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THE INTERNATIONAL RELATIONS JOURNAL
SAN FRANCISCO STATE UNIVERSITY

Contents

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Overview

THE INTERNATIONAL RELATIONS JOURNAL at San Francisco State University strives to exhibit the diverse range of undergraduate and graduate research interests that flourish in our department.

Each semester, the *Journal* is offered as a course in which students participate as writers or editors in a peer review process, or as administrative staff members who assist authors and editors as well as guide the *Journal* through its production.

The goal of the course is to expose students to the peer review process, focusing on academic standards of argumentation and factual accuracy, citation formatting, and collaborative editing using Microsoft Word's "track changes" feature. More broadly, the Journal's executive editors aim to help students develop writing/editing skills applicable in other courses and promote a deeper understanding of the discipline of international relations as a whole.

Submissions & Process

The *Journal* encourages all students pursuing a B.A. or M.A. in International Relations to submit completed works (incomplete papers and abstracts are not accepted) at the beginning of each semester. From these submissions the *Journal*'s executive editors assign students to positions on the writing and editorial boards as well as a number of administrative-level appointments.

The course curriculum includes a number of informational workshops and at least three rounds of structured editing and revision. All editing is anonymous and each submission is reviewed by three different editors.

The structured peer review is as follows: [1] a submission is first edited by an undergraduate or graduate "peer expert" who has conducted prior research on topics and/or regions relevant to the paper and can thus provide fact checking and citation suggestions; [2] second round editing focuses on clarity and academic tone by pairing the manuscript with an editor unfamiliar with the paper's subject; [3] finally, the paper is edited for proper citation formatting and technical aspects.

At the end of the semester, authors participating in this process are expected to submit a final manuscript for consideration by the *Journal*'s executive editors and the faculty advisor.

Publication of Articles

Only submissions that have gone through the peer review process and meet the content and formatting requirements, will be considered for publication. The *Journal* is published yearly.

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ABSTRACT »   *In this research paper, I have sought to provide an analysis on the territorial dispute between China and Japan over the Senkaku/Diaoyu Islands. I have given a short history of Japan's acquisition of the islands and shown that treaty law from 1895 through 1972 is insufficient to clarify whether Japan or China has rightful territorial title. I then turned to customary and case law to identify the principles of territorial acquisition and to apply these principles to the claims of the Chinese and Japanese governments. It would appear that Japan, by virtue of its effective occupation of the uninhabited islands since 1895, has a stronger claim than China, which bases its purported title on ancient discovery. I then highlighted the economic, legal, and security implications the dispute may have on not only the two countries, but also the United States, which is bound by treaty obligation to protect territory under Japanese administration. Because both China and Japan have much to lose in natural resources if the matter were presented to the International Court of Justice for adjudication and because the rationale confirming Japanese territorial possession in the Senkaku matter may work against it in other territorial disputes, it would seem more reasonable for leaders in the two countries to come to a compromise over access to natural and living resources within the disputed area as well as to cooperate on joint administration where exclusive economic zones overlap.*

Sino-Japanese Legal Standoff in the East China Sea: *An Examination of Which Country Has the Stronger Claim in the Territorial Dispute over the Senkaku/ Diaoyu Islands*

by Carlo Barlaan

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On September 14, 2012, a flotilla of Chinese maritime patrol vessels entered Japanese-controlled waters within the vicinity of the disputed Senkaku Islands (also known as the Diaoyu Islands) located in the East China Sea.[1] These uninhabited islands have been effectively administered by Japan for most of the period since 1895; however, they are also claimed by China. China's provocative display of national self-assertion drew official protest from Tokyo.

Prior to this incident, tensions had already escalated between the governments and peoples of the two nations. In August, Japanese right-wing parliamentarians swam to one of the islands and planted a flag, thus sparking public outrage and mass anti-Japanese protests in a number of Chinese cities. Amid rising diplomatic tensions, the Japanese government purchased the islands from their private owner – an act the Chinese government decried as illegitimate.[2]

In November 2013, Beijing declared an Air Defense Identification Zone (ADIZ) over the Senkakus, requiring all traversing aircraft to provide identification and flight plans to Chinese civilian and military authorities or face "defensive emergency measures."[3] In defiance against China

1 See Martin Fackler, *Chinese Ships Enter Japanese-Controlled Waters to Protest Sale of Islands*, New York Times, Sept. 14, 2012, available at http://www.nytimes.com/2012/09/15/world/asia/chinese-ships-enter-waters-japan-controls.html (last visited on Mar. 21, 2014).

2 Martin Fackler, *In Shark-Infested Waters, Resolve of Two Giants is Tested,* New York Times, Sept. 22, 2012, available at http://www.nytimes.com/2012/09/23/world/asia/islands-dispute-tests-resolve-of-china-and-japan.html?pagewanted=all (last visited on Mar. 21, 2014).

3 Chris Buckley, *China Claims Air Rights Over Disputed Islands*, New York Times, Nov. 23, 2013, available at http://www.

and in a show of support for its Japanese ally, the United States sent two B-52 Bombers right through the Chinese ADIZ.[4] In light of these events, one wonders which country the Senkaku/Diaoyu islands really belong to. Which country has the stronger claim to these islands?

In this paper, I seek to answer this question by first presenting the basic material and legal facts leading to the Sino-Japanese dispute. In examining the three major treaties that have been signed between China, Japan, and the United States since 1895, I find that treaty law is by itself insufficient to establish which country has rightful title to the islands. I then look to the relevant customary principles of territorial acquisition, and I relate them to Chinese and Japanese territorial claims. In the section thereafter, I present two landmark cases of arbitration that show how these customary principles have previously been applied to territorial dispute settlement in a court of international law. After applying case law to an assessment of the claims of China and Japan, I move on to examine the economic, legal, and security implications of the dispute, and I suggest what measures China and Japan could take to mitigate the situation short of adjudication by the International Court of Justice (ICJ).

MATERIAL FACTS LEADING TO THE DISPUTE AND THE INSUFFICIENCY OF TREATY LAW

The material facts leading to the territorial dispute between Japan and China date back to 1884, when Japan initiated land and maritime surveys of the Senkaku/Diaoyu Islands. These surveys revealed that the islands were uninhabited and that there was no physical indication of sovereign control by another country. At the time, the imperial government in Beijing did not protest these activities.[5]

Ten years later, in 1894, China and Japan engaged each other militarily in what would later be known as the First Sino-Japanese War. Amid hostilities, in January 1895, Japan officially incorporated the Senkaku Islands into its territory as part

of Okinawa prefecture. Three months after Japan's incorporation of the Senkaku Islands, in April 1895, Chinese and Japanese plenipotentiaries signed the Treaty of Shimonoseki thereby officially ending the First Sino-Japanese War.

The terms of this treaty were largely punitive to China. In addition to paying a massive war indemnity to Japan (Article 4), granting Japan most favored nation treatment in regards to commerce and opening Chinese ports to trade (Articles 5 and 6), and permitting the Japanese to militarily occupy the mainland province of Shandong (Article 8), China ceded Formosa (modern-day Taiwan) and the islands of the Pescadores (Article 2).[6] There was no mention of the Diaoyu/Senkaku Islands in this treaty.

Following its annexation by Japan, the Senkaku Islands were immediately subject to development and resource extraction. Docks, warehouses, and reservoirs were constructed, and Japanese nationals engaged in guano-collecting activities. There would be no change in administration over these islands until the end of the Second World War in 1945, when Japan unconditionally surrendered to the Allied powers. At the time of Japan's surrender, the Senkaku Islands were placed under U.S. military administration.

In Japan's signing of the 1951 San Francisco Peace Treaty, Japan lost what it had gained in the 1895 Treaty of Shimonoseki. Article 2 stipulated that Japan would renounce title to Formosa and the Pescadores. Article 3 stated that Japan would concur to have the United States retain administrative jurisdiction over "Nansei Shoto south of 29 degrees north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island, and the Volcano Islands) and Parece Vela and Marcus Islands."[7] The territory placed under U.S. administration through Article 3 included the Senkaku Islands.

In 1971, the United States returned to Japan the territory placed in its administrative jurisdiction through Article 3 of the San Francisco Treaty. Article 1 of the reversion agreement stated, "With respect to the Ryukyu Islands and the Daito Islands… Japan, as of such date, assumes full responsibility and authority for the exercise of all and any powers of administration, legislation and jurisdiction over

nytimes.com/2013/11/24/world/asia/china-warns-of-action-against-aircraft-over-disputed-seas.html (last visited Mar. 21, 2014).

4 Thom Shanker, *U.S. Sends Two B-52 Bombers into Airzone Claimed By China*, New York Times, Nov. 26, 2013, available at http://www.nytimes.com/2013/11/27/world/asia/us-flies-b-52s-into-chinas-expanded-air-defense-zone.html (last visited on Mar. 21, 2014).

5 Jean-Marc Blanchard, *The U.S. Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands, 1945-1971*, 161 The China Quarterly 102 (2000).

6 University of Southern California US-China Institute, Section on Resources, *Treaty of Shimonoseki, 1895*, available at http://china.usc.edu/%28S%28u0o4uo4552nc4b45rm1khibm%29A%284BUbwWp7zQEkAAAAZDlkMDBjYTctYjM1NC00ODg1LWE5YjgtYTg4NGGE0ZDc0ODU4BJSk2ve3v12T5hSKPbdqc1b-n8A1%29%29/ShowArticle.aspx?articleID=405&AspxAutoDetectCookieSupport=1 (last visited on Mar. 21, 2014).

7 *Treaty of Peace with Japan*, art. 3, Sept. 8, 1951, 136 U.N.T.S. 48-49 (1952).

the territory and inhabitants of the said islands."[8] The United States, in the signing of the reversion agreement, simply transferred administrative authority over the Senkaku Islands to Japan; it did not establish that these islands (or for that matter, all of the Ryukyu Islands) were the sovereign territory of Japan. Whatever the legal status the Senkaku Islands were prior to the outbreak of war between the United States and Japan was the legal status they had re-entered. What treaty law did not explicitly state, Japan reassumed and China contested.

THE CUSTOMARY PRINCIPLES OF TERRITORIAL ACQUISITION AND THE CLAIMS OF CHINA AND JAPAN

Given that treaty law has been insufficient in determining whether China or Japan has rightful title to the Senkaku Islands, it is necessary to apply customary rules of territorial acquisition to their competing claims of sovereignty. The methods most relevant to the Sino-Japanese dispute include discovery or occupation of *terra nullius*, military conquest, cession, and prescription.

According to the principle of discovery or occupation of *terra nullius* (meaning "no one's land") as practiced by European states through the 1600s, if a state had discovered uninhabited land that no other country had laid claim to, it could rightly occupy or simply incorporate this land into its sovereign territory. Through military conquest a state seeks to expand its borders simply through invasion and occupation of land belonging to another state. Through cession, one state agrees to give up part of its sovereign territory to the other state in exchange for a concession such as a sum of money. Finally, according to the principle of prescription, one state obtains title to territory through longstanding, peaceful, and effective display of sovereignty over land that another state claims.[9]

As far as the first principle of discovery relates to the matter, both China and Japan claim to have been the first to discover the Senkaku/Diaoyu Islands, and they claim to have done so at different times. China asserts that its former imperial leaders had known of these islands for centuries as evidenced by their appearance on maps drawn by ancient scholars. Japan, on the other hand, claims that it had discovered the Senkaku Islands in 1884. According to Japanese surveyors at the time, the

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8 *Agreement Between the United and Japan Concerning the Ryukyu Islands and the Daito Islan*ds, art.1, 841 U.N.T.S. 275 (1972).
9 Lori F. Damrosch, et al., *International Law: Cases and Materials* 376-383 (5ᵗʰ ed. 2012).

islands were uninhabited and showed no sign of having been appropriated by imperial China or any other state.

Concerning the principles of military conquest and cession, China asserts that Japan acquired the Senkaku Islands as a consequence of its defeat in the First Sino-Japanese War in 1894. Japan took by force what China did not give. In January 1895, without the agreement of China and before a treaty officially ending the war had been signed, Japan had incorporated the islands into Japanese territory. When Chinese representatives signed the Treaty of Shimonoseki in April, they had only ceded the islands of Formosa and the Pescadores while the Senkaku Islands were left unmentioned.

Japan, on the other hand, claims that its incorporation of the islands into Okinawa had nothing to do with the war and did not occur as a consequence of the treaty. As stated before, Japan regards the Senkakus to have been the sovereign territory of no state prior to its modern discovery; thus, they could not have been China's to cede.

Furthermore, the Chinese government had not protested Japanese surveying activities on and around the Senkakus between 1884 and 1895. China, from a Japanese point of view, had acquiesced. The principle of prescription, thus, could not apply to Chinese claims over the islands, since it did not appear that the Chinese government had been effectively demonstrating authority over them. Under these conditions, the islands may have been capable of being appropriated.

These are the principles of territorial acquisition relevant to the claims of Japan and China over the Senkaku/Diaoyu Islands. The following cases of territorial dispute arbitration will further illustrate how these customary principles have been applied to competing claims of state parties in the past. The rationale leading to the rulings in these cases may hint at how the Sino-Japanese dispute may play out if adjudicated in a court of international law. Like the Senkaku matter, the material facts concerning these cases date back to the latter half of the 19ᵗʰ century.

Case 1: Island of Palmas (United States v. Netherlands)

In *Island of Palmas*, the United States and the Netherlands appeared before the Permanent Court of Arbitration in 1928 to settle a territorial dispute over the maritime Southeast Asian island of Palmas situated between the U.S. Philippine

Islands and the Dutch East Indies. This dispute had its origins in the outcome of the 1898 Spanish-American war and signing of the Treaty of Paris, in which a defeated Spain had ceded the Philippines to the American victor. Title to all islands of the Philippine archipelago that Spain had claimed sovereignty over for the past two hundred years would be transferred to the United States, including the island of Palmas situated in the archipelagic far south. This island, however, had for centuries been occupied and peacefully administered by the Netherlands as a part of the neighboring Dutch East Indies with the consent of indigenous chieftains.

While the United States claimed that the island was theirs by virtue of its discovery by Spain, which had transferred title of land through treaty, the Netherlands argued that what it referred to as Miangas was Dutch territory by virtue of effective, peaceful occupation and clear display of sovereignty.

The court ruled in favor of the Netherlands stating that its "title of sovereignty, acquired by continuous and peaceful display of State authority during a long period of time going probably back beyond the year 1700, therefore holds good."[10] The United States' argument that the island of Palmas was its possession by virtue of Spanish discovery and eventual title-transfer through treaty, did not hold, because any claim to territorial sovereignty, even if based on initial discovery, would additionally require demonstration of effective occupation. This display of territorial control to ascertain national sovereignty had developed into the norm through the 18th century; however, neither the Americans nor the Spanish before them had clearly demonstrated effective control over the island of Palmas at the time the Treaty of Paris was signed. Thus, the island was not effectively Spain's sovereign territory to give to the United States.

Furthermore, the Dutch had, from the 17th through the 19th century, entered numerous conventions with local chieftains establishing recognition of the Netherlands' control over Miangas, and neither Spain nor the United States had contested Dutch displays of sovereignty over the island until 1906 – eight years after the Treaty of Paris was signed.

A parallel may immediately be drawn between the weaker discovery-based American claim over Palmas and that of China over the Diaoyu Islands. How is China's current claim based on discovery any different from the U.S. claim over

10 Island of Palmas Case (The United States v. Netherlands), Permanent Court of Arbitration, 2 U.N. Rep. Int'l Arb. Awards 869 (1928).

Palmas based on Spanish discovery? One must also ask whether China's purported discovery of the Diaoyu Islands had been supplemented by an effective occupation similar to that of the Dutch over Miangas.

Another parallel may be drawn between American non-contestation of Dutch sovereign acts over Miangas in the eight years following nominal U.S. acquisition of the island from Spain, and imperial Chinese non-contestation of Japanese activities on and around the Senkaku islands for eleven years prior to their incorporation into Japan. If evidence of U.S. acquiescence to Dutch control weakened its territorial claim over Palmas, might not this be the case for China and the Diaoyu Islands?

<center>Case 2: Clipperton Island (France vs. Mexico)</center>

In the case of *Clipperton Island*, the decision of which was rendered in 1931, France and Mexico contested each other's claim of sovereignty over an uninhabited island located in the eastern Pacific Ocean. In November 1858, a French naval officer, while onboard a commercial vessel a half-mile off the island's shore, proclaimed Clipperton (referred to as Medanos in Mexico) to be the sovereign territory of France. Although crew members had successfully landed, they had departed without leaving anything physical that would indicate that the island from that moment forth was French territory. Nonetheless, the lieutenant had notified the French consulate in Honolulu of the declaration of sovereignty over the island, and in December this declaration was published in a Hawaiian journal. No other act of French sovereignty over the island had been issued for the next two decades, and Clipperton remained uninhabited and without an established organization of administration.

In December 1897, a Mexican gunboat landed on Clipperton, and its crew raised the flag of Mexico on the island. The French government, upon notification of the incident, asserted in its correspondence with the Mexican government that Clipperton was the sovereign territory of France. After further diplomatic correspondence, the two parties agreed to have the matter arbitrated by the King of Italy.

Mexico claimed that what it referred to as Medanos Island was its territory by virtue of Spanish discovery and state succession. However, the arbitral authority found there to be no evidence of discovery by Spain, and even if it had discovered Medanos, Mexico would have had to prove that Spain effectively incorporated the island into its territory. This exercise of sovereign authority, however, was not

demonstrated, and a geographical map produced by Mexican representatives at the arbitral hearing did not qualify as proof of effective incorporation since it did not appear to have been drawn at the order of the state.

France claimed that Clipperton was *terra nullius* upon proclamation of sovereignty in 1858 and therefore became French territory by virtue of effective occupation. The question remains: How effective does the occupation have to be in order for the acquisition of territory to be valid under international law?

The arbitral authority ruled in favor of France, stating that "if a territory, by virtue of the fact that it was completely uninhabited, is, from the first moment when the occupying state makes its appearance there, at the absolute and undisputed disposition of that state, from that moment the taking of possession must be considered as accomplished, and the occupation is thereby completed."[11] Establishment of an organization on the island to administer the laws of the state was simply another step in the acquisition of territory. Therefore, the proclamation of French sovereignty over Clipperton in November 1858 was all that was required to demonstrate France's legitimate acquisition of territory, even when no other state act indicative of French sovereignty was administered for two decades thereafter.

When Japan had made its appearance on the Senkaku Islands in the 1880s was it similar to that of France on Clipperton at "the absolute and undisputed disposition of the state?"[12] Are ancient Chinese maps sufficient to demonstrate effective occupation of terra nullius – that being the Diaoyu Islands? The following section answers these questions while putting the territorial claims of China and Japan over the Senkaku/Diaoyu Islands to the test.

AN ASSESSMENT OF CLAIMS

Given the principles of territorial acquisition and the rationale behind the decisions rendered in previous territorial dispute cases, one may now better ascertain which country would have a stronger claim to the Senkaku/Diaoyu islands. In this endeavor, it may also be necessary to consider if Japan's incorporation of the Senkaku Islands into Okinawa in January 1895 constituted a lawful acquisition.

In *Island of Palmas*, the Court ruled that discovery of territory was insufficient to establish title of territorial acquisition. Discovery only created an inchoate title, which "must be completed within a reasonable period by the effective occupation of the region claimed to be discovered."[13] Thus, even if China's claims to have discovered the Diaoyu Islands hundreds of years before Japan's own claim to discovery in 1884 are true, it would still have to prove that the former imperial state exercised *effective* control of the islands through sovereign acts.

China may argue that the islands' appearance on maps that were drawn during the Ming and Qing dynasties are evidence of administrative control. However, these maps may be insufficient to prove that these islands were an integral and effectively administered part of Chinese territory. In *Clipperton Island*, Mexico argued that the disputed island was its territory by virtue of Spanish discovery, state succession, and the appearance of that island on old geographical maps. However, the arbitral tribunal found that these maps were not drawn by official order and thus were not reflective of the territorial claims of the state. (It is important to note that an official map, though reflective of a state's claim to territory, may not reflect an effective occupation of it.)

Were the maps showing the existence of the Diaoyu Islands drawn by the order of the Chinese imperial state? Even if they were, was this appearance reflective of effective administrative control? (After all, it isn't just China that appears on Chinese maps.) As mentioned in the decision in *Clipperton Island*, "It is beyond doubt… that the actual, and not nominal, taking of possession is a necessary condition of occupation."[14] China would still have to show through other means that, prior to the arrival of the Japanese, it clearly demonstrated sovereignty over the islands.

In *Clipperton Island*, the arbitrator also stated that possession of new territory is accomplished "from the first moment when the occupying state makes its appearance there."[15] When did China make its physical appearance on the Diaoyu Islands? Is there evidence to prove that it had done this by state order? If no evidence exists to clearly show that China had physically made its presence known on the

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11 See *Clipperton Island (France v. Mexico),* 2 U.N. Rep. Int'l Arb. Awards 1105, 26 A.J.I.L. 394 (1932).

12 See *Clipperton Island (France v. Mexico),* 2 U.N. Rep. Int'l Arb. Awards 1105, 26 A.J.I.L. 394 (1932).

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13 See *Island of Palmas Case (The United States v. Netherlands),* Permanent Court of Arbitration, 2 U.N. Rep. Int'l Arb. Awards 846 (1928).

14 See *Clipperton Island (France v. Mexico),* 2 U.N. Rep. Int'l Arb. Awards 1105, 26 A.J.I.L. 393 (1932).

15 See *Clipperton Island (France v. Mexico),* 2 U.N. Rep. Int'l Arb. Awards 1105, 26 A.J.I.L. 394 (1932).

the island, then in spite of Chinese discovery, the islands were still capable of being appropriated by another state.

Japan argues that no effective display of sovereignty had been made by China. The islands were uninhabited and bore no flag or other physical marker indicating that they were part of Chinese territory. Furthermore, between 1884, when Japan had initiated surveys of the Senkaku Islands, and January 1895, when it had officially incorporated them into Okinawa, the Chinese imperial government had the opportunity to lodge a protest to Japan over its activities in and around the area in dispute. It did not do this, even before the breakout of the First Sino-Japanese War in 1894. China's non-contestation of Japanese physical presence on and around the Senkaku Islands is comparable to the circumstances concerning the *Island of Palmas* case, in which the United States had not challenged Dutch sovereignty on Palmas from 1898 – the time of its nominal acquisition of the island – until 1906. Japan may therefore argue that in a similar way, China had acquiesced to its control over the Senkaku Islands, thereby further weakening the Chinese territorial claim.

Although Japan had incorporated the islands during the Sino-Japanese War, and although the Senkaku Islands were not ceded in the Treaty of Shimonoseki, Japan may claim that the act of incorporation was irrelevant to the war since China had not exercised an effective occupation over the islands before hostilities commenced. In other words, the islands did not need to be mentioned in the Treaty of Shimonoseki to become part of Japanese territory; they were not China's to cede in the first place.

If, as in *Clipperton Island*, Japan can prove that China had not effectively demonstrated sovereign control over the Senkaku islands in the period leading up to their January 1895 incorporation into Okinawa, then that act of official and effective possession may be held as legitimate. If Japan's incorporation of the Senkaku Islands in 1895 is held to be legitimate, the issue then would concern the regularity of Japan's sovereign acts over the newly acquired territory. How effective does possession have to be in order for title to remain sound? In *Clipperton Island*, the arbiter ruled that all that needed to be established for an occupying state to rightly gain title over uninhabited land was the initial moment of its undisputed appearance. In spite of the passing of thirty years without the execution of any state act indicative of its sovereign control over the island – from the 1858 proclamation of French sovereignty through the 1897 French protest of the presence of American nationals on Clipperton – the title of France was held to be sound. Likewise, in the

Senkaku/Diaoyu matter, the incorporation of the islands into Okinawa in January 1895 would be sufficient to demonstrate effective occupation.

In summary, China's territorial claims to the Diaoyu Islands based on discovery appear to be much weaker than Japan's claims based on effective occupation. Moreover, China appears to have acquiesced to Japanese activities on and around the Senkaku Islands during the ten-year period prior to the outbreak of the Sino-Japanese War of 1894-95 and Japan's acquisition of the islands in January 1895.

IMPLICATIONS OF THE DISPUTE AND PROPOSAL

The dispute between Japan and China over the Senkaku/Diaoyu Islands is not merely an issue of identifying which country has rightful title to uninhabited territory; it is an issue that has profound economic, legal, and security implications for these countries and even the United States.

According to the United Nations Convention of the Law of the Sea, in addition to being able to claim sovereign jurisdiction over a territorial sea up to twelve miles off the islets' coastline, the nation possessing rightful title to these islands will be recognized as having an exclusive economic zone stretching as far as 200-miles from the islands' shores (Articles 55-57).[16] This would not only bestow upon that nation exclusive fishing rights in those waters, but also rights to other resources – such as natural gas and oil – that can be extracted from the continental shelf far beneath the ocean's surface (Article 77).[17] Thus, the dispute over the islands is also a conflict over natural resources.

This is not to say that this dispute strictly concerns acquisition of resources of interest to political and economic elites in these countries. The conflict over these islands certainly has a great historical relevance, and many Chinese citizens see Japan's occupation of the Senkaku Islands as part of a grievous history of Japan's aggression toward and exploitation of Chinese territory beginning around the time of the First Sino-Japanese War of 1894-95 and lasting through the Second Sino-Japanese War of 1937-1945. The suffering inflicted by Japan on the Chinese population during these years remains fresh in collective memory, and Japan's cur-

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16 See *United Nations Convention on the Law of the Sea*, art. 55-57, Dec. 10, 1982, 1833 U.N.T.S. 418-419 (1994).

17 See *United Nations Convention on the Law of the Sea*, art. 77, Dec. 10, 1982, 1833 U.N.T.S. 429-430 (1994).

rent occupation of these islands is a strong reminder to the Chinese people and their government that the national humiliation of the past is unfinished business.

It is peculiar that neither of the governments involved in the dispute has proposed to the other to have the matter resolved by the International Court of Justice. Chinese leaders appear confident that their claims are legitimate and that Japan's incorporation of the Diaoyu Islands was illegal; however, Beijing has never proposed that the matter be judged before an arbitral tribunal. Since China is laying claim to territory that is occupied by another country, one wonders why Beijing does not initiate legal proceedings to resolve the dispute.

Chinese leaders may not be doing this for two reasons. First, they may be cognizant that Japan's legal claim to the islands is stronger. Japan's claim is based on customary principles of international law and a body of evidence that more than amply demonstrates an effective and continuous occupation since the date of acquisition, save the years of U.S. administration. It would be difficult to prove that China had effectively and continuously occupied the islands up to the point Japan acquired them.

Second, China's staking of a claim to territory on the basis of international law would run contrary to and undermine the basis of its claim to the islands and rocks of the South China Sea that are partly occupied and claimed by a host of Southeast Asian nations. China asserts that these islands and the sea that surrounds them have historically been part of that country since imperial times as represented on ancient map illustrations. This vast historical claim is unrecognized by any other nation. It is unsupported by evidence of continuous and effective occupation, and it has no basis on international customary laws pertaining to territorial acquisition. Unsurprisingly, when the Philippines filed suit against China at the Permanent Court of Arbitration in January 2013 concerning jurisdiction of a shoal occupied by the Chinese navy and located within the Philippine's exclusive economic zone, Beijing refused to take part in the legal proceedings.[18]

Ironically, one wonders why Japan has not proposed to leaders in Beijing to have the Senkaku dispute resolved in the ICJ. It has all the more reason to, since it has attempted on more than one occasion to get South Korea to appear before that Court in an effort to resolve the territorial dispute over the South Korean-adminis-

tered islets of Dokdo. (The islets are referred to as Takeshima in Japan.) Japanese parliamentarians claim these islets to be an integral part of their territory and refer to the Republic of Korea's armed physical presence, settling, and development of the land as an "illegal occupation." Japan has proposed to South Korean leaders to have the matter adjudicated by the ICJ in 1954, 1962, and most recently in 2012. The proposal has been rejected all three times by the government in Seoul.[19]

Both China and Japan potentially have a lot to lose in this dispute in terms of control over natural resources; however, the reason for the reluctance to resolve the matter through the ICJ may deal more with the probability that the legal consequences of losing (or even gaining) the Senkaku islands are not limited to those islands. In the 1930s and 1940s, both the Chinese communists and the government of the Republic of China not only laid claim to the Diaoyu Islands, but also the surrounding Ryukyu islands, including Okinawa.[20]

Japan had annexed the Ryukyu Islands in 1879 during its early expansionism even though the former Kingdom of Ryukyu was involved in a tributary relationship with the Qing Court in Beijing. The Chinese imperial government had protested to Japanese annexation but to no avail. These days, China's mainland government has been silent on the broader issue of the Ryukyu Islands; nevertheless, it remains to be ascertained whether the reasons that may invalidate Japanese occupation of the Senkaku islands might also be applied to the Ryukyu Archipelago – a daunting thought given that the United States operates military bases in Okinawa. (Again, according to the terms of the 1971 Reversion Treaty, U.S. transfer of administration of the Ryukyu Islands, of which the Senkakus were a part, did not explicitly confer sovereign title over these islands to Japan; it just returned these islands to the legal state they were in before World War II had broken out.)

Furthermore, the legal arguments presented in a potential adjudication might also have an adverse impact on Japan's other territorial disputes involving South Korea and Russia. For example, the rationale used to justify Japanese title

18 See *The Republic of the Philippines v. The People's Republic of China,* Permanent Court of Arbitration (2013), available at http://www.pca-cpa.org/showpage.asp?pag_id=1529 (last visited on Mar. 21, 2014). On August 27, 2013, the arbitral tribunal instituted rules of procedure without China's participation. Currently, the case is still being litigated.

19 For further reading on the Dokdo dispute, see Sean Fern, *Tokdo or Takeshima? The International Law of Territorial Acquisition in the Japan-Korea Island Dispute*, 5 Stanford Journal of East Asian Affairs 79 (2005); for recent developments on the dispute, see *South Korea Rejects Japan's ICJ Proposal*, The Japan Times, Aug. 30, 2012, available at http://www.japantimes.co.jp/text/nn20120831a1.html (last visited on Mar. 21, 2014).

20 See Kimie Hara*, 50 Years from San Francisco: Re-examining the Peace Treaty and Japan's Territorial Problems*, 74 Pacific Affairs 376 (2001); see also Jean-Marc Blanchard*, The U.S. Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands, 1945-1971*, 161 The China Quarterly 104 (2000).

over the Senkaku Islands through effective occupation may also work to confirm South Korea's sovereign title to Tokdo.

China's dispute over Japanese administration of the Senkaku Islands also has ramifications on the United States' security treaty obligations to Japan. Article 5 of the 1960 US-Japan Security Treaty seems to imply that the United States cannot remain uninvolved in the conflict between Beijing and Tokyo:

Each Party recognizes that an armed attack against either Party in the territories *under the administration* of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes.[21]

Is the United States obligated to support Japan's position on the territorial dispute with China? If an attack by China were to occur within the vicinity of disputed territory under the administration of Japan would the United States be drawn into a militarized conflict? China has, in a manner of self-assertion and on more than one occasion, sent its warships through the waters around the Senkaku Islands – waters that Japan claims to be within its sovereign jurisdiction. These incidents beg the question: Is the United States legally obligated by the terms of the security treaty to prevent Chinese ships from entering the waters around the Senkaku Islands?

Given the potentially adverse legal ramifications of the Senkaku matter on Japan's other territorial disputes and that both China and Japan have much to lose if the matter were left to adjudication, it seems unlikely that either party will seek to resolve this issue through the ICJ. The dispute over the Senkaku Islands merits an out-of-court solution that both Japan and China may benefit from and that may require compromise. China and Japan could come to an agreement on sharing access to the maritime resources around the Senkakus, and Japan could grant Chinese fishers permission to operate within the waters under its effective administration. The two countries could also agree to establish fishing quotas in the disputed area, and to coordinate on joint naval search-and-rescue efforts where exclusive economic zones appear to overlap. In the late 1990s, South Korea and Japan, in light of the dispute over Dokdo, had entered into such an arrangement in the signing of the 1998 Partnership Declaration.[22] The United States may also

need to be more involved in the peaceful resolution of the dispute because of its treaty obligation to protect territory under Japanese administration and its interest in preventing the escalation of hostility between the two countries. Officials from the United States and China are capable of delinking bilateral economic issues from territorial ones involving Japan.

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21 See *Treaty of Mutual Cooperation and Security Between Japan and the United States of America*, art. 5, Jan. 19, 1960, 33 U.N.T.S. 186 (1960).
22 See Joseph Manosevitz, *Japan and South Korea: Security Relations Reach Adolescence*, 43 Asian Survey 802-804 (2003); see also Sean Fern, *Tokdo or Takeshima? The International Law of Territorial Acquisition in the Japan-Korea Island Dispute*, 5 Stanford Journal of East Asian Affairs 88-89 (2005).

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University of Southern California US-China Institute, Section on Resources, Treaty of Shimonoseki, 1895, available at http://china.usc.edu/%28S%28u0o4uo4552nc4b45rm1khibm%29A%284BUbw-Wp7zQEkAAAAZDlkMDBjYTctYjM1NC00ODg1LWE5YjgtYT-g4NGE0ZDc0ODU4BJSk2ve3v12T5hSKPbdqc1b-n8A1%29%29/ShowArticle.aspx?articleID=405&AspxAutoDetectCookieSupport=1 (last visited on Mar. 21, 2014)

ABSTRACT » *China has made significant achievements to its legal system in recent decades. There are many laws covering a wide range of areas. However, one must not forget the role of the Communist Party of China when assessing the Chinese legal system. The purpose of this paper is to examine the Chinese legal system. In so doing, the concepts of rule of law and rule by law are defined and applied to examine the key features of the Chinese legal system. In conclusion, I found that China remains a country with rule by law rather than rule of law.*

Rule of Law or Rule by Law?

A Brief Analysis of China's Legal System

by Ka Chio

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Since the establishment of the PRC (People's Republic of China) in 1949, under the leadership of the CCP (Communist Party of China), a great deal of achievements within the legal field have been made in China especially after the late 1970s. In December 1978, at the Third Plenum of the Eleventh Central Committee, the CCP emphasized the importance of laws in the Plenum Communiqué:

"It is imperative to strengthen the socialist legal system so that democracy is institutionalized and legalized, in such a way as to ensure the stability, continuity and full authority of this type of system and law; there must be laws to follow, these laws must be observed, they must be strictly enforced and lawmakers must be dealt with."[1]

There are many laws covering all aspects of life. From 1979 to 1993, the PRC made a total of 1,888 laws, statutes, legal documents and over 2,000 local regulations.[2] As of 2009, China has 231 laws, 600 administrative regulations, and 7,000 local regulations.[3] By the end of August 2011, the Chinese legislature had enacted 240 effective laws including the current constitution,706 administrative regulations and over 8,600 local regulations.[4] In addition, the phrase "ruling the country in accordance with law" had been

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1   Jamie Horsley, "The Rule of Law: Pushing the Limits of Party Rule," in *China Today, China Tomorrow: Domestic Politics, Economy, and Society*, ed. Joseph

Fewsmith (Lanham: Rowman & Littlefield Publishers, Inc., 2010), 51.

2   Sujian Guo, *Post-Mao China: From Totalitarianism to Authoritarianism?* (Westport: Prager, 2000), 97.

3   Horsley, "The Rule of Law," 53.

4   "Government White Paper: The Socialist Legal System of Chinese Characteristics", *China.org.cn*, accessed 19 November, 2011, http://www.china.org.cn/government/whitepaper/2011-10/27/content_23738846.html.

added to the PRC Constitution.[5] The PRC also has legislative branch, executive branch, and judicial branch.[6]

However, there is an important question: Can we call the PRC a country with rule of law just because the above–mentioned phenomena in the legal system? To determine whether the PRC is a country with rule of law, one must first define the concept of rule of law and apply the concept to examine the features of the PRC legal system. Failing to do so is meaningless and will lead to misunderstanding of the legal system and groundless conclusions. In this paper, rule of law and rule by law will be defined and four features of the PRC legal system will be examined: the Constitution, the legislative branch, the judicial branch, and lawyers and the legal profession. If the concept of rule of law matches the features of the PRC legal system, it is a country with rule of law. If not, it is a country with rule by law. As the evidence will prove, even though the PRC has done a lot of work to establish and improve its legal system, it is not a country with rule of law, but rule by law because the CCP, through the party–state institutions, exerts decisive and significant influence over the legal system.

DEFINING THE KEY CONCEPTS

Before effectively and academically addressing the research question of this paper, this section defines the key concepts. The first key concept is party–state and party–state institutions. Party–state is one of the three defining core features of totalitarianism;[7] the other two features are "philosophical absolutism and inevitable goals" and "the official, exclusive, and paramount ideology to which Chinese society and every citizen is required to be subject."[8] In defining party–state, Professor Sujian Guo stated:

"A highly hierarchical and centralized Communist Party is totally bureaucratized, completely intertwined with the state and replaces to a large extent the governmental functions. The real sovereign is the party, not the state. The party machine functions as the "hub" of the political system, while the state serves as an instrument of the party dictatorship and functions as an administrative and bureaucratic apparatus for the party. The party, overriding the traditional concept of the "total state", carries out politics not within but beyond the framework of the

state and in fact employs the state as a tool … The party power overrides the state power."[9]

In the PRC, the CCP has dictatorial power over the state institutions as the CCP is "the core of leadership, exercises highly centralized and unified leadership, and dominates the policy–making process."[10] The CCP totally bureaucratizes with the state institutions, which are the legislature, the executive, and the judiciary. This party bureaucratization has the following characteristics: The CCP, likes an institution of state power, in large part performs the functions of the state; its organizations, leading bodies or leading groups exist at all levels of government; and CCP leaders simultaneously hold positions in state institutions and sometimes one holds several positions.[11] Through this structure, the CCP can first plan a policy in the party organization and send such a policy to state institutions for implementation. The state institutions will not reject it, but will implement it faithfully. Generally, the CCP is the hub while the state institutions–the legislature, the executive, and the judiciary–are merely the arms and legs of the CCP and they are in the hands of the CCP. Such state institutions are called party–state institutions.[12]

The second and the third key concepts are rule of law and rule by law. Most people use these two terms interchangeably and ignore the differences between them. As a matter of fact, there are significant differences between these two terms. Rule of law was first used by constitutionalist Albert Dicey, who presented three characteristics of rule of law: "no one can be punished except for a distinct breach of law established in the ordinary legal manner before the ordinary Courts of the land"; "no one is above the law, and every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the rdinary tribunals"; and "the general principles of the constitution ... [are] the result of judicial decisions determining the fights of private persons in particular cases brought before the Courts."[13] Legal scholar Joseph Raz later added a few aspects to the concept of rule of law, saying rule of law should also include the followings: "All laws should be prospective, open, and clear"; "the making of particular laws should be guided by open, stable, clear, and general rules"; "the independence of the judiciary must be guaranteed"; "the principles of natural justice must be served"; and "the discretion of the crime-preventing agencies should not be allowed to pervert the law."[14] The above definitions of rule of law lead us to establish a redefined concept of rule of law. Rule of law is

5   Horsley, "The Rule of Law," 51.
6   "Constitution," *Chinese Government Official Portal*, accessed 18 November, 2011, http://www.gov.cn/2005-08/05/content_20813.htm.
7   Guo, *Post-Mao China*, 17.
8   Guo, *Post-Mao China*, 15.

9   Guo, *Post-Mao China*, 17.
10 Ibid.
11 Ibid.
12 Ibid.
13 Jialue Li, "China, A Sui Generis Case for the Western Rule-of-Law Model," *Georgetown Journal of International Law* Vol.41 Iss.3 (Spring 2010): 714.
14 Li, "China," 718.

a system in which laws can impose meaningful limits on the exercise of state power, the judicial branch is independent of outside interference, legal profession is prevalent and independent, no one is above the law, and all people regardless of race, gender, ethnicity, age, political background, occupation, religious belief and education are equal before the law. Everyone must follow the law.

In defining rule by law, Professor Randall Peerenboom argued that it is a system in which"law is not supreme, there is little or no separation between law and politics, and the dictates and policies of the rulers trump laws."[15] Professor Sujian Guo further elaborated it, saying in rule by law system, laws–like state terror, mass mobilization, state planning, and administrative command–are a tool to extend control over a society and subject all persons to the rules defined and promulgated by the totalitarian Communist Party, there is no independent judiciary, and the totalitarian Communist Party is the supreme lawmaker.[16] These two definitions of rule by law can generally allow us to make a redefined concept of rule by law. That is, rule by law refers to a system in which laws are merely seen as a tool to govern the country. The ruler is above the laws and laws serve the functions and purposes of the ruler only.

With the above definition of party–state institutions and the redefined concepts of rule of law and rule by law in mind, the following sections will prove that the PRC is a country with rule by law rather than rule of law.

THE CONSTITUTION

Constitution is defined as "the organic and fundamental law of a nation or state … laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers."[17] Since the CCP took over China in 1949, China has several constitutions; they are all claimed to be the fundamental law and define the structure and power of political institutions.[18] The current constitution of the PRC–which was adopted in December 1982 and amended in March 2004–contains 136 articles, covering general principles of the country, fundamental rights and

duties of citizens, the structure of the state, the national flag, the national anthem, the national emblem, and the capital.[19] However, even though the constitution should be the fundamental law in a country, the PRC constitution serves the CCP's interest only because it is "an embodiment or expression of the Communist Party as opposed to a fundamental source of authority."[20]

The CCP can put its political ideology into the PRC Constitution, thus making its political ideology as the fundamental ideology of the whole country. For example, it is clear that the constitutional changes are closely related to the changes in the CCP Constitution.[21] Four fundamental principles–adherence to Marxism-Leninism and Mao Zedong Though, thepeople's democratic dictatorship, the socialist road, and the leadership of the CCP–are in the 1982 CCP Constitution first, and then go into the 1982 PRC Constitution.[22] The 1987 CCP Constitution contained the term 'socialism with Chinese characteristics', then the term was amended in the PRC Constitution in 1988 without consideration.[23] The policy of establishing a socialist market economy, the adoption of Deng Xiaoping Theory and the Three Represents Important Thought are all appeared in the PRC Constitution after the CCP has accepted them in the CCP Constitution.[24]

In addition, the CCP can legitimize the already existing or adopted policies through the PRC Constitution.[25] For example, the CCP has abolished the people's commune system of collective agriculture and has implemented the household responsibility contract system since the late 1970s.[26] Under the household responsibility contract system, each household signs a contract and gets a piece of cultivable land on a per capita basis; by signing the contract, the household is responsible for meeting the state agricultural procurement quota, managing the land and fulfilling all its obligation to the village.[27] After the state and the village deduct all crops and costs, the household can keep the remainder of the earnings and spend them on whatever items they want or save them.[28] As a matter of fact,

15 Randall Peerenboom, *China's Long March toward Rule of Law* (New York: Cambridge University Press, 2002), 64.
16 Guo, *Post-Mao China*, 100.
17 Henry Campbell Black, *Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (St Paul: West Publishing Company, 1990), 311.
18 Guo, *Post-Mao China*, 102.

19 "Constitution."
20 Daniel C.K. Chow, *The Legal System of the People's Republic of China in a Nutshell* (St.Paul: West Law, 2009), 71.
21 Keyuan Zuo, *China's Legal Reform: Towards the Rule of Law* (Boston: Martinus Bijihoff Publishers, 2006) 47.
22 Zuo, *China's*, 48.
23 Ibid.
24 Zuo, China's, 48-49.
25 Guo, *Post-Mao China*, 102.
26 Janes C.F. Wang, *Contemporary Chinese Politics: An Introduction* (Upper Saddle River: Prentice Education, 1994), 311.
27 Ibid.
28 Ibid.

under the constitution of that time this system was prohibited and illegal, it was implemented with Deng Xiaoping's support and approval.[29] After seeing the spectacular success of the household responsibility contract system, a constitutional amendment proposed by the CCP was approved in 1993, saying that the rural people's communes system has been replaced by the household responsibility contract system and it is now legal.[30]

THE LEGISLATURE

The legislature is "the department, assembly, or body of persons that makes statutory laws for a state or nation."[31] The PRC has its own legislature called the National People's Congress which exercises the legislative powers of the state.[32] In accordance with the PRC Constitution, the National People's Congress has the power, among other things, to amend the Constitution, to supervise the enforcement of the Constitution, to enact and amend basic laws governing criminal offences, civil affairs, the state organs and other matters, to elect high–level government officials such the president, and to examine and approve the state budgets and the reports on theirimplementation.[33] The National People's Congress has the standing committee when it is not in session.[34] Provinces, municipalities directly under the central government, counties, cities, municipal districts, townships, ethnic townships and towns have their own people's congresses and their organizations and powers are similar to those of the National People's Congress.[35] Even though the PRC Constitution stipulates the National People's Congress and local people's congresses have the legislative power, these provisions are on paper only because of the CCP. The CCP can issue directions to dominate the law-making process. For example, in 1991 the CCP issued a document called "Certain Opinions on Strengthening the Party Leadership over the State Legislative Work."[36] The document clearly stipulates that, among other things, the CCP Politburo and Congress should examine and review "any amendment to the Constitution, major laws in the political area, especially those in economic and administrative areas before they are referred to the NPC"; "the drafting of laws in the political area

29   Guo, *Post-Mao China*, 102.
30   Guo, *Post-Mao China*, 103.
31   Black, *Black's Law Dictionary*, 900.
32   "Constitution."
33   Ibid.
34   Ibid.
35   Ibid.
36   Zuo, *China's*, 50.

should be approved by the Party"; "draft laws in the political area and major draft laws; in economic and administrative areas should be examined and approved by the Political Bureau or its members before they are deliberated in the NPC"; and the CCP "exercises unified leadership in the work of drafting laws."[37]

The CCP also issues directions for the National People's Congress and local People's Congresses to carry out.[38] For example, since 1979, the CCP has issued four documents on strengthening the CCP leadership on local county elections; all the suggestions of the four documents were made into laws finally.[39] In addition, in 1993, the CCP issued the "Decision on Strengthening the Comprehensive Management of Public Security."[40]Immediately the National People's Congress sent two inspection groups to four provinces and autonomous regions to examine whether these regions strictly followed the CCP instruction on public security or not.[41]

To ensure the CCP can dominate the law–making process without opposition, the majority of members are members of both the CCP and NPC. For example, in 2006 more than70 percent of the National People's Congress members are the CCP members.[42] According to the relevant law, the number of the National People's Congress's members is determined by the NPC Standing Committee and the members of the National People's Congress are not elected directly by the Chinese people, but are elected by 34 electoral units.[43] This arrangement gives theCCP a hand in the electoral process: If the CCP worries its candidates will be voted down, it can put the names of the candidates on the ballots of other electoral units. If the CCP does not want someone to be elected, their names simply will not appear on the ballots.[44] All candidates of the National People's Congress are determined in advance by the CCP Secretariat, the Central Organization Department, the Central United Front Department, the Provincial Party Committees and the democratic parties.[45] Once the CCP–sponsored candidates are elected, they will strictly follow the CCP direction and act in the way the CCP wants. As jurist Zhang Youyu

37   Zuo, *China's*, 50-51.
38   Guo, *Post-Mao China*, 82.
39   Ibid.
40   Margaret Y.K. Woo, "Law and Discretion in Contemporary Chinese Courts," in *The Limits of the Rule of Law in China*, ed. Karen G. Turner et al. (Seattle: University of Washington Press, 2000), 181.
41   Ibid.
42   Zuo, *China's*, 51.
43   Guo, *Post-Mao China*, 84.
44   Ibid.
45   Guo, *Post-Mao China*, 84.

said, "as a Party member, no matter whether you are a (NPC) representative or governmental official, you should act in accordance with Party policy."[46] Therefore, to ensure the CCP members can be elected to the National People's Congress, the CCP will manipulate the election.

THE JUDICIARY

The judiciary is the "branch of government invested with the judicial power; the system of Courts in a country; the body of judges; the bench that branch of government which is intended to interpret, continue, and apply the law."[47] The PRC has its judiciary. In accordance with the PRC Constitution, "the people's courts of the People's Republic of China are the judicial organs of the state" and "the People's Republic of China establishes the Supreme People's Court and the people's courts at various local levels, military courts and other special people's courts."[48] The most important aspect of the PRC judiciary is "the people's courts exercise judicial power independently, in accordance with the provisions of the law, and are not subject to interference by any administrative organ, public organization or individual."[49] In reality, the PRC judiciary is not independent; rather, the CCP influences the judiciary and even intervenes in its judgments.

The role of judges in the PRC judiciary is determined by the CCP. In accordance with the Judge Law of the PRC, the local people's congresses elect the president and other judges of the court of the same level, but the law does not mention the process in detail.[50] All nominations and appointments have to be sent to the CCP Organization Department first, then the Organization Department will either approve or veto the candidates. Finally the list of candidates approved by the CCP will be submitted to the people's congresses for approval.[51] Also in the PRC, judges are regarded as state cadres; therefore, their pay checks and other state benefits "correspond to their rank as state cadres in the bureaucratic administration, such as ministerial or vice ministerial, provincial or vice provincial, divisional or deputy–divisional, and so forth."[52] Generally it is reasonable to say that all judges of the PRC judiciary are CCP members and this arrangement ensures that judges

46 Zuo, *China's*, 51.
47 Black, *Black's Law Dictionary*, 849.
48 "Constitution."
49 Ibid.
50 Peerenboom, *China's Long March*, 305.
51 Ibid.
52 Guo, *Post-Mao China*, 110.

will follow the political and ideological standard of the CCP in making court decisions.

In addition to the selection of judges, the CCP can influence the judiciary through its Political–Legal Committees. The Political-Legal Committees were founded in January 1980 based on the former Political-Legal Group.[53] Usually at the central level, it is headed by a very high CCP cadre and its members include the President of the Supreme Court, the President of the Supreme Procuratorate and the Ministers of Public Security, State Security, Justice, and others.[54] "These committees exist at each level of territorial governments, where they replicate the structure of the central one described above, with the purpose of coordinating activities and establishing guidelines and policies with Party policy pertaining to the administration of justice and law enforcement."[55] The functions of the Political–Legal Committees can be characterized "to impose the Party's leadership on political-legal work by linking the Party centre to the political-legal front line, carrying out the Party's policy and co–ordinating relationships between various political-legal organ."[56] As a result, the Political–Legal Committees actively participate in the daily operation of the courts. For example, in 1983, the Central Political-Legal Committee issued an instruction on how to handle corruption cases that involved less than RMB 2,000. That instruction was quickly followed by the courts and the procuratorates afterward.[57] Also, when the courts face politically sensitive cases such as those concerning the relationship between the courts and the government, judges tend to seek advice from the Political –Legal Committees rather than independently making decisions.[58]

LAWYERS AND THE LEGAL PROFESSION

A lawyer is defined as "a person learned in the law; as an attorney, counsel, or solicitor; a person licensed to practice law."[59] Lawyers generally have three roles in a rule of law country: to draft, disseminate, and implement laws with

53 Zou, *China's*, 59.
54 Ignazio Castellucci, "Rule of Law with Chinese Characteristics, " *Annual Survey of International & Comparative Law* Vol 13 Iss.1 (2007): 55.
55 Ibid.
56 Zuo, *China's*, 59.
57 Zuo, *China's*, 60.
58 Jean-Pierre Cabestan, "The Political and Practical Obstacles to the Reform of the Judiciary and the Establishment of Rule of Law in China," *Journal of Chinese Political Science* Vol.10 Iss.1 (March 2005): 46.
59 Black, *Black's Law Dictionary*, 888.

technical skills; serve as a force for social change through the use of litigation or by participating in the law–making process; and to advocate political reforms such as the establishment of democracy.[60] In 1978, the number of lawyers in the PRC was less than 2,000; in 2008, the PRC had approximately 157,000 lawyers and over 14,000 law firms.[61] PRC lawyers "handle a wide range of criminal, civil, and administrative cases and counseling. Many lawyers and legal scholars also undertake 'public interest' lawyering and get involved in drafting and proposing legislation."[62] However, the CCP should not be forgotten when assessing the development of lawyers and legal profession in the PRC.

The PRC lawyers are subject to the state's direction and policy, which is the equivalent of following CCP's direction and policy. In western countries, lawyers are considered as free professionals or free independent professionals rather than the servants of the state.[63] However, this is not the case in the PRC. In 1982, the National People's Congress passed the Provisional Regulations of the PRC on Lawyers, in which lawyers were defined as workers of the state[64] and they must uphold the value of socialism, which is dictated by the CCP.[65] Even though the Lawyers Law of 2007 defines lawyers as practitioners who get lawyers' practice certificates and who upon being entrusted or appointed, provide legal services to concerned parties, but the nature of being state workers have not been changed.[66] According to the Law, lawyers are required to maintain the confidentiality of state secrets and to abide by the PRC Constitution, which requires all citizens to protect the public order, respect social ethics, and not commit acts that are detrimental to the security and interest of the state.[67] Furthermore, the PRC Lawyers Law also requires that firms with three or more CCP members need to set up a CCP group, which disseminates the CCP instructions, and members of the CCP are required to take a leading role in the political training of other lawyers.[68]

In addition, lawyers in the PRC are subject to pressures from the Ministry of Justice, which is a member of the CCP Central Political–Legal Committee.[69] For example, the Ministry of Justice has the authority to administer the bar examination, assess lawyers' qualifications, issues practicing certificates and business certificates to law firms for daily operations, and conducts annual renewal review.[70] In exercising this authority, the Ministry of Justice assesses the good conduct, politically thinking, and moral character of lawyers. If lawyers fail to meet the above things, their practicing certificates will be at risk.[71] In addition, rather than faithfully defending their clients, the Ministry of Justice will directly interfere in the works of lawyers and lawyers need to act in line with the instructions from the Ministry of Justice especially in political sensitive cases. For example, lawyers who defend the people charged with crimes for the Tiananmen Incident of 1989 are instructed to encourage the defendants to admit the crime rather than help them defend their cases in the court.[72] As the former CCP Politburo member Luo Gan said, in politically sensitive cases political correct stand is where the CCP stands.[73]

Regarding those lawyers who do not follow the CCP guidelines and directions or confront the CCP, the CCP can use the laws to deal with those lawyers whenever they please. For example, Article 306 of the PRC Criminal Law is of a great concern to defense lawyers. It stipulates:

A defender or an agent ad litem who, in the course of criminal procedures, destroys or forges evidence, assists the party concerned in destroying or forging evidence, threatens or lures a witness to, contrary to the facts, change testimony or provide false evidence, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; and if the circumstance is serious, to fixed-term imprisonment of not less than three years and not more than seven years.[74]

Under Article 306 of the Criminal Law, the procuratorate can charge defense lawyers with perjury should they insist on presenting evidence contrary

60 Peerenboom, *China's Long March*, 343-344.
61 Horsley, "The Rule of Law," 58.
62 Ibid.
63 Peerenboom, *China's Long March*, 351.
64 Peerenboom, *China's Long March*, 348.
65 Guo, *Post-Mao China*, 109.
66 Xiandan Huo, "Legal Education and the Transformation of the Legal Profession," in *China's Journey toward the Rule of Law: Legal Reform, 1978-2008*, ed. Cai Dingjian et al. (Leiden: Brill, 2011), 279.
67 Peerenboom, *China's Long March*, 351.
68 Ibid.

69 Zuo, *China's*, 59.
70 Peerenboom, *China's Long March*, 355.
71 Ibid.
72 Guo, *Post-Mao China*, 109.
73 Gerald J. Clark, "An Introduction to the Legal Profession in China in the Year 2008," *Suffolk University Law Review* Vol.41 Iss.4 (Fall 2008):834.
74 "Chinese Laws: Criminal Law of the People's Republic of China 1997," *Lehman*, accessed 18 November, 2011, http://www.lehmanlaw.com/resource-centre/laws-and-regulations /criminal-law/criminal-law-of-the-peoples-republic-of-china-1997-page5.html.

to the procuratorate's case.[75] One commentator has said that "as defined in the CL, the crime of perjury or assisting perjury could be committed by anyone involved in the criminal process, including prosecutors or even judges."[76] Also, the Criminal Law does not stipulate what perjury or forging evidence is. This problematic provision gives the prosecutors and judges great discretion to prosecute defense lawyers and find them guilty.[77] Furthermore, critics say Article 307 of the Criminal Lawaddresses crimes of evidence fabrication sufficiently, so Article 306 is unnecessary.[78] In general, Article 306 discriminates against defense lawyers and is useful for the CCP to persecute lawyers especially those who defy the CCP orders and represent clients in politically sensitive cases. As a critic said, the law "is discriminatory and unfairly targets defense lawyers, creating an uneven playing field with prosecutors."[79]

CONCLUSION

The above examinations strongly suggest that the PRC is a country with rule by law rather than rule of law because of the CCP. The CCP is an organization above the law and it uses the law to control the country and subject people to its rule through the party-state institutions. Laws serve the CCP only. The PRC Constitution is a facsimile of the CCP Constitution. The legislature is merely an organ for the CCP to make laws. The judiciary cannot independently make decisions. And lawyers cannot escape the CCP influence in their day–to–day works. In order to become a real country with rule of law, the CCP must subject itself to the law without conditions. However, given the former paramount leader Deng Xiaoping once said,"we should learn well how to employ and utilize legal weapons,"[80] the CCP is not willing to subject itself to the law and transform the PRC into a country with rule of law. In the years to come, the PRC will remain a country with rule by law.

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75 Amanda Whitfort, "The Right to A Fair Trial in China: The Criminal Procedure Law of 1996," *East Asian Law Review* Vol.2 Iss.4 (2007): 147.

76 "Empty Promises: Human Rights Protections and China's Criminal Procedure Law in Practice," *Human Rights in China*, accessed March 14, 2014, http://www.hrichina.org/sites/default/files/publication_pdfs/hric-empty-promises.pdf.

77 Ibid.

78 Al Young, "The Continuing Lack of Independence of Chinese Lawyers," *Georgetown Journal of Legal Ethics* Vol.18 Iss.3 (Summer 2005): 1145.

79 Ibid.

80 Zou, *China's*, 40.

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ABSTRACT »   *The Arab Spring revolutions and uprisings took many by surprise. Among the affected states, one of the most unique was Libya. The only state to endure both a civil war and successful regime change, Libya has encountered difficulties during its transitional state. This paper explores the environment that brought about unrest, civil war and revolution in Libya, its future prospects and challenges, as well as its own impact on the region as a whole. As with all states directly influenced by the Arab Spring, Libya is continually evolving, and the author hopes to exhibit its odyssey in this article.*

Odyssey's Dawn

Libya, the Arab Spring and the future of the Middle East and North Africa

by Seth Roach

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The uprisings and revolutions in North Africa, beginning in 2010, affected the entirety of the Middle East through a change in power structures, effectiveness of grassroots mobilization, and the forcing of major power players to second-guess their historical policies and current strategy for the future. It also confounded many scholars and experts who did not anticipate the revolutions, revolts and civil wars happening. Authoritarian rulers cracked down on dissidents before they were miraculously uprooted from power by grassroots-organized protesters. Because of these democratic protests, some coined this era as the "Arab Spring," alluding to the history of a region that once operated under repressive regimes now having the chance for democracy. Some even compared these revolutions to the end of the Cold War-era when autocratic regimes fell, providing a power vacuum to favor more democratic governance.[1] However, the most recent revolutions have distinguished many more differences than their Cold War counterparts, especially with the concurring civil wars of Libya and Syria. In addition, while the situation in Libya shares similarities with its fellow states affected by the Arab Spring, it also stands out quite uniquely: it is the only state to have endured a civil war, instigated during the Arab Spring end. It also saw limited intervention by the UN and NATO, of which the American operation to enforce the UN Security Council's resolution, was code-named "Odyssey Dawn."[2] Whereas the word "odyssey"

is defined as "a long wandering or voyage usually marked by many changes of fortune" and was used by professor Dirk Vandewalle to describe Libya's history in the twentieth century[3], it continues to describe Libya and the Arab Spring in its current state.

The purpose of this paper is to examine the situations that Libya has experienced before, during and after the Arab Spring. The author seeks to examine what exactly makes it unique compared to the other states affected by the Arab Spring. With this, I seek to answer the following questions: How organized was the Qaddafi-era government, compared to other governments affected by the Arab Spring? What factors contributed to the Arab Spring being a successful movement in Libya? Is the country fractured, compared to other Spring-influenced states, and if so, in which ways? Have the events in Libya led to destabilization elsewhere in the region or beyond? How optimistic should the international community be for a stable democracy to develop in the wake of the civil war? These questions, when answered, will help to provide greater context with what has happened in the Arab Spring, and what its future may entail in its odyssey, be it uncertain chaos or an eventual level of peace and stability.

To further examine these questions, this paper will look at a variety of quantitative and qualitative data that focuses on answering the above questions. This data comes from the United Nations and other intergovernmental and non-governmental organizations, such as demographic information, and conclusions and analysis regarding issues such as small arms smuggling and other sources of data. In addition, this paper will rely on established literature from scholars and experts who have experience in the Libyan Civil War, and other information that will help the author come to salient conclusions. In addition, this paper will examine weaknesses in the data and evidence that should be addressed in the future, including lack of census data in nomadic peoples such as the Tuaregs, and information from defectors and fighters in the civil war as well as accounts from former Qaddafi regime members and loyalists. While this subject is still new in comparison, it still needs scrutiny as to where more data is required.

1   Jean-Marie Guéhenno. 2011. *The Arab Spring Is 2011, Not 1989 - NYTimes.com.* April 21. Accessed November 15, 2013. http://www.nytimes.com/2011/04/22/opinion/22iht-edguehenno22.html?_r=0.

2   Jeremiah Gertler. 2011. Operation Odyssey Dawn (Libya): Background and Issues for Congress. Report for Members and Committees of Congress, Washington,

DC: Congressional Research Service.

3   Dirk Vandewalle. 2012. *A History of Modern Libya.* Second Edition. New York: Cambridge University Press. P. 1.

LITERATURE REVIEW

A comprehensive review of the literature, news reports and demographic data show several main arguments and conclusions that can be drawn. Like other North African states that had revolutions in 2011, Libya suffered from the same factors of economic inequality, lack of social justice and of democratic institutions that provided the same triggers needed to foment unrest in the country.[4] However, these grievances were more than compounded by peculiarities because of the Qaddafi regime's policies including lack of sound economic policies, a patronage system that rewarded some and brutally punished the rest, and the government's ruthless pursuit of its perceived enemies and rivals, both within and outside Libya. These issues help to explain the current relative unease in wake of a victorious rebellion against the Qaddafi regime.

The Arab Spring, especially Libya, while three years older, still projects uncertainty when compared to Syria's civil war, de-escalation of the wars in Iraq and Afghanistan and other events. At this point, journals are now starting to confront the Arab Spring with relatively recent issues of *Survival* and *International Affairs* being some of the first to do so.[5] Other notable but less scholarly literature has come in the form of books written about the Arab Spring and subsequent revolutions[6], and updated historical reviews such as *A History of Modern Libya*.[7] The more objective and salient books to date are *Libya: The Rise and Fall of Qaddafi* by Alison Pargeter, and *Sandstorm: Libya in the Time of Revolution* by Lindsay Hilsum. The former is a history of the Qaddafi regime's time in power, including its aftermath. Hilsum's work touches upon this topic as well, but focuses more on the Arab Spring and the stories of those who were victims of the regime's paranoid attempts to silence its critics.[8] With proven expertise from previous works, these authors demonstrate strong credibility in their arguments, using aca-

demic-level analysis from Pargeter, and Hilsum's actual experience covering the Libyan Civil War.[9] While they come from a Western point of view, they seek to provide a clear history of what has happened, each providing accounts from those involved, including former government officials[10], rebels and victims of the regime's actions.[11]

In addition to these sources, other established sources of literature have been updated to consider the Arab Spring and its consequences for Libya and North Africa. For instance, professor Dirk Vandewalle of Dartmouth College has written and researched extensively about Libya, publishing *A History of Modern Libya* in 2006.[12] This work has provided an excellent primer and historical analysis of Libya beyond the monarchy and Qaddafi regime, connecting it to the Ottoman Empire and the colonial pursuits of Italy, France and the United Kingdom. However, with the advent of the Arab Spring, Vandewalle felt the need to update this work with a new edition detailing the civil war.[13] This second edition has added more to historical analysis by including the reconciliation of Libya and the Arab Spring.[14] After the attacks on the US Consulate and Annex in Benghazi as well as more recent attacks against other diplomatic and civilian targets, this second edition is surely not to be the last, as goes with other literature that seeks to cover the history and developments of this region.

As the Arab Spring is a continually evolving event, the scholarly research is still new and varying. While many observers have concluded the Arab Spring as an evolving situation with no end in the short term,[15] others have determined they can make conclusions on specific aspects that may determine whether the Arab Spring will be a success or failure for the region.[16] With scholarly research, it will take some more time with developing empirically sound and salient research, especially with the lack of primary sources stated previously in this paper. Much more research on the ground will be necessary to complete this step, such as

4   Shibley Telhami. 2011. "Arab Public Opinion." In *The Arab Awakening: America and the Transformation of the Middle East*, by Kenneth M. Pollack et al, 13-20. Washington, DC: Brookings Institution Press.

5   See Douglas Barrie. 2012. "Libya's Lessons: The Air Campaign." Survival 57-65 and Anthony F Lang, Jr. 2013. "From revolutions to constitutions: the case of Egypt." *International Affairs* 345–363.

6   See Robin Wright. 2011. Rock the Casbah: Rage and Rebellion Across the Islamic World. New York: Simon and Schuster, and Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press.

7   Dirk Vandewalle. 2012. *A History of Modern Libya.* Second Edition. New York: Cambridge University Press.

8   Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp. 5, 119-120, 200, 217.

9   Ibid, pp. 9, 31-33, 68.

10 Ibid, pp. 172, 178-180.

11 Ibid, pp. 96-97, 125-126, 167-171.

12 Dirk Vandewalle. 2012. *A History of Modern Libya.* Second Edition. New York: Cambridge University Press.

13 Ibid, pp. 8-9.

14 Ibid, pp 173-209

15 Kenneth Pollack. 2011. "Understanding the Arab Awakening." In *The Arab Awakening: America and the Transformation of the Middle East*, by Kenneth Pollack et al, 1-9. Washington, DC: Brookings Institution Press. Pp. 7-8.

16 Sheri Berman. 2013. "The Promise of the Arab Spring"and Seth G. Jones. "The Mirage of the Arab Spring." *Foreign Affairs*: 55-74.

focusing on the effectiveness of African leaders to attempt to mediate the Libyan Civil War [17] and the investigation and discovery of hidden chemical weapons caches that were never previously disclosed by the Qaddafi regime.[18]

THE ARAB SPRING – CAUSES AND MOTIVATIONS

The Arab Spring revolutions triggered a miniature "domino effect" of post-Cold War regimes being overthrown, and a growth of grassroots mobilization. While we already know the history and origins of the revolutions, it serves as a starting point for the examination of these questions. Initial protests sparked in late 2010 against the regime in Tunisia, which spread to other states shortly afterward. The origin of the revolutions can be pinpointed to a protest sparked in response to the self-immolation of Mohamed Bouazizi, a young and impoverished fruit vendor.[19] Soon after this protest, unrest spread beyond Tunisia and North Africa. Bouazizi's self-immolation struck a sense of solidarity with many in North Africa and the Middle East because many suffered from the same inequality as Bouazizi, and were motivated to protest that their grievances to be addressed by their respective governments.

When these first protests spread from Tunisia to Egypt, they resulted in a less-violent overthrow of both governments in comparison to Libya.[20] When they spread further to Libya and Syria, the protests became more violent because of brutal government crackdowns.[21] Both Libya and Syria reached the point of civil war, where the former ended in a successful revolution[22] and the latter is still fighting today.[23] Other countries were severely affected as well, such as Yemen which

endured a regime change due to violent suppressions and a reciprocal response that severely injured former president Abdullah Saleh,[24] resulting in his resignation and flight to Saudi Arabia. In the rest of the Arab Peninsula and Gulf states, protests were met with swift repression, often with violent consequences as in the case of Bahrain.[25] Because of the unique history and consequences, a depiction of the conflict in Libya is important.

During the Qaddafi era, the regime was considered just as authoritarian as any of the other regimes affected by the Arab Spring. Many of the regimes share similar issues of inequality, lack of social justice, and crony capitalism via patronage systems. Scholars note that like each regime preceding it, "procrastination in bringing about meaningful, overdue reforms forecast the end of Qaddafi's rule and the collapse of his regime."[26] Unlike the other regimes, the Qaddafi regime stands out with these similarities and take them to a higher level. It has done so by establishing an extremely concentrated patronage system based on tribal and familial connections, reacting violently toward dissidents and engaging in assassinations abroad of its perceived rivals, and harsh treatment of those with whom the regime did not favor or solicit support.[27]

The inequality and patronage of the Qaddafi regime resemble other regimes at a first glance. However, further review exposes the regime's later years as reminiscent of a mafia rather than a military junta.[28] These policies included many of Qaddafi's sons owning most of the country's businesses as well as "pet projects" as the infamous "Man-Made River" that took many years to complete to only marginal results.[29] These and other ongoing irregular policies that Qaddafi implemented brought the country to economic collapse[30], in addition to being ostracized from a majority of the international community for almost two

17 Alex De Waal. 2013. "African roles in the Libyan conflict of 2011." *International Affairs* 365-379.

18 Nathan E. Busch and Joseph F. Pilat. 2013. "Disarming Libya? A reassessment after the Arab Spring." *International Affairs* 451–475.

19 James L. Gelvin. 2012. *The Arab Uprisings: What Everyone Needs To Know.* New York: Oxford University Press. Pp. 26-27.

20 Al Jazeera. 2011. *Hosni Mubarak resigns as president - Middle East - Al Jazeera English.* February 11. Accessed November 3, 2012. http://www.aljazeera.com/news/middleeast/2011/02/201121125158705862.html.

21 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp. 37-42.

22 Kareem Fahim, Anthony Shadid, and Rick Gladstone. 2011. *Violent End to an Era as Qaddafi Dies in Libya - NYTimes.com.* October 20. Accessed November 3, 2012. http://www.nytimes.com/2011/10/21/world/africa/qaddafi-is-killed-as-libyan-forces-take-surt.html?pagewanted=all.

23 Sebnam Arsu and Rick Gladstone. 2012. *New Mayhem on 2 Borders as Syrian Opposition Unifies - NYTimes.com.* November 11. Accessed November 11, 2012. http://www.nytimes.

com/2012/11/13/world/middleeast/syria-war-updates.html

24 Reuters. 2012. *Yemen's Saleh faces music after 33 years in power | Reuters.* February 20. Accessed November 3, 2012. http://www.reuters.com/article/2012/02/20/us-yemen-saleh-idUSTRE81J0IS20120220.

25 BBC News. 2012. *BBC News | Protests as Bahrain uprising anniversary gets under way.* February 14. Accessed November 3, 2012. http://www.bbc.co.uk/news/world-middle-east-17022613.

26 Yahia H. Zoubir and Erzeebet N. Rozsa. 2012. "The End of the Libyan Dictatorship: The Uncertain Transition." *Third World Quarterly* 1267–1283.

27 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp. 96-97.

28 Ibid, p. 169.

29 Ibid, pp. 58-59.

30 Alison Pargeter. 2012. *Libya: The Rise and Fall of Qaddafi.* New Haven: Yale University Press. P. 171.

decades.[31] Libya has many resources, especially some of the most in-demand oil on the market. While Libya should have been able to capitalize on this resource, poor political and economic planning by the central government led the country awry, especially after pursuing contradictory policies every five years, sometimes immediately after no positive results.[32]

Like other states affected by the Arab Spring, Libya was ruled under an authoritarian regime. However, this regime was unmatched in its concern with dissidents and possible coups attempted against it. During the beginning of the junta which eventually became Qaddafi regime, the officers involved were slowly phased out of the inner circles by Qaddafi himself.[33] Eventually the regime would have antagonized enough people that dissent would grow and sustain itself, especially in the eastern province of Cyrenaica.[34] These attempts to maintain what Qaddafi believed was a stable country ended up backfiring in 2011, with the protests increasing in response to each harsh crackdown. This tension led to civil war.[35]

As stated previously, the paranoia and harsh approaches the Qaddafi regime made against its dissidents was unrivaled. It also shares comparisons with other countries on is its treatment of those who were not in the regime's support base. Former Libyan residents and expatriates living abroad were eventually targeted by a regime overreacting from previous demonstrations and concerns of instability fomented by dissidents.[36] While such concerns can be valid, especially with the return of Mujahideen from fighting in Afghanistan during the 1980s, the utter brutality demonstrated by the regime helped engender much hatred amongst its targets and victims.[37]

31 Dirk Vandewalle. 2012. *A History of Modern Libya.* Second Edition. New York: Cambridge University Press. Pp. 170-172.

32 Alison Pargeter. 2012. Libya: The Rise and Fall of Qaddafi. New Haven: Yale University Press. P. 111.

33 Alison Pargeter. 2012. *Libya: The Rise and Fall of Qaddafi.* New Haven: Yale University Press. P. 73.

34 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp. 91-95.

35 Alison Pargeter. 2012. *Libya: The Rise and Fall of Qaddafi.* New Haven: Yale University Press. Pp. 210-212.

36 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. P. 114.

37 Ibid, p. 114.

CONSEQUENCES OF THE ARAB SPRING

While the Arab Spring has ushered in a new era of change and hope for those fighting for democracy in the Middle East, it also has brought about a new era of uncertainty and instability to last in the near term.[38] In addition, other states have pointed to the lack of Libyan stability as contributing to regional instability. Because of these phenomena and looking at the history, several factors come up in having a key role in this instability. Among these are the divisions and differences among demographic lines, the easy access to small arms and other military equipment, and the growth of revolutionary ambitions by the Tuareg minority spread across North Africa and the Sahara. While states like Syria and Egypt have clear tensions and divisions between religious demographics, the situation is much more complex in Libya. The most salient and contentious divisions within Libya are by tribal, geographical and ethnic lines. Each have played an important role in the current realm of instability since before the Qaddafi regime, and even the monarchy.[39]

Ethnically, there are fewer divisions in the official statistics regarding Libyan population. While the CIA World Factbook says the population is over 97% Arab-Berber,[40] a sizable amount of the population identifies as Berber and has been systematically discriminated against by the Qaddafi regime.[41] Other ethnic groups are the Tuareg and the Toubou who live in the southernmost province of Fezzan.[42] These ethnic minorities have been used in some cases by the Qaddafi regime to maintain power and stability. In addition, tribal differences based on location and ethnicity also exist, with the Qaddafi regime manipulating the system to his advantage through patronage and repression. Loyal tribes such as the Warfallah mostly supported the regime, but later became the first to organize and revolt against Qaddafi before the start of the Arab Spring and during its progression.[43] In addition, the patronage system that was encouraged by the previous

38 The Economist. 2013. *A gloomy picture: Three years after the uprisings.* December 20. Accessed March 13, 2014. http://0-search.proquest.com.opac.sfsu.edu/docview/1470333327?accountid=13802.

39 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. P. 17, 220.

40 CIA World Factbook. 2012. *Libya - The CIA World Factbook.* April 1. Accessed April 2, 2012. https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html.

41 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. P. 36.

42 Henry Neville Hutchinson, John Walter Gregory, and Richard Lydekker. 1985. *The Living Races of Mankind.* New Delhi: Mittal Publishers. P. 385.

43 Alison Pargeter. 2012. *Libya: The Rise and Fall of Qaddafi.* New Haven: Yale University

kingdom and the Qaddafi regime helped to enable tribal differences, as well as geopolitical delineations.[44]

The historical provinces of Tripolitania, Cyrenaica and Fezzan have also fostered levels of tension that is of notable concern. Identified by many scholars as historically separate provinces from the Ottoman era, they were united during the colonial period.[45] Historically, these provinces have identified with other regions instead of with each other, or even their own state. Robert Kaplan notes: "Western Libya around Tripoli (Tripolitania) was always oriented toward the rich and urbane civilizations of Carthage in Tunisia, whereas eastern Libya around Benghazi (Cyrenaica) was always oriented toward those of Alexandria in Egypt."[46] Realizing these orientations and the forced union of these regions by colonial powers, these divisions may be magnified during political unrest, especially when leaders use patronage systems that only benefit their own provincial allies.[47]

ARMS PROLIFERATION THROUGHOUT THE REGION

Because of the Libyan Civil War, an immense amount of small arms, explosive ordinance, man-portable air defense systems (MANPADs) and other weaponry, both from Libya and supplied by the West, have made it to other conflicts in Syria and Mali.[48][49] In the wake of the civil war, the UN Security Council assembled a council of experts to examine Security Council resolutions' implementation in Libya. The experts' most recent finding has shined a light on the trafficking of weapons from Libya. They were able to find two areas in particular that weapons,

and sometimes fighters, gravitated toward: Egypt and the Sahel.[50] Beyond that, arms have reached the Gaza Strip and Syria.[51] In addition to weapons, Libya and other states with internal wars also have the dilemma of local jihadists flocking to the fight. For example, in Syria, groups such as the Nusra Front are enjoying a considerable amount of notoriety in fighting the Assad regime and its supporters. Some of these and other fighters have come from the Libyan Civil War on their own accord or as support from other armed groups from the region. In the Iraq War, Libyans were second to Saudis when it came to the numbers of foreign insurgents.[52] The spread of arms has also increased concerns that unconventional weapons may also get into the hands of violent non-state actors. After the civil war, reports came out that stated undeclared WMDs such as mustard gas were uncovered by rebels.[53] This not only brings about questions regarding the trustworthiness of such authoritarian regimes when declaring weapons, but also what happens after such a regime collapses. The instability of newly formed governments also exposes the security of such weapons stockpiles. As seen earlier with the conventional weapons smuggling, the issue of unconventional weapons brings out the worst fears in policymakers and diplomats that hope to ensure greater peace and security in the region.

THE TUAREGS: EXPLOITATION AND DISCRIMINATION

One of the issues that are coupled with the spread of arms is the treatment of ethnic nomadic minorities, especially the Tuaregs. While only 3% of Libyans are ethnic minorities according to census data and the CIA World Factbook, there has been insufficient reliable data collected on those minority groups to date. According to the Minority Rights Group International, Libyan Tuaregs number at about 17,000, or at .2% of the population.[54] They are less populous in Libya than

Press. P. 158. See also Lindsay Hilsum. *Sandstorm: Libya in the Time of Revolution.* P. 169.

44 Dirk Vandewalle. 2012. *A History of Modern Libya.* Second Edition. P. 93.

45 Ibid, pp. 40-41.

46 Robert Kaplan. 2012. *The Revenge of Geography: What The Map Tells Us About Coming Conflicts And The Battle Against Fate.* New York: Random House. P. 303.

47 Kenneth Pollack. 2011. "Understanding the Arab Awakening." In *The Arab Awakening: America and the Transformation of the Middle East*, by Kenneth Pollack et al, 1-9. Washington, DC: Brookings Institution Press. P. 4.

48 C.J. Chivers, Eric Schmitt, and Mark Mazzetti. 2013. *In Turnabout, Syria Rebels Get Libyan Weapons - NYTimes.com.* June 21. Accessed March 27, 2014. http://www.nytimes.com/2013/06/22/world/africa/in-a-turnabout-syria-rebels-get-libyan-weapons.html?pagewanted=all.

49 Stephen Kinzer. 2012. "Libya and the Limits of Intervention." *Current History* 305-309.

50 Salim Raad, Simon Dilloway, Theodore Murphy, Giovanna Perri, and Savannah de Tessières. 2013. *Letter dated 15 February 2013 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council.* New York, March 9.

51 Ibid.

52 Clinton Watts. 2008. "Beyond Iraq and Afghanistan: What Foreign Fighter Data Reveals About the Future of Terrorism." Edited by Small Wars Journal. Accessed May 5, 2013. http://smallwarsjournal.com/mag/docs-temp/49-watts.pdf.

53 Nathan E. Busch and Joseph F. Pilat. 2013. "Disarming Libya? A reassessment after the Arab Spring." *International Affairs* 451–475.

54 Minority Rights Group International. "World Directory of Minorities and Indigenous Peoples - Libya : Overview." RefWorld. August. Accessed May 5, 2013. http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=MRGI&type=&coi=LBY&rid=&do-

other states like Mali and Niger. Despite that, they were still recruited by Qaddafi and hired as fighters during the Civil War[55]. There were reports they were treated inhumanely in other instances.[56]

Why are the Tuaregs important, even though they are such small minority in Libya? We must look toward Mali and its ongoing instability. During the Libyan Civil War, Tuareg supporters of the regime have been threatened and, in some cases, executed by former rebels, because of their alleged ties to the Qaddafi regime.[57] Factors such as easy access to arms, porous national borders and displaced ethnic groups with established grievances helped to form a perfect storm of instability thriving in the region through Tuareg attempts to separate from Mali, sharing a brief partnership with al Qaeda in the Islamic Maghreb during those attempts at secession.[58] After the Libyan Civil War, weaponry from the Qaddafi regime, in addition to weapons appropriated to rebels, have been smuggled to other states facing relative instability and potential conflict like Syria, Mali and Gaza.[59] Due to the porous borders of Libya after its civil war and the nomadic lifestyle of the Tuareg, their grievances and impending security risks have formed a clear insecurity dilemma that needs to be addressed by both the local and international communities.

THE QADDAFI REGIME - OTHER INFLUENCES OF
INSTABILITY

With the violent regime changes during the Arab Spring causing instability, one of the main consequences of Libya is the Qaddafi regime's exploitation of transnational issues in order to gain power as a pivotal state in the region and world. While other issues have more prominence in the aftermath of the Libyan Civil War, these influences of instability are salient as they have provided per-

sistent problems for Libya and its surrounding neighbors since before the Arab Spring and Libyan Civil War. The adventurism of the Qaddafi regime in making itself a scourge of world superpowers was responsible for the deaths of many within and outside of Africa, as well as a continued instability that still affects regimes today.

In the 1980s, the Qaddafi regime is infamous in its pursuit of adventurism as a self-proclaimed "revolutionary state," carving itself a niche as anti-imperialist in rhetoric and substance.[60] After consolidating power and removing potential rivals, Qaddafi molded the Libyan state into one based on his philosophy and values. These values, often contradictory at times, morphed Libya into a maverick state at best and global pariah at worst. The regime wanted to establish itself in the international system as an alternative to the two Cold War-era poles, as seen in Qaddafi's "Third Universal Theory" in *The Green Book*.[61] While few would hold it against other state actors to provide alternatives to the status quo, the philosophy of the Green Book was more of a means to strengthen Qaddafi's cult of personality and possibly gain more power through spreading this ideology.

One of the most important parts of this anti-imperialist niche was the World Center for Resistance against Imperialism, Zionism, Racism, Reaction and Fascism, also known as "Anti-Imperialism Center" and as *al-Mathaba* in Arabic.[62] It was established in 1970s by the Qaddafi government to train young leaders and revolutionaries from Africa and elsewhere in military tactics as well as Qaddafi's political philosophy. While the latter sympathized with most groups, it was less attractive than the military training being offered. Notable recipients of this training were former Liberian president Charles Taylor and Fodayh Sanokh, founder of the Revolutionary United Front in Sierra Leone.[63] During their political and military ambitions, they received support from Qaddafi until their respective defeats.[64] This support was given even when they were accused of war crimes. Other nationalist groups such as the Irish Republican Army and Japanese Red Army sent members to receive training and support from the Mathaba training centers.[65]

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55 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp. 146-147.

56 Ibid, p.145.

57 Ibid. p, 147.

58 The Economist. 2012. *An uneasy alliance: Mali.* May 30. Accessed March 13, 2014. http://0-search.proquest.com.opac.sfsu.edu/docview/1017868706/BE06BAB45A7442BBPQ/2?accountid=13802.

59 Salim Raad, Simon Dilloway, Theodore Murphy, Giovanna Perri, and Savannah de Tessières. 2013. *Letter dated 15 February 2013 from the Panel of Experts on Libya established pursuant to resolution 1973 (2011) addressed to the President of the Security Council.* New York, March 9.

60 Alison Pargeter. 2012. *Libya: The Rise and Fall of Qaddafi.* New Haven: Yale University Press. Pp. 96-103, 113, 148.

61 Ibid, pp. 82.

62 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. P. 121.

63 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. P. 54.

64 For more information on Qaddafi's involvement in the Liberian Civil War, see James Brabazon. 2010. *My Friend the Mercenary.* New York: Canongate.

65 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin

The adventurism by sending actual Libyan forces to fight in wars or for its own pursuits is another aspect of adventurism that has challenged stability in Africa. The most notable of these troop commitments and conflicts was the war with Chad over the *Aouzou Strip*.[66] This war proved to be costly to both sides, more specifically to the Libyan military with its losses and further humiliation by being routed by unorganized militiamen with a lack of military equipment and transport.[67] Because of strict sanctions, the Libyan military was unable to recover from their losses. To make matters worse, the International Court of Justice ruled against Libya in their case over the disputed *Aouzou Strip*.[68] Qaddafi's other forays into adventurism, like sending conscripts to support Idi Amin's forces in Uganda[69] continually lead to the conclusion that Qaddafi's supported causes have led to greater instability outside of Libya, and a growing level of confidence being lost in his people.[70] This lack of confidence eventually built up amongst other grievances, until a catalyst sparked a strong uprising at the right moment. While other uprisings and protest failed previously, the wave of unrest and revolutions caused by the Arab Spring gave Libyans the momentum needed to overthrow Qaddafi.[71]

FINDINGS AND CONCLUSION – OPTIMISM OR SKEPTICISM?

The events of the Arab Spring are still developing and have not settled. It is likely that it will not be settled in the following decade. With continued attacks in Benghazi and enduring instability within Libya and even its more peaceful neighbors, it is very difficult to make any concrete conclusions. As stated earlier, this odyssey will have many high and low points, and may conclude on a more dismal note. However, there are signs of hope. Recent bombings in Libya have provoked a major response from pro-government crowds in cities throughout the country, as well as the blockade of the Foreign Ministry by armed groups has been broken by protesters as well.[72] This can be one sign of hope that Libya is turning one page closer to the end of this chapter.

Now in this case, should the international community be optimistic or pessimistic with these developments during this region's odyssey? As the Arab Spring is just three years old, it is still a relatively new movement and event in the context of history and international relations. Some scholars believe it is still too soon to make judgments on whether the Arab Spring is a success or not, although they believe it is possible to judge specific developments that have come about in the wake of the revolutions and uprisings.[73] In this situation, it still looks like the Arab Spring is a "mirage" through realist views,[74] while others make a more optimistic note.[75] As there seems to be a difference in stability between more peaceful revolutions and those who achieved it through violent means, these events still provide a certain level of similarity in skepticism of any potential form of political stability. Assassinations of opposition leaders in Tunisia, assaults on ethnic and religious minorities as well as an eventual coup in Egypt have sparked debate whether the Arab Spring is actually a "winter", or whether there is any "seasonal change" at all. We must look to other regimes which had to deal with internal instability as well as authoritarian regimes after their eventual revolutions, as Sheri Berman notes in "The Promise of the Arab Spring."[76] Even the American Revolution's first government based on the Articles of Confederation was replaced with a new government and constitution, which preserved elements of fragility leading to its own civil war about a century later.[77] While this still is a different era in comparison, measuring these revolutions and tracking their developments may help to provide a potential timeline as to how long this transition will take. Scholars, politicians, and others concerned with the Arab world must recognize this odyssey, a long and winding journey that Libya and the entire region is undertaking is still in its

Press.Pp. 124-126.

66 Ibid, pp. 152.

67 Alison Pargeter. 2012. *Libya: The Rise and Fall of Qaddafi.* New Haven: Yale University Press. P. 131-133.

68 International Court of Justice. 1994. "Case concerning Territorial Dispute (Libyan Arab Jamahiriya/Chad)." International Court of Justice. February 3. Accessed February 12, 2011. http://www.icj-cij.org/docket/files/83/10331.pdf.

69 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp.153-54.

70 Akram al-Turk. 2011. "Libya: From Revolt to State-Building." In *The Arab Awakening: America and the Transformation of the Middle East*, by Kenneth Pollack et al, 117-127. Washington, DC: Brookings Institution Press. Pp. 118-119.

71 Lindsay Hilsum. 2012. *Sandstorm: Libya in the Time of Revolution.* New York: The Penguin Press. Pp. 11-15.

72 Christopher Stephen, and Caroline Alexander. 2013. *Libya Militias Flee as Pro-Government Crowds End Siege - Bloomberg.* May 10. Accessed May 10, 2013. http://www.bloomberg.com/news/2013-05-10/libyan-protests-spur-embassies-to-issue-travel-alerts.html.

73 Daniel Byman. 2012. "Regime Change in the Middle East: Problems and Prospects." *Political Science Quarterly* 25-46.

74 Seth G. Jones. 2013. "The Mirage of the Arab Spring." *Foreign Affairs*, 55-63.

75 For both sides of this debate, see Sheri Berman. 2013 "The Promise of the Arab Spring"and Seth G. Jones. 2013. "The Mirage of the Arab Spring." *Foreign Affairs* 55-74.

76 Sheri Berman. 2013. "The Promise of the Arab Spring." *Foreign Affairs* 64-74.

77 Ibid.

twilight. This journey has proven to have its triumphs and tragedies, and will continually do so for the foreseeable future.

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ABSTRACT »   *Development has now become a hybrid of modernization and neo-liberal economic policies. Being modern however, does not always fit in with the identity of local communities. This disconnect is especially seen in places, where local communities have been ignored when it comes to applying policies to develop a nation. A primary example would be Guatemala, in which indigenous peoples account for 52% of the population. Indigenous communities, fall outside of the powerful political sphere of a particular developmental discourse, and as a result have been seen as detrimental to their own society's growth. It is why this paper addresses the overall question of: Can development be fully compatible with the preservation of the identities of indigenous communities?*

Modernization and Indigenous Peoples: Culture, Discourse, and Development

by Lucia Obregon

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More than half the people of the world are living in conditions approaching misery. Their food is inadequate. They are victims of disease. Their economic life is primitive and stagnant. Their poverty is a handicap and a threat both to them and to more prosperous areas. For the first time in history, humanity possesses the knowledge and skill to relieve the suffering of these people.

-Harry S. Truman

President Truman addressed the notion of "development" in which the knowledge and skill can provide a better future for the less fortunate. In his address he expressed his support for the United Nations and talked about the need for collaboration with other nations in order to improve the conditions of those living in misery. His speech, however inspiring, also introduced a language highlighting the social differences between those who possess the knowledge and skill and those who don't. This type of language has remained throughout those who promote development. The impact of this has resulted in the segregation of those who have and those who have

not accomplished a level of modernization. This has become especially significant in places where the identity of local communities have now been seen as an obstacle of development, as my case will aim to show.

What is relevant for my research is how development has now become synonymous with modernization. Being modern does not always fit in with the identity of local communities. This disconnect is especially seen in places, where local communities have been ignored when it comes to applying policies to develop a nation. A primary example would be Guatemala, in which indigenous peoples account for 52% of the population. Guatemala is a primary example of how local communities are seen as an obstacle of development, due to the differences in identity and how the idea of development; this will be exemplified in my case study within this paper. This is also seen in many other local communities, such as Bolivia, Peru and Kenya; people who fall outside the powerful political sphere of a particular developmental discourse, have been seen as detrimental to their own society's growth.[1] Therefore, I ask, can development be fully compatible with the preservation of the identities of indigenous communities?

There is a big disconnect with the actual idea of development and what the current condition of the world is. Unfortunately, there are developed nations and there are underdeveloped nations, however, despite their exposure to capitalism, free trade, and other aspects of modern life, underdeveloped nations can't seem to catch up. The attempts to achieve modernization and development in less fortunate countries have been directed by wealthier western nations. For example, the United States in the 1950's and 1960's was an advocate of democracy as the solu-

tion against poverty in Latin America.[2] So it seems that prescriptions for development can change and be tailored over time. What has not changed, however, is the view that cultural, institutional and organizational features of less developed nations like those of their local communities are seen obstacles in their attempts to develop. Therefore, I argue, that when analyzing the current paradigm of development, we realize it cannot exist simultaneously with preserving the identity of indigenous populations.

Over the course of this paper I will analyze different literature regarding the identity and culture of local communities, followed by a case study of Guatemala. Proceeding will be an analysis followed by a brief conclusion highlighting the significance of this case as it pertains to modernization.

LITERATURE REVIEW: CURRENT SCHOLARSHIP

Development and Modernization

Development has now become a hybrid of modernization and neo-liberal economic policies, meaning it has now evolved into having a fiscally conservative response toward physical and debt crises that has created an increase in investment and corporate globalization. Development is a fundamental belief of modernity and economic growth, meaning the achievement of the production of goods and services on one side of the nation's account while achieving a larger total income

1   Igoe, Jim (2005). *Becoming indigenous peoples: difference, inequality and the globalization of East Africa identity politics.* African Affairs, 105, 399-420.

2   Roberts, J. T., & Hite, A. (Eds.). (2007). *The globalization and development reader: perspectives on development and global change.* Oxford: Blackwell.

on the other.[3] Modernization, on the other hand, is the advancement of technology, government, social organization combined together with humanitarian sentiments to produce a better world.[4] The problem here is that development has become equivalent to being modernized; but there is a misconceived correlation between becoming modern and development.

Modernization theory appeared in the 1950s and 1960s and made the attempt to explain the transmission of Western styles of living, technological innovations and individualist culture and self-motivation.[5] "Western" modernization focuses on three main areas of development, one being promoting economic growth by the infusion of technical and social innovation within the economic structure[6], literacy and cultural development in which "encourages a 'state of mind' favorable to modernity"[7]; and lastly, the development of national identity, which includes reinforcement of national identity and democratic policies. Modernization theory introduced the idea that modernizing communities would also promote development.

Promoting modernization would mean that one would replace traditional values with modern values. Modernization theory assumes that "traditional values" are directly tied to the economic conditions of a state.[8] Consequently, if modern values stimulate growth then a transition would be the obvious choice. In the postwar United States, modernization portrayed a notion that underdevelopment is a consequence of a nation's internal characteristics: "traditional economies, traditional psychological and cultural traits, and traditional institutions".[9] From this idea, the extermination of traditional values in developing nations was encouraged, enabling the path for a capitalist development strategy[10]. The role then of "rich" and "modern" developed nations was to stimulate modernization of "backward" nations through economic, cultural, and military assistance.[11]

Culture

Alexander Wendt refers to the term "culture" as "socially shared knowledge," knowledge in turn is defined as "any belief an actor takes to be true"[12]. Since Wendt assumes states to be major players in International Relations, the beliefs that encompass cultures are shared among states, not among individuals. The key attribute of each culture is the "role" in which is place in the identity of the state.[13] A related conflict of a state's identity approach is that it fails to provide suitable explanations of how actors choose from among competing identities, like in the case of Guatemala. While Wendt does not address this problem, he does note that "many situations call up several identities that may point in different directions".[14]

3   Roberts, J. T., & Hite, A. (Eds.). (2007). *The globalization and development reader: perspectives on development and global change*. Oxford: Blackwell.
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12 Wendt, A. (1999). Social theory of international politics. Cambridge University Press.
13 Wendt, A. (1999). Social theory of international politics. Cambridge University Press.
14 Wendt, A. (1999). Social theory of international politics. Cambridge University Press. p.1

The major problem that many modernist have when referring to culture is the accompanied language that goes along with it. The concept of culture is usually viewed as a homogenous term, meaning that culture is undifferentiated; groups have one culture that is shared among members.[15] This implies that everyone shares the same view, and orientation of the world, which is unrealistic and impossible.[16] In *After the Fact*, Geertz states that culture is in fact real and many critics of culture are" burying their heads in the sand."[17] Recognizing that culture is real is essential for the understanding of both power and the powerless.

The way local communities and their culture are viewed remains outdated and reminiscent of the colonial era. Colonial conquests and state efforts were to modernize indigenous societies, among other people and strip them of their culture. This is due to the notion that the more the society maintains its primitive culture, the less developed it is, and it is less likely to develop. This created a belief that culture restricted societies because it prohibits actors to adapt because of their predictable behaviors that were attached to ecological conditions or built environments.[18] This view of culture, unfortunately, still remains dominant today.

Identity and Indigenous Peoples

Identities are formed by institutionalized norms, ideas and values of the social environment in which individuals participate with (Reus-Smith, 2009).[19] Identities are formed through the communication and interaction with the social environment and their interests are shaped by the interaction or relationship with a certain structure. In addition "material resources only acquire meaning for human action through the structure of shared knowledge in which they are embedded."[20] Meaning that identities are shaped through the interaction with the environment, which shapes meaning to the actions actors take. Thus, when local communities have different interest and concepts on development that differs from the state, there could be a possible disconnection within the nation. Psychologist Jerome Bruner, who states that cognitive development is achieved through the many interactions with the surrounding environment, also supports this idea.[21] That is why it is imperative to understand the environment within the state because they are thought to shape the social identities of political actors.

The way identity is shaped through the sharing of knowledge defines the interest and goals of an actor; in comparison to rationalists, in which believe that individuals and states interact with one another in a pre-existing set of preference.[22] Wendt states "Identities are the basis of interests."[23] In terms of development it is important to understand these interests, as individuals are the ones that deal with these inequalities within development. This resembles the ideas of a structuralists, the emphasis is that while structures affect identities and interest, those identities and interest have just as big of an impact on the structures its self. It is the interaction of both that "create and instantiate the relatively enduring structures in terms of which we define our identities and interest."[24] The cooperation of both

15 Ortner, S. B. (2005). Subjectivity and cultural critique. *Anthropological Theory*,5(1), 31-52.
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21 Bruner, J. S. (1996). *The culture of education*. Harvard University Press.
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22 Bruner, J. S. (1996). *The culture of education*. Harvard University Press.
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23 Wendt, A. (1999). Social theory of international politics. Cambridge University Press.
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the social structure of a nation and the identity of the local community must be cohesive; otherwise growth can be almost impossible.

When addressing Indigenous people, their identity and the status within a state, it then becomes a little more complex; local communities in Guatemala are not viewed as valuable, but in turn as obstacles to development. This goes back to the language one attaches to the word as well as the understanding of the concept. The word "indigenous" has a negative connotation; it is seen as un-modern, and primitive. The inclusion or exclusion of the indigenous peoples by a state may be directly reified by their cultural difference.[25] Identifying yourself as indigenous may have certain limits corresponding social action due to the stigma attached to it.[26] Many Functionalist accounts for culture and cultural boundaries as being constrained by material conditions and customary practices. However, indigenous people have demonstrated that they maintain a balance between the relationship of culture and ecology under the larger frame of culture.[27]

To understand the complexity of this problem, Barth (1994) offers three levels in which local communities or indigenous groups can operate.[28] The micro level, or grass roots, is where groups have face-to-face relationships. Here is where values and social expectations come to arise.[29] The Macro-level includes institutional structures such as the government, the United Nations, the World Bank and

several NGO's.[30] This level, as one may have noticed, is those who are supposed to promote and ensure the development and survival of local communities.

This is exemplified by the Declaration on the Rights on Indigenous Peoples as said by the United Nations, focuses on the individual and collective rights of indigenous peoples, as well as the right to maintain their culture, identity, language. It also "emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations".[31] It "prohibits discrimination against indigenous peoples", and it "promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development."[32] The goal of the Declaration is to "encourage countries to work alongside indigenous peoples to solve global issues, like development, multicultural democracy and decentralization."[33] According to Article 31, there is a major focus that the indigenous peoples will be able to protect their cultural heritage, which is extremely important in preserving their identity.[34] The need for a declaration to protect the rights to preserve culture highlights that there is a problem that need to be addressed.

Unfortunately indigenous groups have become more restricted, less self-sufficient, powerless and dependent on the macro level. The need for more representation has made them rely on the median level which consists of tribal governments and indigenous.[35] Because indigenous peoples have become powerless the median level serves to preserve and represent the local communities. They

25 Dressler, W. and Babidge, S. (2010). Identity, Difference and Development. International Studies Association Compendium. Oxford: Blackwell Press
26 (Dressler & Babidge, 2010)
27 Ortner, S. B. (2005). Subjectivity and cultural critique. *Anthropological Theory*,5(1), 31-52.
28   Barth, F.(1994.) "Enduring and Emerging Issues in the Analysis of Ethnicity." In The Anthropology of Ethnicity: Beyond "Ethnic Groups and Boundaries," edited by Hans. London: Allen & Unwin.
Vermeulen and Cora Govers. Amsterdam: Het Spinhuis
29 (Barth, 1994).

30 (Barth, 1994).
31 *Declaration of Human Rights*. United Nations. http://www.un.org/en/documents/udhr/
32 *Declaration of Human Rights*. United Nations. http://www.un.org/en/documents/udhr/
33 *Declaration of Human Rights*. United Nations. http://www.un.org/en/documents/udhr/ p.1
34 *Declaration of Human Rights*. United Nations. http://www.un.org/en/documents/udhr/
35   (Barth, 1994)

create a space for preserving identity and less emphasis on economic reforms that would threaten their land and culture.

Power: Structural Violence

Paul Framer leading anthropologist introduces the notion of structural violence, in which the inequality of power and violence is embedded in the economic, social and political structures of a state.[36] This also applies to development in which he states that social and economic structures are put in place by the "victors" of a certain society. This dominance in a completion-driven society helps replicate inequalities of power.

These inequalities of power, according to Farmer, create a ruling elite class. This becomes problematic when the power less then become marginalized and create illusions: "such illusions suggest an important means by which other mis-readings, most notably the conflation of poverty and cultural difference – are sustained. They suggest that being from different cultures, are of different worlds and of different times. These sorts of misreading are finding a more insidious utility within elite culture."[37] Thus, a nations inability to develop is blamed not on the system that is oppressing local communities but rather on the cultural differences they represent. In addition Farmer adds: "Cultural difference is one of several forms of essentialism used to explain away assaults on dignity and suffering in general."[38] The elites blame cultural differences of the indigenous groups for their misfortune. When in reality, they are victims of the structure put in place leaving them powerless.

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36 Farmer, P. (1994). *The uses of Haiti* (Vol. 3). Monroe, ME: Common Courage Press.
37 Farmer, P. (1994). *The uses of Haiti* (Vol. 3). Monroe, ME: Common Courage Press.
38 Farmer, P. (1994). *The uses of Haiti* (Vol. 3). Monroe, ME: Common Courage Press.

METHODOLOGY

The remainder of this paper will present a very specific case study in Guatemala. This case study will address two factors: modernization in the form of corporate power and the identity of the indigenous community in Guatemala. This will provide a better understanding of the current conflict between local identity and nationwide modernization.

This case study will examine the overture of the Escobal mining project, which aims to foster economic growth while marginalizing the opposition of the indigenous community in San Rafael las Flores and other surrounding communities. This will be contrasted by two very different opinions. One being the opinion of Tahoe Resources Inc., who claims their presence will be for the benefit of the communities. Followed by the opposing idea of the indigenous community that the revenue the mining company will bring comes second to that of their cultural beliefs. The aim is to bring a clear understanding as to why development and preserving the identity of local communities are not compatible.

MINING IN GUATEMALA

The Escobal Project and Tahoe Resources Inc.

The Escobal project is a high-grade silver deposit found in 2007 in San Rafel las Flores, Guatemala. On October 21, 2011, the project was accepted and construction began November 2011. In May 2012, Tahoe Resources Inc. released an economic evaluation of the project, in which it estimated capital cost for the underground mine and milling operation amounting $326.6 million. The project

remains on track and on schedule for excavation in the second half of 2013 with commercial production expected in the 1st quarter of 2014.[39]

Tahoe Resources Inc. is a Canadian mining company that has invested approximately $406 million through its subsidiary Minera San Rafael SA. The mine is in a town called San Rafael de las Flores, in the south eastern part of Guatemala, 700 kilometers from Guatemala City (Jamasine, 2012). The total investment of $500 million is to extract a total of 300 million ounces of silver, placing the mine in a leading position for the silver market.[40] The production is estimated to last 19 years and an additional two years of technical closure of the mine.

According to Tahoe Resources Inc. the Escobal project will benefit the local communities and the people of Guatemala through the increasing of revenue. They plan to help the community by employing over 500 people directly in Guatemala during the expected 20-year project. They also plan to purchase every good and service in Guatemala during the three-year exploration and construction period amounting to approximately $70 million.[41] In addition to the $26 million for the goods and services purchased for production, $15 million for royalties and taxes for the local government and $50 million of taxes and royalties will be collected by the federal government per year.[42] Tahoe Resources Inc. also states that as part of their corporate social responsibility they are committed to "operating its mines and projects in an environmentally responsible manner,"[43] meaning that

they will do everything in their power to meet or exceed the standards set by the applicable environmental laws and regulations in Guatemala.[44] They also commit to protecting the health of and safety of their employees by providing the training and tools for their employees. They also plan to promote high standards in equipment maintenance, ensuring first aid emergency plans, accident prevention programs and report any health or safety related incidents.[45]

As for the community, Resources Inc. is dedicated to the close cooperation with indigenous and business leaders, and local governments to ensure the community preserves its identity. Tahoe plans to "strengthen the community by putting special emphasis on providing local infrastructure, potable water supplies, waste management practices, education and health care" (economic impact, 2013, p.1).

The Guatemalan Government

In the first six months of President Otto Perez Molina's term he approved 68 new exploration and exploitation licenses. This is in addition to the already approved 387 mining concessions and 7234 more are pending; yet the majority of these projects are on indigenous land.[46] Furthermore, Molina recently proposed several reforms on mining laws, which would allow for state participation in mining projects and once again allow for the approval of new mining concessions. Molina is pushing the Constitutional reform that "will make possible for the gov-

39 Tahoe resources inc.Retrieved from http://www.tahoeresourcesinc.com/
40 Jamasmie, Cecilia (2012). *Guatemala's Escobal Mine to become one of the top silver projects in the world: report*. Mining.com. www.mining.com/guatemalas-el-escobal-mine-to-become-one-of-the-top-silver-projects-in-the-world-report/
41 Economic Impact. Tahoe Resources Inc. Retrieved from http://www.tahoeresourcesinc.com/
42 (economic impact, 2013).
43 (economic impact, 2013).
44 (economic impact, 2013).
45 (Economic Impact, 2013).
46 Hufstader, Chris, 2013. *Guatemala's President Propose 2-year mining moratorium*. Oxfam. http://www.oxfamamerica.org/articles/guatemalas-president-proposes-2-year-mining-moratorium

ernment to acquire up to 40% of the revenue coming from mining explorations."[47] The reform includes 55 articles that would change the current mining law that has been in place for the last 15 years. The document aims to "increase the country's revenue and achieve equitable distribution of national income," said Erick Archile, Minister of Energy and Mines.[48] The previous president Alvaro Colom had placed a moratorium in 2008 when the Constitutional Court ruled 7 articles of the mining law unconstitutional. This ruling however, would be reversed under Molina's proposals.[49]

Indigenous People

In November 2012, the citizens of Mataquescuintla held a community discussion in which 96% voted against mining project. On February 17 of this year, the community of San Juan Bosco in San Rafael Las Flores held another community consultation in which 93% voted against Tahoe resources Inc. It was the first in a series of 26 consultations planned for communities in the municipality of San Rafael.[50] Despite the negative response to the mining project in their town, on April 3rd of 2013 was approved by the government and is now in full operation. It is important to mention that the indigenous population occupies these regions as the majority.

47 Hufstader, Chris, 2013. *Guatemala's President Propose 2-year mining moratorium*. Oxfam. http://www.oxfamamerica.org/articles/guatemalas-president-proposes-2-year-mining-moratorium

48 Hufstader, Chris, 2013. *Guatemala's President Propose 2-year mining moratorium*. Oxfam. http://www.oxfamamerica.org/articles/guatemalas-president-proposes-2-year-mining-moratorium

49 Hufstader, Chris, 2013. *Guatemala's President Propose 2-year mining moratorium*. Oxfam. http://www.oxfamamerica.org/articles/guatemalas-president-proposes-2-year-mining-moratorium

50 Schertow, John (2013). Guatemala: Recurring Violence in Area of Tahoe Resource-Goldcorp Mine Demands Investigation and Company Withdrawal. *Upside down world: Covering Activism and Politics in Latin America,* 3(4).

In addition to the clear misrepresentation of the indigenous community in San Rafael, there is a disregard for the beliefs and the value of the land that the indigenous have. Lolita Chavez Ixcaquic, spokesperson for the K'iche Peoples Council states that: "We have a commitment to mother nature and with all people who we coexist. Humanity does not own Mother Nature but in turn we are part of Mother Nature, she is the creator who gives us life. We are committed to reciprocity, to defending mother earth,"[51] to the indigenous population is not an issue of ownership. In fact, this is an issue of the complete disregard of their identity and the value they have for "mother nature." Mining is detrimental to the land, deforestation, loss of biodiversity and pollution is the major contributions of mining. Deforestation happens because "mining requires large areas of land be cleared so the earth could be dug into."[52] Large-scale deforestation is required to be carried out in the areas where mining has to be done in addition to clearing the vegetation around the area for the construction of roads and residential for miners.[53] Pollution not only in the air but also in the water is caused by the high concentrations of mercury and cyanide, which have harmful effects on human health when accidentally consumed.[54] Mining is not only an invasion of community space but is a violation against the well being of its habitants. Lolita Chavez states that: "land is not private property; we don't defend it because it's ours, we defend because it's what gives us life, and it is our mother earth. The problem is not that that they

51 Personal communication. Lolita Chavez Ixcaquic (2012). *Como se Defiende el territorio.* Internet Archive, Barcelona.

52 *How Does Mining Affect the Environment* (2013). Buzzle. http://www.buzzle.com/articles/how-does-mining-affect-the-environment.html

53 *How Does Mining Affect the Environment* (2013). Buzzle. http://www.buzzle.com/articles/how-does-mining-affect-the-environment.html

54 What You Must Know about Mining and Our Environment.. The action Blog. http://www.theactionblog.com/climate-change/mining-affect-environment.php

won't give us money for land, the problem is life."[55] If we destroy the land that gives us life, are we not destroying life itself?

In an interview I conducted on April 3rd, 2013, Juan Antonio Cali, leader and member of the indigenous Kakchiquel group, gives a different perspective: "As humans we have the right of liberty, property and life. However, land is not a right, land is not ours. However, there is the access to land and that is what we don't have as indigenous people."[56] Juan Cali points out that the problem is not that they don't have the right to property but it is that they don't have the same access to property. Juan Cali argues that they are not against development; they are however against the lack of representation and the lack of importance they have in their government. "If there was a silver deposit in my back yard, the mining company does not deal with me. They deal with the state, because the state has no problem exploiting the land and kicking us out."[57] In response to the voting and consultations that are being held in the communities around San Rafael de las Flores he argues that "the problem with these voting's and consultations that are being held is that they have no jurisdiction. No validity. They have no power in court, against the government or with anyone. If we say no, there is no one to hear us." Furthermore, he claims: "…in order to have something happen, would mean to reform the constitution that only benefits the elite." He also argues that in order to make a transformation there also needs to be a change in the way indigenous leaders are leading; "in addition, we do not need more indigenous Politian's, we need indigenous in the ministries of finance, economy and mercantilist in order to

actually have some sort of power."[58] The problem is that they are not being heard, they are not being represented by the constitution or by the government.

ANALYSIS

The San Rafael de las Flores case is a clear example of how the identity of the indigenous population is not a hindrance, rather just not compatible with the current idea of Development. Development in Guatemala means to modernize and monopolize their resources. According to the government, brining foreign investment, mining technology and allowing the exploitation of the land will bring prosperity. This highlights the idea of modern versus traditional values. While modernity is viewed as valuable, preserving nature and culture does not.

For indigenous people of San Rafael las Flores development means the destruction of the land they find sacred. As Lolita Chaves Ixcaquic said in an interview: "they (Guatemalan government) view us as enemies of development, in our community it is simple: we are not asking for money, we are asking to keep your hand away from our territory, it's the relation of power, they accuse us of violating laws that weren't consulted with us in the first place."[59] The influence of the need to develop would suggest that indigenous people just don't understand the value of money and development; however their cultural differences suggest that they understand but rather don't place the same value on money. Therefore the government view indigenous peoples as ignorant and creates a pattern of law making that is not consulted or considered by them.

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55 Personal communication. Lolita Chavez Ixcaquic (2012). *Como se Defiende el territorio*.
    Internet Archive, Barcelona.
56 Personal communication. Juan Antonio Cali. April 12, 2013.
57 Personal communication. Juan Antonio Cali. April 12, 2013.

58 Personal communication. Juan Antonio Cali. April 12, 2013.
59 Personal communication. Lolita Chavez Ixcaquic (2012). *Como se Defiende el territorio*.
    Internet Archive, Barcelona.

This exemplifies the Paul Farmer's idea of structural violence. The Guatemalan government has created a structure that further establishes the racism and the term of "otherness." This creates the narrative of blaming the victims for their own underdevelopment. In the case of mining, the people of San Rafael are being victims of an economic structure that disregards their beliefs and culture. Bringing in corporate powers that threaten not only their livelihood by taking over the land, but they threaten their values and identity. They further marginalize the indigenous population and once again leave them powerless.

It seems that under the current paradigm of development there could only be one choice. Either modernize or preserve indigenous identity. Guatemala does not need to exploit its resources in order to generate its own development. Mining activity is not the only alternative nor should it be a priority for a development model. The problem, persist however, on the idea that modernization is the only viable option. This creates a conflict of an unimaginable scale. The choice is between preserving the identity of 52% of the population and to find other alternatives of development, or to continue to modernize and lose the heritage that set Guatemala apart. Unfortunately, it seems that the Guatemalan government has already made its choice.

CONCLUSION

Modernization is not inclusive; it provides one framework, which is inadequate and unworkable. Unfortunately there currently exists no other alternative. Instead of attempting to simply prescribe a complete transformation of society, it should offer to identify the underlying structural issues of their economic, political and social institutions.

Development should represent not only economic growth but also human security. Ignoring the basic autonomy of a country's structure, such as culture and identity, fail to provide an accurate answer as to why different parts of the world differ under development. Until we study the identity of local communities, like in Guatemala, and their impact in the social and political structure, we cannot apply one model of development and expect it to work.

As highlighted in this paper through theorist work and as presented in the case study, the current framework of development cannot co-exist with the preservation of indigenous identity. If there will ever be an alternative to development then it will require the rethinking of the long-term, micro-level transformation of societies, while maintaining local identity.

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ABSTRACT »   *In India exists a striking disparity between the rights of men and women. Each year one hundred thousand women are lost as a result of greed that stems from customs of the dowery system. This paper looks at how both dowery inequality and death come from the culturalized norm that women are a less valued citizen, and how this effects the development of India. What this paper found was the women's workforce contributed the highest percentage but achieved the lowest percentage in most of the social development factions like healthcare, education, and income, which has significantly contributed to stunted development within India.*

The Advese Effects of the Exclsion of Women in Development

by Devin Hiller

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"Daughters are someone else's property" is a common Hindi phrase used in India to describe the worth of women. In India this is a supported fact in the case of marriage, birth and life. Mitu Khurana faced the threat of not only her death, but of the lives of her unborn children when her husband and mother-in-law tried to coerce her through verbal and physical abuse to undergo an abortion, simply because she was to give birth to daughters[1]. Khurana's story is not unique. Twenty to thirty percent of girls are killed every year by infanticide and one-hundred-thousand mothers are killed every year because they fail to produce a son[2].

Female infanticide is only one of the stigmas in modern Indian culture that promotes gender inequality. The lack of women's access to education,

health care, and the proper enforcement of laws hinders women's safety and their advancement in society every day. As a result of these inequalities the argument can be made that the cultural stigmas that hold back the women of India also hold back India from developing further.

A change has surfaced in world paradigms, which advocates for gender equality as a means to promote civil liberty, social development and overall state development within nations. This leeds to the question: How does gender inequality contribute to the underdevelopment of a state? As an answer, this paper makes the argument that a state's economy and development can be greatly improved by the implementation of gender equality through, cultural revelations, education, and the

1   See E.G. Davis (Director), *It's a girl (2013)*
2   See E.G. Davis (Director), *It's a girl (2013)*

suppression of poverty, resulting in the utilization of a fully empowered population.

This paper will proceed by first outlining the dynamics of women in development through the use of journal articles, books and documentaries in the literature review. The literature review will be followed by a short methodology, which will then be accompanied by case study set in India. Lastly, this paper will provide an analysis and conclusion that will explore the rationale behind the claims of this paper.

LITERATURE REVIEW

Gender equality as a solution for positive development is a controversial issue in the scholastic medium. Scholars who debate on the topic of gender equality in development fall into common themes that coincide with the social and economic factors of development. For the purposes of this paper the relevant themes at play in regard to state development and gender equality are culture, empowerment, poverty, employment, and education. While these themes span a wide range and often overlap, each brings a new dynamic to development and casts a different shadow on the effects of the impediment of gender equality in regard to a states success in development.

CULTURE

Perhaps one of the most important themes of development that all international relations theories agree on is that education is paramount in the development of a state. The third Millennium Development Goal is aimed at the empowerment and elimination of gender disparity through the channels of gender equality in education of all levels. Women in developing countries have twenty-one percent lower literacy rates than men, which not only disempowers women on a socioeconomic level but also stunts the growth of a country due to the inaccessibly to tap the knowledge of a full population[3] The assumption has been made that the best way for a state to develop, is to provide primary education for all [4]This has been supported by the evidence that women who receive at least seven years of education have two fewer children, which alleviates some of the stresses of poverty on

the family unit[5]. The reduction in children per household is a trait of a developed country[6], which creates the incentive to educate the state equally regardless of gender. Education is a proven tactic in igniting development, however it is not widely used.

Culture is the most controversial theme this paper will discuss due to the combative ideas within theories. Cultural aspects in India span all the themes listed throughout this paper thus far. There is a wide gap between the legislature in place in India that protects against dowry death, equal opportunity and the enforcement of these laws due to the paradigms of the existing cultures that view women as a resource rather than an equal[7]. Elevation in poverty due to the population boom of post-colonialism has led to an elevation in violence toward women due to dowry(although illegal, commonly practiced) and son preference[8]. The assumption has been made that most issues on a microeconomic level that contribute to development can be improved through a change in the gender bias for men[9].

Culture as it has already been noted is not easily changed, nor is it readily changed. This is due to the predisposition of post colonial feminist theory that believes in the abstinence from westernization. This can be obtained by the implementation of short term goals[10]. The feminist perspective argues that in order for culture to truly change in the direction of gender equality as a means for development, villages and grass roots campaigns must implement the promotion of education, non-violence, fair employment and the deconstruction of a son preference in order to mold culture slowly rather than implement country-wide culture shock[11].

3   See N.P. Stromquist, *Women and Illiteracy: The Interplay of Gender Subordination and Poverty*. Comparative Education Review, 34(1) Special Issue on Adult Literacy p. 95-111 (1990)
4   S.G. Neidell, *Women's Empowerment as a Public Problem: A case study of the 1994 international conference on population and development*. Population Research and Policy Review, 17(3), 247-260. (1998)
5   A. Klassen, *Does gender inequality reduce growth and development? evidence from cross-country regressions. Does Gender Inequality Reduce Growth and Development?* Evidence from Cross-Country Regressions, 1(1), p. 1 (2000)
6   N.P. Lagerlöf, *Gender Equality and Long-Run Growth*. Journal of Economic Growth, 8(4) p.403-426 (2003)
7   E.G. Davis (Director), *It's a girl (2013)*
8   (CEDAW, 1998)
9   A. Sen, *The Many Faces of Gender Inequality*. The New Republic. (2001)
10 A. Sa'ar, *Postcolonial Feminism, the Politics of Identification, and the Liberal Bargain*. Gender and Society , 19(5) p. 680-700 (2005) Lorentzen, 2005)
11 (Sekhon, 2006)

EMPOWERMENT

One of the most important factors to gaining equality is through empowerment. Empowerment is defined as sharing power with subordinates[12]. This paper makes the assumption that empowerment can be simplified in the form of management or those in power share such powers with those who are subordinate in order to create the notion of full participation[13]. This definition is relevant to gender equality due to the parallels that can be made from the factors of development. Specifically, the assumption can be made that due to cultural aspects, women have the tendency to be subordinates under a patriarchal regime, therefore uniting their qualifications to receive empowerment. According to Women's Empowerment as a Public problem: A Case Study of the 1994 International Conference on Population and Development, "Empowerment requires husbands, partners, families and communities to help promote a healthy environment free from coercion, violence or abuse, in which women are free to use community services on a basis of equality[14]. From the feminist perspective, empowerment of women through vast mediums such as education, healthcare and equal opportunity in the workplace is one of the main ways a country can develop.[15]. While this assumption is applicable in India, culture paradigms are not easily changed and need the support of an economic project in order to be realistically represented and understood. The argument has been made that in order to develop a state must lessen the impacts of poverty, which according to Kabeer, "goes hand in hand with disempowerment"[16]. Empowerment is thus treated as means for development.

Though empowerment is a variable in the formula for a developed state, scholars argue that empowerment and gender equality are the result of the alleviation of poverty through economic intervention rather than social intervention[17].

These scholars believe that the suppression of women as actors in a developing state is largely in part due to their status as impoverished, and therefore make the assumption that welfare and social programs can elevate their economic position and therefore raise the economic position of the state on the whole[18]. Additionally, from the psychological perspective, scholars are cautionary about unrealistic expectations for empowerment. This is because they could have adverse results creating the feeling of disappointment, stunting the continuous evolution of gender equality and empowerment[19]. While these scholars certainly address the economic issues and climate of a developing state on the economic standpoint, both express a narrow view of how gender equality develops, equating it to the model of a western state. This view disregards the grass roots movements of women that are still ongoing of these western states to obtain gender equality despite the fact that they are in a categorically developed western state.

POVERTY

Empowerment as previously stated reacts to smaller factors, the first of which is the theme of Poverty. Poverty has been highlighted as the first of the United Nations(UN) Millennium Development Goals(MDG), created to eradicate extreme hunger and poverty. Poverty as defined by the MDG's is noted as "the proportion of people whose income is less than one dollar a day". While this definition highlights the definition of "extreme poverty", often poverty lines share similar boundaries. In India women are especially at risk of poverty based on their susceptibility to illiteracy, caste, land ownership and dependence on wage earnings[20]. Specifically women are at risk of poverty in India because they are viewed as second class citizens due to the resources(food, medicine, education, etc.) they receive after the men or boys [21]This often causes gender inequality within socio-economic standing of women and thus a higher chance of under productivity within the state stunting development.

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12 See J.A. Conger, *The Empowerment Process: Integrating theory and practice* The Academy of Management Review 13(3), 471-482 (1988)

13 See J.A. Conger, *The Empowerment Process: Integrating theory and practice* The Academy of Management Review 13(3), 471-482 (1988)

14 S.G. Neidell, *Women's Empowerment as a Public Problem: A case study of the 1994 international conference on population and development.* Population Research and Policy Review, 17(3), 247-260. (1998)

15 S.G. Neidell, *Women's Empowerment as a Public Problem: A case study of the 1994 international conference on population and development.* Population Research and Policy Review, 17(3), p. 247-260. (1998); See A. Sen, *The Many Faces of Gender Inequality.* The New Republic. (2001); See World bank. *About development.* (2013). Retrieved from: http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,-contentMDK:20147486~menuPK:344190~pagePK:98400~piPK:98424~theSitePK:95474,00.html

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17 S.W. Sinding, *Population, poverty and economic growth. Philosophical Transactions: Biological Sciences,* The Impact of Population Growth on Tomorrow's World364(1532), p. 3023-3030 (2009)

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19 L.V. Kempen, *The 'Downside' of Women Empowerment in India: An Experimental Inquiry into the Role of Expectations.* Social Indicators Research, 94,(3) p. 465-482 (2009)

20 See World bank. *About development.* (2013). Retrieved from: http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20147486~menuPK:344190~pagePK:98400~piPK:98424~theSitePK:95474,00.html

21 E.G. Davis (Director), *It's a girl (2013)*

Adversely scholars of the neoliberal perspective believe that women's status will rise with the elevation of wealth in a state. It has been assumed that wealthy states have a higher status of women[22] and that the urbanization and infrastructure reform is the way to achieve a solution to poverty and by extension gender inequality. Although urbanization and industrialization is one way a state can develop, this theory has been criticized in the way that globalization takes advantage of gender inequalities within the developing state because women are the predominate workforce in outsourced industry but make a fraction of the wage.

MORTALITY RATES

Another theme scholars have commented on within the controversial issue of gender inequalities effect on development is the mortality rates within a developing state. Mortality becomes apparently parallel with gender identity when ruling out cause of death from heart disease or cancer, but rather focusing on intentional deaths caused by violence, suicide or accidental death[23]. In India, 100,000 deaths a year are caused by "dowry deaths". Dowry deaths are when a woman is killed because her family could not produce an adequate dowry or could not produce a son[24] In the film It's a Girl, it was claimed that one in four girls does not live through puberty, though either infanticide or feticide because she will be a financial burden on her family. This gender disparity at birth causes a ratio of 140 boy to 100 girl ratio. These deaths are frequently ignored by authorities due to the cultural acceptance and reasoning. The Convention on the Elimination of All Forms of Discrimination Against Women(CEDAW) attributed the elevated female mortality to "son preference". The precedent is set that women have a higher rate of mortality and therefore negatively effecting the choices they make for long term goals, which causes them to abstain from the limited availability of education or investment and make short term goals[25].

While some scholars recognize the effects of mortality caused from violence and murder within the spectrum of gender inequality, they provide the adverse claim that the mortality rates are a result of expansive poverty, inaccessibility to adequate health care and famine due to economic crisis[26]. This model suggests that socioeconomics are secondary to macroeconomics, creating the dynamic that issues within social status are secondary to basic need.

EMPLOYMENT

Within social status employment from both wage and unstructured work(agriculture, fisheries, independent business) the theme of gender has been the cause for debate. From the feminist perspective, women are underpaid or unpaid, which is nothing new in a world where patriarchy rules the day. In employment, women are not victims of development, but agents for their own economic situation[27]. Ninety percent of the female workforce works in the agricultural markets and the connection has been made that underpaying these women does not allow them to expand technologically, stunting the growth of agricultural enterprises[28]. By underpaying the female workforce, they cannot progress at an adequate rate for development.

Adversely liberal institutionalizes argue that the underpaid employment of women makes them desirable in the global economy because of the low wages. The low wage brings in more corporate contracts, and therefore capitol for the state which can then be trickled down to the impoverished and eventually allow them to develop[29]. Because women only occupy four percent of organized labor in India feminists would argue that without proper vitalization of the full population, development can only plateau[30].

CULTURE

Perhaps one of the most important themes of development that all international relations theories agree on is that education is paramount in the development of a state. The third MDG is aimed at the empowerment and elimination of gender disparity through the channels of gender equality in education of all levels. Women in developing countries have twenty-one percent lower literacy

22 N.P. Lagerlöf, *Gender Equality and Long-Run Growth*. Journal of Economic Growth, 8(4) p.403-426 (2003)
23 F.C. Pampel, *Gender Equality and the Sex Differential in Mortality from Accidents in High Income Nations Population*. Research and Policy Review , 20(5) p.397-421 (2001)
24 E.G. Davis (Director), *It's a girl (2013)*
25 (Lorentzen, 2005)
26 K. Navaneetham, *The Influence of Cohort Effects on Mortality Trends in India: Role of Economic Factors.*

Population Research and Policy Review, 12(2) p. 159-176 (1993)
27 H.M. Hapke, *Petty Traders, Gender, and Development in a South Indian Fishery*. Economic Geography , 77(3) p. 225-249 (2001)
28 (CEDAW, 1998)
29 A. Klassen, *Does gender inequality reduce growth and development? evidence from cross-country regressions. Does Gender Inequality Reduce Growth and Development?* Evidence from Cross-Country Regressions, 1(1), p. 1 (2000)
30 (CEDAW, 1998

rates than men, which not only disempowers women on a socioeconomic level, but also stunts the growth of a country due to the inaccessibly to tap the knowledge of a full population[31]. The assumption has been made that the best way for a state to develop is to provide primary education for all[32]. This has been supported by the evidence that women who receive at least seven years of education have two fewer children, which alleviates some of the stresses of poverty on the family unit[33]. The reduction in children per household is a trait of a developed country[34], which creates the incentive to educate the state equally regardless of gender. Education is a proven tactic in igniting development, however it is not widely used.

Culture is the most controversial theme this paper will discuss due to the combative ideas within theories. Cultural aspects in India span all the themes listed throughout this paper thus far. There is a wide gap between the legislature in place in India that protects against dowry death, equal opportunity and the enforcement of these laws due to the paradigms of the existing cultures that view women as a resource rather than an equal[35]. Elevation in poverty due to the population boom of post-colonialism has led to an elevation in violence toward women due to dowry(although illegal, commonly practiced) and son preference[36]. The assumption has been made that most issues on a microeconomic level that contribute to development can be improved through a change in the gender bias for men[37].

Culture as it has already been noted is not easily changed, nor is it readily changed. This is due to the predisposition of post colonial feminist theory that believes in the abstinence from westernization. This can be obtained by the implementation of short term goals[38]. The feminist perspective argues that in order for culture to truly change in the direction of gender equality as a means for development, villages and grass roots campaigns must implement the promotion of educa-

tion, non-violence, fair employment and the deconstruction of a son preference in order to mold culture slowly rather than implement country-wide culture shock[39].

The literature reviewed throughout this paper provides a rounded view on the Scholarly theorist attitude toward gender equality as a tool of development within India and in the scope of development within the state.

METHODOLOGY

This paper will analyze the socioeconomic position of gender equality with the relationship to the corresponding development and economic improvement potential of a developing state using India as the primary case study. It will explore the relevant factors of development such as; education and literacy, non-casual employment, mortality, healthcare and the effects of poverty within the population. By applying gender equality as a means of development this section spans both the assumptions of micro and macroeconomics, providing the balanced argument for gender equality as a means for development. Additionally, this paper will examine the reasoning and hesitation behind the cultural ramifications that could be caused by the advocating of gender equality.

This paper will make the point that although India has experienced fiscal growth, the rampant population growth cancels out this development with the growing poverty, especially among the marginalized rural labor force that is predominately Female. This will be followed by the aspect of positive growth and applications that can be applied as a potential solution to socioeconomic problems that reflect India as a state.

CASE STUDY: INDIA

India, rich with culture and tradition, is currently the second largest country by population[40]. Scholars believe that Indian culture and people date back seventy-five thousand years, creating the assumption that Indian people have seen an insurmountable quantity of history. Through the modern age, a change has surfaced advocating for the development of all states. While India arguably stands on both sides of "developed" and "undeveloped", it will not progress and a state unless it rectifies gender inequalities through the promotion of education, sup-

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31 N.P. Stromquist, *Women and Illiteracy: The Interplay of Gender Subordination and Poverty.* Comparative Education Review, 34(1) Special Issue on Adult Literacy p. 95-111 (1990)

32 S.G. Neidell, *Women's Empowerment as a Public Problem: A case study of the 1994 international conference on population and development.* Population Research and Policy Review, 17(3), 247-260. (1998)

33 A. Klassen, *Does gender inequality reduce growth and development? evidence from cross-country regressions. Does Gender Inequality Reduce Growth and Development?* Evidence from Cross-Country Regressions, 1(1), p. 1 (2000)

34 N.P. Lagerlöf, *Gender Equality and Long-Run Growth.* Journal of Economic Growth, 8(4) p.403-426 (2003)

35 E.G. Davis (Director), *It's a girl (2013)*

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37 A. Sen, *The Many Faces of Gender Inequality.* The New Republic. (2001)

38 A. Sa'ar, *Postcolonial Feminism, the Politics of Identification, and the Liberal Bargain.* Gender and Society , 19(5) p. 680-700 (2005) Lorentzen, 2005)

39 (Sekhon, 2006)

40 (Census, 2011)

pression of poverty and a change in the cultural outlook of the role of women in society.

Like many ancient civilizations, India holds deep roots to the cultures that have shaped it. One of the major influences in India is the assertion of Hindu religion in Northern India[41]. Stein argues that as culture changed to represent the Hindu religion, the overt and abrasive patriarchal values changed the gender dynamics by leading to the increased subordination of women(1998). In the case of India, Hindu is not only a religion but a cultural guideline. Many of the same Hindi values made their way into modern Indian society. This connection is made in Ruth Vanita's article The Self is Not Gendered: Sulabha's Debate with King Janaka, "a woman should never be independent but under the protection of her father in youth, husband in adulthood, and son in old age"[42] The gospel passage often acts as a social guideline for society, and in many cases it dictates the treatment and roles attributed to each respective gender.

Due to the bias that Hinduism bestows upon women's roles, Indian women often live in the constraints of "classical" women's work. These "classical" roles include child-bearing, household chores and unpaid labor. Studies have shown that when women participate in gainful employment in India a woman's agency increases[43]. This agency positively affects the economy through an increase in GDP. However the study also goes on to say that due to cultural restrictions from the devout patriarchal society, such as a greater emphasis placed on joint child care with the husband and joint responsibility of household chores, it becomes exponentially harder for women to play a role in employment opportunities outside the home.

In addition to restrictions on employment, Indian culture also perpetuates gender inequality in the form of "son preference", highlighting an emphasis on female mortality rates. Son preference stems from the benefits and drawbacks of the dowry system. The system also rooted in Hindu culture, is the practice of property or money given to the groom to make the bride more desirable. Though by law India has outlawed the practices of dowry, it is still a large part of marital culture. Son preference is accentuated by the dowry system because daughters are seen as an outflow of wealth, whereas sons are seen as and in flow of wealth through marriage. This cultural paradigm has many consequences, including vio-

lence against women for having too small a dowry or not being able to produce sons, female fetus/infanticide, and an imbalance in the ratio of male to female children. When there is a disruption in the gender ratio of a state, the ramifications are often extreme violence and congruent with a rise in murders per capita due to the excess in organization between young men[44], which negatively effects the development of India.

The claim has been made in regard to the benefit of mortality rates due to their control of population growth. While the population growth of India is in some way stunted, the ramifications of that type of population control is often more harmful than good. An alternative to population control is the access to education and literacy for women. Women and girls in India are often excluded or given second preference to their brothers for education attention. According to a study, literacy significantly reduces the mortality rates of girls from ages 0 to 5 drastically. Additionally this tactic serves as a minor interference within Indian culture due to the fact that a woman can still perform her household roles without disrupting the male roles[45].

One state in India worth mentioning as a positive example in women's empowerment and use of agency is the State of Kerala. India has an average of 3.0 children per couple; Kerala has an average of 1.7, well below the goal of 2.0[46]. The primary reasoning behind such a steep shift in child birth per couple is the emphasis on women's education. Because the birthrates in Kerala diminished due to the attention to women's literacy and education, the mortality rates followed suit. As a result of the promotion of women's empowerment and agency, there has been greater recognition in women's property rights, hindering some cultural injustices the women of India face, in turn promoting positive development.

Women's property rights and education correlate with the presence of poverty. One of the reasons why women have little participation in the economic progression of India is the lack of economic resources caused by social constraints; namely Property rights. Due to the patriarchal nature of India, land and assets are favorably given to the male members of the family. Women in India lack the necessary resources to start their own business because of these paradigms and in many cases this preserves the cycle of patriarchy. Studies show that when women in India own a business, they are often not only successful but positively contrib-

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41   B. Stein, *A History of India*. New York: Wiley. (1998)

42   (2003, p.77).

43   A. Sen, *The Many Faces of Gender Inequality*. The New Republic. (2001)

44   A. Den Boer, *A Surplus of Men, a Deficit of Peace: Security and Sex Ratios in Asia's Largest States*. International Security, 26(4) p. 5-38 (2002)

45   A. Sen, *The Many Faces of Gender Inequality*. The New Republic. (2001)

46   A. Sen, *The Many Faces of Gender Inequality*. The New Republic. (2001)

ute to empowerment and agency of women in addition to their household income, thus positively effecting the economy of the surrounding region. Muhammad Yunus who created the microcredit union, was aimed at the rural market. Yunus lent modest loans to rural people(predominately women), and was repaid at 98 percent[47]. This data showed a relief in poverty of the area and showed the added participation of women in the community as active players.

Women's agency and empowerment in India is a crucial factor in the development of the country. Not only does the empowerment and progress toward gender equality provide a positive enforcement of development for the country but it also marshals a plan for development that excludes violence and exclusion. By fully utilizing the population of India, goals can be accomplished through a bend in social dynamics rather than a schism.

ANALYSIS

Through data given in both the literature review defining women in regard to development and the case study set in India, this article can, with reasonable confidence, positively support the claim that the lack of female utilization can hurt the state in regard to development. Through this lens, we can see that it is not only socially, but fiscally irresponsible to exclude women from employment, state benefits, and educational programs.

In many developing countries, including India, the largest industries are agriculture and textile. These two sectors are extremely labor intensive, and require higher inputs of labor over capital. Because demand is a constant we can make the assumption that the supplied workforce is the variable. Therefore, a current or future loss in the working labor market would greatly impact the current Indian economy and future economic potential. As we have seen in India, women are discouraged from seeking gainful employment outside the home. From this claim, the conclusion can be drawn that due to the diminished supply of labor force(i.e. women), demand cannot be adequately met, thus causing a loss of potential profit within the state, stunting development.

In addition the lack of education standardization for women of developing countries will also negatively affect the profitability of industry within the state. As this paper has shown, access to education greatly improves a woman's chance of living above the poverty line. The money earned in educated fields then sub-

merges itself into the economy, allowing for a ground up approach for economic enrichment.

From previous research we have seen that the promotion of education for females would allow for an increased percentage of females in the current labor market, and a reduction of both population expansion and infanticide. An increase in the current labor market due to females entering the labor force would lead to a more efficient economy, and a more skilled labor force. In addition to pure fiscal advancement of a greater number of households, education has shown to advance innovation in numerous fields of study. The combination of education and the unique perspective of being a woman can provide advancements in government policy, distribution of welfare, and provide variety within intellectual thought, effectively changing the way the government is run. This change could have the potential to change cultural dynamics, allowing countries like India to gain a fully utilized population.

CONCLUSION

Through the span of history patriarchy has been ingrained into culture, state dynamics and the way countries evolve. This can be seen in every state regardless of GDP, developmental progress or cultural stigma. However, the correlation between the excessive and overt exclusion and suppression of women in a developing state is paramount in understanding why the state in question is underdeveloped. The direct correlation between a difference in education, labor equality and the risk of poverty and morality is amplified in developing countries is due to the under-utilization of the population at large. The under-utilization of the disempowered population effectively hinders growth. From the claims and evidence seen in this paper, the conclusion can be made, that gender equality is the overriding pursuit that must be accomplished in order to successfully develop a state.

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ABSTRACT »   *This paper surveys and analyzes the relationship between China and NATO's security gains in a system of anarchy. It demonstrates that the era of American unipolarity is waning; NATO and China are countering each other's relative gains in power. This posturing will result in a new bipolar realignment of the international structure. Using a neo realist perspective, it reviews three cases of NATO intervention: Kosovo, Afghanistan, and Libya. It argues that in each case NATO has had direct influence on China's security beginning with the bombing of their embassy in Belgrade, occupying a country that shares its borders, and intervening in Libya during the uprises of the Arab Spring, a country that China relies upon for energy. The two actors' security is directly defined by each other's gains, resulting in the aforementioned bipolarity.*

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The Far-East Also Rises:

Sino-NATO Security Gains and the New Bipolarity

by Topher Devine

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President Barak Obama has pledged to pivot the United States military focus to East Asia, already having stationed 250 marines in Australia, with the aim to have ten times more by the decades end.[1] This is not going unnoticed. A recent New York Times article highlighted China's growing navy, noting that it has invested over one billion dollars in its military in the last decade, and that soon its navy will be the second largest in the world.[2] It would appear that the American unipolar moment is just that, a moment.

At the same, the US-centric military alliance, North Atlantic Treaty Organization (NATO), has been expanding its presence beyond Europe. Congruently, China has been expanding its influence beyond Asia. It is because of these developments that a chronological survey of NATO's interventions in relation to China's security is needed. This survey is vital to understanding the future structure of the international system. This paper aims to argue that in each intervention, NATO has had direct influence on China's security, beginning with the bombing of their embassy in Belgrade, and continuing to the occupation of a country that shares its borders—Afghanistan—as well as intervening in Libya during the of the Arab Spring. The two actors' security is directly defined by each other's gains, and that this will result in a bipolar system, similar to that of the Cold War.

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1   Matt Schiavenza, "What Exactly Does It Mean That the U.S. Is Pivoting to Asia?," *The Atlantic,* last modified April 15, 2013, , <http://www.theatlantic.com/ china/ archive/2013/04/what-exactly-is-the-pivot-to-asia/274936/.

2   Richard Parker, "Pilotless Planes, Pacific Tensions," *The New York Times,* last modified May 21, 2013, http://www. nytimes.com/2013/05/13/opinion/drones-and-the-rivalry-between-the-us-and-china. html

To demonstrate this causality, this paper will first review the relevant literature. Then, it will justify its necessity, and methodology. It will go on to explain the realist notion of balance of power theory, and examine the nature of state security in an anarchic system. The three NATO interventions will then be examined chronologically to see their impact on China's security. Finally, it will conclude, that in fact, Sino-NATO security relations are causal.

LITERATURE REVIEW:

To what degree do China's security gains affect NATO's, and vice-versa? This literature review aims to answer that question. Two articles have been chosen to best explain the theoretical perspectives being used to analyze three accounts of NATO intervention and their effects on Chinese security. The interventions include Kosovo, Afghanistan, and Libya. Theoretical perspectives will be reviewed under the subheading "Neo Realism," while the intervention analysis will be covered under the subheading "Case Studies". A final section will be devoted to the review's conclusion. Understanding the causal relationship between China and NATO's security gains is fundamental in the analysis of the future structure of the international system, and is necessary for understanding and prescribing state relations in that future.

NEO REALISM:

A neorealist perspective is vital to understanding the relationship between China and NATO's security gains. This theory best explains the strategic, self-interested and suspicious nature of states that lead to security competitions and systemic balancing. Neoliberal institutionalists disagree, and claim that through shared interests states can find ways to cooperate amongst themselves. They argue that international organizations can mitigate security competitions.[3] However, neorealism argues that these institutions are only relevant as long as they can be used as tools of the state. This is because states can never fully trust one another, and will do anything to increase their power.

In his piece, Anarchy and the Struggle for Power, John Mearsheimer elaborates on the above bedrock by outlining five specific assumptions. He lists these assump-

tions as so: the international system exists in a state of anarchy; all great powers possess some sort of military capability; states are always suspicious of each other's goals; survival is their main goal; and that states are rational actors. It is because of these assumptions that states seek hegemony as means of security. Great powers define the polarity of the system. The assumptions explain his assertion that a bipolar system is the most secure, and that security is relative.[4]

Mearsheimer's five assumptions are integral to understanding the behavior of both China and NATO in the international system. It is because of the anarchic nature of the system that China is naturally threatened by NATO's interventions, as nothing restrains it from growing. It is intrinsic that both actors distrust each other's ambitions. These actors are rational, and calculate their security in terms of the other's power. Thus, an increase in China's security threatens the American unipolarity that NATO is used to protecting. The article however, does not specifically apply the theory to the two, and predicts the end of NATO. Further theory is needed to examine if there is in fact a causal relationship between China and NATO's security.

Kenneth Waltz applies Mearsheimer's assumptions to explain post Cold War NATO behavior in his paper: The Balance of Power and NATO Expansion. The paper's purpose is to explain this expansion through a realist perceptive and refute the charge that realism fails to explain the post Cold War international structure. NATO's relevance is linked to US reliance on it as a source of power. He claims that the current structure won't last due to its unchecked unipolar power that the current structure won't last, he claims. This is because of the suspicious nature of states that will lead to new alliances and hegemonies. The expansion, he argues, is alienating, and forces Russia to move eastward, allying itself with an increasingly suspicious and powerful China, as opposed to integrating itself with the rest of Europe. A balancer will rise eventually. Combined they give the subject the tools needed to analyze NATO's interventions.[5]

While the paper helps to explain NATO's expansion, it does not explore NATO's interventions, nor does it expand on China's security in relation to such actions. It does, however, specifically account for why the emergence of a new power should occur in order to balance out such actions. While lacking a grander

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3   Robert Keohane, "From After Hegemony: Cooperation and Discord in the World Political Economy," in *Essential Readings in World Politics 4th edition*, ed. Karen Mingst, Jack Snyder (New York: Norton and Co, 2011), 292.

4   John Mearsheimer, "Anarchy and the Struggle for Power," in *Essential Readings in World Politics 4th edition*, ed. Karen Mingst, Jack Snyder (New York: Norton and Co, 2011), 31-33.

5   Kenneth Waltz "The Balance of Power and NATO Expansion," *CIAO,* last modified October 1998, http://0-www.ciaonet.org.opac.sfsu.edu/wps/wak02/.

survey of their relationship, together the two works explain that security is relative, NATO is still relevant, and that a balancer will rise amongst them.

CASE STUDIES:

In the article China and NATO: Grappling with Beijing's Hopes and Fears, Richard Weltz briefly surveys the two's relationship, while recommending greater cooperation and engagement between them if they are to avoid a security competition. The bombing of the Chinese embassy in Serbia by NATO in 1999 marked the first direct interaction. NATO's use of force was unauthorized by the United Nations Security Council (UNSC) and heightened China's distrust of the western alliance. While China sees NATO's success as vital to their state security, they also observe the expansion into Asia with suspicion. It is, however, the Afghan war that is pointed to as the best point for cooperation between the two.[6]

Weltz's article speaks of the zero-sum security between the two actors in the global system. However, his reliance on mutual cooperation falls short of explaining the relationship between China and NATO. It is precisely because of this zero-sum nature that the two actors will continue to vie for more power, in order to enhance their own security. NATO's intervention in Kosovo was a perceived threat to China. Thus, the enhancement of NATO's security did affect China's.

Milosz Kucharski's paper, China in The Age of American Primacy, functions similarly to Weltz's piece. However, it focuses much more on NATO's intervention in Afghanistan. Kucharski's piece argues that the intervention into a bordering state has led China to conclude that through NATO, the U.S. is attempting to contain them. He adds, that expansion into Asia would never be countered by military force. U.S. reluctance to use hard power results in soft balancing. Soft balancing is a less overt maneuver of the global polarity. It concludes that China is the only power capable of checking America's hegemony, and predicts increased conflict as each power acts in its own self-interest. [7]

Kucharski uses the balance of power theory, expressed by Mearsheimer and Waltz, to explain and predict a change to the international system's struc-

ture. His point to increased conflict because of the intervention, discredits Weltz's argument that cooperation through Afghanistan between China and NATO. The dangers of unipolarity are again evident, as well as how the nature of the system—anarchy—keeps states distrustful. Though the article includes Afghanistan and Kosovo, it does not review Libya, and therefore is not a complete survey of the relationship between the two actors.

NATO's latest intervention— Libya, is thoroughly examined in China's Perilous Libyan Adventure, by Ted Carpenter, describes Chinese foreign policy toward North Africa and the Middle East as "unapologetic realism." The Libyan intervention gave Beijing a chance to flex its military might when it sent a Naval vessel to the Mediterranean Sea to evacuate its nationals from the country. China relies on Libyan energy supplies and accused NATO of gross overreach of what it had been granted by the UNSC resolution.[8]

The article reaches the same conclusion as the others: the nature of the system is zero sum. NATO's adventures into Libya were seen as a threat to China's security. This is not just because of the perceived overreach concerning the UNSC resolution, but NATO's choice to intervene in a country China relies on for energy, when it has not done so in other states affected by the Arab Spring, such as Syria. The article falls short, like the others as it does not compile a comprehensive and complete survey of NATO interventions.

CONCLUSION:

Due to the lack of a supranational government, states must seek to maximize their security. The structure is shaped by hegemons that vie for power at each other's expense, as is has been demonstrated by Mearsheimer and Waltz. This helps to explain Chinese suspicion over the motives behind, and the precedents set, by NATO's interventions and disregard of the UNSC. Unipolarity breed's mistrust amongst states that feel like they are at the mercy of a global hegemon. It is for this reason that China and NATO's security is zero-sum in nature and that the two actor's behavior affects their security proportionately. The reviewed literature, compiled together, may have answered that question, however, a comprehensive chronology of Sino-NATO security correlation is needed to further understand the two's nature and future polarity of the system.

6   Richard Weltz, "China and NATO: Grappling with Beijing's Hopes and Fears," *Jamestown Foundation*, last modified July 6, 2012, http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=39593#.UjdCHxaFyAM.

7   Milosz Kucharski, "China in The Age of American Primacy," *International Relations*. 26, no. 1: 60-77, http://ire.sagepub.com/content/26/1/60.

8   Ted Carpenter, "China's Perilous Libyan Adventure." *Cato Institute,* last modified September 9, 2011, http://0-www.cato.org.opac.sfsu.edu/publications/commentary/chinas-perilous-libyan-adventure?print.

JUSTIFICATION OF METHODOLOGY:

This paper will examine the effects of NATO's interventions on China's security. To do so it will chronologically look at the three separate cases of such interventions and will include Kosovo, Afghanistan, and Libya. An analysis and survey of this helps us see how the actions of NATO prompt the actions of China and vice versa. Each surveyed intervention will illustrate this causal relationship in an increasingly bipolar world, where the two's security have found itself dependent upon one's losses, for the others gains.

Due to the zero-sum nature of security in an anarchic international system, a neo realist approach is needed to analyze the aforementioned relationship. Structural power is best explained by scholars like Mearsheimer and Waltz who have written extensively about balance of power theory. This paper aims to add a complete analysis of Sino-NATO security relations to neo realist literature.

NEO-REALISM AND BALANCE OF POWER THEORY:

To understand the behavior of both China and NATO we must first look at the nature of the international system and the actors that make up such a system. States are the primary actors, although, when forming alliances like the US has done with its European allies, these alliances behave as states. Using a neo realist perspective is vital to understand such behavior.

The nature of the international system is anarchic, meaning that it lacks a supranational authority: state sovereignty is therefore the highest authority. Institutions like the United Nations (UN) serve merely as a place for states to convene, and can only affect a state's sovereignty if the state in question has less power than those that make up UNSC.[9] For example, China and Russia both blocked UNSC resolutions authorizing NATO's air war over Serbia and Kosovo. Serbia as the weaker power to the states that make up NATO were no match in might, which meant that the Western alliance could conduct the intervention with or without international legitimacy through the UNSC.[10] In this anarchic system, the only check to power is power, which defines state behavior.

States are self-interested with their primary goal being survival, and it is because of this that they seek to maximize their power and increase their security.[11] Situations like the unauthorized NATO intervention in Kosovo, drive weaker states to maximize their power at all costs, and stronger states to consolidate the power they already have while maximizing their security. Therefore, China is seeking a larger navy and the US continues to develop new military technologies to maintain itself as the world's premier power.[12]

This behavior causes suspicion amongst states because there is no higher authority in the global system; there is no way to verify each actor's intentions.[13] For example, when the US moves marines to Australia, China will perceive this as a threat. In turn, China increases its navy to extend its presence further into the pacific.[14][15] Suspicion over the intentions of a state's security maximization, leads to security competitions, and only perpetuates the lust for more power amongst states.

In their quest for power maximization, states will seek alliances, or regimes that serve to strengthen their security by matching the power of other states or hegemonies. Alliances like NATO are evidence of this. The United States, the dominant power, maintains great influence in Europe because of NATO. In turn, the smaller states of the aforementioned continent enjoy the heightened security that an alliance with the US provides.[16] Many analysts believe that China, along with Russia, have formed the Shanghai Cooperation Organization (SCO), not just to reaffirm is influence over Central Asia, but to counter the unchecked power of NATO.[17] It is through these hegemonies and alliances that the polarity of the system is defined.[18]

The polarity of the system defines its structure; due to the system's anarchic nature, hegemonic power is the only check to hegemonic power, and because this power is relative, not absolute in nature. As seen in the Cold War, the suspicion of both the US, and its rival, the USSR, led to a security competition. The two hegemons, while vying for more power, sought to enlist the allegiances of any state not already under their sway, or to envelope states that were in their rival's

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9   John Mearsheimer, "The False Promise of International Institutions," in *Essential Readings in World Politics 4th edition*, ed. Karen Mingst, Jack Snyder (New York: Norton and Co, 2011), 309.
10   Kenneth Waltz "The Balance of Power and NATO Expansion."
11   John Mearsheimer, "Anarchy and the Struggle for Power," 31-33.
12   Richard Parker, "Pilotless Planes, Pacific Tensions."
13   John Mearsheimer, "Anarchy and the Struggle for Power," 31
14   Ibid.
15   Matt Schiavenza, "What Exactly Does It Mean That the U.S. Is Pivoting to Asia?."
16   John Mearsheimer, "The False Promise of International Institutions," 309.
17   Milosz Kucharski, "China in The Age of American Primacy."
18   Kenneth Waltz "The Balance of Power and NATO Expansion."

sphere. In their quest for domination of the system, the two hegemons created a systemic bipolarity. The Cold War demonstrates how the anarchic nature of the system allows for security competitions to lead to systemic polarities through the hegemonic desire of states.[19]

Presently, many scholars view the current system as unipolar, with the United States as the sole global power. However, due to the fundamental nature of states, and their aforementioned self-interest and desire to survive, such a structure leaves the unipole momentarily belligerent, as demonstrated previously with the case of NATO's Kosovo intervention. The sudden demise of the USSR left the US and its alliance NATO with unbridled power. With no other hegemonic power to stop it, NATO did not need to UNSC's authorization to act in the regions once dominated by the Soviets. Again, weaker states view actions like these suspiciously and begin to worry about their own sovereignty. China, attempting to insure that its growing influence continues, is beginning to expand and seek alliances like that of the SCO, to counter the United States. It is the very nature of a unipolar system that will cause the shift to bipolarity, in what is known as known as balancing. So the relative nature of power will always lead to hegemonic powers checking themselves, through alliances, and security competitions, both militarily or economically.[20]

It is the purpose of this paper to show how the structure of the system is shifting from unipolarity, to bipolarity. Chronologically, it will show that the US, through its alliance NATO, is countering China's gains in security, while in turn China is countering NATO's increased global reach. It is because of the aforementioned theory, that the research has concluded this to be true.

The collapse of the Soviet Union in 1991, left NATO—formed in 1949—without a clear mission and allowed an unchecked rapid expansion into Central Europe to include former states of Soviet influence. Congruently, Yugoslavia fell into civil war. The alliance used humanitarian pretexts to intervene not only in Bosnia and Herzegovina, but in Kosovo as well.[21] The alliance appeared to shift its mission from that of an anti-Soviet one, to that of a humanitarian protector. This is consistent with realist thinking. The US still wanting to maintain it's primacy over Europe, needed NATO to maintain its relevancy, so that the Europeans would still see it as vital to their own security. Using NATO to intervene the Bal-

kans, gave Europeans a reason to continue to see the alliance as a tool to further their own self-interest.

China, a state that advocates for a policy of non-interface in the domestic matters of other sovereign nations was against this shift in policy, and viewed NATO's forays into the Former Yugoslavia with suspicion—fearing they set a dangerous international precedent. During NATO's bombing campaign over Serbia and Kosovo in 1999, the Chinese press took the Serbian narrative, and challenged the legality of the interventions, due to the fact that it was not authorized by the UNSC, in part because China refused to grant legitimacy to the shift in NATO policy.[22] China was attempting to use the UN to check US power, however, at the time China was not yet able to match that power. This demonstrates the lack of authority that such international institutions hold over other states, and further highlights the fact that in an anarchic system, the only check to power is power.

The first interaction between the two actors occurred on May 7th 1999, when NATO bombed the Chinese embassy in Belgrade. The motives behind the incident are still debated today, as the alliance claims it was an accident, but China— already uneasy about the intervention—believes that to be impossible. The incident sparked protests at the embassies and consulates of NATO members in China. Although reparations were made by the US, the bombing has furthered Chinese suspicions toward NATO's motives in its interventions.[23] The incident shows the first example of balancing between the two actors. Chinese aversion to the intervention prompted Beijing to strengthen its diplomatic ties with Russia, so to block any UNSC resolution concerning the Balkan interventions. Furthermore, as the former Yugoslav republics enveloped Western influence; many argue that because of the increased cooperation between Russia and China, Beijing was able to consolidate its power over Central Asia through the creation of the its security alliance the SCO in July of 2001.[24] This demonstrates how the aforementioned belligerence of the sole power of a unipolar system will provoke a counter-balance to arise, through invoking the insecurity of other states, states will seek hegemonies to further their own security and to maximize their power.

Shortly after the formation of the SCO, the attacks on September 11th 2001, prompted the US to invoke Article 5 of NATO's treatywhich states an attack on one member state is an attack on all member states. This thrust the alliance into

19 Ibid.
20 Ibid.
21 Richard Weltz, "China and NATO: Grappling with Beijing's Hopes and Fears."

22 Milosz Kucharski, "China in The Age of American Primacy."
23 Richard Weltz, "China and NATO: Grappling with Beijing's Hopes and Fears."
24 Milosz Kucharski, "China in The Age of American Primacy."

its current intervention in Afghanistan that began in October 2001, marking its first incursion into Central Asia.[25] This justified not only NATO's occupation of Afghanistan, but also the establishment of US bases in Uzbekistan and Kyrgyzstan. China fears a permanent NATO presence in the region, and perceives it as direct threat for two reasons: one, because Beijing relies heavily on Central Asia and the Middle East for its energy resources, and with American bases in both regions, it fears that these supply lines are now vulnerable to US control; two, because of a US military presence in Japan, Korea, and Australia, China fears that through NATO's role in Central Asia, the US is pursuing a policy of containment at a time that Beijing is enjoying rapid modernization, both economically and militarily.[26][27] Due to the lack of a rival, and through self-justified interventions, NATO is able to occupy regions once dominated by the USSR. The expansion into Central Asia directly affects Sino-security, and has further emboldened the SCO. Since the 2001 invasion, the SCO has signed numerous declarations that further institutionalize itself, with China as its unmatched economic leader. One declaration in 2005, demanded NATO and the US leave all bases in the region. In 2006 Uzbekistan evicted the US from its base.[28] Again, this provides evidence to support the aforementioned theory, that through a unipolar system, the actions of the sole power only promotes fear amongst other states. This caused these states to in turn form alliances of there own to counter that power, as China has through the SCO, demonstrating its own hegemonic ambitions.

NATO's most recent intervention into Libya during it's civil war lasted from March 19th to October 31st and may have had the largest impact on China's security to date.[29] The incursion went to further Chinese concerns for alliance as a continuing policy of containment, while targeting Chinese energy interests.[30] At the time China imported 150,000 barrels of oil per day from the Libya.[31] In addition, Beijing had 35,000 nationals working in the North African state. Fearing harm to their citizens, China orchestrated their first military deployment to the Mediterranean Sea and North Africa to evacuate them.[32] Though affecting China's security, the Libyan Civil War, and consequent NATO intervention, provided China a chance to showcase its modern military to the world. The Chinese evacuation and naval presence in the Mediterranean, though justified, left Western observers suspicious, considering China's motives as dubious.[33] Again, we see how, as the two actors grow, their security is directly affected by each other.

China's policy of non-interference was also challenged by the intervention. Realizing that the overthrow of the Libyan regime was possible, and wanting to maintain its interests in the country, it voted along with the NATO members of the UNSC for the implementation of a no fly zone. However, it was quick to charge the Western alliance with gross over reach of its UN backed mandate, due to NATO arming the rebels. Once it realized the rebels would actually overthrow the regime, they sent diplomats into the rebel held town of Benghazi, with the aim of negotiating a peacekeeping mission after the conflicts end. China was desperate to be part of the rebuilding process with the hopes of maintaining its interests in the state. However, documents were discovered that revealed Beijing had attempted to sell weaponry to the Libyan regime secretly and under the radar of a UN ban on weapons sales to the country. The revelation severely damaged the relations between China, and The National Transitional Council, the newly formed rebel-backed government.[34] This shows that China, like all states, are calculating when it comes to their security, and exemplifies realist notions of power maximization.

CONCLUSION:

With the end of the Cold War, NATO's power has gone unchecked. The alliance has been able to expand its sphere of influence into regions once dominated by a Soviet hegemony—whose collapse left a gap in the system that allowed for the expansion of China as a world power. NATO's security gains have directly influenced the creation of a counter alliance—the SCO—with Beijing at its center.

25 "Collective Defense," *NATO, last modified July 2, 2012, http://www.nato.int/ cps/en/natolive/ topics_59378.htm.*

26 Milosz Kucharski, "China in The Age of American Primacy."

27 Lionel Beehner, "ASIA: U.S. Military Bases in Central Asia," *CFR, last modified July 26, 2005, http://www.cfr.org/kyrgyzstan/asia-us-military-bases-central-asia/p8440.*

28 Abdujalil Abdurasulov, "Uzbekistan, Key to Afghan War Drawdown, to Ban Foreign Military Bases," The *Christian Science Monitor, Last modified August 30, 2012, http://www.csmonitor. com/World/Asia-South-Central/2012/0830/Uzbekistan-key-to-Afghan-war-drawdown-to-ban-foreign-military-bases.*

29 Rick, Gladstone "U.N. Votes to End Foreign Intervention in Libya," *New York Times, last modified October 27, 2011, http://www.nytimes.com /2011/10/28/ world/middleeast/security-council-ends-libya-intervention-mandate.html.*

30 Ted Carpenter, "China's Perilous Libyan Adventure."

31 "Relying on Libya," *The Economist, last modified February 25, 2011, http://www.economist. com/blogs/dailychart/2011/02/libyan_oil.*

32 Gabe, Collins and Andrew Erickson, "Implications of China's Military Evacuation of Citizens from Libya." *Jamestown Foundation, last modified March 2011, http://www.jamestown.org/programs/chinabrief/ single/?tx_ttnews% 5Btt_ news%5D=37633&cHash=7278cfd21e6fb19afe8a823c5cf88f07.*

33 Ted Carpenter, "China's Perilous Libyan Adventure."

34 Ibid.

Due to the suspicious nature of states, China has eyed NATO's unrivaled power with distrust; just as NATO viewed Beijing's display of military might in its evacuation of its citizens from Libya as a dubious show of force. This is because the system lacks a supranational governing authority that can transparently check states security gains.

The bombing of the Chinese embassy in Belgrade, the occupation of a country along its borders, and facilitating the over throw of the China friendly government in Tripoli, demonstrates the realist notion of systemic balancing. It is because NATO has no rival, nothing can stop it's hegemonic ambitions; this fuels China's own hegemonic ambitions, leaving the two actors to struggle for power in Central Asia and the rest of the system. It is because of the zero sum nature of the international system that as America "pivots" towards Asia, China will seek to expand its power in the Pacific to match the US. This will cause a shift in the polarity of the system. It remains to be seen if the shift will be hostile. The shift to a bipolar structure only means that indeed the two actors security is directly defined by each other's gains, that Sino-NATO security gains are causal, and that the American unipolar moment is just that, a moment.

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