berkeley: University of California Press, 2005.

In the secular society the Western world has been building, there is no room for archaic traditions and faiths, and the fact that well-educated people born and raised in this society willingly surrender to something as barbaric as religion is incomprehensible. The irony of the Western world being based on Christian fundamentals is lost on many, but can be said to be a contributing factor in why some young people of non-Christian faith feel ostracized in Europe and North America. Moallem proposes a valid narrative when he states that fundamentalism, like the one IS represents, is not the final, erratic breath of a dying tradition. Rather, it is a response to the rise of secularization, a counter-attack to the ideals of modernity.

While converts and many of the younger recruits are drawn to IS for reasons like adventure and a sense of self-aggrandizement, a lot of IS' fighters and growing migrant population travel to the Islamic State for two reasons: 1) the perceived persecution of Muslims worldwide, and 2) the duty of Hijrah. The former is a very prominent topic in interviews, articles and videos written by the IS propaganda machinery. In this narrative, the Western world is involved in a long-running war of oppression against Muslims, with conflicts in the Middle East and Africa over the last two centuries (Ottoman Empire versus the Habsburg, Israel versus Palestine, the Bosnian genocide, etc.) being used as proof. The anger and frustration at the apparent inaction of the Western world in the conflict in Syria have also been an important factor in this. Conspiracy theories on the Western complicity in the conflicts, on both sides, are spread to create anger and sympathy. One such tweet states, "The killings of innocent muslims [sic] is not just collateral damage tolerated by the leaders of the west, but also directed by them"<sup>7</sup> Using photos of children, who have been injured or killed in attacks from "non-believers", IS is building up a narrative that pits Muslims against everyone else. It also speaks to a unity through race, not in the classical sense, but as a social construct of the Muslim "race" united by their commonalities in faith. The latter reason, the duty of Hijrah, is explained at length in the 8<sup>th</sup> issue of the IS magazine *Dabiq*: "Hijrah, as it was defined by Ibn Qudamah is 'to leave darul-kufr for Dār al-Islām' [Al-Mughni]. Sa'd Ibn 'Atiq (rahimahullah) said, 'It is migrating from the places of shirk and sin to the land of Islam and obedience' [Ad-Durar as-Saniyyah]."<sup>8</sup> Hijrah, migration, most commonly refers to the prophet Muhammad and his followers' move from Mecca to Medina in the sixth century to avoid assassination. In *Dabiq*, the Dār al-Islām that is referred to is a region ruled by Muslims, where Islamic laws are executed and where the authority is Muslim even if the majority of the population might be kuffar (non-believers). The article goes on to explain that according to teachings of Allah, the world is spacious enough for Muslims to create their own state, and if such

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7 Erin Marie Saltman and Melanie Smith, "'Till Martyrdom Do Us Part' Gender and the ISIS Phenomenon," Institute for Strategic Dialogue, May 1, 2015, accessed December 10, 2015, <http://www.strategicdialogue.org/publications/>.

8 Al-Muhajirah, "The Twin Halves of the Muhajirin," 32.

a state exists, believers should migrate there instantly instead of living in a state where Islamic law is not the law of the land. With the creation of the Islamic State ruled by Islamic law, some see it as their religious duty to migrate to follow Allah's commands.<sup>9</sup>

While Muslims do not share a common ethnicity or race, and even the ranks of IS are filled with soldiers of many colors and languages, IS does have a racial scheme that pits "true believers" against what is often referred to as "laymen Muslims," and Muslims against non-believers.<sup>10</sup> In August 2014, IS began a campaign to cleanse Iraq and its neighboring countries of the influence of other religions, and the Yazidis of northern Iraq fell victim to this campaign. Writing in the 9<sup>th</sup> issue of *Dabiq*, *Al-Muhajirah* justifies and glorifies the sexual slavery of Yazidi women in the article "Slave-girls or prostitutes?" According to the Islamic State, as non-believers, the Yazidis should be subjected to total humiliation: their fighters should be killed, their women captured and their children enslaved. This includes the women being sold as slaves and taken as concubines. In December 2014, infamous Australian migrant Elomar Sharrouf posted a photo on his Twitter account asking for any buyers for "1 out of 7 Yazidi slave girls", for "\$2500 each."<sup>11</sup>

### **Female Foreign Fighters of Islam**

Both in scholarly articles and news journalism women are usually assumed to be passive, nonviolent or peripheral agents, being used, abused or conned into joining a cause by their dominant partner, father or other male authority figure. However, female terrorists, female foreign fighters and female terror brides are not a new concept. Throughout history women have joined fundamental battles alongside their husbands and sons, picking up weapons to fight for their beliefs. Sometimes women can even be more radicalized than their men. In their article "European Female Jihadists in Syria: Exploring an Under-Researched Topic", ICCT Research Fellows Edwin Bakker and Seran de Leede state that while there is a lot existing scholarship on the role of women in terrorism and women in jihadist movements, little research has been done on the female foreign fighters joining these movements.<sup>12</sup> They also point out the fact that historically involvement on this scale is unprecedented, thus increasing the demand of research on the field to explain the how, why and what of the issue in order to manage or prevent further recruitment by IS. Ali

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9 *Al-Muhajirah*, "The Twin Halves of the Muhajirin," 33.

10 *Ibid.*, 34.

11 Saltman and Smith, "'Till Martyrdom Do Us Part' Gender and the ISIS Phenomenon," 28.

12 Edwin Bakker and Seran De Leede, "European Female Jihadists in Syria: Exploring an Under-Researched Topic," *ICCT - International Centre for Counter-Terrorism*, April 1, 2015, accessed October 10, 2015, <http://icct.nl/publication/european-female-jihadists-in-syria-exploring-an-under-researched-topic/>.

summarizes the main view of most of the scholarship when she writes that there seems to be one universal factor that influences the decision of both men and women to join IS: the promise of an adventurous life while at the same time offering meaning to their lives.<sup>13</sup>

IS as an organization brandishes its creed to bring forth the return of the Khilafah through bloodshed and violence. As Al-Muhajirah writes in *Dabiq*: “By Allah, we brought it back by the edge of the sword, and we did not do so through pacifism, negotiations, democracy, or elections. We established it according to the prophetic way, with blood-red swords, not with fingers for voting or tweeting.”<sup>14</sup> While IS has not yet allowed women to fight, there are two special forces in the Islamic State’s military system that consist of women only. In the Jordanian hostage crisis of January 2015, IS demanded the return of would-be suicide bomber Sajida al-Rishawi in exchange for the Jordanian pilot they had in their possession. Al-Rishawi participated in a suicide attack in Amman in 2005, together with her husband, but while his bomb vest detonated, hers did not. The demand for a female hostage, rather than any of the male hostages held by Jordan shows that IS is increasingly appreciative of female participation in the jihad.<sup>15</sup>

### **Jihadi Chic: the Lure of ISIS**

As Mah-Rukh Ali notes in her article “Isis and Propaganda – How Isis Exploits Women,” it is a paradox that despite the perceived brutality of the organization, IS recruitment continues to escalate. Equally paradoxical is the fact that women are increasingly joining the group in stark contrast to its promotion of violence, both physical and sexual, against women and children. As discussed in the previous section, female terrorists are hardly a new concept in the world of security studies. However, the aggressive tactics IS is employing specifically towards women is unique. It is important to note that evidence has shown that these girls and women are very diverse, both in their background, reasons for radicalization and migration, and actions once part of IS.<sup>16</sup> So, while the push and pull factors presented in this section are true for some migrants, they cannot be used to generalize on the motivations for all of these girls and women.

In an interview with CNN Inside, Michael Steinbach, current head of the FBI’s counterterrorist division, said, “[the] recruitment of women by ISIS is much more than we’ve ever seen by a terrorist organization.”<sup>17</sup> As many as 550 or more girls and women have migrated to Syria and Iraq to join IS since it set up shop, and it does not look like

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13 Ali, “ISIS and Propaganda: How ISIS exploits women,” 15.

14 Al-Muhajirah, “The Twin Halves of the Muhajirin,” 47.

15 Saltman and Smith, “‘Till Martyrdom Do Us Part’ Gender and the ISIS Phenomenon,” 18.

16 Ibid.

17 By Pamela Brown and Wesley Bruer, “FBI official: ISIS is recruiting U.S. teens,” *CNN*, February 3, 2015, <http://www.cnn.com/2015/02/03/politics/fbi-isis-counterterrorism-michael-steinbach/>

the flow will slow down anytime soon.<sup>18</sup> In the IS magazine *Dabiq*, regular contributor Umm Sumayyah Al-Muhajirah, writes about the Hijrah (migration for the cause of Allah) of herself and many others like her:

[Now] every day there are not only muhājirīn to the land of Islam but also muhājirāt who were sick of living amongst kufr and its people. As soon as the sun of their awaited state rose, they rushed to it alone and in groups from the eastern and western extents of the Earth. Their colors and tongues are different, but their hearts are united upon “there is no god but Allah.” I remember the day I performed hijrah, I was the only Arab woman amongst the muhājirah sisters during that trip.<sup>19</sup>

It is important to note here that Umm Sumayyah Al-Muhajirah is in all likelihood a fabricated name, “Umm” meaning mother and “Muhajirah” meaning female migrant. The romantic vision of an Islamic utopia, combined with the promise of a romantic partner at the end of the road is strong in these narratives. As Saltman and Smith note, the prize of a meaningful romance, unlike the childish high school flirting of their everyday lives, appeal to the younger segment of potential Jihadi brides.<sup>20</sup> On Tumblr, one user named *diary-of-a-muhajirah* tells her followers of how she met her husband after arriving in Shaam (the Islamic State): “After we finished the salah, he turned back and smiled at me. And I can feel something. Yes, I guess I just fell in love with someone - my husband! Allāh has answered my prayer. Al Hamdulillah.” This romantic narrative, perpetuated by countless social media accounts on Tumblr, Twitter, Ask.fm and Instagram glorify the life in the Islamic State and accentuate the romantic and picture perfect-worthy. In another example of these romantic notions you have the case of Zahra and Salma Halane, twin sisters from Manchester who traveled to Syria in 2014. Both were married to IS fighters, and then widowed less than 6 months later. Instead of mourning the deaths of their husbands, the girls expressed pride in the martyrdom that took their husbands’ lives, Zarah posting that she was now the “wife of a green bird.” According to Saltman, this term is a common reference expressed by Western female migrants, explaining that: “This aspiration is bound to notions of honor and a strong belief in the possibility for reunion with spouses, family members and friends in jannah or ‘paradise.’”<sup>21</sup> Combined with the glorification of their husbands’ deaths, this narrative serves to romanticize the act of being a widow and quells potential fears of would-be Jihadi widows.

The propaganda brought forth by Jihadi brides themselves is coupled with the active recruitment of IS men. Men like the one Anna Erelle communicated with under the disguise of being a Muslim teenager in France. As more information is gathered on how

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18 Neumann, “Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s.”

19 Al-Muhajirah, “The Twin Halves of the Muhajirin,” 33.

20 Saltman and Smith, “‘Till Martyrdom Do Us Part’ Gender and the ISIS Phenomenon,” 20-23.

21 Ibid., 24.



this communication happens, there is a growing consensus that the strategies employed by IS are the same that pedophiles and other sexual predators use when recruiting young victims online.<sup>22</sup> By forming secret relationships, providing emotional support, establishing trust and then setting up a formal meeting offline, is very true to the norm of the expert pedophile.

In addition to actively pursuing female recruits, IS has also published a “Manifesto for Women,” a guideline put together by educated Western women from the IS ranks, of both Anglo-Saxon and Arab ethnicity, formulating how women should behave in the Islamic State.<sup>23</sup> The document states that women and men are not equal, stipulates rules for how and what jobs women in the Islamic State can employ, and how they should dress. It also states that the way women in the west work has made them accept corrupt ideas, and that “the model preferred by infidels in the West failed the minute that women were ‘liberated’ from their cell in the house.” The manifesto includes a year-to-year guide on how a woman should lead her life, including statements on how a girl can be married at nine, and should be married by age 16 or 17.<sup>24</sup> All of these measures suggest a long-term design that diverges from other, more traditional terrorist organizations. As Sara Mahmood writes in her paper on the female IS fighters “Marrying women to the jihadists will ensure that the lineage of the Muslims fighting to create the ultimate caliphate persists.”<sup>25</sup> Ironically, considering the manifest’s focus on the woman being subservient to her husband, many young girls who join IS are looking for respect, according to Mahmood. In a Europe plagued by Islamophobia, many girls and women long for a society where their use of the hijab will not alienate them or make them a target for racism.

### Agency and Jihadi Feminism

Through globalization, national and personal identities have met with a new crisis, as the nation-state and dominant narratives that used to shape them are corroding. The outcome has been, in the words of Moallem, a war “between the dominant and the dominated ethnicities, as well as hegemonic masculinities and emphasized femininities.”<sup>26</sup> In this crisis of cognition, as the cookie-cutter shape is no longer available to present people with a recipe for who they are and what their role in society is, a “desire for lost unity” emerges. Gender identity is one of the key issues in this crisis, pushed to the center stage when the side effect of modernity and globalization turned out to be the introduction of women into industries and arenas previously dominated by men. The outcome, feminism,

22 Tami Amanda Jacoby, “Jihadi Brides at the Intersection of Contemporary Feminism,” *New Political Science* 37, no. 4 (2015): 537.

23 Ali, “ISIS and Propaganda: How ISIS exploits women,” 13.

24 Ibid.

25 Sara Mahmood, “Female fighters of Islamic state: why more from the West?” RSIS Commentaries, Singapore: Nanyang Technological University, 2015: 1.

26 Moallem, *Between Warrior Brother and Veiled Sister: Islamic Fundamentalism and the Politics of Patriarchy in Iran*, 155.

is the radical opposition to fundamentalism. They are both a product of modernization, born out of the “crisis of masculinity” and the conflict between the public and private, and represent two opposing poles through Islamic fundamentalism and Western egalitarian feminism.

Enacting the word feminism on behalf of the Islamic State might seem, from a Western perspective, paradoxical. However, female and male converters are doing exactly that. Jihadi Brides represent a new aspect of feminism, aligned with Islamic fundamentalism, and in its very essence anti-Western egalitarian feminism. As Jacoby notes in her article on contemporary feminism, Jihadi feminism unsettles two key assumptions made by contemporary feminists: “That all women *want* gender equality, and that all women *want* to be heard.”<sup>27</sup>

Jacoby presents three different perspectives on how to understand Jihadi brides in a feminist perspective: 1) the victim, 2) the warrior, and 3) the Feminist.<sup>28</sup> The first aspect, viewing the girls as victims whose “political motives are generated from a position of powerlessness or depravity at the hands of men” is a somewhat unpopular view in gender studies because it takes away the possibility of agency. However, as Jacoby points out, oppression of women does exist in some political contexts, and from what we know of IS’ society it is a severely oppressive one given the fact of its patriarchal readings of scripture and the absence of a rights-based culture.<sup>29</sup> Furthermore, many of the girls who migrate to Iraq and Syria to join up with IS are by all probabilities not aware of what their situation will be like in the Islamic State, and thus are goaded in much the same way as victims of human sex trafficking.

The warrior-aspect employs many of the same criteria used to define male recruits to IS, the most vital one being that of a political motive. One important factor in this is the idea that the women involved usually identify more with their husband and his compatriots than they do with other women.<sup>30</sup> Women like the legendary Khawlah bint al-Azwar, a Muslim warrior from the seventh century and one of Muhammad’s first followers, represent the dream scenario for these women, fighting and killing for a cause that they themselves believe in as much as their husbands. It should come as no surprise that women would want to pick up arms and fight; from Jean D’Arc to Hua Mulan, history is filled with women wanting to take part in the fighting and claim their agency in a war they truly believe in. Being able to fight is its own kind of feminism.

Closely related to the view of the warrior, but with some variation is the third scenario: Jihadi brides as feminists. This is by far the most optimistic of the perspectives Jacoby presents, where the Jihadi brides are working to break down the constraints of the gender

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<sup>27</sup> Jacoby, “Jihadi Brides at the Intersection of Contemporary Feminism,” 537.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., 538.

hierarchy in both their country of origin and in the Islamic State.<sup>31</sup> In times of war or serious crisis, women often see their position in society change as the need for manpower or support necessitates the active participation of women. IS has opened up for more active participation of women in warfare in the future, and for the Jihadi brides that can be seen as a real feminist victory in their right to defend their beliefs and their right to take action on the same grounds as men.

IS is also taking into account the idea of feminism when recruiting young women. As mentioned in the previous section, the manifesto specifically concerned with women is one of many strategic moves to build up the agency of potential recruiters. Starting with the 7<sup>th</sup> issue IS-magazine *Dabiq*, published in February 2015, there is a column specifically targeted at jihadi brides and potential female recruits called “To Our Sisters.” It is signed Umm Sumayah Al-Muhajirah, mentioned in earlier sections in this essay, and frequently references the hijrah, religious duty and the important roles women play in building what is essentially the Islamic State’s utopia. In the 8<sup>th</sup> issue of the magazine, Al-Mahajirah preaches to her fellow sisters, telling them to be strong and patient, and to await their reward:

Be firm, my dear sister, be patient, and await your reward. Be wary, be wary of thinking of going back to the lands of the *tawāghīt*. Know that you have sisters who have been afflicted with great afflictions. Some of their husbands were killed, some were amputated, some were paralyzed, and some were imprisoned, but their wives were firm like the firmest of mountains. The tribulations did not increase them in anything but firmness and patience. Do not forget that reward is in accordance with the degree of hardship and ‘The matter of the believer is amazing.’<sup>32</sup>

Feminism for the sisters of the Islamic State, in their own words, is the strong belief in the fact that women are the rocks and mortar of the family. Women are there to support their husbands and family, to uphold the traditions, and to keep the ideology alive through themselves as well as their offspring. As Saltman and Smith notes, “females joining the ISIS movement are not only rejecting the culture and foreign policy of the West they leave behind; they are also embracing a new worldview, cultivated by ISIS, based on building what they are told will become a utopian society.”<sup>33</sup> The women who join IS celebrate every victory as another step in the fight for utopia, and every new recruit as another subject saved for the *khilafah* (the region controlled by IS). Within the radicalization process, the women share a strong belief in their fulfilling religious duty and as nurses, teachers, wives and mothers they contribute and are assured their due reward in the afterlife.<sup>34</sup>

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31 *Ibid.*, 540.

32 Al-Muhajirah, “The Twin Halves of the Muhajirin,” 37.

33 Saltman and Smith, “‘Till Martyrdom Do Us Part’ Gender and the ISIS Phenomenon,” 14.

34 *Ibid.*, 15.

## **Conclusion**

As Syrian and Iraqi refugees are filling up newspaper articles and academic journals, and European countries, the trickle of Western migrants moving from Europe to the war-torn regions of Iraq and Syria remain a mystery to many. As this paper has shown, there are many different kinds of motivation that drive these women to migrate from the West to the Islamic State, some similar to the male recruits, while others are more related to female tropes. Whether warrior or victim, or neither, the women who migrate to the Islamic State are searching for a meaning in their lives that did not exist in the Western world. The promise of traditional gender identities, respect and agency in a world that assumes Muslim girls have none are issues that the Western world needs to address if they want to stop this growing migration. Whether a less polarized political climate would de-radicalize these girls and women is uncertain, and so far IS propaganda techniques seem too efficient. More research is needed in this field, not just to fully understand what drives this migration, but also to uncover if there might be any preventive measures available to stop more girls from leaving their family in search for a reality that by all accounts does not exist.

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