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**PAPERS, ESSAYS AND REVIEWS**

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## LETTER

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### FROM THE EDITOR

I have been saddened like many others by the violent acts of terrorism, military conflict, and humanitarian crises that have happened this year around the world. But the year 2015 will also be remembered as the year scientists discovered water on Mars, the year a country eradicated mother-to-child transmission of HIV and syphilis for the first time, the year Cuba and United States reestablished full diplomatic relations after 54 years of hostility, and the year all countries committed to reduce carbon emissions for the first time. The evolution of human societies and the changing dynamics between actors have always had a thematic place in previous issues, and it seemed fitting to devote one issue to the topic of technology and innovation. This issue of the *Yonsei Journal of International Studies: Papers, Essays, and Reviews*, features a collection of submissions on governance, including the context of technology. The questions raised by the articles presented include; How does technology shape and change the workings of civil society? How can developing countries promote innovation of small and medium enterprises? How should governments promote technology and innovation through intellectual property rights? Between the covers of this issue, readers will find a multitude of perspectives that contributes to the way in which we view the world. Included in this issue are four papers, three essays, an interview and a review; submitted by students and professors from around the world.

The first submission in the “Papers” section, “The Role of Technology in Promoting Civic Engagement and Democracy – A Comparative View: Egypt, Tunisia, and Turkey” by Talia Schwartz Maor, analyzes the role technology played during the Arab Spring. Maor’s quantitative and qualitative

analysis of social media leads to the conclusion that while social media played a crucial role in raising awareness and planning events, it is an insufficient drive for political change. In “The Economic Development and the Growth of Small-Medium Enterprises in Indonesia: A Hometown Investment Trust Fund Approach”, Suryo Ariyanto Nugroho examines the Indonesian government initiative to promote the growth of small and medium enterprises. He explores the implementation of a framework to facilitate SME access to finance and capital. Chris Kruckenberg in “One China, One Taiwan: A New Framework for the Settlement of the Taiwan Straits Dispute” argues in favor of a neutral and independent Taiwan as the optimal resolution of the Taiwan Straits Dispute when considering regional and global interests. Finally, “A Defense of Utility Models: the Case of China” by Runhua Wang examines the current state of the intellectual property rights regime in China and argues that a utility model regime will be conducive to China’s technological innovation and economic growth.

In the “Essays” section, “Abenomics: Revitalization and Resurgence of Japan” by James Shin and Jack Walsh provides an analysis of Shinzo Abe’s domestic and foreign policy as well as Japan’s future role in the region. The next piece “The Process of Decolonization, the Emergence of International Human Rights, and the Current de facto Inequality of International Law” by Justin Su Wan Yang examines the discrepancy between Western and non-Western states in the context of international law and governance. The final essay “On China’s New Era Anti-Terrorism Governance in the Middle East” by Jun Zhao and Yu Hu analyzes the motivations and implications of China’s anti-terrorism efforts in the Middle East.

This issue includes an interview with Signe Poulsen, Representative of the newly established United Nations Human Rights Office in Seoul which was set up to follow up on the United Nations Commission of Inquiry on Human Rights in the Democratic People’s Republic of Korea report. In the previous Vol.6 no.2 issue of the *Journal*, we ran an interview with Hon. Michael Kirby, who chaired the Commission of Inquiry, about his experience with the commission and his hopes for future development of the COI report. This issue’s interview nicely complements the Kirby interview. Also included is Niv Horesh’s timely review of Liu Mingfu’s *The China Dream: Great Power Thinking and Strategic Posture in the Post American-Era* which was published in English this month. Horesh critically reviews Liu’s narrative on China and places it in the context of China’s global aspirations and Sino-US relations.

*Yonsei Journal of International Studies: Papers, Essays, and Reviews* began with the Spring 2009 issue as the first English-language journal of

International Studies run by graduate students in East Asia. And for the past seven issues, it has showcased unique perspectives of students and young scholars on many pressing topics. The past two years I spent at the Journal have been an extraordinary journey of learning. I say this because this issue marks the end of my time as the editor in chief of the *Yonsei Journal*. It has been an honor to have had the opportunity to work alongside inspiring young scholars as well as a devoted team of editors. The *Journal* is truly a product of their passion and motivation. Without the time and devotion of many individuals, this issue would not have been possible. I would like to take the opportunity to express my appreciation. I would also like to thank the Graduate School of International Studies administration for the support they provide for the Journal.

I wish the best for the future of the *Journal* and sincerely hope that readers enjoy this issue as much as previous issues. Happy reading!

A handwritten signature in black ink that reads "Siri Sung". The script is fluid and cursive, with the first letters of "Siri" and "Sung" being capitalized and prominent.

Siri Sung  
Editor in Chief



# **MEET THE CONTRIBUTORS**

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Talia Schwartz-Maor is a doctoral student at UC Berkeley Boalt Hall School of Law, where she studies the intersection of law, society and technology. Her research interests relate to the legal functioning of technology and its impact on legal norms and institutions. Her dissertation is about the role of collaborative information communication as an alternative justice system; more specifically regarding the phenomena of sharing on social media and how it is played out as a new form of social control mechanism.

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Suryo Ariyanto Nugroho is a master candidate at University of Tokyo Graduate School of Public Policy (GraSPP). His research interests include international development, small-medium enterprises (SME) development, and the political economy of regional integration in Asia. Prior to his study at the University of Tokyo, he received a master's degree in business and entrepreneurship at the University of Cambridge Judge Business School and also Middlesex University, London. Furthermore, his work experience in a venture capital firm increased his interest in the importance of small-medium enterprise (SME) development policy to support the economic growth of a country.

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Runhua Wang is a third year J.S.D candidate from the University of Illinois College of Law. She received her L.L.M. in the same law school, and double-majored in Industrial Engineering and Law in Beihang University in China. Her area of interest is law and economics, intellectual property, government grants and financial policies. Currently, she is doing an empirical study about the technical innovation by small and medium-sized enterprises (SME) in China.

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James Shin is currently a senior studying Life Science and Biotechnology at Yonsei University. Currently he is the president of an academic student association for students passionate about foreign affairs called Visionaries of International Studies (VOIS) at Underwood International College, Yonsei University. Originally from Atlanta, Georgia, he moved to Korea after living in New York City looking for something different. He plans on studying law after graduation. Jack Walsh is a political science and international relations major at Yonsei University. His senior thesis is on cyber security and diplomacy. Born and raised in Maine, Jack acts as the head editor and director of research of Visionaries of International Studies (VOIS).

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Justin Su Wan Yang is currently a PhD Researcher in international criminal law and international human rights at King's College London. He received his master's degree in Public International Law at Leiden University. Previously, he worked at the United Nations International Criminal Tribunal for the former Yugoslavia (Defence for Prlić), International Criminal Tribunal for Rwanda (Trial Chamber for Nizeyimana), and the Special Tribunal for Lebanon (Trial Chamber for Ayyash et al.). He is originally from Korea.

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Zhao Jun graduated with a Ph.D in the Middle East Studies at Shanghai International Studies University in 2012. He works as a postdoctoral researcher at East China Normal University and currently holds the position of Associate Professor of Middle East Studies Institute at Shanghai International Studies University. He has research interests in terrorism in the Middle East, Arab League and East African Community. He is the author of *Arab League and Arab Order* (to be published in 2016) and the co-author of *Case Studies: the Development patterns of Islamic Countries in the Middle East after World War II*. Hu Yu is a Ph.D candidate in English language studies at Shanghai International University. She is specializing in cross-culture interaction between the Islamic and Western world and is working on a dissertation titled *Napoleon Bonaparte's Culture Communication in Egypt*.

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Niv Horesh is Professor of the Modern History of China and the Director of the China Policy Institute at the University of Nottingham, United Kingdom. His first single-authored book, *Shanghai's Bund and Beyond* (Yale UP, 2008), is the first comparative study of foreign banking in pre-war China. The book surveys the impact of British overseas bank notes on China's economy before the outbreak of the Second Sino-Japanese War in 1937. Horesh's second single-authored book, *Chinese Money in Global Context* (Stanford UP 2014, Economics and Finance Series) makes for a China-centered examination of the evolution of money and finance around the world since the birth of coinage in Lydia (in what is today western Turkey) and up to the present. It also situates current efforts at RMB internationalization within the broad sweep of the post-Bretton Woods world order. His third single-authored book is *Shanghai, Past and Present* (Sussex Academic, 2014). It is an introduction to the warp and weft of the city's history written with non-specialists in mind.



# PAPERS

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**THE ROLE OF TECHNOLOGY IN PROMOTING CIVIC  
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VIEW: EGYPT, TUNISIA, AND TURKEY**

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**ONE CHINA, ONE TAIWAN:  
A NEW FRAMEWORK FOR THE SETTLEMENT OF  
THE TAIWAN STRAITS DISPUTE**

*Chris Kruckenberg*

**A DEFENSE OF UTILITY MODELS:  
THE CASE OF CHINA**

*Runhua Wang*

# THE ROLE OF TECHNOLOGY IN PROMOTING CIVIC ENGAGEMENT AND DEMOCRACY – A COMPARATIVE VIEW: EGYPT, TUNISIA AND TURKEY

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*This paper focuses on the role of the Internet and social media in promoting citizens' resistance during the Arab Spring. Specifically, it analyzes the dynamic between technology and social change in light of case studies – the revolutions in Egypt (2011), Tunisia (2010-11) and Turkey (2013). Using a well-established theoretical framework and empirical evidence, the paper suggests that social media is a critical factor for collaborative action, albeit not an exclusive one.*

Theories on the social and political functioning of technology are diverse. While most schools of thought acknowledge the close link between technology, politics and social activism, each characterizes these links differently. Technological Determinism identifies social change as the *outcome* of inevitable technological developments. The Social Construction of Technology theory considers social norms to be at the *origin* of technological advancements. Within this broad framework, two opposing theories on the political function of technology evolved: the utopians versus the cyber-skeptics. The role of the Internet and particularly of social media, in promoting resistance during the Arab Spring has been studied in depth. Scholars on one side of the fence suggest that social media played a pivotal role in these revolutions mainly because collaborative platforms allow citizens to organize, share information and broadcast in a manner that was previously held only by mainstream media channels. This optimistic notion has been heavily criticized by those who suggest that technology backed political uprisings that were already on the move. This paper seeks to push

the ongoing debate between ‘digital evangelists’ and ‘techno-realists’<sup>1</sup> a step further by offering a middle-ground proposition, according to which technology’s role in collective actions is determined not only by the platform but also by the individual. In a nutshell, I argue that the Internet and social media are critical factors for social and political change, albeit insufficient ones. The argument is supported by a rich theoretical background on the dynamic between technology and social change, examined in light of three case studies – the revolutions in Egypt (2011), Tunisia (2010-11) and Turkey (2013).

The rest of the paper unfolds as follows. First, the selected case studies will be introduced, the “Twitter/Facebook revolutions” in Egypt, Tunisia and Turkey are briefly described, and the impact of social media on the level of political engagement in each of these revolutions is discussed. Analysis is conducted according to the Khamis and Vaughn classification that suggests three potential functions/roles of social media in facilitating political activism – cyberactivism, civic engagement and citizen journalism. Backed with theoretical analysis according to which actual activism and cyberactivism greatly differ, the final section proposes a pessimistic point of view regarding the role of social media in each of these revolutions. The critique is also supported by empirical evidence extracted from past studies conducted on the use of social media during the three revolutions in question.

### **The Revolutions in Egypt, Tunisia and Turkey**

The Tunisian uprising from 2010-2011, in which the Tunisian military acted against the security forces, was successful in ousting President Zine El Abidine Ben Ali after about twenty-two years of regime control. The protests followed the self-immolation of Mohamed Bouazizi on December 17, 2010 and expressed the people’s will for social, economic and political change. Similarly, in a series of demonstrations of civil, and at times violent resistances, the citizens of Egypt voiced their frustrations with corruption and the lack of political freedoms. The Egypt revolution of January 2011 resulted in longtime President Mubarak resigning in February of that year, following a thirty-year dictatorship. Though less significant in magnitude in terms of political implications, the Twitter revolution in Turkey also took place on the grounds of political despair. The Gezi demonstrations of 2013 started

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1 Francesca Comunello and Giuseppe Anzera, “Will the Revolution be Tweeted? A Conceptual Framework for Understanding the Social Media and the Arab Spring,” *Islam and Christian-Muslim Relations* 23 (2012): 453–470.

from discontent with the government's plan to build a shopping center at the heart of Taksim Square, and quickly turned into general protests against the right-wing government.

The successes of these specific revolutions, in terms of changing the political reality,<sup>2</sup> make them particularly interesting case studies. The success of the Egyptian revolution was attributed to several factors, *inter alia*, that protesters were organized in groups, used mixed information platforms, both traditional and new,<sup>3</sup> and acted locally.<sup>4</sup> In the case of Tunisia, it has been suggested that social and geographic indicators were some of the reasons for the revolution's success. Here, it should be noted that Tunisia is a geographically cohesive, small country with no major geographic barriers and is ethnically, religiously and linguistically unified.<sup>5</sup> The Gezi protests are also considered a reminder of the public's ability to voice its opinions. Despite the fact that the governing party AKP is still in power, some commentators refer to changing dynamics of post-Gezi Turkey as binding "any government to be inclusive, responsive and transparent."<sup>6</sup> The greatest common denominator of these three revolutions is the extensive use of social media during the protests<sup>7</sup> and the ongoing debate regarding its contribution to their success.

## The Debate

The Social Construction of Technology (SCOT) theory suggests that technology does not evolve in a vacuum, but rather that it is highly influenced by, and representative of, social norms. Within this broad framework, cyber-utopianism and cyber-skepticism are two schools of thought that

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2 Ranking levels of success is clearly a subjective index, yet these revolutions are widely considered successful in terms of changing the political reality, at least in part.

3 Gilad Lotan, et. al, "The Revolutions Were Tweeted: Information Flows during the 2011 Tunisian and Egyptian Revolutions," *International Journal of Communications* 1375 (2011): 1405.

4 Mohammed El-Nawawy and Khamis Sahar, "Political Activism 2.0: Comparing the Role of Social Media in Egypt's 'Facebook Revolution' and Iran's 'Twitter Uprising,'" *CyberOrient* 6 (2012).

5 L. Carl Brown, "The Tunisian Exception," October 14, 2014, [www.juancole.com/2014/10/the-tunisian-exception.html](http://www.juancole.com/2014/10/the-tunisian-exception.html) (accessed December 2, 2015).

6 Emre Kizilkaya, "Turkey's ultimate success and Gezi democratization," *Hurriyet Daily News*, November 15, 2015, [www.hurriyetdailynews.com/turkeys-ultimate-success-and-gezi-democratization.aspx?pageID=449&nID=83259&NewsCatID=550](http://www.hurriyetdailynews.com/turkeys-ultimate-success-and-gezi-democratization.aspx?pageID=449&nID=83259&NewsCatID=550) (accessed December 13, 2014).

7 Joseph Sarah, "Social Media, Human Rights and Political Change," *Boston College International & Comparative Law Review* 145 (2012): 157-163; Pablo Barberá, "SMaPP DATA REPORT A Breakout Role for Twitter?" In *The Role of Social Media in the Turkish Protests, Social Media and Political Participation Laboratory*, (New York: NYU Press(2013).

describe the dynamic between the Internet and social change in opposing manners. The digital-evangelists, or the optimists, tell the story of how online collaborative platforms promote democratization and activism given their unique characteristics. The techno-realists, meaning the pessimists, argue that civil movements predated the Internet and that social media encourages “slacktivism,”<sup>8</sup> at best.

### An Optimistic Analysis – Internet’s Role in Promoting Democratization

Clay Shirky, the founding father of the optimistic approach, theorized that social media promotes social activism as it allows individuals and groups to organize with minimum to no barriers.<sup>9</sup> According to Shirky, social media paves the way to activism via access to information, and more importantly, access to conversation. This assertion is primarily based on the fact that the Internet is a many-to-many form of communication: as a decentralized, symmetric, ‘bottom-up’ mechanism, the Internet is structured to foster democracy by empowering the individual in her attempts to voice and collaborate. The general notion that Internet usage and political participation are linked has also been backed empirically in a study that found accidental exposure to news to be positively associated with political engagement.<sup>10</sup> According to the optimist stream, the decentralized nature of the Internet is precisely what led to the “leaderless revolutions” and contributed to their success.<sup>11</sup> Internet ‘believers’ thus defined the Arab Spring as “Twitter/Facebook revolutions,” reflecting the idea that new media facilitated the uprisings of these social movements.<sup>12</sup>

It has been argued that this role of social media is amplified in authoritarian regimes given the atmosphere of oppression and citizens’ fear of voicing their opinions against the government unless others share

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8 Malcolm Gladwell, “Small Change: Why the revolution will not be tweeted,” *The New York Times*, October 4, 2010, <http://www.newyorker.com/magazine/2010/10/04/small-change-malcolm-gladwell> (accessed December 13, 2014).

9 Clay Shirky, *Here Comes Everybody: The Power of Organizing Without Organizations* (New York: Penguin Press, 2008); Clay Shirky, “The Political Power of Social Media,” *Foreign Affairs* 90 (2011): 28.

10 Yonghwan Kim, Hsuan-Ting Chen, and Homero Gil de Zuniga, “Stumbling Upon News on the Internet: Effects of Incidental News Exposure and Relative Entertainment Use on Political Engagement,” *Computers in Human Behavior* 29 (2013): 2607-2614.

11 Sahar Khamis, “The Role of the Media in Arab Transitions: How ‘Cyberactivism’ is Revolutionizing the Political and Communication Landscapes,” In *The IEMed Mediterranean Yearbook*, eds. Senen Florensa and Andrew Bassols. (Barcelona: European Institute of the Mediterranean, 2013): 55-59.

12 Ibid.

their views.<sup>13</sup> Furthermore, in most of these regimes, Internet censorship is a widespread practice; in both Egypt and Tunisia, the governments cut off Internet access following the outbreaks, *inter alia*, to disrupt social media communications.<sup>14</sup>

The political function of technology in the context of the Arab Spring uprisings has been heavily studied; the impact of social media throughout the Arab Spring demonstrations has been segmented and framed in different manners, using a variety of theoretical models.<sup>15</sup> For the purpose of this paper, the conceptual model offered by Khamis and Vaughn is implemented. Khamis and Vaughn defined three potential functions for social media in contributing to mass uprisings. The revolutions in question will be analyzed according to these three categories – cyberactivism, civic engagement and citizen journalism.<sup>16</sup>

### *Cyberactivism*

Cyberactivism has been defined by Howard as “the act of using the Internet to advance a political cause that is difficult to advance offline” with the goal of creating “intellectually and emotionally compelling digital artifacts that tell stories of injustice, interpret history, and advocate for particular political outcomes.”<sup>17</sup> Another way of defining this category is by relating it to the digital use and influence of social media as in the case of *direct* political activism.

The dramatic role that social media played in the Egypt revolution is supported by a finding that suggests that those who relied on blogs, Twitter, Facebook, phones, and e-mail for information about the protests were more likely to attend the first day of the Tahrir Square demonstrations than those who had used traditional media.<sup>18</sup> Furthermore, a 2011 study by the Dubai School of Government analyzed Facebook users at the time of the revolution

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13 Zeynep Tufekci, and Wilson Christopher, “Social Media and the Decision to Participate in Political Protest: Observations from Tahrir Square,” *Journal of Communication* 62 (2012): 363-379.

14 Joseph, “Social Media, Human Rights and Political Change,” 157-163.

15 Pippa Norris, “The Impact of Social Media on the Arab Uprisings: The Facebook, Twitter, and YouTube Revolutions?” In *Advancing Comparative Political Communication Research: New Frameworks, Designs and Data, European Consortium Joint Workshops*, Antwerp, Belgium, April 2012; Comunello, “Will the Revolution be Tweeted,” 453–470.

16 Sahar Khamis and Kathrn Vaughn, “Cyberactivism in the Egyptian Revolution: How Civic Engagement and Citizen Journalism Tilted the Balance,” *Arab Media & Society* 13 (2011).

17 Philip N. Howard, *The digital origins of dictatorship and democracy: Information technology and political Islam* (Oxford: Oxford University Press, 2011), 145.

18 Zeynep Tufekci and Wilson Christopher, “Social Media and the Decision to Participate in Political Protest: Observations from Tahrir Square,” *Journal of Communication* 62 (2012): 363-379.

in Egypt, and found that over 80% of Facebook users used the platform for political purposes; almost 30% used it to organize and manage activities. In Tunisia, almost 87% of users used Facebook for protest related agenda; about 22% were cyber-active in organizing the protests via social media.<sup>19</sup> The use of social media during the Gezi protests was extremely widespread and was described as a significant tool in the hands of citizens for direct activism. The importance of Twitter during the demonstrations was, first and foremost, in facilitating social activism and political mobilizations by allowing civil society to coordinate and organize events.<sup>20</sup>

### *Civic Engagement*

Civic Engagement is described as “the process through which civil society is invited to participate in ongoing political, economic and social efforts that are meant to bring about change.”<sup>21</sup> Civic Engagement thus can be described as the use of social media for *indirect* political activism.

During the demonstrations in Egypt, almost 31% of protesters used social media to raise awareness about the cause of the movement; 24% used it to spread information about the events. Furthermore, the role of social media during the Egypt uprising was found to be central, based on the fact that more than a quarter of the protesters had first heard of the protests through Facebook.<sup>22</sup> In Tunisia, over 31% of protesters used social media to raise awareness about the political occurrences, and over 33% used it simply to spread information about the demonstrations.<sup>23</sup> The use of social media during the Gezi protests, in this case the use of Twitter in particular, was found to be highly significant given its large volume and capacity to keep the public informed and actively engaged. Overall, more than twenty two million tweets were published from June 1 to 11, around 90% of which came from within Turkey, and approximately 88% of them were in the Turkish language.<sup>24</sup>

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19 Fadi Salem and Racha Mourtada, “Civil Movements: The Impact of Facebook and Twitter, Arab Social Media Report 2011,” *Dubai School of Government - Governance and Innovation Program* (2011): 27-29.

20 Aslı Tunç, Vehbi Görgülü, “Mapping Digital Media: Turkey,” *Open Society Foundations* (2012): 37-39.

21 Khamis, “Cyberactivism in the Egyptian Revolution.”

22 Tufekci, “Social Media,” 363-379.

23 Salem, “Civil Movements,” 27-29.

24 Joseph, “Social Media, Human Rights and Political Change,” 157-163; Pablo, “SMaPP Data Report: A Breakout Role for Twitter?”

### *Citizen Journalism*

Citizen Journalism is defined by Khamis and Vaughn as a citizen's use of digital tools to report on current events and give their own interpretation to reality. This concept addresses the phenomenon in which users of social media create a new form of media coverage that replaces, or complements, traditional media channels.

Tufekci and Wilson referred to the emergence of the "citizen journalist" with regard to the Egypt revolution. They found 48% of participants conveying critical information to the public via the production of photos or videos during the revolution.<sup>25</sup> The massive use of Twitter during Gezi protests was explained, in part, due to the lack of mainstream media coverage. Using social media as a journalistic platform enabled an open reporting of the events.<sup>26</sup> In all three revolutions, Twitter helped protesters mobilize and coordinate while drawing the attention of both the local government and the international community to the events.<sup>27</sup>

### **A Pessimistic Analysis – Technology Does Not Lead to Revolutions**

The aforementioned optimistic view has been criticized even by those that do believe in technology's ability to cure society's illnesses.<sup>28</sup> The pessimists argue that technology alone does not make revolutions, but that it is rather the will of the people that does.<sup>29</sup> One notion of criticism shared by most skeptics as to the Internet's ability to create social change derives from a realistic interpretation of actual, versus a potential, use of social media. As coined by Evgeny Morozov, a well-known critic, this distinction is referred to as 'cyber-activism' and 'cyber-hedonism.' In the context of political engagement, others call for the distinction between physical and cyberactivism, stating that the latter is insufficient as it is based on weak

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25 Tufekci, "Social Media," 363-379.

26 Tunç, "Mapping Digital Media," 37-39.

27 Joseph, "Social Media, Human Rights and Political Change," 157-163; Olga Khazan, "These Charts Show How Crucial Twitter Is for the Turkey Protesters," *The Atlantic*, June 12, 2013, [www.theatlantic.com/international/archive/2013/06/these-charts-show-how-crucial-twitter-is-for-the-turkey-protesters/276798](http://www.theatlantic.com/international/archive/2013/06/these-charts-show-how-crucial-twitter-is-for-the-turkey-protesters/276798) (accessed December 13, 2014).

28 Khamis, "Cyberactivism in the Egyptian Revolution;" Micah L. Sifry, "Did Facebook Bring Down Mubarak?" *CNN*, February 11, 2011, [www.cnn.com/2011/OPINION/02/11/sifry.egypt.technology/index.html?iref=allsearch](http://www.cnn.com/2011/OPINION/02/11/sifry.egypt.technology/index.html?iref=allsearch) (accessed December 12, 2015).

29 Chris Taylor, "Why Not Call it a Facebook Revolution?" *CNN Tech*, February 24, 2011, <http://www.cnn.com/2011/TECH/social.media/02/24/facebook.revolution> (accessed December 12, 2015).

social ties and passive acceptance of ideas.<sup>30</sup> Referring to Morozov's idea of "slacktivism," Nelson called for the revival of "a notion of citizenship that involves more than one-click participation."<sup>31</sup>

An influential critique of the importance of social media to the Arab Spring was introduced by Malcolm Gladwell.<sup>32</sup> Gladwell's argument is highly similar to that of Morozov's, yet his reasoning is somewhat different and has a more socio-technological angle. In a nutshell, Gladwell contends that the social ties needed in order to create political activism are strong ones, whereas the ties that exist on social media are weak, at most.<sup>33</sup> Gladwell also argues that the Internet's symmetric structure (considered by some as an advantage) is its Achilles heel:

Because networks don't have a centralized leadership structure and clear lines of authority, they have real difficulty reaching consensus and setting goals. They can't think strategically; they are chronically prone to conflict and error. How do you make difficult choices about tactics or strategy or philosophical direction when everyone has an equal say?<sup>34</sup>

Based on this theoretical framework, the impact of social media on political involvement in the three discussed revolutions should be called into question. Even in accepting the significant use of social media among protesters, one must bear in mind that the overall Internet penetration rate in most Arab societies is relatively low, making the overall cyberactivism effect inherently limited; the internet penetration rate in Egypt in 2011 during the time of the uprising was 21%.<sup>35</sup> Penetration rates of social media are even lower; Facebook penetration rates during the revolutions in Egypt and Tunisia were 7.66% and 22.49%, respectively. Twitter penetration rates during the same time were 0.15% and 0.34% respectively.<sup>36</sup> This point of

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30 Gladwell, "Small Change;" Khamis, "Cyberactivism in the Egyptian Revolution," 58.

31 Anne Nelson, "The Limits of the 'Twitter Revolution,'" *The Guardian*, February 24, 2011, <http://www.guardian.co.uk/commentisfree/cifamerica/2011/feb/24/digital-media-egypt> (accessed December 13, 2014).

32 Gladwell, "Small Change."

33 Mark S. Granovetter, "The Strength of Weak Ties," *American Journal of Sociology* 78 (1973): 1360-1380.

34 Gladwell, "Small Change."

35 El-Nawawy, "Political Activism 2.0."

36 Salem, "Civil Movements," 27-29.

criticism is less relevant to Turkey, in which the internet penetration rate at the time of protests was about 46%. Nonetheless, learning from the case of Iran, high penetration rate in and of itself is *not* a proxy for successful activism.<sup>37</sup> In other words, even in accepting the importance of social media to collective action and political engagement, there seems to be a ‘catch 22,’ a paradox stemming from the digital divide,<sup>38</sup> as citizens who are most in need of the media are those less likely to have access to it.<sup>39</sup>

Furthermore, even those that do have access to the platform do not necessarily use it for political purposes. In Egypt, over 12% of Facebook users used the platform for entertainment purposes during the protests. The parallel ‘use for fun’ in Tunisia was 11%.<sup>40</sup> These quantitative figures illustrate Morozov’s notion of ‘cyber-hedonism.’ Lastly, among those that did use social media for political engagement, only a small fraction of cyber-activists dominated the digital sphere; a study of the Egypt revolution found 20,000 “elite” users generated about 50% of all tweets and only 30-40 million of the 200 Twitter users are actually ‘active.’<sup>41</sup> Similarly, a study that analyzed Twitter’s data flow during the Gezi demonstrations found that 1% of protesters generated about 80% of all retweets.<sup>42</sup>

## Conclusion

In answering what the role of social media was during the Arab Spring uprisings, the conclusion is not as decisive as one would have hoped. Both cyber-utopians and cyber-skeptics make convincing theoretical arguments that are also supported empirically. Analyzing the revolutions in Egypt, Tunisia and Turkey, social media clearly fulfilled three political functions – cyberactivism, civic engagement and citizen journalism. Social media facilitated political involvement in those revolutions by providing a direct media channel for planning the protests, raising awareness of the events, and enabling individuals to spread news both in their communities and internationally. Despite this critical role, the importance of social media to the uprisings in Egypt, Tunisia and Turkey should not be overrated.

37 El-Nawawy, “Political Activism 2.0;” Gadi Wolfsfeld, et. al, “The Social Media and the Arab Spring: Politics Always Comes First,” *APSA 2012 Annual Meeting Paper* (2012).

38 Amir Hatem Ali, “The Power of Social Media in Developing Nations: New Tools for Closing the Global Digital Divide and Beyond,” *Harvard Human Rights Journal* 24 (2011): 185-219.

39 Wolfsfeld, “The Social Media.”

40 Salem, “Civil Movements,” 27-29.

41 *Ibid.*, 15.

42 Joseph, “Social Media,” 157-163; Pablo, “SMaPP Data Report.”

Optimists are faced with a reality that includes low Internet and social media penetration rates, considerable use of social media for non-political purposes, and lastly, a trend of centralized cyberactivism indicating that only a small group of users were, in fact, politically engaged. The overall conclusion is thus that the dynamics between technology and social change are more complex than has been previously argued. Social media is without a doubt a necessary driving force for political activism, yet it is insufficient in bringing about actual political change. **Y**

# THE ECONOMIC DEVELOPMENT AND THE GROWTH OF SMALL-MEDIUM ENTERPRISES IN INDONESIA: A HOMETOWN INVESTMENT TRUST FUND APPROACH

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*Small medium enterprises (SMEs) play a significant role in Indonesia by having a high contribution to employment growth, GDP and also to net exports, which makes them potentially important for the economic development of Indonesia. However, despite their importance to national economic growth, SMEs' growth is having a problem with lack of strong foundation and also growth cycle. The analysis shows that limitation to financial access and SMEs' lack of innovation and business knowledge are the major constraints for the SMEs. This paper will analyze the impact and also limitation of one Indonesian government initiative to support the financial access to SMEs that is called Kredit Usaha Rakyat (KUR). After that, this paper will also analyze the possibility of implementing Hometown Investment Trust Fund in Indonesia as an alternative source of funds to overcome the SMEs' issue of limitation to finance. And then in order to tackle the issue of lack of innovation, this paper will discuss the possibility of integrating Hometown Investment Trust Fund with the university and cooperative as its business operator to enhance the growth of SMEs both in urban and rural areas.*

One of the most important factors that makes small medium enterprises (SMEs) sustainable is government support, which is in the form of policies that can become a catalyst for entrepreneurial growth. Some policies that have already been implemented in many countries aim to reduce the financial constraint that entrepreneurs face, such as preferential loans with low-interest rate and also preferential tax treatment for SMEs.<sup>1</sup>

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1 International Monetary Fund, "Taxation of Small and Medium Enterprises" (paper presented at the International Tax Dialogue Conference, Buenos Aires, Argentina, October 17-19, 2007)..

In Indonesia, the government has already implemented some policies to ease SMEs' financial constraint. The first one is a low tax rate for SMEs that have a gross profit below 4.8 billion rupiah, which about 12% from gross profit per annum.<sup>2</sup> This tax rate is considered very low compared to the tax rate in many developed countries, which revolve around 15% per annum.<sup>3</sup> Beside a low tax rate, the Indonesian government also provides a low-interest loan for low risk SMEs through the national banks, hoping that by this loan the SME can achieve significant growth.<sup>4</sup>

Nevertheless, with these policies, the government has not achieved a significant growth in the number of entrepreneurs in Indonesia. The data that has been provided by the Ministry of Cooperative and Small Medium Enterprises<sup>5</sup> states that the number of entrepreneurs in Indonesia was only 1.56% of the population in 2012. It was considered low compared to Singapore and Malaysia, where about 7% and 3% of their population were entrepreneurs.

There are two main reasons these policies are ineffective, which are the lack of entrepreneurial knowledge transfer from the government to the potential entrepreneurs and also limited access to the formal sources of finance (banks). Only 18% of the SMEs have the access to formal sector finance and the remaining 82% still rely on internal savings, retained earnings and borrowing from family, friends and informal money lenders.<sup>6</sup> The problems occur for both the SMEs and the banks, where from the SMEs that had been surveyed,<sup>7</sup> around 65% stated that the collateral requirement and also high lending rates became their biggest barriers to accessing finance from the bank. While from the banks side, the information asymmetry became the biggest issue for them since they still consider many of the SMEs as risky, hence they put a high interest rate and tighter requirement for getting a loan.<sup>8</sup>

There are four issues that will be discussed in this paper; the first one is

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2 PricewaterhouseCoopers, *Indonesian Pocket Tax Book 2014* (Jakarta, 2014), PwC.

3 *Ibid.*, 1.

4 Shigehiro Shinozaki, "A New Regime of SME Finance in Emerging Asia: Empowering Growth-Oriented SMEs to Build Resilient National Economies," *ADB Working Paper Series on Regional Economic Integration* (2012): 15-25.

5 Indonesian Ministry of Cooperatives and SMEs, "Statistik UKM [SME statistics]," In *Statistik UKM, 2012*, [http://www.depkop.go.id/index.php?option=com\\_phocadownload&view=category&id=124:s:statistik-ukm-2012&Itemid=93](http://www.depkop.go.id/index.php?option=com_phocadownload&view=category&id=124:s:statistik-ukm-2012&Itemid=93) (accessed December 13, 2014).

6 Tulus Tambunan, "Financial Inclusion, Financial Education, and Financial Regulation: A Story from Indonesia," In *Asian Development Bank Institute Working Paper* 535 (2015): 3-33.

7 *Ibid.*, 4.

8 *Ibid.*, 4.

to analyze the impact of the government of Indonesia's Kredit Usaha Rakyat (KUR) and also its limitations. The second issue is to analyze the needs of implementing the Hometown Investment Trust Fund (HIT) as an alternative financing scheme for SMEs to grow their business in Indonesia.<sup>9</sup> Third is to analyze the possibility of utilizing universities as a business incubation center and also as the main channel for executing the HIT, which can enhance the regional development that has become an inconclusive issue in Indonesia. And lastly is to incorporate the cooperatives as an alternative channel for implementing HIT in rural areas.

The author hopes that with the implementation of the Hometown Investment Trust Fund, the SMEs in Indonesia can get better access to finance and capital so that they can grow their business, and can bring a positive impact to the economic growth of Indonesia.

### **An Overview of SMEs in Indonesia**

SMEs play a significant role in creating employment in Indonesia, which in turn fosters Indonesia's economic development (Figure 1). In the past, because of its role in creating job opportunities, SMEs played a major role in sustaining the household income and, at the same time, steadily decreasing the poverty rate during the financial crisis.<sup>10</sup> The main reason for this phenomenon is because in Indonesia SMEs are less dependent on any formal source of capital (e.g. bank loan), which makes them more resistant to sudden financial shocks compared to a large firm.<sup>11</sup>

The numbers in Figure 1 are also supported by the statement from the Indonesian Ministry of Cooperative and SMEs,<sup>12</sup> which identified that in 2011 the SMEs created job opportunities for 101,722,548 people in Indonesia (97.24% of the total employment in Indonesia) and in 2012 the number even grew to become 107,657,509 people (about 9.16% higher than in 2011). The SMEs' contribution to GDP is also substantial, with 57.94% (equal to 4,303,571.5 trillion rupiah) in 2011, which increased to 59.08% of the GDP (4,869,568.1 trillion rupiah) in 2012.<sup>13</sup>

9 Naoyuki Yoshino and Sahoko Kaji, *Hometown Investment Trust Funds: A Stable Way to Supply Risk Capital* (Tokyo, Japan: Springer, 2013), 25.

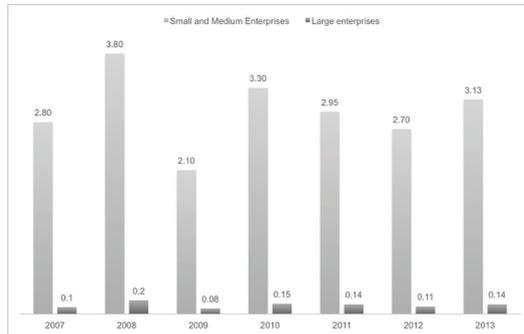
10 Annabelle Mourougane, "Promoting SME development in Indonesia," *OECD Economics Department Working Papers* 995 (2012): 5-32.

11 Albert Berry, et. al, "Small and Medium Enterprise Dynamics in Indonesia," *Bulletin of Indonesian Economic Studies* 37, no. 3 (2001): 363-384.

12 *Ibid.*, 5.

13 Indonesian Ministry of Cooperative and SMEs, "SMEs Development in Indonesia" (paper presented at the 1st Meeting of the COMCEC Trade Working Group, Ankara, Turkey, June 20, 2013).

Figure 1. Contribution to Employment Growth by SMEs and Large Firms (in percentage points)



Source: Indonesian Ministry of Cooperatives and SMEs.<sup>14</sup>

Furthermore, SMEs in Indonesia have a significant impact on the net export rates of Indonesia. In 2010, SMEs' export contributed approximately 175,894.9 billion rupiah (15.81% of the total net export), with the leading export commodities being handicraft (30%), fashion and accessories (29%), furniture (27%), food and beverages (10%), and health and beauty products (4%).<sup>15</sup> Due to their availability ranging from urban to rural areas, the SMEs play an important role in regional development, especially in rural areas.<sup>16</sup>

With all of the aspects that have been mentioned above and also considering the fact that SMEs in Indonesia play a significant role in Indonesian economic development, the SMEs will become one of the key factors enhancing the development of the Indonesian economy.<sup>17</sup>

### *The SMEs' Growth in Indonesia*

SMEs in Indonesia grew rapidly from the period of 2007 until 2013. In 2007 the number of SMEs was counted as 47,840,600 enterprises and there was a big difference between the number of SMEs and large firms, which totaled around 450,000 firms (see table 1). Then in 2013 there was a 28.5% growth rate for the numbers of SMEs in Indonesia amounting to 61,496,080 firms, while the growth rate of large firms was smaller than the SMEs' growth rate

<sup>14</sup> Ibid., 5.

<sup>15</sup> Tulus Tambunan, "Development and Some Constraints of SME in Indonesia," Research Institute of Economy, Trade & Industry, [http://www.rieti.go.jp/jp/events/10100101/pdf/5-5\\_tambunan\\_paper\\_en.pdf](http://www.rieti.go.jp/jp/events/10100101/pdf/5-5_tambunan_paper_en.pdf) (accessed January 2, 2015).

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

(15.7%) from 450,000 firms in 2007 to 521,000 firms in 2013.

*Table 1. Number of SMEs and Large Enterprises in Indonesia (in 000 units)*

	2007	2008	2009	2010	2011	2012	2013
Small and Medium Enterprises	47,840	52,367	52,764	55,914	57,229	59,768	61,490
Large Enterprises	4.5	4.4	4.7	4.73	4.94	5.04	5.21
Total	47,845	52,372	52,769	55,919	57,234	59,773	61,496

Source: Badan Pusat Statistik<sup>18</sup>

The growth structure of the SMEs in Indonesia can be divided into four different findings, such as:

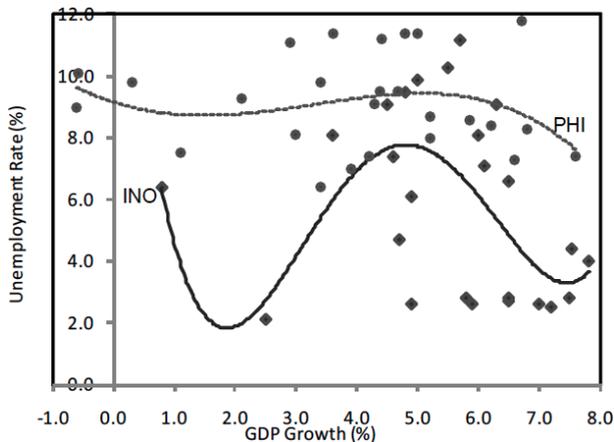
1. The flexibility of SMEs to specialize either to become a subcontractor to a larger firm, if they already have already got their own economies of scale, or to develop their own niche market when they do not yet have economies of scale. This flexibility allows the SMEs to survive and grow even in a difficult conditions (e.g. financial crisis).
2. The growth stage of SMEs varies depending on their level of maturity, where in the early stages of development they are usually start as household industries, and then become manufacturers in later stages.
3. The increasing level of customers' incomes can enable new market development, since customers' demand are going to shift to a more sophisticated products. This condition will encourage the growth of SMEs and also increase the competition among SMEs that can lead to more innovation and improvements.
4. The growth of SMEs in urban areas is faster compared to rural areas. This happens because urban areas have a higher population density that leads to a higher demand than the demand in the rural areas. Besides that SMEs in urban areas can get some benefits due to better business conditions within those areas.

18 Badan Pusat Statistik, "Statistik Ekonomi dan Keuangan Indonesia [Indonesian Economic and Financial Statistics]." Statistik Ekonomi dan Keuangan Indonesia, 2014, [http://www.bps.go.id/tab\\_sub/view.php?kat=2&tabel=1&daftar=1&id\\_subyek=35&notab=1](http://www.bps.go.id/tab_sub/view.php?kat=2&tabel=1&daftar=1&id_subyek=35&notab=1) (accessed December 13, 2014).

## Constraints toward Nurturing SMEs' Growth

Indonesia's economy is considered to be the 10<sup>th</sup> largest by nominal Gross Domestic Product (GDP) at Purchasing Power Parity (PPP). Referring to World Bank data, the annual GDP growth rate of Indonesia in 2012 was 6.2% slightly decreased from 6.5% in 2011.<sup>19</sup> However, despite its high GDP growth rate, Indonesia's unemployment rate is still considered quite high. Shinozaki argued that economic growth in Indonesia does not necessarily mean there is growth in the employment rate as well (see figure 2).<sup>20</sup> From figure 2, it is clear that when the GDP growth of Indonesia increased from 2% to 5%, the unemployment rate hiked from 2% to 7.8%. This indicates that there is a problem with the quality of economic growth in Indonesia, which might be caused by a lack of the establishment and also growth cycle of SMEs.<sup>21</sup>

Figure 2. Economic Growth and Unemployment Rate in Indonesia and the Philippines



PHI = the Philippines; INO = Indonesia

Source: (Shinozaki 2012)

According to World Bank Group, the lack of the establishment and also

19 World Bank Group, "World Bank Enterprise Survey," Enterprise Survey, 2009, <http://www.enterprisesurveys.org/data/exploreeconomies/2009/indonesia#firm-characteristics> (accessed December 13, 2014).

20 Ibid., 4.

21 Ibid., 4.

growth cycle of SMEs in Indonesia happened due to several constraints faced by SMEs in Indonesia. Those two major constraints are limitation to formal financial access and SME's lack of knowledge and innovation.<sup>22</sup>

### Financial Access to the SMEs in Indonesia

#### *The Importance of Financial Access to the SMEs' Growth*

Access to finance is very important for enhancing the growth of SMEs in order to support economic development. SMEs use the funding that they have for growing their business by purchasing fixed assets or expanding their business to another market. In order to comprehend the relationship (whether it will be a positive or negative) between access to finance and SMEs' growth, a correlation analysis will be used.

Then, simple nonlinear regression analysis will be used to assess the impact of funding from formal finance to the SMEs' growth. The data were obtained from World Bank Group's enterprise survey,<sup>23</sup> where the dependent variable will be the SMEs' growth and access to formal finance will be the independent variable. The method that will be used to conduct this regression analysis is Ordinary Least Square Method (OLS), with the following equation:

$$\log\_growth = \beta_0 + \beta_1 \log\_credit + U$$

Where

$\log(growth)$ : The SMEs' growth function that is indicated by the percent of SMEs buying fixed assets (buildings, equipment, land, machinery, etc.) in order to grow their business.

$\beta_0$ : The predicted percentage of growth if percentage growth of formal finance is equal to zero ( $\log(credit) = 0$ ).

$\beta_1$ : Change in percentage of growth, when  $\log(credit)$  is increased by one percentage point.

$\log(credit)$ : The percentage of loans or credit that have been approved by financial institutions.

$U$ : Residual.

From the analysis, it can be estimated that the capital raised from financial

<sup>22</sup> Ibid., 20.

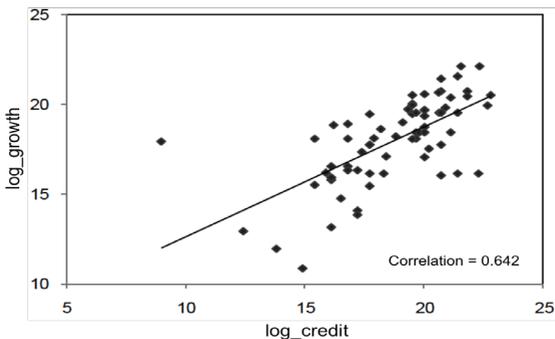
<sup>23</sup> Ibid., 20.

institutions correlates positively (correlation = 0.642) with the SMEs' growth, which is denoted by the percentage of SMEs that acquire fixed assets (see figure 3). This analysis shows that with better access to finance, the SMEs will prefer to invest for their growth by purchasing fixed assets.

The regression analysis shows that the increase in access to finance (credit) drives up the SMEs' growth with the significance level at 1% (see table 2). From the result it can be seen that if the percentage of credit growth increases by 1 percentage point, the SMEs' growth increases by 0.6166 percentage points. Therefore, the resulting equation is:

$$\log\_growth = 6.4132 + 0.6166 \log\_credit + U$$

Figure 3. Correlation Analysis between Access to Finance and SMEs' Growth



Source: Author's Calculation based on World Bank Group Enterprise Survey and Badan Pusat Statistik

Considering the result of this analysis, there is a high probability that providing better access to finance will be one of the government's policy concerns in order to enhance the growth of SMEs, which can lead to more sustainable economic development.

Table 2. SMEs' Growth and Access to Finance (Credit) Regression Analysis (with OLS)

Dependent Variable: log\_(growth)  
 Included Observations: 255

	Coefficients	Prob.
$\beta_0$	6.4132***	0.0000
$\beta_1$	0.6166***	0.0048
R-squared	0.4331	

\*p<0.1, \*\*p<0.05, \*\*\*p<0.01

Source: Author's Calculation based on World Bank Group Enterprise Survey and Badan Pusat Statistik

**SMEs' Constraints to Access a Formal Source of Funds**

However, despite its importance for enhancing the growth of SMEs, there is clear evidence that the SMEs in Indonesia still have a lot of difficulties getting financial access to formal institutions. Figure 4 shows that both the percentage of small enterprises and medium enterprises that can get access to bank loans are low (small enterprises = 16.5% and medium enterprises = 27.6%) compared with the percentage of large companies that can get loans or a credit line from the banks (47.1%).<sup>24</sup>

Figure 4. Firms with Bank Loans or a Credit Line (in %)



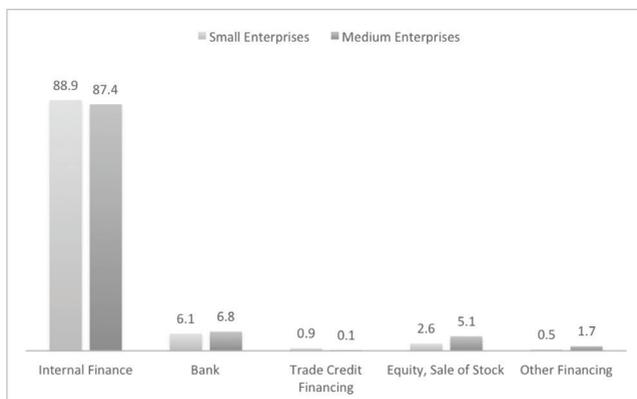
Source: World Bank Group Enterprise Survey

Having limited access to sources of finance from formal institutions, SMEs still rely on their internal finance as a source of funding for their business activities, where the percentage for both small enterprises and medium

24 Ibid.

enterprises are quite high at 88.9% and 87.4% respectively.<sup>25</sup> The percentage of SMEs that use bank loans as their source of funding to operate their businesses is quite low at 6.1% for small enterprises and 6.8% for medium enterprises.<sup>26</sup>

Figure 5. SMEs' Source of Finance (in %)



Note: Other Financing: Venture Capital, Cooperative, and Microcredit

Source: World Bank Group Enterprise Survey

Based on the analysis on figure 4 and 5, it can be seen that although there are some small and medium enterprises that have credit line from the banks to get loans for operating their business, however only 6.1% of the small enterprises and 6.8% of the medium enterprises that utilize the credit line that they have to run their business. It happens because the SMEs are reluctant to use the bank loans and they prefer to use their internal source of fund to run their business.

According to the survey that had been done by Indonesian Ministry of Cooperatives and SMEs,<sup>27</sup> there are some factors that become the trigger of this issue (see figure 6). The biggest concern is about strict requirement of collateral from the banks, which in most cases the SMEs fail to achieve it because of their insufficient collateral value to fulfill the banks' requirement. The second major trigger is the high lending rate from the bank to the SMEs due to the higher risk of non-performing loan as the result of the

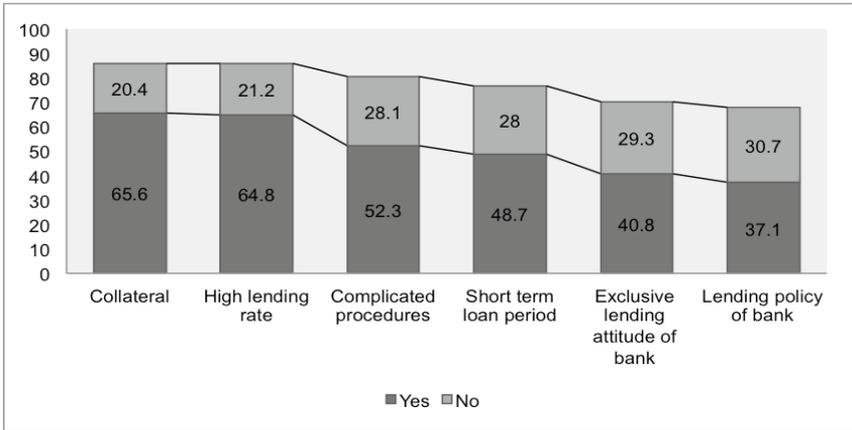
25 Ibid.

26 Ibid.

27 Ibid., 5.

information asymmetry between the banks and the SMEs. Furthermore, the implementation of Basel Capital Accords (Basel II and Basel III) will accelerate the limitation of access to the bank loans for the SMEs, because these regulations will require banks to raise their capital requirement, which means that they will be less tolerant for riskier businesses like SMEs.<sup>28</sup>

Figure 6. Obstacles to Access Bank Loan (in %)



Note: The survey was conducted by asking whether each of these issues become the SMEs' barrier to bank loan or not

Source: Indonesian Ministry of Cooperatives and SMEs

From all of the analysis above, the result is clear that there are some limitations that are confronted by the formal institutions (in this case is banks) to give financial access to SMEs. This also means that the SMEs will have some difficulties to raise secure and sustainable funds to grow their business. Thus, to overcome this problem, a new alternative source of funds is needed to complement the limit of bank financing to the SMEs.

### The Issue Regarding Business Knowledge and Innovation

Innovation is inarguably one of the key aspects for SMEs to grow their business because by focusing on innovation, the SMEs can improve their productivity and also expanding their market base. In order to innovate

28 N. Yoshino, and T. Hirano, "Pro-cyclicality of the Basel Capital Requirement Ratio and Its Impact on Banks." *Asian Economic Papers* 10 no. 2 (2011): 22-36.

themselves, the SMEs need business knowledge and also guidance either from government, incubator or other SMEs.<sup>29</sup> However in Indonesia these business knowledge and guidance seems not to be taken seriously. World Bank Group indicated that the innovation amongst the SMEs was very low comparing to the large companies, and only 9.31% of the SMEs are engaging in innovation-related activities, while the percentage of the large companies is 50.83% (see table 3).<sup>30</sup>

Table 3. Indicator of Innovation

Categories	SMEs	Large corporations
Percentage of firms with an internationally recognized quality certification	3.95	40.8
Percentage of firms using technology licensed from foreign companies	6.35	35.4
Percentage of firms with their own website	6.7	45.3
Percentage of firms using email to manage supplier and client relations	20.25	81.8
Average percentage of engagement in innovation related activities	9.31	50.83

Source: World Bank Group (2009) Enterprise Survey

Based on the analysis on innovation aspects, it can be identified clearly that the level of innovation among the SMEs is quite low. It happens because of several knowledge-related factors, such as: lack of professional institutions to educate and train entrepreneurs, limited amount of experienced entrepreneurs that can educate and train people to start their entrepreneurial career, and lack of good entrepreneurship development program.<sup>31</sup>

### **Government Initiative to Provide Financial Access through Kredit Usaha Rakyat (KUR) / Credit for the People**

Kredit Usaha Rakyat (KUR) or Credit for the people is one of the most notable

29 Ibid., 10.

30 Ibid., 20.

31 Balbir B. Bhasin, and Sivakumar Venkataramany, " Globalization Of Entrepreneurship: Policy Considerations For SME Development In Indonesia," *International Business & Economics Research Journal* 9, no. 4 (2010): 95-104.

initiatives from the government of Indonesia to encourage financial inclusion to SMEs in Indonesia. As it has been analyzed in the previous chapter, SMEs in Indonesia are facing some constraints in order to access financing from the banks, which are related to strict requirement of collateral and also high lending rate from the banks. Therefore, the government has developed KUR that tackle the issues of insufficient collateral from the SMEs to the bank as well as to provide the SMEs with a reasonable lending rate.<sup>32</sup>

Within this program's framework (see figure 7), the Ministry of Finance provides insurance for 70% of the loans that are given to the SMEs, while the banks bear 30% of the risk.<sup>33</sup> Under this scheme, there are six national banks and also 26 regional banks that have already joined in order to provide loans to the SMEs.

While in terms of interest rate, because the government guarantee 70% of the loans' risk, hence the banks become more risk-tolerance and can provide interest rate at the level of 13% for the retail businesses and 22% for the microenterprises.<sup>34</sup> This interest rate is considered low, comparing with the interest rate from the informal financial sources. Besides that, in order to manage the risk and potential issue of the government regarding this loan to SMEs, the government of Indonesia has already set a ceiling of 20 million rupiah that can be borrowed by the microenterprises.

### Impact of KUR and Its Limitation

The KUR program has created a positive impact on SMEs by supporting them with a source of finance that can be accessed easily. In 2012, approximately 29 billion rupiah (\$3.1 million) had been circulated to 1,909,914 SMEs by the banks as part of the KUR loan program.<sup>35</sup> Stimulated by the success in 2012, the government increased the amount of funds that were distributed to the SMEs through the KUR program, which was estimated as 37 trillion rupiah (\$2.9 billion) in 2013.<sup>36</sup> In 2014, the six national banks partaking in the KUR program had provided 11,309,283 SMEs with funds of 146.33

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32 Khan Kikkawa, and Yuqing Xing, "Financial Inclusion in Indonesia: A Poverty Alleviation Strategy," in *Financial Inclusion in Asia: Country Surveys*, eds. Jae-Ha Park and Li Kouqing (Tokyo: Asian Development Bank Institute, 2014), 45-61.

33 M. Sembiring, and W. Purwanti, "Indonesia's Experiences on Micro Finance Institution and Small Scale Cross Border Transaction" (paper presented at the ADBI-AFDC- ABAC Asia-Pacific Forum on Financial Inclusion: Approaches, Regulations and Cross-Border Issues, Shanghai, China, June 25-27, 2012).

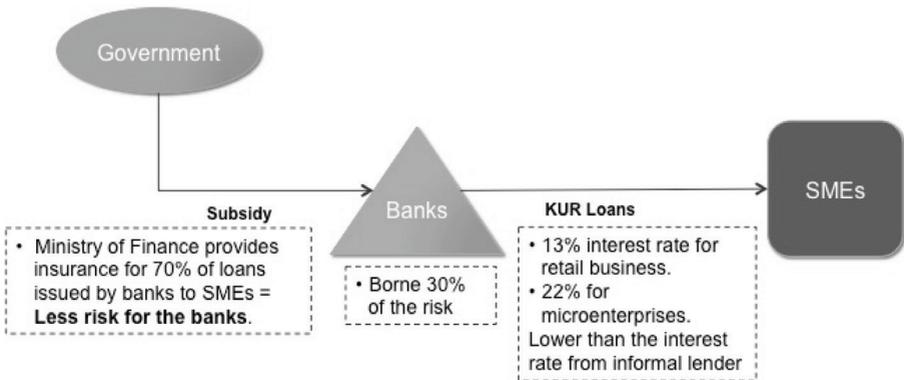
34 *Ibid.*, 33.

35 *Ibid.*, 36.

36 *Ibid.*, 35.

trillion rupiah.<sup>37</sup>

Figure 7. Framework of Kredit Usaha Rakyat (KUR)



Source: Khan & Xing (2014)

An analysis has been done to assess whether the government initiative through KUR has created a positive impact on SMEs. This analysis has been established following the credit supply function of the disequilibrium model,<sup>38</sup> and also based on the regression model that has been developed by the Central Bank of Indonesia in their empirical investigation on the credit crunch in Indonesia.<sup>39</sup>

According to the model, the loan or credit supply function is defined by the banks lending capacity and the factors that affect the eagerness of the banks to supply the loan, such as: lending rates, real output (GDP), and the non-performing loan (NPL) of the SMEs.<sup>40</sup> Hence, the loan or credit supply function can be described as follows:

$$CS = \beta_0 + \beta_1 \text{len\_capacity} + \beta_2 r + \beta_3 y + \beta_4 \text{sme\_npl} + U$$

CS: Credit supply

37 Ibid., 35.

38 Ray C. Fair, and Dwight M. Jaffee, "Methods of Estimation for Markets in Disequilibrium," *Econometrica* 40 (1972): 497-514.

39 *Credit Crunch In Indonesia In the Aftermath of the Crisis*. Directorate of Economic Research and Monetary Policy, Bank Indonesia, Jakarta, 2001.

40 Ibid.

- len\_capacity: The lending capacity, which can be described as: total liabilities minus capital of the bank minus required reserve minus cash in vault.
- r: Lending rates.
- y: Real output, which is measured by the real value of GDP.
- sme\_npl: The non-performing loans of the SMEs.
- U: Residual

The data that will be used for this regression analysis are the data from 2005 until 2013. From the regression analysis that has had been done, the credit supply for SMEs increases when the lending capacity, lending rates, production output (real GDP) increase (see table 4). Besides that, the credit supply also increases even when SMEs' NPL increases, which indicate that the banks are more risk-tolerant of SMEs' risky loan because of the government's support through the KUR program (see table 4). Hence, the result shows that Kredit Usaha Rakyat (KUR) has a positive impact towards credit supply, since the banks are willing to give credits to SMEs (even though they are riskier than large enterprises) under this program.

*Table 4. Analysis of KUR's Impact to the Credit Supply (2005 – 2013)*

Dependent Variable: CS  
 Included Observations: 60

	Coefficients	Prob.
Constant	-24.8248***	0.0000
len_capacity	0.4273***	0.0048
r	0.3768***	0.0005
y	2.4468***	0.0029
sme_npl	0.015***	0.0000
Adjusted R-squared	0.5786	

\*p<0.1, \*\*p<0.05, \*\*\*p<0.01

Source: Author's Calculation based on Badan Pusat Statistik (2012) and Bank Indonesia (2013)

However, there is a big hesitation towards the KUR program regarding whether it will be sustainable during a crisis. In order to analyze its sustainability, the

same regression model will be used, however this time the analysis will be divided into two. The first one is the analysis before the global financial crisis (GFC) that will use 2005-2007 data. The second one is the analysis after the GFC, which will use 2008–2013 data.

*Table 5. Analysis of KUR's Sustainability Towards the Credit Supply*

*Before the Global Financial Crisis (2005 - 2007)*

Dependent Variable:CS

Included Observations: 60

	Coefficients	Prob.
Constant	-23.1225***	0.0006
len_capacity	0.4928***	0.0057
r	0.2748***	0.0000
y	2.1641***	0.0049
sme_npl	0.1206***	0.0000
Adjusted R-squared	0.6557	

*After the Global Financial Crisis (2008 - 2013)*

Dependent Variable:CS

Included Observations: 60

	Coefficients	Prob.
Constant	-25.0756***	0.0000
len_capacity	0.2652***	0.0033
r	-0.0203***	0.0008
y	2.6804***	0.0015
sme_npl	-0.0391***	0.0000
Adjusted R-squared	0.5488	

\*p<0.1, \*\*p<0.05, \*\*\*p<0.01

Source: Author's Calculation based on Badan Pusat Statistik (2012) and Bank Indonesia (2013)

After the analysis both on the impact and also the sustainability of (KUR), the result is that Kredit Usaha Rakyat indeed has a positive impact on the credit supply for SMEs. However, the analysis also shows that the KUR program is more risk-sensitive after the global financial crisis, since this KUR loan program is distributed through banks which are sensitive to financial

crisis. Besides that, the incoming implementation of the Basel III capital requirement in 2019 makes the banks more risk-averse and limit loans to the SMEs even with the support of the KUR. Hence, it can be assumed that the KUR program is not really sustainable, since it is sensitive towards financial crisis; therefore, an alternative source of finance for the SMEs is needed.

### **Hometown Investment Trust Fund (HIT): An Alternative Source of Finance for the SMEs**

Hometown Investment Trust Fund (HIT) is a small investment that focuses on regional development. The uniqueness of HIT is its model, which aims to develop an innovative financial intermediary channel outside of the indirect funding and market sectors in one country's financial system.<sup>41</sup> HIT creates a new flow of funds that can accommodate riskier businesses like SMEs and it also focuses on enhancing the financial system to support SMEs as a form to promote real economic development.<sup>42</sup>

In the HIT framework, the business operator acts as an asset management company to manage the funds that have been generated from the investors (see Figure 7). This business operator's roles consist of doing a valuation of the SMEs that will be invested in using the funds, channeling the investment to the chosen SMEs and monitoring the SMEs by doing a business audit.<sup>43</sup>

The investors of HIT can invest directly in the project that will be executed by the SMEs through the website (like the model of Crowd funding) that has been developed by the business operator or through other HIT sales channels, such as banks, cooperatives, post offices, etc. (see Figure 7). This concept of using the website as an investment platform can allow the investors to choose the projects that they are interested in, while also reducing the transaction cost of direct investment to the project. By implementing this direct investment model to the SMEs from household financial assets, HIT can provide other sources of funding to the SMEs with better risk tolerance compared to the banks are bound to the Basel capital requirement.<sup>44</sup>

HIT uses the approach of silent partnership in order to ensure the management independence of the SMEs to run their business (see figure 8). Silent partnership allows people to invest directly in individual projects;

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41 Ibid., 9.

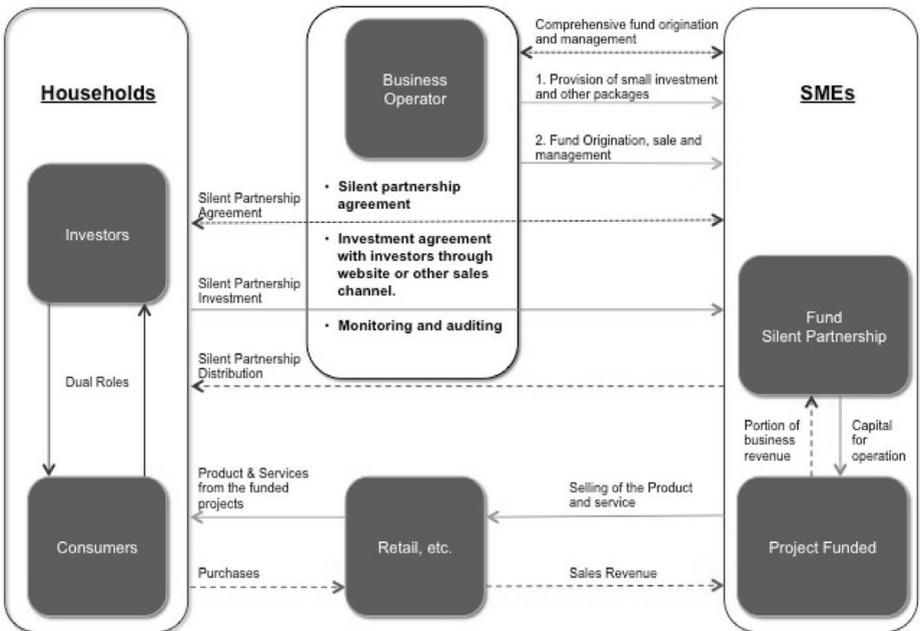
42 Ibid., 9.

43 Ibid., 9.

44 Ibid., 9.

however, they will not be allowed to participate in the management of SMEs and/or the SMEs project. This approach is different from traditional investment in the partnerships and common stock where the investors in a publicly traded company are involved in the shareholder meeting to decide the direction of the company.<sup>45</sup>

Figure 8. HIT Framework Diagram



Source: Yoshino, Kaji, *Hometown Investment Trust Funds: A Stable Way to Supply Risk Capital*

Hometown Investment Trust Fund has three major advantages. First, it can reduce information asymmetry, because the investors have direct access to the SMEs' projects in which they will invest their money. Second, HIT is a stable source of risk capital, since it is a project-driven fund where the investors decide to invest in the SMEs and projects that they are familiar with (e.g. the investors can choose to invest to the SMEs that are located in the same region or hometown as they are), thus the investors can trust the

45 Ibid., 9.

SMEs and do voluntary monitoring. Third, HIT can connect households (both investor and consumers) to the SMEs so that they can grow and provide more job opportunities, as well as regional development, which can contribute to the economic development of Indonesia.<sup>46</sup>

### **HIT Implementation Approach in Indonesia**

Besides the issue of access to finance, Indonesia's SMEs also face another major constraint, which is lack of innovation and business knowledge. Therefore, it will be desirable to develop an HIT implementation approach that can overcome this problem. There are two implementation models that will be discussed in this paper: the first one is to incorporate universities as the business operator of the HIT and the second is to utilize the role of cooperative for developing HIT to reach the SMEs in rural area.

#### *Incorporating Universities as the Business Operator of HIT*

The basic argument for this approach is that universities will provide knowledge and guidance to the SMEs through their business incubation center to the SMEs. Business knowledge is crucial because it will determine the successful execution and the growth of their business. By acquiring an adequate level of knowledge, SMEs can obtain a strategic advantage in enhancing their business productivity, understanding the market, differentiating their products, and expanding their market base. Without this strategic advantage, potential investors would not be eager to invest in the SMEs because they are unsure that the SMEs can survive in the market even after receiving their investment.

The initiative to enhance the growth of SMEs has become one of the universities' focuses towards becoming entrepreneurial universities. One of the common strategies to achieve that is through developing business incubation centers to assist SMEs in developing their business. Up until now, there are 82 major universities in Indonesia that have a center for SMEs development, or a business incubation centers.<sup>47</sup>

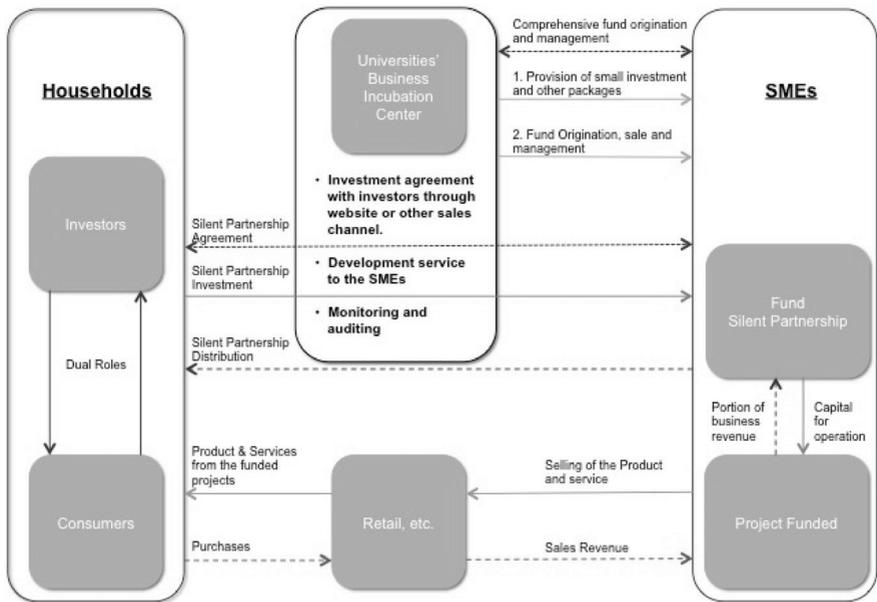
The framework of this model starts with the investor's access to the list

46 Naoyuki Yoshino and Taghizadeh Farhad Hesary, "Hometown Investment Trust Funds: An Analysis of Credit Risk." *ADBI Working Paper Series* 505 (2014): 3-20.

47 Heri Kuswara, "Strategi Perguruan Tinggi Mewujudkan Entrepreneurial Kampus [Higher Education's Strategy to Become Entrepreneurial University]." *Direktorat Jenderal Perguruan Tinggi*, February 3, 2012, <http://dikti.go.id/blog/2012/02/03/strategi-perguruan-tinggi-mewujudkan-entrepreneurial-campus/> (accessed January 16, 2015).

of SMEs project database on the website (see figure 9). On this website the investor can check all of the information about the SMEs and their projects, such as the company profile, details of the project and potential yield of the project. The website also acts as the investment platform where the investors can invest their money directly through the website to the projects that suit their interest, just like in a crowd funding online platform (e.g. kickstarter.com). In this model, the main sales channel for HIT will be through the website, however there will be further sales channel development through banks, post offices and cooperatives.

Figure 9. Universities – HIT Framework Diagram



Source: Author's Concept based on the Hometown Investment Trust Fund model by Yoshino & Kaji

The universities play a big role in this model because they will be the business operators of HIT. The main activities of the universities in this model are building an online investment platform for the HIT, promoting HIT to potential investors, evaluating the SMEs project to minimize the risk as well

as to foresee the potential of each SMEs' projects, providing a development packages (knowledge, guidance and consultancy) to the SMEs, and doing the monitoring and auditing of the SMEs.

There will be various advantages when implementing HIT through the universities' business incubations, such as:

1. The universities have a lot of experts (e.g. professors and researchers) that are capable of developing and also guiding the SMEs to grow their business. These experts from the universities will become the SMEs' mentors and consultants, and it will be a great benefit for the SMEs.
2. Many potential students can become consultants for the SMEs (either as a pro-bono scheme project consultant or as an intern).
3. This model also allows the students to learn directly from the SMEs' key players, so that they will be motivated to become entrepreneurs, hence it can increase the growth of SMEs in Indonesia.
4. Gaining better trust from the investor since the universities have already gained credibility through public exposure as well as because of the experts inside the universities.

### *Rural Development Strategy through the Integration of HIT and Cooperatives*

Cooperatives have played an important role in the development of rural areas in Indonesia. There is a government organization that manages all of the cooperatives in Indonesia and it is called Induk KUD. Induk KUD is the national federation of rural cooperatives in Indonesia, and it was founded on November 12, 1979.

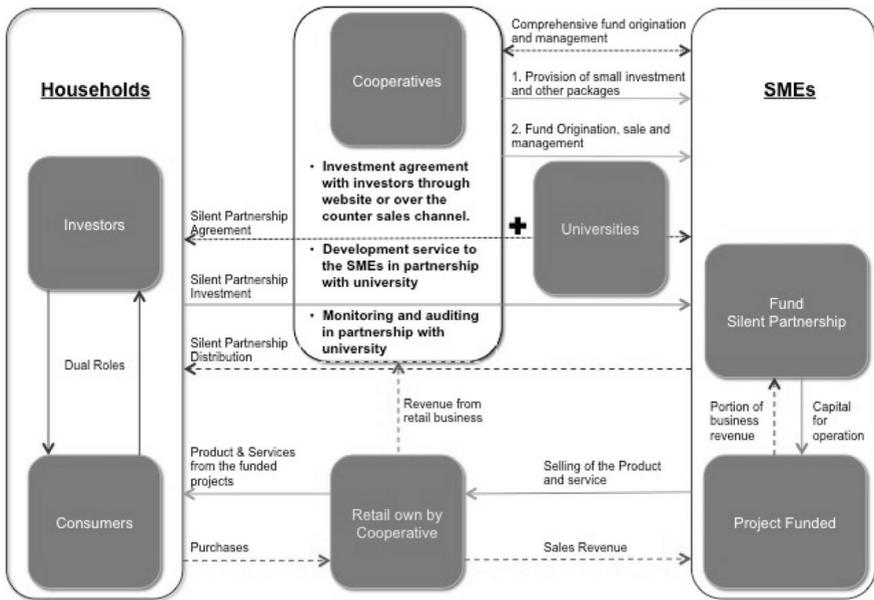
The Induk KUD mission is to help the cooperative movement expand joint business relationships, ensure creation and implementation of a business climate that supports cooperative survival and development, education and training, develop cooperative business, and improve the welfare of its members and as a result the community. Induk KUD currently has members in 27 provinces with three overseas representative offices.

The cooperative has a savings and loan business unit for members of staff, their members (individual and SMEs), and potential members. They also procure and distribute goods such as raw materials and production facilities to increase production for members and staff. The organization also assists in helping members and open up markets in domestic and foreign countries in the various sectors that there are in – agriculture, fisheries,

livestock, plantation, mining, forest and crafts.

The basic argument for this approach is that the cooperative has a business model that is relatively similar to a business incubator. From the explanation above, it is clearly stated that the cooperative supports the development of its SMEs' members and provides them with necessary access to low interest loans. However, the cooperative's source of funds is limited to the internal contribution of its members, which is one of the reasons for the integration of HIT to expand its external source of funds (public investors).

Figure 10. Cooperatives – HIT Framework Diagram



Source: Author's Concept based on the Hometown Investment Trust Fund model by Yoshino & Kaji (2013)

In this approach, the investors can invest directly in the SMEs and their projects either through an online investment platform (just like in the university approach) or by going directly to the cooperative or the over the counter (see figure 10). Over the counter selling channel will be important for the cooperatives that are located and have portfolios of SMEs' projects in

rural areas, since internet access will be quite limited in this area.

As for the development of the SMEs and also monitoring and auditing, this can be done directly by the cooperative or by partnership with the university. Partnership with a university will be quite useful when the cooperative has fewer experts to develop the SMEs, so in order to fulfill the gap, the cooperative can collaborate with the university to get the necessary resources.

The advantages of implementing HIT through cooperatives are:

1. The vast network of cooperatives in both urban and rural areas can create a wider positive effect of HIT implementation.
2. The HIT model can be easier to be implemented within cooperatives than universities, since cooperatives have a quite a similar business model to HIT.
3. Cooperation with universities will allow the cooperatives to acquire the necessary expertise to develop SMEs and execute a more effective fundraising method.
4. Better support from the government through the Ministry of Cooperatives and SMEs.

## **Conclusion**

SMEs in Indonesia play a significant role in the economy by making a high contribution to employment growth, the GDP and also to net exports. Besides that, the number of SMEs in Indonesia is bigger than the number of large companies, which makes them potentially important for the economic development of Indonesia.

Despite their importance to national economic growth, SMEs' growth is having a problem with its foundation and growth cycle. The problem is due to two major constraints, which are limited access to finance and SMEs' lack of innovation and business knowledge.

The analysis that has been done regarding financial access, shows that access to finance is important for enhancing the growth of SMEs, however, from the analysis it can be observed that the percentage of SMEs that have already received credit lines or bank loans is quite low. Furthermore, the SMEs are reluctant to get loans from the banks because of two major problems: such as the binding collateral requirement and high lending rate from the banks. These two major problems appear because there is an information asymmetry between the banks and the SMEs.

Regarding the issue with innovation and business knowledge, the research indicates that the innovation amongst SMEs is very low compared to the innovation of large enterprises. This occurs because the SMEs could not get an adequate level of business knowledge or guidance to improve their business.

So, in order to overcome issues with limitations to financial access, the implementation of the Hometown Investment Trust Fund (HIT) is needed. According to the analysis, HIT will be suitable to be implemented as an alternative source of funds for SMEs because of several features: its ability to reduce information asymmetry, its nature as a stable source of risk capital, and its capability to connect households with SMEs. The integration approach of HIT will be very important, since SMEs also face some challenges that are related to innovation and business knowledge. This paper suggests two types of HIT integration: the first is integration with universities and the second is integration with cooperatives. Conducting further research is necessary to validate whether these two types of HIT integration can be implemented since they are still concepts that have not been tested in reality yet. **Y**

# ONE CHINA, ONE TAIWAN: A NEW FRAMEWORK FOR THE SETTLEMENT OF THE TAIWAN STRAITS DISPUTE

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*The 2016 presidential and parliamentary elections in the Republic of China (ROC) could be of seminal importance. With the Nationalist Party (KMT) poised to lose the presidency by a large margin, the more pro-independence Democratic Progressive Party (DPP) could see major gains. This has heady implications for the PRC-ROC relationship, as the PRC has historically had chilly relations with the DPP over their pro-independence stances and policies. This paper argues that in order to lower the potential increased tension levels between the two, and in the region generally, the PRC and ROC need a durable settlement to the Cross-Strait Dispute. The remaking of Taiwan as a totally neutral, independent state, in the mold of Switzerland, could be that solution. While on the face of it an independent Taiwan would only exacerbate tensions in the region, a careful look at the myriad of interests of the major powers in the region show that, depending on the details and form of independence, these interests can be accounted for. By applying international law and taking into account these major interests, an independent Taiwan could defuse many, if not all, the tensions caused by the complex PRC-ROC relationship over the years.*

The dispute in the Taiwan Strait over the status of the island of Taiwan has been a source of tension in East Asia since the end of the Chinese Civil War in 1949. Until the 1970s, the Republic of China (ROC) in Taiwan was widely considered the legitimate government of China. After the US derecognized the ROC in 1978, however, the People's Republic of China (PRC) has been widely considered the legitimate government of China.<sup>1</sup> The PRC claims that

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<sup>1</sup> John F. Copper, *Taiwan: Nation-State or Province?* 6<sup>th</sup> Edition (Philadelphia, PA: Westview Press, 2013), 189.

Taiwan has always been a part of China, and thus continues to claim it has a right to reunify China by taking control of the island. The ROC, as one could imagine, has resisted this effort. Partially thanks to the ROC's own efforts, and partially due to ambiguity in the US' Taiwan policy, this resistance has been largely successful.

This dispute is all the more important today because of recent developments in the ROC. In the 2014 local elections, the Nationalist Party (KMT) lost elections across the board, partially due to the current President's unpopularity. The Democratic Progressive Party (DPP) was the main beneficiary of this wipeout, taking almost all of the seats lost by the KMT.<sup>2</sup> This political shift is important because of the contrasting cross-strait policies of the two major parties: the KMT has brought the ROC closer to the PRC, whereas the DPP generally opposes strengthening relations with the PRC.<sup>3</sup> Some radicals in the DPP even call for a declaration of outright independence from China, raising hackles with the PRC government.<sup>4</sup> This shift away from the party that sought closer relations with the PRC makes it more important than ever to find a peaceful solution to the dispute over Taiwan's status.

This paper intends to lay out a possible framework that would lead to a peaceful resolution of the Taiwan Straits Dispute with the least concessions on the part of the major powers with interests in the settlement. Taiwanese independence is generally dismissed out of hand as an option by most scholars, and thus there is little discussion of what a settlement involving an independent Taiwan could look like. While the possibility exists that this type of arrangement may never have an opportunity to be implemented, there are numerous situations that could arise which would make some sort of independence for Taiwan attractive to all parties. In order to properly contextualize the interests involved, however, we need to understand the developments that have molded the present situation.

## ROC Drift From China

Since democratization in the late 1980s and early 90s, the ROC has slowly changed course from identifying as the definitive representative of China in

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2 Min Hua Huang, "Taiwan's Changing Political Landscape: The KMT's Landslide Defeat in the Nine-in-One Elections," Brookings Institution, <http://www.brookings.edu/research/opinions/2014/12/08-taiwan-political-landscape-elections-huang> (accessed March 18, 2015).

3 Dongtao Qi, "Divergent Popular Support for the DPP and the Taiwan Independence Movement, 2000-2012," *Journal of Contemporary China* 21, no. 78 (2012): 980.

4 John W. Garver, "Introduction: Taiwan's Democratic Consolidation," in *Taiwan's Democracy: Economic and Political Challenges*, eds. Robert Ash, John W. Garver, and Penelope B. Prime (Chippenham, Wiltshire, Great Britain: Routledge, 2011), 24.

the world. There has been a noticeable shift in identification among citizens of the ROC during this time period, with the number identifying as “Chinese” consistently less than 10 percent. Identification as “Taiwanese” or “both Chinese and Taiwanese” have also remained relatively stable, but at a much higher level, with both categories consistently combining to reach over 75 percent and more recent figures reaching 93 percent.<sup>5</sup> When combined with the fact that almost 85 percent of the ROC population is not mainland Chinese,<sup>6</sup> many cannot help but feel a sense of otherness when they look across the strait.

This trend is not completely coincidental; there was a concerted effort by the first two elected presidents of the ROC to foster and solidify this idea of a unique Taiwanese identity. Chiang Ching-kuo, Chiang Kai-shek’s successor and KMT President of the ROC, initiated democratic reforms in the 80s, but died in office shortly thereafter and was succeeded by his Vice President, Lee Teng-hui. During President Lee’s tenure, policies were enacted that not only built upon Chiang’s democratization, but also began to put forward a new identity for the ROC. Before Lee’s presidency, it was official KMT policy to encourage Chinese identity, pushing other ethnicities to the margins and working to create a vision in the ROC of their state as the rightful heir to China rather than the PRC.<sup>7</sup> President Lee, on the other hand, put policies in place that sought to build a “New Taiwanese” identity: one that was still culturally Chinese, but politically Taiwanese, with an emphasis on the latter.<sup>8</sup> Educational changes, such as allowing local languages and cultures to be taught in schools for the first time since the ROC was reestablished on Taiwan in 1949, served to enhance this feeling of a unique Taiwan identity on the island.<sup>9</sup> This flurry of reform was to further what Lee referred to as “special state-to-state”<sup>10</sup> relations with the PRC: enhancing the ROC’s international status as well as building a unique identity separate from China generally, and the PRC specifically.

This drift away from Chinese identification continued under the second

5 Michael Danielson, “On the Road to a Common Taiwan Identity,” in *National Identity and Economic Interest: Taiwan’s Competing Options and Their Implications for Regional Stability*, ed. Peter C.Y. Chow (New York, New York: Palgrave MacMillan, 2012), 147.

6 Scott L. Kastner, “Cross-Strait Tensions and Taiwan’s Economic Vitality,” in *The Vitality of Taiwan: Politics, Economics, Society, and Culture*, ed. Steve Tsang (New York, New York: Palgrave Macmillan, 2012), 120.

7 Rou-Lan Chen, “Reconstructed Nationalism in Taiwan: A Politicised and Economically Driven Identity,” *Nations and Nationalism* 20, no. 3 (2014): 524, 527-8.

8 Jennifer M. Wei, *Language Choice and Identity Politics in Taiwan* (Lanham, MD: Lexington Books, 2008), 64-5.

9 *Ibid.*, 21.

10 Qi, “Divergent Popular Support for the DPP and the Taiwan Independence Movement,” 978.

democratically elected ROC president, Chen-Shui-bian of the DPP, who spent most of his first term consolidating this seeming cross-party consensus with regards to cross-strait issues.<sup>11</sup> Chen strengthened the educational and cultural policies of the Lee years, adding a few more of his own, such as the renaming of public places and institutions to better reflect their uniquely Taiwanese association.<sup>12</sup> Chen initially tried to engage the PRC under Lee's premise of a "special state-to-state" relationship, but to no avail. Alarmed by President Lee's actions to enhance the ROC's legitimacy as an independent state, the PRC was not willing to allow Chen any space to build on these efforts.<sup>13</sup> This, along with various domestic setbacks, caused Chen to take a much more aggressive pro-independence stance in his second term after 2004. This is when the general consensus on identity and PRC relations began to diverge somewhat, as the KMT began to steadily re-embrace the ROC's Chinese heritage, and the DPP began to criticize any movement closer to the PRC, portraying it as moving closer to unification with the mainland.<sup>14</sup>

In this context, Ma Ying-jeou of the KMT was elected ROC president in a landslide in 2008, temporarily easing fears in the PRC over any kind of sudden break by the ROC. Ma's policies signaled a growing closeness in relations with the PRC, with Ma publicly denying any kind of support for a change in the status quo.<sup>15</sup> While economic relations between the PRC and the ROC had been consistently growing since the early 90s (they accelerated greatly under Ma with the signing of the Economic Cooperation Framework Agreement (ECFA)) a trade pact that removed barriers on certain sectors between the two entities.<sup>16</sup> Despite patterns of individual identity consistent with the Lee and Chen eras, at this time, many in the ROC found Ma's cross-strait maintenance of the status quo acceptable, as witnessed by his reelection in 2012. Management of local affairs, however, has been the primary cause of his massive unpopularity since.<sup>17</sup> With ratings in the low teens or high single digits, it was somewhat expected that his party, the KMT, would eventually suffer electorally.

Since 2014, most sources show a large shift away from the KMT in ROC

11 Dafydd Fell, "The Polarization of Taiwan's Party Competition in the DPP Era," in *Taiwan's Democracy: Economic and Political Challenges*, eds. Robert Ash, John W. Garver, and Penelope B. Prime (Chippenham, Wiltshire, Great Britain: Routledge, 2011), 78-9.

12 Zhidong Hao, *Whither Taiwan and Mainland China: National Identity, the State, and Intellectuals* (Hong Kong: Hong Kong University Press, 2010), 55-57.

13 Fell, "The Polarization of Taiwan's Party Competition," 83.

14 *Ibid.*, 84.

15 Yitan Li, "Constructing Peace in the Taiwan Strait: A Constructivist Analysis of the Changing Dynamics of Identities and Nationalisms," *Journal of Contemporary China* 23, no. 85 (2013): 130.

16 *Ibid.*, 123.

17 Huang, "Taiwan's Changing Political Landscape."

election polling for the presidential and legislative polls leading into 2016. Despite there still being many undecided voters in these polls, the DPP Chairwoman Tsai Ing-wen normally has a 10-point lead over a hypothetical KMT opponent, and intentions to vote for the DPP reach 10 to 15 points ahead of the intentions to vote KMT.<sup>18</sup> Even about 75 percent of “Pan-Blue” voters (supporters of the KMT and the People First Party) strongly believe there will be a change in the party holding power next year.<sup>19</sup> This does not bode well for the KMT or the prospect of calm cross-strait relations.

### The PRC’s Dilemma

The PRC has consistently maintained a “One China” policy, in one way or another, as its official position on the Taiwan Straits Dispute. Taiwan had been officially part of China before the Japanese took it as a colony in 1895, but was returned to the ROC, then in control of mainland China, in 1945. After its victory in the Chinese Civil War, the PRC has claimed since its founding in 1949 that Taiwan is part of China, and that the PRC—and by extension the Communist Party of China (CCP)—is the legitimate government of the island. This is despite the fact that the defeated ROC government had fled to the island and established its control there. Before the 1972 rapprochement with the US, this meant constant military confrontation of varying degrees between the PRC and ROC, sometimes even militarily involving the US, as with the multiple straits crises of the 1950s. After the US decided to derecognize the ROC and recognize the PRC as the representative of China, the PRC did back off on the militarized confrontation, finally ceasing the regular shelling of ROC-controlled islands off the mainland coast in 1979.<sup>20</sup>

After Deng Xiaoping’s rise to leadership in the PRC, there was a marked shift towards a softer hand with regards to cross-strait relations. Deng espoused a “One China, Two Systems” model, which effectively called for both Taiwan and the PRC to form one entity, while the local Taiwanese government would be allowed to operate with a degree of autonomy.<sup>21</sup> This arrangement would effectively treat Taiwan as another of the PRC’s provincial governments, simply with a larger range of action in a number

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18 Lok-sin Loa, “Power Shift Expected in 2016: Poll,” *Taipei Times*, <http://taipeitimes.com/News/taiwan/print/2015/02/10/2003611245> (accessed March 18, 2015).

19 Loa, “Power Shift Expected in 2016.”

20 “PRC’s New Year’s Message to Compatriots in Taiwan,” January 1, 1979 in *China/Taiwan: Evolution of the “One China” Policy—Key Statements from Washington, Beijing, and Taipei*, ed. Shirley A. Kan (Washington, D.C.: Congressional Research Service, 2014): 39.

21 Lowell Dittmer, “Taiwan’s Narrowing Strait: A Triangular Analysis of Taiwan’s Security since 2008,” in *US Strategic Pivot to Asia and Cross-Strait Relations: Economic and Security Dynamics*, ed. Peter C. Y. Chow (Gordonsville, Virginia: Palgrave Macmillan, 2014), 15.

of areas (such as electoral policy), but more limited in other ways (such as control over defense of the island).<sup>22</sup>

In the early 90s, the ROC began to economically open up to the PRC, with many ROC businessmen making the trek to China to take advantage of the cheap labor available there.<sup>23</sup> This benefitted both entities greatly: the ROC experienced enhanced economic growth, and the PRC gained access to technology and capital it could not have developed on its own.<sup>24</sup> This slight warming of relations led to a small revision in the “One China” policy in 1992, with the ROC and PRC agreeing that there would be “One China, Different Interpretations,” also known as the “1992 Consensus.”<sup>25</sup> This entailed the two parties accepting the existence of “One China,” but each party interpreting what that meant in their own way.

The CCP was upset when President Lee announced the holding of a democratic election for President in 1996, as the PRC had seen the KMT as an entity it could work with. The KMT acceptance of the 1992 consensus of “One China, Different Interpretations” and the warming of relations with the PRC before 1996 was seen as a sort of investment by the PRC to draw the ROC closer politically,<sup>26</sup> but Lee’s encouragement of a new Taiwanese identity upset many on the mainland who saw this as a betrayal. Thus, when elections were announced for 1996, the PRC opted to try and interfere, announcing its opposition to Lee being elected, and conducting missile tests off the coast of Taiwan.<sup>27</sup> This event provoked a huge backlash on multiple fronts: Lee was elected handily, and the US moved navy formations into the Taiwan Strait to ward against any actual PRC attack. This event set the tone for Lee’s final years as President, when he continued his work to enhance ROC prestige, eventually categorizing ROC-PRC relations as “state-to-state” relations in 1999 before he left office.<sup>28</sup> This implication of ROC sovereignty

22 Christopher R. Hughs, “Negotiating National Identity in Taiwan: Between Nativization and De-Sinicization,” in *Taiwan’s Democracy: Economic and Political Challenges*, eds. Robert Ash, John W. Garver, and Penelope B. Prime (Chippenham, Wiltshire, Great Britain: Routledge, 2011), 65-6.

23 Yun-peng Chu and Gee San, “Taiwan’s Industrial Policy and the Economic Rise of the PRC: Opportunities and Challenges,” in *Taiwan’s Democracy: Economic and Political Challenges*, eds. Robert Ash, John W. Garver, and Penelope B. Prime (Chippenham, Wiltshire, Great Britain: Routledge, 2011), 129-131.

24 Shelley Rigger, *Why Taiwan Matters: Small Island, Global Powerhouse* (Lanham, MD: Rowman & Littlefield Publishers, 2011), 126.

25 “One China, Different Interpretations,” November 3, 1992 in *China/Taiwan: Evolution of the “One China” Policy—Key Statements from Washington, Beijing, and Taipei*, ed. Shirley A. Kan (Washington, D.C.: Congressional Research Service, 2014): 50-1.

26 Alan D. Romberg,, “Sunshine Heats Up Taiwan Politics, Affects PRC Tactics,” *China Leadership Monitor*, no. 44 (2014): 10.

27 Li, “Constructing Peace in the Taiwan Strait,” 128.

28 Copper, *Taiwan: Nation-State or Province?*, 191.

did not sit well with the PRC.

When President Chen was elected in 2000, the PRC was even more distraught, as Chen's party, the DPP, had espoused explicit language in the past calling for a declaration of complete independence from China. Chen initially tried to connect with his CCP counterparts in the PRC, but the PRC refusal to acknowledge any DPP overtures ended this chance at a thaw.<sup>29</sup> Chen's reelection in 2004 was greeted with the passing in 2005 of the PRC's "Anti-Secession Law" (ASL). The ASL stipulated five situations in which the PRC would be required to use military force to coerce reunification with Taiwan: an outright declaration of independence, the occupation of Taiwan by a foreign military, the ROC dragging out negotiations with the PRC over reunification, ROC acquisition of nuclear weapons, or political discord in the ROC.<sup>30</sup> PRC President Hu Jintao further raised tensions when he stated that "there is only one China in the world... China's sovereignty and territorial integrity tolerate no division," implying a revision of the 1992 Consensus to line up more with PRC policy before that agreement.<sup>31</sup> While President Ma's administration has seen a lowering of tensions, official PRC policy has only deviated in form, not letter, since 2008.

## The Decision

The CCP's disdain for the DPP, combined with an almost certain transfer of power to that party in next year's national elections, could possibly make for a very tense cross-strait environment. With the idea of political unification toxic to the population of the ROC, and the prospect of domestic political support for *de jure* independence increasing, tensions between the ROC and PRC will undoubtedly increase after next year's elections. In order to defuse this situation, implementing a durable settlement to the problem of Taiwan's status is imperative. With that in mind, there are a number of possible outcomes to this dispute.

There is one solution scholars agree is completely unrealistic: ROC assimilation of the PRC into one Chinese state under its rule. The ROC has not had the military capability to attempt something like this for decades, and it would run into the same operational problems as any PRC amphibious invasion of Taiwan. It should go without saying that the peaceful assimilation of the PRC into the ROC is also off the table in the foreseeable future. The ROC simply does not possess the kind of military or economic power

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29 Li, "Constructing Peace in the Taiwan Strait," 128.

30 Copper, *Taiwan: Nation-State or Province?*, 228.

31 Richard C. Bush, *Uncharted Strait: The Future of China-Taiwan Relations* (Washington, D.C.: Brookings Institution Press, 2013), 82.

necessary for either option to be feasible.<sup>32</sup>

Both a confederation and federation between the two entities has been floated as a solution that could be durable, but both contain structural problems that will be difficult to reconcile with the interests involved. A confederation would involve granting more sovereignty to the ROC than the PRC is ready to allow, up to and including the ability to withdraw from the arrangement, without some sort of guarantee for reunification.<sup>33</sup> A federation, on the other hand, would constrict the ROC's range of action too much, amounting to a guarantee of unification in the future without the requisite freedom of action for the ROC.<sup>34</sup> A hybrid of the two, as theorized by Zhidong Hao, a professor at the University of Macau, runs into similar problems. Hao's model assumes the PRC, and specifically the CCP, will be willing to democratize rapidly enough to fully accommodate any concerns the ROC has about political unification.<sup>35</sup> In return, this hybrid structure would not allow the ROC to withdraw from the arrangement, and effectively lock in reunification at some future date.<sup>36</sup> However, these assumptions ignore the dilemma that a hybrid arrangement guarantees the PRC what it wants, namely a tangible promise of future unification, while making internal political concessions something of an afterthought. All three of these models also neglect the unintended consequences of any internal PRC reforms. If a new PRC province is allowed to claim partial sovereignty, what is to keep other provinces—notably those with grievances against the central government like Tibet and Xinjiang—from demanding the same?<sup>37</sup> These outcomes are prisoner's dilemmas with little incentive for any player to cooperate.

PRC absorption of the ROC is, conversely, a very realistic possibility. Whether through military or economic coercion, the PRC's leverage over the ROC has only grown since the PRC-US rapprochement. Economic integration has led to a large portion of the ROC economy being dependent on the PRC for labor and markets, without reciprocal dependence developing.<sup>38</sup> Military asymmetry has also grown between the two, and while any kind

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32 David A. Shlapak, et al., *A Question of Balance: Political Context and Military Aspects of the China-Taiwan Dispute* (Washington, D.C.: RAND National Security Research Division, 2009), 123. ROC military indicators are discussed throughout this book but are most succinctly summarized here.

33 Hao, *Whither Taiwan and Mainland China*, 131.

34 *Ibid.*, 132.

35 *Ibid.*, 123.

36 *Ibid.*, 133-134.

37 *Ibid.*, 135. In fact, the Dalai Lama has proposed a Confederation arrangement for Tibet in the past.

38 Li, "Constructing Peace in the Taiwan Strait." The majority of Li's article deals with a large quantity of economic statistics illustrating this increased asymmetrical dependence.

of amphibious invasion of Taiwan will be fraught with difficulty and great risk, including the intervention of the US and Japan, the PRC on paper has the capabilities to simply overwhelm ROC defense over time.<sup>39</sup> The peaceful unification through the “One China” policy is an avenue preferred by most of the CCP, but the ROC has consistently stated its preference for the status quo, especially in the aftermath of the Hong Kong election protests last year.<sup>40</sup> Being reduced to a provincial government is not something that has much appeal in the ROC. Again, the lack of guarantees by either side gives both parties little reason to cooperate.

Thus, a Taiwan independent from China is left as the last option for a durable solution to the cross-strait dispute. This option is rarely discussed and quickly dismissed by most observers of the ROC-PRC relationship, mostly because this option would seem to be the least likely and worst outcome of those on offer. Theoretically, a declaration of independence would trigger a PRC invasion, and quite possibly a regional or worldwide conflict. However, I believe this eventuality could be managed with negotiations on the form a declaration would take. With proper consultation between the PRC, ROC, US, and Japan, there is a real chance negotiations could produce an agreement on Taiwanese independence that would prove long-term and maximize the chance to avoid a major conflict. The best way to do this is to address each of these party’s concerns through an arrangement guaranteeing Taiwan as an independent, neutral state in the same way that Switzerland’s status was guaranteed after the Napoleonic Wars.

To illustrate this, we need to define the major interests at stake in the settlement of the dispute, and then examine how this arrangement can account for these interests.

## Existing Interests

### *The People’s Republic of China*

From the outset, the PRC would seem to have the least to gain and the most to lose from the establishment of a neutral Taiwan across the Strait. Mao Zedong claimed the island at the PRC’s founding, and no CCP leader has substantially revised this claim since. Politically, the CCP certainly sees reunification as something that is imperative to its survival, at least at the moment. With the more recent emphasis on a type of Chinese nationalism

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39 Shlapak et al. spends most of the second half of their study thoroughly examining the rise in quality in the PLA compared to the deterioration of ROC capabilities over the last decade or so.

40 Li, “Constructing Peace in the Taiwan Strait,” 134.

in response to a number of territorial disputes, namely those involving Japanese control of the Daiyou/Senkaku islands, any abrupt retreat on the issue of reunification could seriously damage the PRC population's view of CCP legitimacy.<sup>41</sup> Whatever the outcome of the Taiwan Straits Dispute, there will also be implications for a number of other PRC territories, namely Outer Mongolia, Xinjiang, and Tibet, all of which have active separatist movements. If the PRC enters into an arrangement that allows Taiwan sovereignty over how it governs its internal affairs, there is no reason some other province looking for power devolution from the central government will not seek the same benefits.<sup>42</sup> It should be clear that the PRC, and specifically the CCP, have a lot on the line when it comes to the outcome of the Taiwan Straits Dispute.

There is more than just domestic political capital on the table when it comes to this settlement; the PRC has heavy geostrategic interests in the island, and any kind of resolution of the Straits dispute will need to account for them. The main strategic draw to reunification is the role that the island serves in reinforcing the "First Island Chain" (FIC), and its identification by many People's Liberation Army (PLA) planners as a "gateway to the Pacific."<sup>43</sup> The FIC extends south from the major Japanese home island, Honshu, along the Ryukus, Okinawa, Taiwan, the Philippines, Malaysia, and Indonesia, ending in Singapore.<sup>44</sup> While the island of Taiwan is not absolutely essential to the chain, its topography and geographic location help to reinforce it. The island itself is very mountainous, especially on the Eastern side, which faces the Philippine Sea, and it's location in the center of the northern portion of the FIC would pose a problem if the island was ever controlled by an entity hostile to the US or Japan.<sup>45</sup> There are no islands nearby that could provide a replacement for Taiwan in the FIC, which means that the entire perimeter would be breached if the island were to be controlled by the PRC. That said, control of the island would also fit comfortably into China's traditional definition of its periphery by way of these defensible geographic and topographical features.<sup>46</sup>

Thus, reunification has great appeal for the military establishment in the PRC. Taking control of Taiwan would, in addition to acquiring a new

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41 Bush, *Uncharted Strait*, 30.

42 Alan M. Wachman, *Why Taiwan? Geostrategic Rationales for China's Territorial Integrity* (Stanford, California: Stanford University Press, 2007), 26.

43 *Ibid.*, 30.

44 James R. Holmes, "Defend the First island Chain," US Naval Institute, <http://www.usni.org/magazines/proceedings/2014-04/defend-first-island-chain> (accessed May 2, 2015).

45 Wachman, *Why Taiwan?*, 120.

46 *Ibid.*, 118, 120.

defensible frontier in the Pacific, mean the realization of the potential for the People's Liberation Army Navy (PLAN) to break out of their current confined position and into the Central Pacific. Control of the island would extend the PRC's territorial waters out from the eastern edge of Taiwan, coincidentally the most defensible portion of the island, and bump up against a far less defensible section of the FIC than before.<sup>47</sup> Many PLA officials have been defining reunification with Taiwan as an issue of national security, and understand anything affecting the PLAN's buildup, including taking control of a geographically important location like Taiwan, as a zero-sum game.<sup>48</sup> While the "Second Island Chain" (SIC) would still theoretically contain the PLAN farther east, a breakdown of the FIC would greatly hinder any US-led effort to contain the PLAN, and allow the PRC much greater latitude in bringing its military to bear with regards to other disputes in the region.

Without a peaceful political settlement, however, the PRC could be tempted to utilize the ASL to justify a military invasion of the island. This, of course, would be ill-advised for any number of reasons. While the PRC might on paper have overwhelming military power against the defense forces of the ROC, the forces stationed on Taiwan could provide a formidable defense, heavily complicating any kind of amphibious invasion. Even further complicating things is the PLAN's lack of experience carrying out these kinds of operations, compounded by the historical difficulty of amphibious landings.<sup>49</sup> All of this would need to be done before the US or Japan could come to the aid of the island, adding yet another layer of risk to an already risky proposition. Even if the PLA were to conquer the island, the prospect of a follow-up guerilla campaign in a land where at least one million citizens have some measure of military training should worry even the most hardline CCP leader.<sup>50</sup>

Economically speaking, reunification would have great benefits to the PRC economy, theoretically adding roughly \$500 Billion to its GDP.<sup>51</sup> Taiwan is a much smaller prize in this respect than it was in the 1980s, when ROC and PRC GDP's were much more evenly matched,<sup>52</sup> but the opening of economic

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47 Ibid., 143.

48 Ibid., 163.

49 Shlapak et al., *A Question of Balance*, 95-105. A detailed discussion of these aspects of a PRC amphibious invasion and ROC response are discussed here.

50 Ibid., 104-105; Also see Bush, *Uncharted Strait*, 112, 180 regarding likelihood and support of an ROC guerilla campaign after an invasion.

51 "Taiwan," *CIA World Factbook*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (accessed May 6, 2015).

52 A. James Gregor and Maria Hsia Chang, *The Iron Triangle: A US Security Policy for Northeast Asia* (Stanford, California: Hoover Press, 1984), 87.

relations at roughly the same time brought foreign direct investment (FDI) from Taiwan into the PRC, increasing both entities economic growth. While unification would absorb this source of investment into the PRC economy, many theorists see the differences in makeup between the two economies actually leading to a decrease in Taiwan's GDP after unification.<sup>53</sup> Today, the PRC economy far out-sizes that of the ROC, and while there would be some economic benefit to annexing the island, it may not be worth the effort required to overcome the considerable resistance to such a settlement.

### *The United States and Japan*

The US has had a strong interest in the Taiwan Straits since the Communist victory in the Chinese Civil War in 1949. While the US has officially derecognized the ROC since 1979, it has also refused to acknowledge the legitimacy of PRC claims over the island. Especially since the enactment of the ROC's democratic reforms, the US has maintained this strategically ambiguous position regarding the ROC<sup>54</sup>—while not directly saying it would defend the island, President Clinton's movement of aircraft carriers into the straits to prevent PRC missile tests from escalating in 1996 and subsequent maintenance of US naval formations in the area leave little doubt as to what a US response would look like in retaliation to an actual attack on the island.<sup>55</sup> Intermittent arms sales have only reinforced this image of the US as a de facto ally of the ROC, with President Ma stating directly that "relaxed tensions depend very much on the continual supply of arms from the United States to Taiwan."<sup>56</sup>

Much of this support derives from the desire to maintain the strength of the FIC. As discussed above, if the PRC were to annex Taiwan, the FIC would be in danger of being regularly breached by the PLAN.<sup>57</sup> Currently, the FIC effectively contains the PLAN to the South and East China Seas as well as the PRC controlled portion of the Taiwan Strait. PRC construction of artificial islands in the South China Sea shows that they are resigned to attempts to normalize the southern portion of the FIC as their natural maritime boundary rather than try and break it at any single place. Conversely, Taiwan's position in the northern portion of the FIC provides a much better opportunity to

53 Copper, *Taiwan: Nation-State or Province?*, 231.

54 Dean Chen, "An Indispensable Pillar of Obama's 'Pivot' to Asia: Continuing Strategic Ambiguity across the Taiwan Strait," in *US Strategic Pivot to Asia and Cross-Strait Relations: Economic and Security Dynamics*, ed. Peter C. Y. Chow (Gordonville, Virginia: Palgrave Macmillan, 2014), 31.

55 Vasilis Trigkas, "Aircraft Carriers in the Taiwan Strait," *The Diplomat*, <http://thediplomat.com/2014/12/aircraft-carriers-in-the-taiwan-strait/> (accessed May 2, 2015).

56 Rigger, *Why Taiwan Matters*, 184.

57 Bush, *Uncharted Strait*, 224.

dismantle the FIC perimeter. While a break in this chain would not be the end of US access to Asia, PLAN access to the Philippine Sea could make shipping routes much more complex and costly than with the FIC at least nominally intact.<sup>58</sup> The SIC has a limit over one thousand nautical miles to the east of the FIC, and with Guam the only solid link in the chain between Honshu and Guinea, the US would no longer be as able to protect open shipping lanes or enact its defense policy as it can with an intact FIC.<sup>59</sup> This would almost certainly lead to greater PRC influence in rising Southeast Asian states like Indonesia and the Philippines, which would now lie outside the US defense perimeter.<sup>60</sup> The most direct shipping lanes now also falling outside the most efficient routes would certainly leave inter-Asian trade much more subject to PRC control, and directly affect the economies of major US allies: the Republic of Korea and Japan.

Since the world community shifted to recognizing the PRC as the sole representative of China, Japan has conducted only a partial policy of engagement with the ROC. While there have not been official exchanges of diplomatic missions, many Japanese NGOs and governmental organizations regularly interact with the ROC, and Japan is one of the ROC's largest trading partners.<sup>61</sup> However, Japan's biggest concern is maintaining the freedom of trade through the waters surrounding Taiwan, namely the Taiwan and Luzon Straits. In 2011, 11 million barrels of oil and 5.4 trillion cubic feet of liquefied natural gas headed for Northeast Asia were shipped to through these two bodies of water.<sup>62</sup> With Japan cutting back on its utilization of nuclear power after the Fukushima disaster, it is easy to see why the maintenance of the freedom of the shipping lines in the Taiwan Straits region might be considered a matter of national security. If the straits were completely controlled by a third party hostile to Japan, it would be a simple task for that party to close down the straits to any vital trade making its way north. The heavy costs of rerouting shipping through less direct routes would take its toll on the Japanese economy, giving the state that controlled the straits leverage over Japan.<sup>63</sup>

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58 Scott Cheney-Peters, "Navigating the Black Ditch: Risks in the Taiwan Strait," Center for International Maritime Security, <http://cimsec.org/navigating-black-ditch-risks-taiwan-strait/14052> (accessed May 1, 2015).

59 Wachman, *Why Taiwan?*, 126-7.

60 Holmes, "Defend the First Island Chain". This article provides a robust discussion of the aspects of this defense perimeter.

61 Copper, *Taiwan: Nation-State or Province?*, 209; Cheney-Peters, "Navigating the Black Ditch" also has a good chart comparing the share of trade between the ROC's top trading partners.

62 Cheney-Peters, "Navigating the Black Ditch."

63 John J Tkacik Jr., "Removing the Taiwan Stone from Asia's Great 'Go' Game: Thoughts on Taiwan's Geographic and Demographic Role in Asia-Pacific Security," in *National Identity and Economic*

As the United States' northern security anchor, Japan also has heavy incentive to continue supporting the US defense posture in the region. With the appearance of the PRC flexing its naval muscle in the last few years, in one instance sending a small number of vessels to circumnavigate the Japanese home islands,<sup>64</sup> Japan does not want to see any kind of unilateral settlement of the Taiwan Straits Dispute. This perception of an aggressive PRC posture in the region has led Japan to strengthen its Self-Defense Forces for maritime operations—in contrast to traditional Japanese defense policy that focuses on anti-invasion forces—to counter the PLAN, creating yet another flashpoint for conflict in East Asia.<sup>65</sup> This is despite continued treaty protection from the US, which should worry US strategists who have for decades worked to avoid an arms race in Asia by way of a powerful US presence.<sup>66</sup> The US is in no hurry to see the order it has defended since 1945 compromised.

Beyond basic security logic, there is another reason the survival of the ROC on Taiwan is important to US strategic goals in Asia: the ROC's successful democratic transition as a regional model.<sup>67</sup> While not the oldest democracy in the region—Japan democratized after World War II, and the Republic of Korea enacted more complete democratic reforms slightly before the ROC—the ROC today can be held up as a model of stable democratic reform. The ROC provides an example of Chinese democracy at work, and counters the idea sometimes perpetuated by the CCP that their model of governance is the only one fitting for China.<sup>68</sup> More generally, there are a number of states in Southeast Asia that have only recently begun to democratize, and the ROC provides a more recent example of successfully overcoming the hurdles they face, as well as an alternative face to the China that the PRC represents. Myanmar is the most recent state to reform, but states like Indonesia, Thailand, and Singapore also have more recent histories of transition from authoritarianism, as well as sizable Chinese populations.<sup>69</sup> The ROC is a reminder that they do not have to return to authoritarian rule

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*Interest: Taiwan's Competing Options and Their Implications for Regional Stability*, ed. Peter C.Y. Chow (New York, New York: Palgrave MacMillan, 2012), 262.

64 Bjorn Elias Mikalsen Gronning, "Japan's Shifting Military Priorities: Counterbalancing China's Rise," *Asian Security* 10, no. 1 (2014): 10.

65 *Ibid.*, 3-4.

66 Joseph S. Nye, "The 'Nye Report': Six Years Later," in *Japan and America Volume 2: The Postwar*, eds. Ellis S. Krauss and Benjamin Nyblade (New York: Routledge, 2004), 144.

67 Chen, "An Indispensable Pillar of Obama's 'Pivot' to Asia," 40-41.

68 Rigger, *Why Taiwan Matters*, 168 and Wachman, *Why Taiwan?*, 25 for CCP claims, and Chen, "An Indispensable Pillar of Obama's 'Pivot' to Asia," 32 for a summary of the US normative image of the ROC as an example of Chinese democracy.

69 Tkacik, "Removing the Taiwan Stone from Asia's Great 'Go' Game," 251-2, 255.

at the first sign of democratic dysfunction, of which there has been plenty over the years in the ROC.<sup>70</sup> The difficulty of standing by and watching a democratically elected government be assimilated by an authoritarian one also plays into the US willingness to see the ROC survive. What would it say to the other, newer democracies in the region if the US were to allow one of their ranks to be swallowed up by a larger neighbor?<sup>71</sup> This US perspective is something one must take into account when considering a settlement to the Taiwan Straits Dispute.

### The Balancing Act

In addition to the ROC maintaining the status quo in regards to governing the island of Taiwan, these outside interests need to be accounted for when negotiating the final settlement of the Taiwan Straits Dispute. In return for certain concessions by all parties involved, a neutral Taiwan could account for many, if not all, the interests discussed here.

It must be said first that any kind of settlement of the dispute would have to be a political event. Whether through coercion or peaceful methods, by virtue of their democratic government the 23 million people living on the island of Taiwan will need to have some sort of input as to how their status is resolved. As support for reunification with mainland China under a PRC aegis consistently has a low level of support in the ROC,<sup>72</sup> it does not seem that any kind of political concession on the ROC's part will happen soon, even if the PRC were to gain overwhelming economic or military leverage over the ROC. No ROC politician from any party can realistically support such a move, and with all the major prospective candidates for next year's elections talking about moving away from the PRC economically, there is little prospect for a shift in unification's favor.<sup>73</sup> By contrast, polling data from 2008 suggests over 70 percent support for an independent Taiwan, were peaceful relations with the PRC maintained.<sup>74</sup> This support, when combined with support for a status quo solution, makes an arrangement that guarantees the current relations infinitely more palatable to Taiwanese citizens than a unilateral

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70 Bush, *Uncharted Strait*, 184. Almost all the works I have cited dealing with ROC internal politics can attest to this messiness, but this gives a good structural summary of internal ROC political turmoil.

71 Chen, "An Indispensable Pillar of Obama's 'Pivot' to Asia," 32-33 contains a discussion of the recent Asia "Pivot" and deepening US ties with Asian states vis-à-vis the PRC.

72 Romberg, "Sunshine Heats Up Taiwan Politics," 2. Most recent poll results are summarized here with actual figures in Romberg's notes (specifically note 4).

73 Bush, *Uncharted Strait*, 86 regarding ROC domestic political hurdles, and Romberg, "Sunshine Heats Up Taiwan Politics," 6-7 regarding KMT and DPP presidential candidates opinions on ROC trade balance.

74 Danielson, "On the Road to a Common Taiwan Identity," 142.

settlement. A neutral Taiwan would allow the ROC to continue functioning as before, but simply with certain restrictions on its actions, mainly in regards to interactions with belligerents. Thus, neutrality for Taiwan is very politically feasible on the island.

From a costs perspective, a softer line by the PRC could be appealing and offer some new opportunities for the CCP. As stated earlier, almost all of the solutions for the Taiwan Straits Dispute are effectively unilateral outcomes in the PRC's favor. The more promising ones that involve eventual reunification without complete PRC absorption of the ROC contain the seeds of their own failure in the assumption that the PRC will enact internal democratic reforms effectively, and at a fast enough pace to encourage the ROC to accept reunification in some fashion. By allowing an independent Taiwan, the PRC can continue to avoid these additional reforms, and since the CCP functions as an authoritarian government, there would be no need for it to comply with any additional demands that would disrupt the PRC's internal status quo. By contrast, if the PRC did annex Taiwan, but granted the island some power within the PRC, there is no guarantee the island's government would not aggravate existing grievances rather than alleviate them. As far as the threat Taiwanese Independence poses to CCP legitimacy, a quick study of the evolution of the PRC since Mao's death shows there are reasons for CCP optimism. The PRC has undertaken a number of reforms over the years that have gone against well-established Socialist and Communist doctrine, especially regarding the economy. Any future leaders of the CCP should be able to find some way to adequately justify this change in policy through public rhetoric and policy, likely in a similar process as what was experienced during Deng's reforms in the 1980s.<sup>75</sup> The PRC could also reap dividends in the accumulation of soft power. If other states in the region see the PRC negotiating an end to a major dispute rather than coercing a settlement, there is no reason to think those states would not take PRC rhetoric about a "peaceful rise" more seriously. While it may not change minds in Asia overnight, demonstrating the willingness and flexibility to negotiate over such a major issue could go a long way towards building trust with neighbors and alleviating tensions in the region.

Militarily, a neutral Taiwan territorially guaranteed by the major powers of the region would account for many of the defense interests discussed earlier. The main reason for optimism here is that, for many in the PRC, controlling

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75 Christian Ploberger, "China's Reform and Opening Process: A Fundamental Political Project," *Asian Social Science* 6, no. 11 (2010): 28-41. This article provides an extensive analysis of the political processes that accompanied Deng's push to reform the PRC economy.

the island is not nearly as important as preventing others from doing so.<sup>76</sup> In conjunction with official adoption of complete neutrality, enshrining a stance of pacifism in the ROC constitution—like Japan—could remove Taiwan as a prize for any major power in the region. While the PRC would not have control over the island, Taiwan could not establish an alliance with the US or Japan, thus weakening the FIC. While a weakening of the FIC would be detrimental to US and Japanese interests, an arrangement that keeps Taiwan under the control of a neutral ROC government would be an optimal middle ground that would give the PLAN additional operational breathing space but not completely eliminate the FIC as a defensive perimeter. Like Switzerland and Japan, Taiwan would continue to maintain a self-defense force, but the guarantee of each of the three major powers to maintain the independent neutrality of the island would prevent any power moving to control the island, giving each party legal authority to intervene in the case of an outside attempt to control Taiwan. This balance, where no state would hold preponderance, would ensure the physical security of this arrangement.

The Hague Convention on Neutrality would help to economically secure a Swiss-style settlement for Taiwan by way of ensuring the ROC could legally uphold the status quo as far as trade movement around the island. The Convention allows unlimited movement by non-belligerent shipping in neutral waters, and allows neutral states to restrict movement beneficial to belligerents across both land and sea.<sup>77</sup> These restrictions would effectively maintain the status quo as far as trade flows through the straits by discouraging the escalation of conflicts, as this would trigger trade exclusion in Taiwanese waters for any belligerent parties. A neutral Taiwan could continue its current economic ties with the PRC, Japan, and the US without having to worry about the security implications of these relations. This careful economic and security balance could be just what the region would need to ensure prevention of a large-scale conflict over the Taiwan Straits Dispute.

### **A Contingency Plan**

Scholars rarely discuss the settlement form laid out here, and for good reason. Given the growing capacity of the PRC to assert its economic and military power in the region, it is reasonable to assume the PRC can simply wait until it has enough leverage over the ROC or the US has little enough

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76 Wachman, *Why Taiwan?*, 40.

77 Hague Conference of 1907 (The Hague, 1907), V, VI, XIII. Chapter V addresses restrictions in material movement across land, and multiple articles under chapters VI and XIII lay out the restrictions on belligerent naval movements.

resolve to defend the island. It is logical to assume that the PRC will look quite imposing when set against any balancing coalition it might face in the future.

However, situations do not always work out as contemporary thinkers predict, regardless of how logical their assumptions are at the time. Tomorrow the US and/or Japan could reverse their current economic malaise and make up for PRC economic gains, the PRC economy could slow down much faster than predicted in the next few years, or there could even be some sort of real political change in the PRC. Some sort of reversal of PRC fortunes is not imminent, but it is good to have options in case history decides to go a little off the rails.

Thus, a new long-term solution to the dispute has been proposed: through an international treaty, Taiwan would be allowed to declare independence as a completely neutral state. Like any other solution, this one requires trade-offs, but it is the only one that addresses each major party's most salient issues in a balanced fashion. While there may not be an opportunity to enact this framework, being prepared for any eventuality can only be a virtue when the stakes are this high. **Y**

# A DEFENSE OF UTILITY MODELS: THE CASE OF CHINA

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*Utility models are a type of exclusive rights provided to inventors or innovators in a comparatively short amount of time as a complement of regular patents. Utility models are cheap, quick, and easy to gain because they lack a process of examining the non-obvious. However, there are many criticisms on utility models and utility model regimes. This paper revisits these criticisms and the utility model regime in China. It explains why this regime is important to facilitate the domestic technology developers and responds the economic and political concerns from the previous scholars considering the cases in developed countries rather than a case in a developing country.*

Major industrial nations, such as Japan and Germany, have adopted utility model regimes. The World Intellectual Property Organization (WIPO) defines utility models like patents, but issued for a shorter duration and granted without substantive examination.<sup>1</sup> However, the number of worldwide applications of utility models is almost four to seven times less than the number of patent applications between 2008 and 2010,<sup>2</sup> and several offices experienced absolute decreases in applications, such as the offices of Austria (-12.4%) and Germany (-3.3%) in 2012, while others have seen a slowing in the rate of application growth in recent years.<sup>3</sup>

The majority of utility model applications across the world have originated from China since 2003.<sup>4</sup> In China, the system is mainly (at 98%) used by residents to seek protection within China.<sup>5</sup> Furthermore, the number of utility model applications has averaged over 20% more than the number of patent applications in the past twenty years, while the rate of the growth of

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1 World Intellectual Property Organization (WIPO), *WIPO IP Facts and Figures*, 2012.

2 *Ibid.*

3 World Intellectual Property Organization (WIPO), *Patents, Utility Models and Microorganisms*, 2013.

4 *Ibid.*

5 *Ibid.*

non-resident applications decreased in 2013.<sup>6</sup>

Why are utility model patents in China much more popular than in other countries? Why does the US not have a utility model regime? Indeed, Mark Janis has precisely analyzed the regime and criticized it since it is overprotective and raises transaction costs.<sup>7</sup> His analysis of not building a utility model regime in the US is fairly persuasive to many scholars,<sup>8</sup> so there has been less and less American literature discussing this topic. This trend is also passed on to other countries, and some scholars applied his theory to criticize the countries having had utility model regimes for years. China, as a country with a large population, large market and large applications of utility models, inevitably is one of the targets of criticism. However, are these criticisms valid? All coins have two sides. The experiences of Japan, Brazil, and the Philippines show that utility models can be an important source of technical change and information diffusion, especially in developing countries.<sup>9</sup>

This paper takes China as a case study to show how a utility model regime could be appropriately adopted for China, especially to influence the growth of R&D behavior of small and medium-sized enterprises (SMEs). Part 1 introduces the main critiques of the utility model regime from some vital scholars. To impartially judge the utility model regime, art 2 clarifies its characteristics and the key features of utility model law in China. Then, Part 3 expands upon the controversial arguments and data evidence to specifically show how the current regime affects the economy, politics, innovation, markets, and SMEs in many countries, especially in China. The last part explains whether non-substantive examination, the significant core factor of the utility model regime, should be a reasonably criticized point.

### **A Costly and Valueless Utility Model Regime—A Traditional View**

While a utility model regime is popularly applied in many countries, the U.S. does not have an interest in building one.<sup>10</sup> This is because of its high cost of construction and limited value to American inventors and innovators. Janis did a cost and benefit analysis of constructing a utility model regime in the

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6 State Intellectual Property Office of the P.R.C., “Statistic Information,” 2015, <http://www.sipo.gov.cn/tjxx/> (accessed November 11, 2015)

7 Mark D. Janis, “Second Tier Patent Protection,” *Harv. Int’l. L. J.* 40 (1999): 151.

8 *Ibid.*

9 Keith E. Maskus, “Lessons from Studying the International Economics of Intellectual Property Rights,” *Vand. L. Rev.* 53 (2000): 2238.

10 Runhua Wang, “Utility Models Revisited: The Case of Investing in China,” *Elect. U.ILL. J. L. Tech. & Pol’y*, 2015, November 6, 2015, <http://illinoisjltp.com/timelytech/utility-models-revisited-the-case-of-investing-in-china/> (accessed December 13, 2015).

US, and his study shows how costly and valueless it is to build a utility model regime in the US.<sup>11</sup> Even though the regime would have lower registration fees and provide more monopoly protection, he believes that the acquisition cost of this new regime is higher than its benefits.<sup>12</sup>

The absence of substantive examination will cause additional patent attorney fees for the applicants who expect a skillful drafting of their claims, and higher litigation cost, but not enough compensation.<sup>13</sup> A further obstacle would be the additional costs of protecting technology development created by the different responsibilities between the two types of regimes.<sup>14</sup> The cost of examining the obviousness of the technology in the process of substantive examination could be shifted to the judiciary.<sup>15</sup> Thus, Janis claims that a second-tier protection system like this undermines the goal of providing quick and low cost protection.<sup>16</sup>

With concerns about the market, Janis strongly doubts if the utility model regime over provides property rights and improperly abuses commercially feasible options.<sup>17</sup> This would result in too much collective licensing, which would kill many free transactions of technologies in the market and result in an inefficient market of technology transfers.<sup>18</sup>

The increasing inventions rewarded by a utility regime are the obvious improvements of technology existing in public domains or anti-commons property, the cost of which could be uncertain.<sup>19</sup> Therefore, Janis worries over their future in the market where, “uncertainty over both the value of the invention and the scope of claims may represent an insurmountable obstacle to efficient bargaining even for utility patents.”<sup>20</sup>

Even if SMEs can cooperate with other inventors or innovators with relatively higher innovation capabilities through a collective licensing mechanism with copyrights and patents,<sup>21</sup> Janis argues that the probable anti-commons phenomena would blight this licensing mechanism by

11 Janis, “Second Tier Patent Protection,” 151.

12 *Ibid.*, 180.

13 *Ibid.*, 185-186.

14 *Ibid.*, 182.

15 *Ibid.*, 186. (“In a second tier patent regime without pre-grant substantive examination, the responsibility for applying the substantive standards of patentability is shifted to the judiciary, and the costs are correspondingly borne by the litigants”).

16 *Ibid.*, 189.

17 *Ibid.*, 217.

18 *Ibid.*, 206.

19 *Ibid.*, 188.

20 *Ibid.*, 202, 204. (“Effectively, neither of the owners has a commercially meaningful privilege of use; the bundle of commercially meaningful rights has been fragmented.”)

21 Robert P. Mergers, “Contracting into Liability Rules: Intellectual Property Rights and Collective Rights Organizations,” *Cal. L. Rev.* 84 (1996): 1293.

transacting technologies inefficiently.<sup>22</sup> Reichman agrees that a licensing world involving utility models will seriously disadvantage new entrants relative to incumbents under an “over-protectionist IP (Intellectual Property) regime.”<sup>23</sup> Therefore, Janis suggests that utility model regimes can only be properly adopted to cure market failure caused by the inability of IP regimes which cannot fairly compensate innovative industrial developers for their endeavors.<sup>24</sup>

Hence, the nature of the mechanism is recognized as a “post-grant administrative revocation procedure” by Janis, and the U.S. can either improve the speed of patent issuance instead of setting a new regime of second-tier protection or use case laws to evaluate “protectability” of the technologies as utility models.<sup>25</sup>

Mark Zhai has expanded and applied Janis’s opinions to heavily criticize the utility model regime in China.<sup>26</sup> Zhai argues that “junk patents” without substantive examination provide unfair advantages for local companies. He claims that China cannot continue to sustain economic growth by only absorbing technology from foreign sources and that the regime lacks economic means in China.<sup>27</sup>

While the cost of registration and maintenance of a utility model is only a fraction of that of a regular patent, there are high transaction costs to practice it, such as prosecution uncertainty, litigation inefficiency, and licensing clearance costs.<sup>28</sup> The uncertainty costs also apply to foreign investors trying to license or get a license for technologies in the Chinese market.<sup>29</sup> In order to control the uncertainty cost, foreign investors have to deal with the higher costs of due diligence, so Zhai worries that they may

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22 Janis, “Second Tier Patent Protection,” 202, 204.

23 Jerome H. Reichman, “Intellectual Property in the Twenty-First Century: Will the Developing Countries Lead or Follow?” in *Intellectual Property Rights: Legal and Economic Challenges for Development*, ed. Mario Cimoli et al. (Oxford University Press, 2014), 116. (“Such regimes also enable large corporations that are sometimes slothful innovators to accumulate pools of cross-licensed patents that create barriers to entry for the truly innovative small and medium-sized firms”).

24 Janis, “Second Tier Patent Protection,” 217.

25 *Ibid.*, 189; Rudolf Krasser, “Development in Utility Model Law,” *JIC*. 260 (1995): 955. Krasser agrees with Janis’s analysis of uncertainty costs, increased judicial costs, over-protection and anti-commons worries.

26 Mark Shiqian Zhai, “The Chinese Utility Model Patent Is Destroying Innovation in China,” *AIPLA Q. J.* 39 (2011): 413.

27 *Ibid.*, 415, 426, 429, 430.

28 *Ibid.*, 427.

29 *Ibid.*, 417, 429. (If high due diligence cost “becomes the new cost to doing business in China, how long will it take before foreign companies pull out of the Chinese market completely?”).

completely pull out of the Chinese market.<sup>30</sup> In addition, following Janis' concerns about anti-commons, Zhai predicts that the regime will potentially slow progress and may even deprive the value or utility of prior inventions so as to impede all foreign and domestic innovations.<sup>31</sup>

Generally speaking, most criticisms on the utility model are about the extra transaction costs and its probable negative effects on the efficiency of the whole patent system.<sup>32</sup> However, the above conclusions may not always be absolute for all countries at different levels of economic development. It is essential to analyze the significance of having a utility model regime by examining the case of China.

### Utility Model Characteristics and How It Runs in China

Utility model is a generic term that refers to the subject matter that falls between patent law or sui generis design law.<sup>33</sup> However, there is no global consensus on the term's meaning due to fundamentally different concepts from one country to another.<sup>34</sup> For example, it is defined as "innovation patent" in Australia, "utility certificate" in France, "short term patent" in Belgium, or as "utility innovation" in Malaysia.<sup>35</sup> Thus, it is necessary to review the nature of these systems by looking at the characteristics of some typical utility model regime designs.<sup>36</sup>

The United Kingdom's Utility Designs Act of 1843 was the earliest classical utility model regime.<sup>37</sup> The act protected design shape or configuration of useful articles of manufacture that were literally remote from regular patent protection.<sup>38</sup> However, in 1919, it was reduced to insignificance by a series of judicial and legislative actions.<sup>39</sup> The reason for its failure may have

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30 Ibid., 429.

31 Ibid., 431-432. See also Janis, "Second Tier Patent Protection," 201-202. ("An anti-commons exists where multiple individuals own rights to exclude others from an object resource, such that no one has an effective privilege of using the resource").

32 Mark A. Lemley, "The Economics of Improvement in Intellectual Property Law," *Tex. L. Rev.* 75 (1997): 1008.

33 Uma Suthersanen, Graham Dutfield, and Kit Boey Chow, "Utility Models and Other Alternatives to Patents," in *Innovation without Patents, Harnessing the Creative Spirit in a Diverse World*, 2007, 18.

34 Ibid.

35 Ibid.

36 Wang, "Utility Models Revisited: The Case of Investing in China."

37 Lionel Bently and Brad Sherman, "The United Kingdom's Forgotten Utility Model: The Utility Designs Act of 1943," *Intell. Prop. Q.* 3 (1997): 265. Both Janis and Tabrez Ahmad & Pratic Priyadarshi Choudhury agree with this judgment. See also Tabrez Ahmad and Pratic Priyadarshi Choudhury, *Utility Model Protection: Harnessing the Backwaters of IP*, 2012.

38 Ibid.

39 Ibid.

been the many criticisms of the regime. For instance, it provided narrow protection to external appearance or “form”, but not function or principle; therefore, there were many arguments for extending its scope to functional equivalents of the embodiments that the drawing illustrates.<sup>40</sup>

The German utility model regime is called *Gebrauchsmuster*. Different from the English one, this regime remains firmly and essentially a creature of design protection in 1891.<sup>41</sup> It became a prototype of a classical utility model regime with its lack of a pre-grant examination, limitation of subject matter to only movable articles having three dimensions, and very short-term of protection.<sup>42</sup> The classical utility model regime was progressively abandoned and developed into a modern second-tier patent regime to complement the regular patent regime.<sup>43</sup> In 1990, Germany abolished the requirement of a three-dimensional configuration and broadened the subject matter to protect electronic circuit designs, chemical substances, foodstuffs and drugs beyond immovables.<sup>44</sup> With the amendments, the German utility model regime became not merely about protecting designs,<sup>45</sup> but was transformed into a longer and stronger regime, providing patent-like protections of small inventions.<sup>46</sup> The qualified protected inventions become less strictly tied to three-dimensional, functional shapes of tools or everyday implements.<sup>47</sup>

In most countries with a utility model, regimes do not require substantive examination.<sup>48</sup> This turns the application process of a utility model into a registration process, which is obviously simpler and faster than an application process including an examination for non-obviousness.<sup>49</sup> However, utility models do require novelty.<sup>50</sup>

Based on the discussed common characteristics of a utility model regime, utility models are fairly defined as “subpatentable innovations,”

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40 Janis, “Second Tier Patent Protection,” 156.

41 *Ibid.*, 158-159.

42 *Ibid.*, 158. Three years from the application date, renewable for an additional three-year term.

43 *Ibid.*, 155, 162-163.

44 *Ibid.*, 164.

45 J.H. Reichman, “Legal Hybrids between the Patent and Copyright Paradigms,” *Colum. L. Rev.* 94 (1994): 2457.

46 *Ibid.*, 165. See also, J.H. Reichman, “Charting the Collapse of the Patent Copyright Dichotomy: Premises for a Restructured International Intellectual Property System,” *Cardozo Arts & Ent. L. J.* 13 (n.d.): 500.

47 Wang, “Utility Models Revisited: The Case of Investing in China.”

48 Tabrez Ahmad and Pratik Priyadarshi Choudhury, *Utility Model Protection: Harnessing the Backwaters of IP*, 2012, 5.

49 Janis, “Second Tier Patent Protection,” 161.

50 Heather Ann Forrest, “Utility Model : Widening the Economic Divide between ‘Legacy’ and ‘New’ EU Member States,” *Int’l Bus. Law* 32 (2004): 217.

which, combined with early disclosure of regular patent applications and narrow interpretation of claims, allow local firms to invent around foreign innovations.<sup>51</sup> Fortunately, this series of rules to favor surrounding inventions is excluded from the restriction of TRIPS Article 31 for dependency patents to favor developing countries.<sup>52</sup>

In order to respond to Zhai's criticism of the "unfair benefits" to developing countries, especially China, it is necessary to read through and compare the main rules of application and enforcement for utility models and patents.

Utility models are categorized as a type of "patent" under Chinese law,<sup>53</sup> with practical and new technical solutions relating to a product's shape, structure, or combination of the two.<sup>54</sup> The Chinese laws that regulate utility models include the PRC Patent Law ("Patent Law"), the Rules for the Implementation of the Patent Law ("the Rules") and the Guide of Patent Examination ("the Guide"). The latter two explain the terms in "Patent Law."<sup>55</sup>

The Guide regulates that the subject matter of utility models has to be attached to products.<sup>56</sup> Method claims can only be protected under regular patents rather than utility models.<sup>57</sup> The length of protection is 20 years from the date of filing for regular patents, but only 10 years for utility models.<sup>58</sup> Both types of rights require novelty, inventiveness and utility,<sup>59</sup> but the standards of examination for them are slightly different.<sup>60</sup>

The State Intellectual Property Office of the PRC (SIPO) conducts a preliminary examination to determine conformity with proper procedure and qualification for the requirement of utility and novelty.<sup>61</sup> When a

51 Sean A. Pager, "Patents on a Shoestring: Making Patent Protection Work for Developing Countries," *Ga. St. U.L. Rev.* 23 (n.d.): 755.

52 Wang, "Utility Models Revisited: The Case of Investing in China."

53 Hong Liu & Jun Wei, *Technology Transfer to China: The Patent System*, 5 Santa Clara Computer & High Tech L. J. 363, 373 (1989). They looked earlier draft of China's Patent Law that says "'Working a patent' means the manufacture of the invention, utility model or design, or use of the patented process." Gradually, it becomes general knowledge that people in China call patent for all three kinds of invention. The current draft of the 2009 Patent Law in China still states that "inventions-creations" means inventions, utility models and designs" in Article 2.

54 The Standing Comm. Nat'l People's Cong., *Law on Patent* (China, 2009), Article 2.

55 Wang, "Utility Models Revisited: The Case of Investing in China."

56 SIPO, *The Guide of Patent Examination* (China, 2010), Section 1, Chapter 2, Article 6.1.

57 *Ibid.*, Section 1, Chapter 2, Article 6.3; The Standing Comm. Nat'l People's Cong., *Law on Patent*, Article 2.

58 *Ibid.*, Article 42.

59 *Ibid.*, Article 22. The inventiveness is equivalent to the non-obviousness requirement in USPTO (U.S. Patent and Trademark Office) because of the difference of translation.

60 Xiaoqing Feng, "The Interaction between Enhancing the Capacity for Independent Innovation and Patent Protection: A Perspective on the Third Amendment to the Patent Law of the P.R. China," *Pitt. J. Tech. L. & Pol'y* 9 (2009): 52.

61 Hong Liu and Jun Wei, "Technology Transfer to China: The Patent System," *Santa Clara Computer*

utility model application passes this preliminary examination, it should be published and issued on the same day.<sup>62</sup> The rules regarding compulsory licenses or six-month grace period for regular patents and utility models are not distinguishable.<sup>63</sup> Both of them must satisfy the same standards of novelty when searching prior arts and have practical applicability to meet the standard of utility.<sup>64</sup> However, only regular patents require a substantive examination as a condition of issuance.<sup>65</sup> In terms of enforcement, courts or administrative authorities can ask for a patent examination report from SIPO as evidence in a utility model infringement dispute. SIPO is authorized to search, analyze, and evaluate the technology from the request of the patentee or an interest-related party.<sup>66</sup>

An applicant is allowed to file both a utility model and a regular patent application for an identical invention on the same day.<sup>67</sup> In order to acquire a regular patent, however, an applicant must abandon the previously obtained utility model.<sup>68</sup>

## Effects of Utility Model Regimes: Exterior and Interior Concerns

### *Economic and Political Concerns*

According to the criticisms by Zhai and Janis, various high transaction costs are the drawbacks of having a utility model regime. However, in reality these costs can exist in differing degrees. In the case of China, interior transaction costs for applicants do not completely exist. First, the additional cost of drafting a utility model through an attorney would not be a problem. The Guide clearly regulates the requirement of preliminary examination. If an applicant tries to gain advantage when getting a patent by making a better draft of claims, it should be more popular to do so through the process of substantive examination for a regular patent application. An application for a regular patent also has this process, so if Janis really assumes that skillful drafting tricks can work during preliminary examination,<sup>69</sup> then the

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& *High Tech. L. J.* 5 (1989): 367; SIPO, *The Guide of Patent Examination*, Section 1, Chapter 2, Article 7.4.

62 The Standing Comm. Nat'l People's Cong., *Law on Patent*, Article 40.

63 *Ibid.*, Article 24, Article 51; SIPO, *The Guide of Patent Examination*, Section 1, Chapter 2, Article 7.3.

64 *Ibid.*, Article 22; Liu and Wei, "Technology Transfer to China: The Patent System," 364.

65 *Ibid.*, Article 35.

66 *Ibid.*, Article 61; St. Council, *The Rules for the Implementation of the Patent Law* (China, 2010), Section 5, Chapter 5, Article 2.3.

67 *Ibid.*

68 *Ibid.*; The Standing Comm. Nat'l People's Cong., *Law on Patent* Article 9.

69 Janis, "Second Tier Patent Protection," 180-181.

high agent cost for application would be inevitable when pursuing any type of patent protection. Thus, this process should not be counted as an extra cost for a utility model regime.

Second, the “long-term transaction costs” exist in some circumstances, especially in some developing countries where the litigation system is not robust enough to ensure the efficient protection.<sup>70</sup> Of the patent invalidity proceedings brought in China, 95% were filed against utility model patents, and approximately 60% of all utility model patents were declared invalid in China.<sup>71</sup> However, this is outdated evidence from before 1991,<sup>72</sup> and the current invalid rate of utility model patents in China is approximately 0.9%.<sup>73</sup> If the market judges the current utility model regime as efficient, transaction costs will not be a disaster but be covered by its benefits and demands.<sup>74</sup>

Besides the discussed internal costs, effects on the external environment and other third parties must be considered. For example, the Commission of the European Community stressed the economic need for the expansion of a utility model regime across Europe in 1995.<sup>75</sup> Increasingly efficient access to technologies brought by this kind of regime could be useful for EU members with weaker and less technologically based economies.<sup>76</sup> The Economic and Social Committee further recognized their contribution to EU development by boosting investment in R&D.<sup>77</sup>

This is not limited to Europe, as many other industrial countries and other heavy intellectual property importer countries have demands for second-tier patent regimes like utility model regimes.<sup>78</sup> Reichman even predicts that there is a trend towards enacting such regimes in developing countries.<sup>79</sup> For a stronger connection between developing countries and the worldwide flow of scientific and technical information, utility model regimes would need to

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70 *Ibid.*, 196. (“Utility model protection relies so heavily on adjudication through the court system, and multinationals may believe that many developing countries lack the infrastructure that would be required for reliable adjudication of utility model claims”).

71 Peter A. Cummings, “From Germany to Australia: Opportunity for a Second Tier Patent System in the United States,” *Mich. St. U. Coll. L. J. Int’l L.* 18 (n.d.): 319; Zhai, “The Chinese Utility Model,” 427.

72 Uma Suthersanen, *Utility Models and Innovation in Developing Countries*, 2006, 21. Suthersanen made note 66 for the source of the data.

73 State Intellectual Property Office of The P.R.C.’s Department of Program and Development, *Annual Valid Chinese Patent Report*, 2012.

74 *Infra* Part 3.1.2 & Part 3.1.3.

75 Commission of the European Communities, *Green Paper: The Protection of Utility Models in the Single Market*, 1995, 12.

76 Forrest, “Utility Model,” 218.

77 *Ibid.*, 217.

78 Suthersanen, *Utility Models and Innovation in Developing Countries*, 6.

79 Reichman, “Intellectual Property,” 1129.

share locally generated scientific data with the world.<sup>80</sup> The result would be the stimulation of investment in the production of knowledge goods through access to knowledge.<sup>81</sup> Thus, this regime is important for economic growth and human welfare in every state of economic development.<sup>82</sup>

Janis agrees that the idea of connecting nations coincides with the characteristic scholarly assertion that utility model protection is important for the domestic economy at the beginning of a country's industrialization.<sup>83</sup> Meanwhile, he worries the inefficient redundant efforts inside these regimes will end up in long run rent dissipation within the developed economies.<sup>84</sup> This concern is understandable and fair because developed countries can receive more benefits from international connections and corporations through international conventions.<sup>85</sup> The nature of conventions or covenants like TRIPs undeniably mandates a relatively high floor of substantive protection so as to force developing countries with limited discretion to modulate their standards.<sup>86</sup> Therefore, developing countries should feel no compunction in designing a regime favoring their own interests.<sup>87</sup>

In concrete terms, "emerging economics will not reach their full economic potential without adequate intellectual property regimes."<sup>88</sup> Reichman warns technology-exporting countries that if utility model regimes are adopted for short-term advantages to reach for high levels of international protection, they risk maintaining their technological superiority and the payment advantages would invert over time.<sup>89</sup> Comparatively, technology-importing countries can strengthen their own innovative capabilities so as to benefit from existing international conventions and may even have a chance to challenge and compete with those advanced technology-exporting countries possessing pre-existing comparative advantages.<sup>90</sup> Gradually, these emerging economics, especially the high and middle-income developing countries, will become major competitors with technology-exporting countries.<sup>91</sup>

This is not the end of the argument about patent regimes. Janis further

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80 *Ibid.*, 45.

81 *Ibid.*

82 *Ibid.*, 46.

83 Janis, "Second Tier Patent Protection," 194.

84 *Ibid.*, 213.

85 Pager, "Patents on a Shoestring," 759.

86 *Ibid.*, 805.

87 *Ibid.*, 806.

88 Reichman, "Intellectual Property," 1117.

89 *Ibid.*, 1119.

90 *Ibid.*, 1121.

91 *Ibid.*, 1117, 1121. Here the emerging economies are exemplified by BRIP groups to challenge OECD countries.

argues that for a country involved in the international environment, a weak patent regime deters the improvement of domestic productivity, most of which is created by access to international technologies, intermediate inputs, and producer services.<sup>92</sup> Truly, production capability is always an important factor for technical development in a country,<sup>93</sup> especially in a developing country which could transform into a developed country through acquisition of technologies.<sup>94</sup> However, Reichman follows traditionalists to recommend a greater use of utility model laws in developing countries because such a regime often proves better than nothing, even though it has many limits and weaknesses.<sup>95</sup>

Furthermore, the EU Commission publicly suggested that the lack of a European-wide utility model in the European Patent Convention was a weakness.<sup>96</sup> Many scholars believe that the German utility model system facilitated economic advancement from developing to developed country status.<sup>97</sup> Also, empirical evidence shows that a combination of relatively weak IP rights protection and the availability of second-tier patents like utility models and design patents encourages technical improvement.<sup>98</sup> It will have benefits for the people who challenge a weak patent regime because it increases the cumulative cost of litigation,<sup>99</sup> or because it brings unfair benefits to a country where industries lack the ability to independently innovate.<sup>100</sup>

In sum, the robust American model of applying a strong non-obviousness requirement<sup>101</sup> is inappropriate for most developing countries.<sup>102</sup> Defining utility model patents as junk patents,<sup>103</sup> Zhai is wrong to consider the lack of economic means of the utility model regime in China by saying it is a fully developed country.<sup>104</sup> There is both no persuasive evidence to define the Chinese economy according to his perspective nor to reject the idea of

92 Keith E. Maskus, *Intellectual Property Rights in the Global Economy*, 2000, 204.

93 T Srinivasan, 3A: *Handbook of Development Economics*, 1995, 2238.

94 Pager, "Patents on a Shoestring," 761.

95 Reichman, "Intellectual Property," 1129-1130.

96 Philip Leith, *Harmonisation of Intellectual Property in Europe: A Case Study of Patent Procedure*, 1998, 117.

97 Suthersanen, Dutfield, and Chow, "Utility Models and Other Alternatives to Patents," 30.

98 Suthersanen, *Utility Models and Innovation in Developing Countries*, 8.

99 The degree of influence varies from to the fields of industry, such as badly in information technology and biotechnology sectors. Reichman, "Intellectual Property," 1120-1121.

100 Zhai, "The Chinese Utility Model," 425.

101 Janis, "Second Tier Patent Protection," 161.

102 Maskus, "Lessons from Studying the International Economics of Intellectual Property Rights," 202; *infra*, Part 3.3.

103 Zhai, "The Chinese Utility Model," 429.

104 *Ibid.*, 430.

a utility model regime in a developed economy. Janis's study lacks similar evidence.<sup>105</sup>

According to Reichman, "IP systems are more than just pieces of legislation, and may best be viewed as public policy regulatory institutions."<sup>106</sup> During the first hundred years of development, the U.S. refused to respect international intellectual property rights in order to have the freedom to imitate British innovations and put them on the market for the future of its social and economic development.<sup>107</sup> In reality, the realm of IP rights is always viewed as a collection of national policies or being supportive of and complementary to adequate national policies.<sup>108</sup>

Some countries may use a utility model regime to strengthen their weak patent regime or because they cannot adapt to the standard patent regime<sup>109</sup> adopted by developed countries. Since it offers easily accessible monopoly protection and other rewards, it can be considered a proper subsidy policy for local private entities, as opposed to direct subsidization.<sup>110</sup> Therefore, developing countries should reasonably be free to tailor their own regime around particular industries to comparatively favor local innovators.<sup>111</sup>

In China's case, there is an important legislative trend to encourage people's enthusiasm for inventing, and the utility model regime is a necessary element in this trend.<sup>112</sup> Alternatively, if China did not have such a second-tier patent regime, in order to take advantage by free riding the technologies produced by other countries because of a lack of the ability to independently innovate, it may have to sacrifice the whole patent regime to a weak one in order to take advantage from the technologies produced by other countries. Therefore, a utility model system seems to be an intelligent policy for China to help it transfer from a dependent-innovating country to an independent-innovating country. This double-edged policy can be intentionally adjusted to be weak or robust according to government goals while simultaneously not

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105 Janis, "Second Tier Patent Protection," 195. For example, in Japan's case, Janis found little causal evidence that the existence of a utility model regime has contributed to its rise to economic prominence, so he concluded that a regular patent regime like that in the U.S. is better than having a utility model regime.

106 Reichman, "Intellectual Property," 1123.

107 William Pretorius, "TRIPs and the Developing Countries—How Level Is the Playing Field?," *International Intellectual Property Law & Policy* 7 (2002): 80–82.

108 Srinivasan, 2283.

109 Janis, "Second Tier Patent Protection," 161. Janis realized that the disappearance of utility models was disastrous for some countries because it could reduce the non-obviousness standard in their weak patent system future.

110 Pager, "Patents on a Shoestring," 799.

111 *Ibid.*, 804.

112 Feng, "The Interaction between Enhancing the Capacity for Independent Innovation and Patent Protection: A Perspective on the Third Amendment to the Patent Law of the P.R. China," 61.

influencing the improvement of the regular patent system in order to meet various international trade requirements.

*Utility Model Promotes or Eliminates Innovation?*

A survey conducted by the EU Commission in 2004 shows that Finland, Denmark, Sweden and Germany had strong innovation.<sup>113</sup> Among them, Finland and Denmark's utility model regimes are relatively young, and Sweden does not have a utility model regime.<sup>114</sup> Comparatively, Italy and Spain, the countries with much longer histories of having utility model regimes, are shown to have weak innovation systems.<sup>115</sup> In early 20th century Japan, innovations may not necessarily have been encouraged by the utility model regime because the feature of non-examination was only introduced in 1993 when its registrations were declining.<sup>116</sup> Actually, filing figures are not enough to represent a country's innovation. The evidence of the decreased number of filed utility models in China is not stronger than that of R&D expenditures. Also, there are no existing theories or governments in practice using a utility model regime merely for encouraging applications. While the positive effects on innovation may not extend to everywhere in the world, this should not mean the utility model is evil. Therefore, it is important to learn from other factors outside the utility model regime.

A second-tier patent system encourages minor adaptations and inventions by local firms rather than revolutionary innovations,<sup>117</sup> so it could be important for China to provide registration of utility models to stimulate industrial production and scientific research.<sup>118</sup> Classical reward theory views the development of the patent system<sup>119</sup> in China as driving a powerful incentive in technological progress<sup>120</sup> because greater access to IP protection will provide greater incentives to innovate,<sup>121</sup> in order to get monopolies or cash

113 Suthersanen, Dutfield, and Chow, "Utility Models and Other Alternatives to Patents," 22.

114 *Ibid.* Finland introduced its utility model regime in 1991. Denmark introduced its utility model regime in 1992.

115 *Ibid.*; John Richards and Ladas & Parry LLP, *Utility Model Protection Throughout the World*, 2010.

Italy introduced its utility model regime in 1934. Spain introduced its utility model regime in 1929.

116 Suthersanen, Dutfield, and Chow, "Utility Models and Other Alternatives to Patents," 19.

117 *Ibid.*, 8. The arguments about local market will be discussed in Part 4.3. *infra* Part 4.3.

118 Ruifang Chen, "The Utility Model System and Its Benefits for China—Some Deliberations Based on German and Japanese Legislation," *IIC*. 14 (1983): 506.

119 In Part 3.1.3 & Part 3.1.4, the paper discusses the reason why some countries have to consider use second-tier patent regime to robust their weak patent system. There could be reasons for their environment or political concerns, but it is demonstrated that utility model regime is a measure to be efficient to improve the patent system in a country.

120 *Ibid.*, 501.

121 Forrest, "Utility Model," 219.

rewards and improve reputation. Reward theory leads led the development of the PRC Patent Law.<sup>122</sup> Therefore, its amendment in 2009 narrows the scope of a patentee from “the inventor or designer” to “the name of the inventor” to reinforce the inventor’s incentive to create.<sup>123</sup>

Besides this classical reward theory’s endorsement, it should be no surprise that prospect theory views utility models as security for the future expenditure of development or for the necessary funds to innovate.<sup>124</sup> Conversely, Janis suspects the short-term protection accelerating the exposure of technology to public domain could be opposite to the incentive of inventors,<sup>125</sup> but this argument can only challenge classical utility models, which are merely protecting external appearances rather than the real value lying in the functionality of the technologies.<sup>126</sup> In China, the current utility requirements of the utility model are equal to that of a regular patent.<sup>127</sup> Furthermore, because the subject matter of the utility model in China excludes procedures or measures, the functionality of a utility model should not become a theoretical obstacle to encouraging innovation.

In addition, the prior patentee can coordinate downstream innovations with different firms to reduce duplication of efforts so as to enhance the efficiency of the innovation process.<sup>128</sup> The enhanced efficiency could be led by one industry but expanded to other downstream industries so as to finally stimulate the original innovations.<sup>129</sup> Alternatively, utility models with lower standards of inventiveness can become “prime candidates” for competitors who are free riders in the market, consequently making them highly pro-innovation.<sup>130</sup>

The market can eliminate anxieties over overprotection and anti-commons created by utility models.<sup>131</sup> Strengthening the impact of consumers on

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122 Runhua Wang and Jiangwei Chen, “Innovation Stimulating and Patent System under Globalization: An Analysis of New Institutionalism,” *Journal of Social Development* 3 (2015): 178.

123 Feng, “The Interaction between Enhancing the Capacity for Independent Innovation and Patent Protection: A Perspective on the Third Amendment to the Patent Law of the P.R. China,” 61.

124 Janis, “Second Tier Patent Protection,” 210.

125 *Ibid.*, 218.

126 *Ibid.*, 218.

127 *Supra* part 2.2.

128 *Ibid.*, 210.

129 The National People’s Congress heavily calls for stimulating original innovation in their annual meeting in 2013. Then, the Chinese government starts paying more and more attention on encouraging original innovation.

130 Suthersanen, *Utility Models and Innovation in Developing Countries*, 7. (“Many inventions which originate in SMEs have a lower standard of inventiveness, and are prime candidates for free riding by competitors. Consequently, utility models may be highly pro-innovation and consequently good for the national economy.”)

131 *Infra* Part 3.3.

the development of technology to cure the monopoly problems of over-properization is not a drawback of the utility model regime.<sup>132</sup> Hence, regulators should never ignore the benefits of consumers when designing any legal regimes. Utility model regimes are true precursors of many hybrid legal solutions made for new technologies.<sup>133</sup>

Another concern is that a utility model regime would decrease the efficiency of the whole patent system by protecting minor improvements.<sup>134</sup> Many people reasonably refer to utility models as minor patents since the laws under various utility model regimes require soft non-obviousness. For example, Australia directly named the regime “petty patent.”<sup>135</sup> A possible reason could be that it protects imitation-related innovations or technologies collectively in particular industries.<sup>136</sup> Inevitably, “imitation is an essential stage in learning to innovate and can even be creative in itself.”<sup>137</sup> Also, flourishing imitation-related innovations may not be a tragedy for society. The Nordhaus model shows that the reduction of production cost happens with the opposite trend of the outcomes of invention of products.<sup>138</sup> Regarding more benefited competitors legally imitating, an increasing of the outcome should be expected in the utility model regime where various products make the market diversified and provide more alternatives to favor consumers and stimulate competition among inventors so as to benefit both the innovating firms and consumers.<sup>139</sup>

Developing countries should acquire technologies,<sup>140</sup> but the most essential point for them is the commercialization of technologies. However, the lack of that consideration is a common problem for many countries, especially for China.<sup>141</sup>

Although state-run academies of science in China register many regular

132 Maskus, “Lessons from Studying the International Economics of Intellectual Property Rights,” 203.

133 Reichman, “Intellectual Property,” 2459.

134 Lemley, “The Economics of Improvement in Intellectual Property Law,” 1008.

135 Commission of EU, *supra* note 85, The Part Two of talking about economic needs of UMs concludes that “Utility model protection therefore seems suited to small technological advances with a relatively short lifetime which are likely to develop in the future.”

136 Reichman, “Intellectual Property,” 1124.

137 Suthersanen, *Utility Models*, 9; Pager, “Patents on a Shoestring,” 803.

138 Erich Kaufer, *The Economics of the Patent System*, 1988, 25.

139 *Ibid*. The model shows an increasing of the outcome when the inventor licenses the patent to a competitor. However, this is only a potential expectation. *Infra* Part 3.3.

140 The three categories are 1) to absorb established technologies by tapping the global public domain, 2) to generate its own technological innovations, or 3) encourage the transfer of proprietary technologies by foreign firms. Pager, “Patents on a Shoestring,” *supra* note 56, 761.

141 Maskus, “Lessons from Studying the International Economics of Intellectual Property Rights,” 203.

patents every year, fewer of these patents are commercialized as products on the market or licensed to others,<sup>142</sup> probably because sovereignty and promotion schemes were the reasons pushing scholars to invent. In order to be promoted to become a professor or a researcher with the same level of title, the Chinese scholars need to file patent applications to present their invention endeavors and academic abilities. Gradually, the absence of commercial incentives would make these university inventors tend to focus less on inventions with marketable applications.<sup>143</sup> However, compared to state funding, the amount of R&D funding in private entities, especially in SMEs, is limited.<sup>144</sup> Thus, the utility model becomes a significantly easier and cheaper approach for private entities, and it would not be too late to realize the importance of commercialization of innovations from any resources.<sup>145</sup>

In China, the lack of commercialization of technologies is reasonable because of its less free market. Its percentage of local individual inventors among all local utility model holders (17.9%, accumulated until March 2014) is much higher than the figure of foreign applicants (2.6%).<sup>146</sup> The individually developed utility models face market access barriers or have little effect on increasing market competition. Thus, it is necessary to understand the interaction between utility models and the market.

### *Interaction between Utility Models and the Market for Local and Foreign Companies*

Due to the simplification of the conditions necessary to obtain monopoly protections, a utility model would be a more frequent recourse for a variety of business concerns in Europe.<sup>147</sup> However, this regime's overprotective potential is not an absolute benefit.<sup>148</sup> The adjustment of a market to one with utility models could send signals of the systemic weakness of the

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142 Ibid.

143 Ibid., 202.

144 A lot of scholar scandals in China reveal that some professors secretly collect money from lending the resources, or the result of study of the labs funded by state to private entities with much lower cost than the they should pay on fair market or do by their own behalf. These private entities even include public enterprises. Hongzhen Xie and Yueke Zhang, "Secret Transaction of Technological Invention: "From Selling Patent to Steal State Fund," *Fenghuang Wang-Hubei*, 2014, [http://hb.ifeng.com/news/sddc/detail\\_2014\\_04/15/2127856\\_0.shtml](http://hb.ifeng.com/news/sddc/detail_2014_04/15/2127856_0.shtml) (accessed December 13, 2014)

145 This is not only a problem for utility models but also for regular patents in China because most of Chinese scholars and regulators ignore prospect theory or have not realized the existence of prospect theory; Janis, "Second Tier Patent Protection," 210.

146 State Intellectual Property Office of the P.R.C., "Statistic Information."

147 Commission of the European Communities, *Green Paper: The Protection of Utility Models in the Single Market*, 12.

148 Janis, "Second Tier Patent Protection," 217.

legal hybrid regimes; thus, a utility model regime can only be a cure for chronic market failure caused by inability of the regular patent or copyright regimes.<sup>149</sup>

Responding to Janis's concerns, there is no evidence for viewing utility models as conflicting with the free market. While they arguably provide artificial lead-time to compensate for the lack of natural lead-time under trade secret law, it does not unduly discourage competitors from benefiting from an innovator's contribution, and even usually permits an improver to capture the economic value of his improvement.<sup>150</sup> Conversely, larger market players from foreign countries may overuse utility models to circumvent their products which bars imitators or other competitors from sharing in the market.<sup>151</sup>

Zhai's concern is even more serious: the unfair advantages granted to local companies through the utility model regime could cause foreign companies to choose not to enter China's utility model patent market at all, so China would lose imported foreign technology that could "significantly advance China's own technological development."<sup>152</sup> Actually, the scenario is more complex than Zhai predicted since different sizes of businesses run in a utility model market and there are staggered benefits for arguable parties, a side with strong or weak technical innovations or a side with weak technical innovations. A utility model market includes both transactions and the products developed by them. The inventors license their IP rights to the imitators. Meanwhile, as a type of patent strategy, they usually file a bundle of patents and utility models to protect their inventions and innovations developed in the same period. After that, they will also keep doing research and development around the previously issued regular patents and utility models so as to file more IP rights around the previous one.

There should be more foreign goods and techniques to compete in an open market strengthened by a robust patent system.<sup>153</sup> For some developing counties with weak patent regimes, adding a utility model regime could be an efficient way to strengthen the patent system. China is revolutionary in encouraging original innovations rather than innovations solely invented around existing foreign technologies.

Suthersane worries that an applicant can be more competitive when

149 Ibid.

150 Reichman, "Intellectual Property," 2459.

151 Suthersanen, *Utility Models*, 8; Leith, *Harmonisation of Intellectual Property in Europe: A Case Study of Patent Procedure*: 120.

152 Zhai, "The Chinese Utility Model," 433.

153 Maskus, "Lessons from Studying the International Economics of Intellectual Property Rights," 203. *Supra* Part 3.1.3.

he prohibits his competitor's imitations immediately after filing an auxiliary application of utility model with a simultaneous regular patent application or converting a riskily failed regular patent application to a utility model application.<sup>154</sup> This could strike a balance for some firms, particularly for SMEs, by helping to safeguard or improve their market position when free riders crowd into the market.<sup>155</sup> While anti-commons and uncertainty problems make many scholars suspicious about its future in the U.S. market,<sup>156</sup> a developing country like China can use the regime to subsidize its local firms.<sup>157</sup>

The utility model regime is always considered to stimulate local innovative activities.<sup>158</sup> From 1975 to 1980, local applications in Germany were on average 73% of all applications of utility models.<sup>159</sup> At the same time, generally over 92% of utility model applicants in Japan were domestic.<sup>160</sup> This phenomenon is extreme in China where foreign applications have rarely constituted more than 1% of all utility model applications since the regime was formed in 1985.<sup>161</sup> This is different from the theories predicting that foreign companies will file more utility models applications in China because of the lack of substantive examination.<sup>162</sup> Eventually, the utility model system could provide security for assembling heavy technology importers, especially for some industrialized countries.<sup>163</sup>

The western scholars over criticized how this second-tier patent regime absorbs technology from foreign sources. In reality, it could be a reasonable political measures of the government in a developing country to maximize domestic company benefits or to provide them comparative advantage to balance political and economic pressure. The developing country has to protect foreign IP after opening their domestic markets to trade, which is always a "development dilemma" embodied in TRIPS for developing countries.<sup>164</sup>

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154 Chen, "The Utility Model System and Its Benefits for China—Some Deliberations Based on German and Japanese Legislation," 505.

155 Suthersanen, *Utility Models*, 7.

156 Janis, "Second Tier Patent Protection," 202.

157 *Ibid.*, 195.

158 Suthersanen, Dutfield, and Chow, "Utility Models and Other Alternatives to Patents," 29.

159 Chen, "The Utility Model System and Its Benefits for China—Some Deliberations Based on German and Japanese Legislation," 502.

160 *Ibid.*, 503.

161 Statistic from SIPO, accessed January 16, 2015, <http://www.sipo.gov.cn/tjxx/>.

162 Edward W. Tracy Jr. et al., "A Practical Patent Strategy for U.S. Companies Doing Business in China," *Landslide* 3 (n.d.): 17.

163 Suthersanen, *Utility Models*, 6.

164 Payer, "Patents on a Shoestring," 803-804; Reichman, "Intellectual Property," 1119. ("If they open their domestic markets to trade, they face political and economic pressure to protect foreign IP").

If regular patent systems are considered to “cater primarily to foreigners” in developing countries, a second-tier patent system is understandable in targeting local inventors.<sup>165</sup> In Germany, an average of over 46% of patent applications were filed by foreigners from 1975 to 1980.<sup>166</sup> In China, foreigners have filed over 32% of all accumulative regular patent applications as of 2012.<sup>167</sup> Comparatively, the rate of foreign applications of regular patents in Japan reduced from 15.5% to 13.2% from 1975 to 1980,<sup>168</sup> and its experience clearly suggests that the advantages of utility models should adjust the structure of the domestic development of technology.<sup>169</sup>

Unfortunately, the goal of having a utility model regime should never be to hinder the importance of foreign technologies in developing countries.<sup>170</sup> It creates conditions to possibly obtain advanced technologies from other countries as inexpensively as possible inside the range of TIRPS and other conventions.<sup>171</sup> Therefore, even though Zhai previously overstates the issue, the partial benefits of the regime for China could risk obstructing the whole patent regime to “attract enough new foreign technologies.”<sup>172</sup>

In sum, it is clear to see the benefits of a utility model regime for domestic inventors and firms, but not clear the impact on the incentive and behaviors of the foreign inventors and firms on the markets protecting utility models.

### *Effects of Utility Model Regime on the SMEs*

Empirical evidence from the EU Commission shows a low frequency of regular patents applications from SMEs in France and the U.K.<sup>173</sup> Comparatively, “utility model systems are particularly advantageous for SMEs,”<sup>174</sup> because they target inventions from SMEs rather than larger

165 *Ibid.*, 803.

166 Chen, “The Utility Model System and Its Benefits for China—Some Deliberations Based on German and Japanese Legislation,” 502.

167 State Intellectual Property Office of the P.R.C., “Statistic Information.”

168 Chen, “The Utility Model System and Its Benefits for China—Some Deliberations Based on German and Japanese Legislation,” 503.

169 Reichman, “Intellectual Property,” 1129. (“The Japanese experience suggests that advantages accrued from the use of utility models that surround foreign patents with tripwires of small-scale blocking effects tend to peter out once the country relying on this tactic shifts its own domestic emphasis to relatively basic research”).

170 *Ibid.*, 1119. (“If they protect foreign IP, they create conditions that force them to abandon their goal to obtain IP as inexpensively as possible”).

171 *Ibid.*

172 Zhai, “The Chinese Utility Model,” 433.

173 Michael Kern, “Towards a European Utility Model Law,” *IIC*. 25 (1970): 629. (“Nearly half of the patent attorneys in both states frequently did not apply for protection of inventions on behalf of their SME clients.”)

174 Suthersanen, *Utility Models*, 7.

inventions that are typically protected by a regular patent regime.<sup>175</sup> This aim is manifested in Germany where “utility models are mostly filed by SMEs and entrepreneurs.”<sup>176</sup> Also, a survey from the U.K., France, Spain, Italy and Germany by the EU Commission shows that 76% of the SMEs expressed a high interest in joining a utility model friendly community, in contrast to much smaller interest among larger companies.<sup>177</sup> Hence, this section introduces the effects of a utility model on SMEs.

It is necessary to design a proper second-tier protection regime to enhance the competitive ability of SMEs in the market. Besides the low rate of SME survival,<sup>178</sup> more innovations emanate from SMEs than from larger “multinational conglomerates.”<sup>179</sup> However, “cost is no doubt the major obstacle impeding SME access to patent systems worldwide,”<sup>180</sup> and the limitation of funding may even inhibit them from investing in R&D.<sup>181</sup> Comparatively, in developing countries, public research institutes usually have enough funding and conditions to do R&D, but do less commercialization with their useful inventions.<sup>182</sup>

As a result of the emergence of patent trolls around the inventions developed by public institutions in China, the state should move some weight of science development from these public institutions to SMEs. Universities and other public institutions do not practice their patents and lack the channels of technology transfers. Therefore, some non-practice entities buy the patents from these entities and ask other practitioners in the market to pay for licensing or stopping practicing for infringement. This will be a trend sooner or later in the future of China, as has been the experience of other developed countries. The clear expressions of utility models are even more easily found to be similar, as existing products in the market because of its soft requirement on the inventive step. The trend of invention commercialization could not only balance the development of technology in

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175 Kern, “Towards a European Utility Model Law,” 629.

176 Cummings, “From Germany to Australia: Opportunity for a Second Tier Patent System in the United States,” 305.

177 Suthersanen, *Utility Models*, 9.

178 Moya K. Mason, “What Causes Small Business to Fail?,” n.d. (“95% of new businesses fail within the first five years.”)

179 Suthersanen, *Utility Models*, 7.

180 Janis, “Second Tier Patent Protection,” 179.

181 Suthersanen, *Utility Models*, 7; *infra* Part 3.2.3; Suthersanen, Dutfield, and Chow, “Utility Models and Other Alternatives to Patents,” 31. German empirical evidence suggests that capital prohibits innovation of SMEs.

182 U.N. Secretariat, *Compendium of Documents and Reports Relating to the Work of the UNCTAD Ad Hoc Working Group on the Interrelationship between Investment and Technology Transfer*, 1995.

China, but also be a bridge to bringing more technologies into the market.<sup>183</sup>

In the early stages of new product commercialization, cost is a decisive factor of commercial success.<sup>184</sup> In the market, especially in an open international market with large amounts of new technologies, the acquisition of a patent protection for utility model products at a comparatively low cost possibly increases the role of the small-scale innovations by SMEs and makes a safe harbor for the livelihoods of their businesses.<sup>185</sup> Therefore, the nature of a utility model regime is supposed to reduce the cost of acquiring the protection at a level that fits the budgets of typical SMEs.<sup>186</sup> Other than reserving monetary costs, SMEs favor the regime primarily because it saves time and administration.<sup>187</sup>

In China, a utility model application and a regular patent application cost different amounts.<sup>188</sup> The publication of technology is a pre-condition required to move the application of a regular patent to the process of substantive examination.<sup>189</sup> Therefore, because pending time could be longer than the statute of limitations of infringement disputes, there could be a risk of short-term infringement use of the applied invention or efficient reverse engineering by others. Conversely, the utility model regime in China does not have these problems in practice, so SMEs would be reasonable to consider filing a utility model application even when they are simultaneously pursuing a protection under a regular patent.

After SMEs have enhanced access to the world of patents, they could intensify their innovative activity to increase their competitive ability in the market.<sup>190</sup> This is an opportunity not just to access technology, but also to finance, to recruit skilled labor, to build interactions with universities and

183 Maskus, "Lessons from Studying the International Economics of Intellectual Property Rights," 203. (" Finding mechanisms for public agencies and private enterprises to cooperate in such commercialization could bring a number of new technologies to the market, with benefits for consumers. "); *supra* Part 3.2.3

184 Commission of the European Communities, *Green Paper: The Protection of Utility Models in the Single Market*, 13.

185 Suthersanen, *Utility Models*, 8, ("The utility models make it possible to increase the role of small-scale innovators and artisans in economic development and help them stay in business in the face of new technologies that might threaten their livelihoods").

186 Janis, "Second Tier Patent Protection," 178.

187 Commission of the European Communities, *Green Paper: The Protection of Utility Models in the Single Market*, 16.

188 Substantive examination particularly for regular patent applications takes at least 2,500 RMB. This is the main expense for applying a regular patent, and it takes at most three years. The Standing Comm. Nat'l People's Cong., *Law on Patent*, Article 35.

189 SIPO, *The Guide of Patent Examination*, Section 1, Chapter 1, Article 6.5.

190 Robert Hart, "The European Union's Proposed Protection for Utility Models - The Implications for Computer Programs," *Int'l Intell. Prop. L. & Pol'y* 3 (1998): 51-1.

public institutions, to share R&D resources, and to get more local and national government policy support.<sup>191</sup> It is significantly necessary to analyze if a utility model regime can be of efficient use to SMEs in their innovation activities, especially in China.

While this is a fair regime without substantive examination for every applicant, larger market players may overuse the whole patent system through utility models to circumvent their technologies, which makes it hard for SMEs to compete.<sup>192</sup> Larger companies can use injunction relief with their small or big inventions to aggregate their monopoly status in the market.<sup>193</sup> This risk unfortunately increases the cost of doing business for all others in that industry, especially for the SMEs presumably “least well-positioned to handle such costs.”<sup>194</sup> Therefore, since the utility model regime does not preclude larger companies, it is necessary to consider the risk of making a situation in opposition to the initial government incentive of a regime partially favoring SMEs.<sup>195</sup>

In China, dual-application of a regular patent and a utility model patent is a double-edged sword.<sup>196</sup> On one hand, the risk of circumvention of an industry by larger companies should be taken seriously because they can get efficient monopoly protection for their technologies at any stage, especially during pending substantive examination for their regular patent applications. On the other hand, it should spur technology importation. Roughly more than half of the patent applications are filed in conjunction with a split-off utility model in Germany.<sup>197</sup> This technique of dual application could be advisable for technology-exporters from developed countries when their technologies enter a market providing utility model protection.

Thus, utility models can be a secure option for SMEs when they are trying to pursue a regular patent requiring higher invention requirements for substantive examination, which could encourage SMEs to challenge themselves to invent advanced technologies and try to apply for regular patents with stronger protections. Also, another alternative could be that utility models build a bridge of cooperation between larger companies and SMEs. They can obtain financial support to improve their research with utility models as collateral for lenders or as signals to attract investors, and the

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191 Forrest, “Utility Model,” 219.

192 Suthersanen, *Utility Models*, 8.

193 Janis, “Second Tier Patent Protection,” 181.

194 *Ibid.*, 186.

195 *Ibid.*

196 St. Council, *The Rules for the Implementation of the Patent Law*, Article 41..

197 Cummings, “From Germany to Australia: Opportunity for a Second Tier Patent System in the United States,” 304.

monopoly right granted by their utility models can also help the SMEs limit the risk of business failure in the market with their products.<sup>198</sup> This is significant for SMEs in early commercial stages when they have less information and must gauge the demand of their technologies in the market.<sup>199</sup>

In addition, easily acquired utility models can send signals to local governments that SMEs are innovative firms, which would spur further subsidies and beneficial policies. In China, every provincial government provides awards to the registration of patents, including utility models. Subsidies can underwrite the R&D expenses of SMEs, especially in early commercial stages. Besides signaling licensees and governments, utility models are also able to send signals to potential investors by showing their R&D interest and potential R&D ability. In this process, if an SME files a dual-application, the registration of a utility model will secure potential investors so as to strengthen the value of the firm and its technology. Also, recall Janis's opinion that the weakness of SME bargaining results in less development of technology than in larger companies.<sup>200</sup> His argument against setting a utility model regime in the U.S. would not be a proper argument against having a utility model regime in China.

Furthermore, the wasteful uncertainty cost for foreign investors could possibly be a proper and usual policy of subsidy to partially protect local SMEs, and the importance of new technologies and highly innovative businesses go far beyond their direct contribution to employment.<sup>201</sup> In China, local applicants have accounted for roughly over 99.3% of the utility model patent applications since 2006, and generally over 99% of all utility model filings.<sup>202</sup> Not only is the government empowered under various Conventions through the utility model regime to favor local SMEs for its own interest,<sup>203</sup> the regime itself is more popular than the regular patent regime. Among the three types of patent protection in China, the amount of regular patent filings is always less than one third of the patent filings total.<sup>204</sup>

In order to encourage SMEs from less inventive industries of processing

198 Janis, "Second Tier Patent Protection," 189. ("Second-tier patents may provide small companies with the security necessary to obtain intermediate financing necessary to move a research program ahead to the next benchmark.")

199 Commission of EU, *supra* note 85, at 13.

200 *Ibid.*, 206. ("Small enterprises and independent inventor may well lack the resources and/or sophistication to participate in the complex bargaining that would be necessary to re-aggregate patent rights in an economically sensible fashion.")

201 Forrest, "Utility Model," 218; *Creating An Entrepreneurial Europe: The Activities of the European Union for Small and Medium-Sized Enterprises (SMEs)*, at 76 COM(2003), 26 final (Jan. 21, 2001).

202 State Intellectual Property Office of the P.R.C., "Statistic Information."

203 *Supra* Part 3.1.2. Pager, "Patents on a Shoestring," 806.

204 State Intellectual Property Office of the P.R.C., "Statistic Information."

and manufacturing to original innovation, the above risks should be better examined through an empirical study,<sup>205</sup> but there is a long way to go to move Chinese SMEs to reliance on the regular patent regime so as to reduce the uncertainty and high due diligence costs of foreign investors.

### Does Substantive Examination Matter?

The fundamental difference between a utility model registration and a regular patent registration is substantive examination, the core of which in China is the requirement of non-obviousness.<sup>206</sup> From 2006 to 2010, there was an average of around 21.5% of utility model applicants in China that were rejected in the preliminary examination for lacking utility, but more than 97% of these failed applications were individual applicants rather than “work for hire.”<sup>207</sup> In order to encourage the competitive and innovative abilities of local companies, especially SMEs, this data evidence shows that the utility standard does not significantly influence the issuance of utility models to companies.

Some European utility model regimes have no requirements of non-obviousness. These regimes run as classical utility regimes and usually are called three-dimensional regimes, such as the regimes in Italy, Denmark, Finland, Greece, Portugal and Spain.<sup>208</sup> These regimes only examine for formality.<sup>209</sup> Their novelty standards only prohibit the inclusion of local prior arts, so many scholars suggest abolishing this kind of regime protecting three-dimensional forms.<sup>210</sup> In contrast, a second-tier patent system could complement the regular patent regimes and solve the issues made by a three-dimensional regime.<sup>211</sup>

Utility models, however, could still qualify less novelty than regular patents

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205. Leith, *Harmonisation of Intellectual Property in Europe: A Case Study of Patent Procedure*, 120.

206 “The Guide” includes searching both local and international prior arts in the process of preliminary examination for utility models, but excludes the process of testing non-obviousness which is only required when a regular patent application is pending. “The Guide” shows the three types of preliminary examination for the three types of patent filing in the Part I and mentions less about the search for novelty in this part. However, even though it expresses the detail of examination of novelty of utility models in Part II, “The Substantive Examination,” the Patent Law of China only requires this procedure adopting on the application of invention patent in Article 35. Therefore, because the test of utility is a forward step of testing novelty, which is defined in Part 2.3, Article 3 of “the Guide”, we learn that the nature of the substantive examination is to test non-obviousness of an invention.

207 Hui Lian, “An Empirical Study of Rejected Applications of Utility Models,” *Intellectual Property* 8 (2011): 78-79.

208 Suthersanen, *Utility Models*, 12.

209 *Ibid.*, 13.

210 Hart, “European Union’s,” 50-52.

211 Janis, “Second Tier Patent Protection,” 191.

because of the pending time spent on substantive examination. Concerning pending time, observing the variance of utility model filing and issuance could be better than only observing the issuance rate.

### *How Technology Developers Protected with Utility Models*

When utility model holders want to protect their rights from infringement, some European courts require evidence of particular novelty and inventive step, the substantive conditions required for regular patents.<sup>212</sup> The re-examination requirement of a patent examination report in utility model litigation in China is similar as these substantive conditions. This judicial procedure could be helpful to feed the gap of the different responsibilities between a regular patent regime and a utility model regime.<sup>213</sup>

“The Guide” regulates the contents of a patent examination report, and the process of making the report is controlled by SIPO. However, concretely, it only interprets the vague language of the Patent Law. Therefore, it is difficult to clearly understand the strength and the efficiency of the protection of utility models through the redundant standards in the evaluation of patent examination reports. Similarly, that the preliminary examination adopts lower level standards of novelty and inventive step than regular patents is also not very clear.<sup>214</sup> However, these would not cause gap costs because the two standards of novelty and non-obviousness in the process of preliminary examination and the process of making a patent examination report are equally the same. It should be reasonable to define the utility model regime in China as the regime used by Germany and Austria, rather than the “Patent Regime,” in France, or the “Three Dimensional Regime” in Italy.<sup>215</sup>

In Germany, the portion of invalid utility models issued is very small,<sup>216</sup> so it could be reasonably inferred that technologies are often safely protected and get less successfully challenged under a similar utility model regime, like that in China. In China, the requirement of a patent examination report controls the non-obviousness so as to treat third parties fairly when they are challenging the validity of the utility models. Until 2012, there were 5832 invalidity cases filed for utility models, and 72% of these claims lost their rights of protection for lacking creativity.<sup>217</sup> Superficially, the mechanism

212 Krasser, “Development,” 951.

213 Janis, “Second Tier Patent Protection,” 182.

214 SIPO, *The Guide of Patent Examination*, Part 5, chapter 10, article 3.2.1(2), (4) and (6).

215 Suthersanen, *Utility Models*, 12.

216 Chen, “The Utility Model System and Its Benefits for China—Some Deliberations Based on German and Japanese Legislation,” 506.

217 Yong Chen, “Statements about the Examination of Creativity of Utility Models,” *Intellectual Property* 8 (2013).

increases the uncertainty of the standards of soft obviousness, so it increases the cost of enforcing the protection of utility models.

While 50.8% of utility model validity disputes were decided as completely invalid, 14.7% were found to be partly invalidity, and only 34.5% of the disputed utility models are valid until 2012.<sup>218</sup> Furthermore, the amount of disputed utility models was only 0.58% of the total number of issued utility models.<sup>219</sup> Applicants consider the utility models as property rights that can more quickly grant monopoly protection than a regular patent, which requires a lengthy pending time to get processed by the high standards substantive examination. However, they should have the knowledge that when they enforce their rights of utility models against infringers of the protected technologies, getting a patent examination report consumes time. Thus, SMEs should generally favor utility models because it saves application costs, has a soft obviousness standard and supposedly provides quick protection.

## Conclusion

Utility models are a type of exclusive rights provided to inventors or innovators in a comparatively short amount of time as a complement to regular patents. Utility models are cheap, quick, and easy to gain because they lack a process of examining non-obviousness.

For a country, constructing a utility model regime is costly, but it can help local companies, especially SMEs, to quickly get access to the patent world, so as to potentially be on the path toward controlling the local market and fostering original innovation. With this condition, they can send signals to potential investors and local governments to announce their potential ability to produce innovation so as to acquire capital to compensate their early investment in R&D.

In China, this system partially favors local businesses and SMEs with the soft obviousness standard. However, for the future of “worldwide harmonization of substantive patent law,”<sup>220</sup> it is an effective tool to attach to the regular patent regime, so as to make the whole patent regime robust and the market ready for technology corporations and commercialization. **Y**

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<sup>218</sup> *Ibid.*, 78-79.

<sup>219</sup> State Intellectual Property Office of the P.R.C., “Statistic Information.”

<sup>220</sup> F.-K Beier, “The Future of Intellectual Property in Europe—Thoughts on the Development of Patent, Utility Model and Industrial Design Law,” *ICC 22* (1991): 167, 172.



# ESSAYS

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## **ABENOMICS: REVITALIZATION AND RESURGENCE OF JAPAN**

*James Shin and Jack Walsh*

## **THE PROCESS OF DECOLONIZATION, THE EMERGENCE OF INTERNATIONAL HUMAN RIGHTS, AND THE CURRENT DE FACTO INEQUALITY OF INTERNATIONAL LAW**

*Justin Su Wan Yang*

## **ON CHINA'S NEW ERA ANTI-TERRORISM GOVERNANCE IN THE MIDDLE EAST**

*Zhao Jun and Hu Yu*

# ABENOMICS: REVITALIZATION AND RESURGENCE OF JAPAN

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Japan's role in Asia has been among the most highly contested in modern times. Some have accused the state of acting as a warmonger, puppet of an external great power, valiant bulwark against the scourge of communism, bastion of democratic virtue, or prideful international sociopath. So what is Japan today? It is a nation of stagnation: dim growth prospects and a shrinking working class mark a diminishing presence on the world stage. The population of 125 million who fueled the incredible growth of the last century will drop to 97 million by the middle of this one, and forty percent of that population will be over the age of 65,<sup>1</sup> hardly a sufficient force for any prospects of growth. Moreover, the industrialization and globalization of other East Asian countries, especially China, has eroded Japan's comparative advantage in exports. These countries do not have the burden of high wages or an imminently unstable social welfare system. However, Japanese Prime Minister Shinzo Abe's bold and ambitious policies for economic transformation hold the potential to revitalize Japan's prospects. With a plan colloquially referred to as 'Abenomics,' Japan aims to elevate itself out of years of stagnation, and emerge once again as one of the largest economies in the East Asian region. With the commencement of Abenomics, various sectors of society have been targeted for drastic restructuring. Not only the economic, but also the political, social, and military sectors are subject to reform under Abenomics.<sup>2</sup> Thus, we believe that the energetic efforts of Shinzo Abe in enhancing Japan's economy form a solid base for a new movement towards a more active and cooperative role in East Asia. What then lies at the very center of Abenomics?

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- 1 Sir David Warren, "Where is Japan? A Study of an Economic Powerhouse at a Moment of Political Change," *Asian Affairs* 44, no. 2 (2013): 175-187.
  - 2 Puneet Paul Singh, "Abenomics: The Objectives and the Risks," *BBC*, July 19, 2013, <http://www.bbc.co.uk/news/business-23339712> (accessed November 25, 2015).

Surprisingly, Japan has been showing a considerable amount of progress and Shinzo Abe is planning to implement more rigorous economic reforms and fiscal policies. Relative early success of Abenomics, with growth up to 3.5% and a drop in unemployment resulted from an monetary policy targeted at reducing real interest rates and increasing the inflation rate.<sup>3</sup> Therefore, the expansion of government expenses and spending along with hefty stimulus packages can be viewed as one of the pivotal points in his economic reforms. Abe asserted his aggressive monetary policy by appointing Haruhiko Kuroda as governor of the Bank of Japan. Kuroda is said to have set a target of achieving 2% inflation rate and increasing the amount of public spending within a year.<sup>4</sup> This proactive fiscal policy also includes public works packages, expenditures on public programs, and infrastructure development. Abe's strategy is a comprehensive growth plan.

With such sudden and rapid stimulus from the public sector, Japan's economic prospects are brightening, at least for the moment. Bold experiments in monetary policy have led Japan out of economic downturn, which has lasted years, consequently leading to a dramatic downfall in exchange rates. The weakening of the yen as a result of substantial government spending has prompted a rise in exports and increased attraction of foreign investment in Japan's domestic economy. In addition, inflation of the yen has aided in raising corporate earnings and wages, consequently raising private consumption and stock prices as well. In regards to structural reform, opportunity for Japan to take initiative and develop the capacity for self-sustaining growth through investment in various sectors including energy, health, and employment, has been created.<sup>5</sup> However, some cast skepticism on Shinzo Abe's rigorous economic reforms, questioning whether or not Japan will be able to maintain sustainable growth. The Bank of Japan's ability to achieve their 2% inflation target has also come into doubt. These questions concerning finance remain to be resolved. Next, we speculate on the other goals which Shinzo Abe hopes to achieve.<sup>6</sup>

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3 Charles Riley, "Year of Abenomics delivers Japan Revival," *CNN Money*, November 6, 2013, <http://money.cnn.com/2013/11/06/news/economy/japan-abenomics/> (accessed November 25, 2015).

4 Jakarta Arisyi Fariza Raz, "Abenomics and implication on its Asian neighbors," *The Jakarta Post*, February 11, 2013, <http://www.thejakartapost.com/news/2013/02/11/abenomics-and-implication-its-asian-neighbors.html> (accessed November 25, 2015).

5 Matthew Boesler, "The truth about Abenomics- The Japanese Economic Experiment that is Captivating the World," *Business Insider*, March 16, 2013, <http://www.businessinsider.com/what-is-abenomics-2013-3> (accessed November 25, 2015).

6 Ezrati, Milton Ezrati, "Skepticism about Abenomics," *Foreign Policy Journal*, November 13, 2013, <http://www.foreignpolicyjournal.com/2013/11/13/skepticism-about-abenomics/> (accessed

## Military Rehabilitation

Essentially, Article Nine of the Japanese constitution dictates that it is contrary to the character of the nation (and international agreements) for the Japanese government to maintain a standing army capable of offensive warfare. The state is entirely banned from all acts of belligerency or any acts of violence that are not clearly in self-defense.<sup>7</sup> The regional security forecast in 2013, certainly as seen from the perspective of Japan, is one that would bring most regional experts to question the feasibility of Article Nine. Most significant is the territorial dispute between Japan and China over the Senkaku/Diaoyu islands that became inflamed in 2012. The Japanese government formally purchased the islands from a private holder, over stern objections from China's foreign ministry.<sup>8</sup> While the territory itself is small, the islands are an important fishing ground rich in resources such as gas, oil, and minerals.<sup>9</sup> Looking to the United States as Japan's metaphorical bodyguard, American leadership is not eager to engage in a diplomatic battle with China, on Japan's behalf, over a remote group of islands in the Pacific Ocean. The lingering uncertainty regarding Japan's ability to assert itself and its territory, however, lie clearly in the policy of Abenomics.

Cultural and financial aspects of Abenomics directly facilitate the growth and maintenance of Japan's military in the near future. In 2010, China nudged Japan aside as the world's second-largest economy,<sup>10</sup> aggravating the perception that Japan has been stuck in a frozen economy with little growth and a grim projection into the future. Relating back to the Senkaku/Diaoyu territorial dispute, Abe and his cabinet have realized that Japan needs to readjust its economic and defensive stance in the region. In order to project regional power comparable to China, however, the country needs a strong and stable economy to support future increases in defense spending.

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November 25, 2015).

- 7 Prime Minister of Japan and His Cabinet, "The Constitution of Japan," Last modified November 3, 1943, [http://www.kantei.go.jp/foreign/constitution\\_and\\_government\\_of\\_japan/constitution\\_e.html](http://www.kantei.go.jp/foreign/constitution_and_government_of_japan/constitution_e.html) (Accessed November 28, 2013).
- 8 Julian Ryall, "Japan agrees to buy disputed Senkaku islands," *The Telegraph*, September 05, 2012, <http://www.telegraph.co.uk/news/worldnews/asia/japan/9521793/Japan-agrees-to-buy-disputed-Senkaku-islands.html> (accessed November 28, 2013).
- 9 Ministry of Foreign Affairs of Japan, "Three Truths about the Senkaku Islands," Last modified October 04, 2012, [http://www.mofa.go.jp/region/asia-paci/senkaku/three\\_truths\\_1.html](http://www.mofa.go.jp/region/asia-paci/senkaku/three_truths_1.html) (accessed November 28, 2013).
- 10 BBC News, "China overtakes Japan as world's second-biggest economy," *BBC*, Last modified February 14, 2011, <http://www.bbc.co.uk/news/business-12427321> (accessed November 28, 2013).

Japan has customarily, though not legally, capped military spending at 1% of the gross domestic product (GDP)<sup>11</sup> in order to keep policymakers from operating outside the spirit of its pacifist constitution. For Abe to increase the spending in the annual budget without violating this custom, he would need to directly increase Japan's GDP proportionally to the predicted increase in military spending. However, in order to start the cycle of a stable economy feeding into military funding, the Japanese government has to address this exact core obstacle that is preventing the expansion and improvement of the economy: decades of fiscal shrinkage.

Abe's efforts to revitalize the Japanese economy have been bold, with a \$100 billion (10.3 trillion yen) expansion to government spending in 2013.<sup>12</sup> While the economy can certainly grow and improve the domestic fiscal situation, it constitutionally could not begin its military expansion without the change in the application of Article Nine. The introduction of growth-oriented policies made a reinterpretation of the role of Article Nine inevitable, and this happened via a July 2014 resolution passed by Abe's government.

For the first time in nearly ten years, Abe approved an increase in defense spending that may foreshadow an expected amendment to Article Nine. In the standard national budget, spending increased by 0.8% this year for military and related spending. Still a meager increase compared to China's sustained annual increases of 10% or more over the past twenty years, the true spark to the fire lies in Abe's stimulus package for the 2013 fiscal year. Approximately 20% has been boldly allotted to military investment and defense spending in the future.<sup>13</sup> From an external perspective, it is highly abnormal to allocate one-fifth of a massive fiscal stimulus while merely increasing defense spending in the national budget by less than one percent. Actually, this is Abe's response to the previously explained cap on military spending that is proportional to Japan's GDP. While Abe customarily should not inject defense spending through the national budget, the injection through a stimulus falls under an entirely new set of regulations.

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11 Kirk Spitzer, "Why Japan's Biggest Defense-Spend Hike in Over Two Decades Isn't Going to Buy Much" *TIME*, Last modified September 02, 2013, <http://world.time.com/2013/09/02/why-japans-first-defense-spend-hike-in-over-two-decades-isnt-going-to-buy-much/> (accessed November 28, 2013).

12 The Economist, "Abe's master plan," Last modified May 18, 2013, <http://www.economist.com/news/leaders/21578044-shinzo-abe-has-vision-prosperous-and-patriotic-japan-economics-looks-better> (accessed November 28, 2013).

13 Gwynn Guilford, "Abe is planning a massive fiscal stimulus—but what's left to stimulate?" *Quartz*, December 20, 2012, <http://qz.com/37804/abe-is-planning-a-massive-fiscal-stimulus-but-whats-left-to-stimulate/> (accessed November 28, 2013).

Related divisions have also undergone spending boosts that offer insight into the future expectations of government. The Japanese Coast Guard is, unlike most other nations, not governed under the military or judicial branches of government and instead is operating under the Ministry of Land, Infrastructure, Transportation, and Tourism. Whether this was a strategic bureaucratic reassignment to avoid restrictions to military divisions is unclear, but it certainly serves that purpose under the government's Abenomics campaign. As a non-military division that is crucial to Japan's assertion of sovereignty and territory, the coast guard received a total budget increase of nearly 40% from last year. The budget specifically states that 20.6% of funding is earmarked to protecting Japanese territory, highlighting the coast guard's sub-military role and revealing another aspect of Abe using his economic policy as a parallel to expanding Japan's hard power in Asia. Some analysts have said that the coast guard has been the government's means of "[coping] with its vulnerabilities without addressing the underlying problems of its defense policy." However, considering other policy changes coinciding with the rise in maritime funding, the coast guard appears to be playing an instrumental role in Abe's united defense vision for the future.

The sights are set beyond Japan's own domestic defense industry as well. In an effort to gain standing support for the constitutional change that would give Abe the landslide he needs to fulfill the conservative dream of a powerful Japan, the Abenomics policy also looks to profit immensely from arms exports and defense cooperation. In June 2013, negotiations were held with the French president that saw the early workings of a cooperative alliance in nuclear and military equipment. Together with Japan's Business Federation, there has been a strong move to relax and review the restrictions on arms development and exportation, culminating in the outright lifting of the arms export ban in June 2014.<sup>14</sup> With the legal inability to freely export arms technology, Japanese firms are more able to maintain up-to-date technological exploration in the field and thus are largely unsuccessful in attracting mass-production contracts and investment. Abe's intentions, on the contrary, along with the projections from related analysts, suggest that the abolition of export restrictions will lead to immense expansion in the military contracting sectors for companies like Mitsubishi Heavy Industries

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14 Mina Pollmann, "Japan's First Steps into the World of Arms Exports," *The Diplomat*, January 15, 2015, <http://thediplomat.com/2015/01/japans-first-steps-into-the-world-of-arms-exports/> (accessed November 25, 2015).

and NEC.<sup>15</sup> A double-win for Abe, these partnerships would both secure Japan's place as a competitive military manufacturer as well as secure the nation's place in a highly profitable industrial sector.

The chips of Abe's defense interests fall into place with the reinterpretation of Article Nine – the essential green light for the nation's militarization. While there have been no direct admissions that Abenomics is an economic policy aimed at the rearmament of Japan, the layers of the policies are riddled with defense spending, regulation changes, and reallocation of spending to avoid international stipulations. The purely financial ambitions of Abe's trademark agenda specifically facilitate his increase in defense spending, and are constructed to sustain future increases. Similarly, Constitutional changes and future-oriented agreements with other leaders illuminate the future of Japan as a military participant.

### **Japan's Role as a Regional Power**

Despite nationalist and militarist sentiments among the prominent Japanese political actors, the reactivation of Japan's military will lead to more constructive activity as an Asian democracy. The postwar constitutional restrictions on Japanese armament frame Japan's role as oriented toward American security concerns. Because the state, though possessing a large self-defense force, has very limited ability to project power, it has been perceived as serving primarily as an entity within the American global security regime. Prime Minister Yasuhiro Nakasone's 1983 characterization of Japan as an "unsinkable aircraft carrier"<sup>16</sup> of the US has served to define Japan's role. In that capacity, Japan is prevented from assuming its full capability as a regional power; structured by its lack of a power-projecting military into the US counter-communism global arrangement, there has been no opportunity for Japan to develop a coherent, independent role as an actor in Asia.

Rather, the state has muddled at best through abortive efforts to carve out a position as a great power, especially since the fall of the Soviet Union opened up the world order for potential reshuffling.<sup>17</sup> Shorn of the ability to assert its power-projection capabilities, Japan has sought to claim a space in the international world in other capacities. The role of "bridge

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15 Tiago Mauricio, "Abenomics and Japan's Defense Priorities," *International Relations and Security Network*, June 27, 2013 <http://www.isn.ethz.ch/Digital-Library/Articles/Detail/?id=165176> (accessed November 28, 2013).

16 Tsuneo Akaha, "Japan's Non-Nuclear Policy," *Asian Survey*, 24, no. 8 (1984): 852-877.

17 Gilbert Rozman, "Japan's quest for great power identity," *Orbis* 46, no. 1 (2002): 73-91, ISSN 0030-4387, [http://dx.doi.org/10.1016/S0030-4387\(01\)00107-7](http://dx.doi.org/10.1016/S0030-4387(01)00107-7).

between China's authoritarianism and the West's human rights agenda"<sup>18</sup> was subverted by China's economic resurgence and international political confidence.<sup>19</sup> A promising alignment alongside Russia, including a favorable settlement of the northern islands territorial dispute that would have been empowering in terms of domestic politics, faded as the 1990's Russian state rejected economic progress in favor of corruption. The chance of becoming a sort of lending powerhouse also fizzled with deepening economic stagnation. All aspirations for a respected leadership role in the region were self-destructed in the mid 1990s with rising nationalism; the Diet weakened an apology marking the 50th anniversary of Japan's defeat, acidic comments were released by various officials (including an assertion by the director-general of the Energy Agency that "Japan was not the only one that was wrong," and that "it was thanks to us that they were able to become independent," and "Japan's right wing asserted a national identity that was both divisive in Asia and not supportive of American goals."<sup>20</sup> With the limitations on becoming a normal state, Japan was left with no avenue for becoming a great power.

With the confidence and determined effort at economic revitalization and reactivation of real military capability, Japan under Shinzo Abe is now making another, far more promising effort. The previous efforts were all catalyzed and emboldened by large changes and trends in international security: America's security and financial needs, and then Russia's rebirth and development. This next effort is no different. Here we see Japan attempting to use its new capability to establish a role as a leader of Asian democracies, so as to better integrate and contain a China roaring ahead with foreign policy ambitions.

Central to this consideration is Japan's relationship with India, the other large democratic power in the Asia Pacific. India, though facing growing rivalry with China over issues such as border disputes and military presence in the Indian Ocean, has very little foreign policy momentum to bring to the table. Roughly only 800 diplomats represent the country, the same caliber of representation as Singapore, and "is still punching well below its weight in foreign affairs."<sup>21</sup> Nonetheless, Abe is showing determined signs of developing a deeper relationship. After his 2007 visit to the country,

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18 Ibid., 6.

19 Ibid., 10.

20 Rozman, Japan's quest for great power identity," 9.

21 "India Abroad," *The Economist*, September 29, 2012, <http://www.economist.com/node/21563415> (accessed November 14, 2013).

along with Indonesia and Malaysia, he announced a new “roadmap” for “cooperation in wide-ranging areas” including “working together in the global arena.” This further was intended, he declared, to “give concrete shape to the strategic and global partnership” between the two governments, in the context of “bilateral cooperation between the two major democracies in Asia.”<sup>22</sup> Beyond rhetoric, the security partnership was formalized in the 2008 Joint Declaration on Security Cooperation Between Japan and India. This document establishes bilateral cooperation and information sharing on security matters, with special emphasis on maritime security. In the 2013 Japan-India Summit, Prime Minister Manmohan Singh reiterated that Japan is “a natural and indispensable partner in our quest for stability and peace in the vast region in Asia that is washed by the Pacific and Indian Oceans.”<sup>23</sup> The very fact that a bilateral summit was convened is telling enough: Japan is maneuvering to be in a position to align with India on a wide variety of issues, especially security, and this relationship is deepening.

Japan is not simply pursuing a bilateral relationship with another potential great power; it is positioning itself as a leader and strategic partner of many Asian nations. In the same India-Malaysia-Indonesia trip, Abe signed a Japan-Indonesia Economic Partnership Agreement and put forth a joint statement with Malaysian Prime Minister Abdullah Badawi that the two governments “will cooperate not just in the context of our bilateral relations, but also on regional and global issues.” He laid out the strategy more explicitly when questioned about assertive diplomacy:

I have been speaking of assertive diplomacy, which is to engage in foreign policy to strengthen cooperation and coordination with countries that share basic values, and secondly to build an Asia that is open and brimming with innovativeness, and also thirdly to contribute to the peace and prosperity of the international community. These are the elements of what I call assertive diplomacy. It is not for us to selfishly insist on Japan’s national interests. Rather, we need to give thought to what Japan should do in the international community. In the international arena we need to assert very firmly what Japan

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22 Shinzo Abe, “Press Conference By Prime Minister Shinzo Abe Following His Visits to Indonesia, India and Malaysia,” (Press Conference, August 24, 2007), Speeches and Statements by Prime Minister, [http://www.kantei.go.jp/foreign/abespeech/2007/08/24press\\_e.html](http://www.kantei.go.jp/foreign/abespeech/2007/08/24press_e.html) (accessed November 25, 2015).

23 Manmohan Singh, Ministry of External Affairs, Government of India, “Prime Minister’s address to Japan-India Association, Japan-India Parliamentary Friendship League and International Friendship Exchange Council,” May 28, 2013, <http://www.mea.gov.in/in-focus-article.htm?21754/> (accessed November 14, 2013).

intends to do together with the countries of the world.

This is the attitude of an empowered nation. Japan is expanding its foreign policy capabilities by addressing the major concerns of the nations of Asia: the prospect of expanding Chinese hegemony. Abe is “clearly intent on engaging China from a position of strength, viewing it as a non-democratic and rising power that fundamentally challenges the international status quo, as well as Japan’s national security,” according to *Strategic Comments*.<sup>24</sup> The nations with which Shinzo Abe is currently in partnership are receptive: the emphasis on maritime security plays well with both Indian concerns over China’s ‘String of Pearls’ military port facilities around the Indian Ocean, as well as with ASEAN perturbation over China’s aggressive claims to the South China Sea.<sup>25</sup> By portraying Japan itself not as a hegemon intent on pursuing its own self interests but rather as the nexus of linked partnerships with democratic Asian nations who appreciate Japan’s investment, security guarantee and guidance both economic and political, Abe opens a new path to assuming the relative prominence of a great power. This is in contrast to the other influential regional player, China, who aggressively entertains conflicting territorial claims not only with India and Japan but also Vietnam, Brunei, Malaysia and the Philippines. This has led to naval confrontations with the Philippines<sup>26</sup> and armed incursions into Indian territory<sup>27</sup>, as well as a heated dispute with Japan itself over the Diaoyu/Senkaku islands.

We perceive Japan’s aggressive claim to these islands as essentially similar in motivation to China’s, in that it represents an initial probing attempt at demonstrating regional power projection and influence. Coupled with the nationalist sentiment from many Japanese Liberal Democratic Party (LDP) leading politicians, including Abe himself, this dispute could serve as a distasteful reminder of Japan’s historical aggression and colonization, potentially alienating historical victims such as Korea. Japan’s assertiveness and openness towards the Asian democracies and middle powers, however,

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24 “Beyond Abenomics: Japan’s grand strategy,” *Strategic Comments* 19, no. 4 (2013): v-vi. (<http://www.tandfonline.com/doi/full/10.1080/13567888.2013.830419> (accessed November 23, 2013).

25 “India, Japan join hands to break China’s ‘string of pearls’” *The Times of India*, May 30, 2013, [http://articles.timesofindia.indiatimes.com/2013-05-30/india/39627850\\_1\\_indian-ocean-india-and-japan-japanese-counterpart-shinzo-abe](http://articles.timesofindia.indiatimes.com/2013-05-30/india/39627850_1_indian-ocean-india-and-japan-japanese-counterpart-shinzo-abe) (accessed November 14, 2013).

26 “Philippine warship ‘in stand-off’ with Chinese vessels,” *BBC*, April 11, 2012, <http://www.bbc.co.uk/news/world-asia-17673426> (accessed November 14, 2013).

27 “China accused of incursion in India’s Arunachal Pradesh,” *BBC*, August 22, 2013, <http://www.bbc.co.uk/news/world-asia-india-23790860> (accessed November 14, 2013).

does not mean that China is excluded entirely. Indeed, Shinzo Abe has pragmatically deemphasized the anti-Chinese nationalist rhetoric which he once espoused verbosely and has “developed and adopted a policy of rapprochement.”<sup>28</sup> Given the enormous trade dependency between the two countries it would be impractical not to. Abe, then, is not moving Japan into a position of power with the end of combating China. Rather, by assuming great power status with the empowerment of its military and regional leadership, Japan is asserting that China will not be able to unilaterally create the defining discourse on security in Asia. Instead, it will have to cooperate and integrate with a multipolar regional power structure, with the weaker states within China’s intended sphere of influence protected by coalition with both Japan and India. By assuming great power status, Japan takes on the task of maintaining an Asia that is stable, developing, and free of Chinese dominance.

### **Trans-Pacific Partnership: Make or Break for Abenomics**

The Trans-Pacific Partnership (TPP) is a multilateral free trade agreement (FTA) that includes such G20 powers<sup>29</sup> as the US, Australia, Mexico, Canada, and Japan. The TPP aims to remove all tariffs without any exception between the member nations. Despite increasing efforts to form FTA’s both regionally and abroad,<sup>30</sup> Japan faced domestic resistance to the unrestricted tariffs that would be implemented if Japan entered into the TPP.<sup>31</sup> The main conflict stemmed from the agriculture sector, particularly producers of the Sacred Five: rice, sugar, dairy, wheat, and barley.<sup>32</sup> Backed by the Japanese Agriculture Cooperatives (JA) and members of both the Liberal Democratic Party (LDP) and Democratic Party of Japan (DPJ), the agriculture sector had been successful in delaying negotiations for Japan’s entry into the TPP until its entry in 2015.<sup>33</sup>

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28 John Hemmings and Maiko Kuroki, “Tokyo Trade-Offs: Shinzo Abe’s Hedging Strategy Against China,” *The RUSI Journal* 158, no. 2 (2013): 58-66.

29 Dpmc.gov.au. “G20 member countries,” 2013. [http://www.dpmc.gov.au/g20/member\\_countries.cfm](http://www.dpmc.gov.au/g20/member_countries.cfm) (accessed November 22, 2013).

30 Prime Minister of Japan and His Cabinet, “Press Conference by Prime Minister Naoto Kan Following the APEC Economic Leaders’ Meeting in Yokohama,” November 14, 2010.

31 “Japanese agricultural group head submits comment to USTR, urging TPP members to treat agriculture as an exception,” *The Japan Agri News*, June 8, 2013, <http://english.agrinews.co.jp/?p=387> (accessed November 22, 2013).

32 “TPP Or No TPP Japanese Agriculture Must Be Reformed,” *Forbes*, 2013, <http://www.forbes.com/sites/stephenharner/2013/08/19/tpp-or-no-tpp-japanese-agriculture-must-be-reformed/> (accessed November 22, 2013).

33 “Japan joins the TPP talks,” *The Canon Institute for Global Studies*, 2013, <http://www.canon-igs>.

However, Shinzo Abe insisted that entry into the FTA was necessary for the success of his three-pronged economic plan.<sup>34</sup> Membership would not only foster strengthening of Japan-US relations, but would also allow progress with regional East-Asian FTAs, specifically the Association of Southeast Asian Nations (ASEAN) and Comprehensive Economic Partnership in East Asia (CEPEA). The CEPEA, concomitantly with the TPP, would provide a sound foundation for the Free Trade Area of the Asia-Pacific (FTAAP). Development of the FTAAP has been mentioned even before Abe's return as prime minister. Former prime minister Naoto Kan emphasized Japan's need towards more globalized trade policies in 2010 after the Asia Pacific Economic Cooperation (APEC) meeting held in Yokohama.<sup>35</sup> Contrary to the JA's present concerns, Kan expressed at the press conference that opening the Japanese markets to foreign nations, on a scale comparable to the Meiji era opening of ports at Yokohama in 1859, would revitalize the dying agriculture sector in Japan. According to former Prime Minister Naoto Kan:

Japan's agriculture is weakening today and we shall revive this agriculture, but at the same time we shall work on economic partnerships and liberalization endeavors, an area in which Japan has fallen behind other countries. We shall engage in this area in terms of a new round of the opening up of Japan in the 21st century.

Which begs the question, why was the JA so opposed to the TPP? Before its entrance into the FTA, the Japanese government systematically protected Japanese farmers by placing high tariffs on agricultural imports and providing subsidies on production, the most persistently protected product being rice under the Food Control Law first introduced in 1942.<sup>36</sup> Originally meant to regulate distribution of food resources during World War II and continuing on through post-war reconstruction, such high levels of protection from the government have had detrimental effects on the rice industry. Subsidies pay farmers to grow limited amounts of rice and hoard their unused lands

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org/en/column/macroeconomics/20130904\_2096.html (accessed November 22, 2013).

34 Daniel Hanson and Lara Crouch, "Why Japan Must Join the TPP," *The Diplomat*, June 5, 2013, <http://thediplomat.com/pacific-money/2013/06/05/why-japan-must-join-the-tpp/> (accessed November 22, 2013).

35 Prime Minister of Japan and His Cabinet, "Press Conference by Prime Minister Naoto Kan Following the APEC Economic Leaders' Meeting in Yokohama," November 14, 2010.

36 Masayoshi Honma, "Japan's Agricultural Policy and Protection Growth," Originally published in *Trade and Protectionism*, NBER-EASE Volume 2, by Ito, Takatoshi and Anne Krueger. 95-114. Chicago: University of Chicago, 2013.

to prevent consolidation of lands by potential conglomerates that would implement more productive growing methods.<sup>37</sup> The entire system used to protect the rice farmers has led to inefficient production that needlessly drives market prices high. The 800% tariff<sup>38</sup> on rice imports restricts and damages the consumers by limiting their access to more affordable products. This approach taken by the government and perpetuated by the JA has led to an approximately 50% drop in farmer's income from JPY 6.1 trillion in 1990 to JPY 3.4 trillion in 2007.<sup>39</sup> The significant increased cost of Japanese grown rice and concerns over contamination of locally grown crops as a result of the Fukushima nuclear debacle<sup>40</sup> have led to a higher demand to import foreign rice. The JA was right to be apprehensive. A joint statement signed by JA president Akira Banzai and Roger Johnson, president of the National Farmers Union in the U.S., released on June 11, 2013 expressed their concern.

This broad framework seems to lack any effort toward supporting farmers and minimizing the adverse effects inflicted upon them. Tariff adjustments should be at an appropriate level and serve as a fair and justifiable measure to provide balance. It is both unfair and unacceptable to put the interests of multinational corporations above those of farmers who are forced to sell at a minimal farm-gate price...Greater transparency in the negotiating process and in-depth study of the possible impact of the TPP are called for. As long as the TPP negotiations are conducted under the framework of secrecy, the daunting fear of the damage imposed upon family farmers will continue to grow.<sup>41</sup>

Entrance into the TPP could prove to be devastating for domestic farmers already having to deal with growing fears of radiation amongst the Japanese populace. The FTA would force them to compete with foreign producers given

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37 Masayoshi Honma, "Japan's Agricultural Policy and Protection Growth," in *Trade and Protectionism, NBER-EASE Volume 2*, eds Ito, Takatoshi and Anne Krueger, (Chicago: University of Chicago, 2013.): 95-114.

38 "WTO Critique Of Japanese Agriculture," *Forbes*, 2011, <http://www.forbes.com/sites/stephenharner/2011/02/17/wto-critique-of-japanese-agriculture/> (accessed November 22, 2013).

39 "TPP Or No TPP Japanese Agriculture Must Be Reformed," *Forbes*, 2013. <http://www.forbes.com/sites/stephenharner/2013/08/19/tpp-or-no-tpp-japanese-agriculture-must-be-reformed/> (accessed November 22, 2013).

40 "Japan Seeks New Rice Source," *Wall Street Journal*, 2013, <http://online.wsj.com/news/articles/SB10001424052970204294504576612450622716270> (accessed November 22, 2013).

41 National Farmers Union (USA) and JA Zenchu (Japan), "Joint Statement of National Farmers Union (USA) and JA Zenchu (Japan) regarding the Trans-Pacific Partnership Negotiations," June 11, 2013.

tariff free access to the Japanese market, a task that may prove too difficult after so many years of stagnation.

Though the TPP may force farmers to be more competitive and may result in widespread bankruptcy, competition from foreign producers would not be a definite death sentence. Japanese rice is able to demand such high prices because of its reputed quality.<sup>42</sup> Worldwide demand for quality rice caused by a shortage of agricultural output has led to a global rise in the cost of rice.<sup>43</sup> The demand provides Japanese farmers with a market in which their product could flourish and would not limit their production. Small-scale farmers gain more freedom with their livelihood in a competitive market as opposed to relying on government subsidies that dictate the amount of their profits. The domestic needs would be met by lower quality foreign rice from countries with much larger production capabilities such as the U.S., which would also serve to bolster relations between the two nations. However the JA remains stubborn, and as one of Japan's largest and most funded cooperatives,<sup>44</sup> they possess and have exercised the means to delay negotiations for entrance into the TPP. To quell the behemoth organization, Shinzo Abe has made promises to the agriculture sector to protect the "Sacred Five." He claimed that Japan has enough influence to warrant the desired exemptions to the tariff free FTA and hopes to seal entry by the end of 2013.<sup>45</sup>

In spite of the resistance from the agricultural sector, Abe had little choice but to enter the TPP. The past 20 years of Japan's stagnant economy have finally reached a point where Japan can confidently participate in global markets. Participation in the TPP as well as in other FTAs would usher in a new era for Japan that could potentially place them above China as an Eastern superpower. Despite resistance from the JA, Abe recognized that it was essential for negotiations to go smoothly and for the TPP to be successful in order for his economic plan, Abenomics, to have its full effect on the Japanese economy. The multilateral trade agreement would not only give Japan an economic advantage, but would also prevent China from

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42 "You are what you eat," *The Economist*, 2013, <http://www.economist.com/node/15108648> (accessed November 22 2013).

43 "Probe on rice shortage, price increase still on," *Tribune*, 2013, <http://www.tribune.net.ph/nation/probe-on-rice-shortage-price-increase-still-on> (accessed 22 Nov 2013).

44 Mark Klinedinst and Hitomi Sato, "The Japanese Cooperative Sector," *Journal of Economic Issues* 28, no. 2 (1994): 509-517, (accessed November 22, 2013).

45 Kyodo, "Abe wants Japan to play leading role in TPP deal," *Japan Times*, October 11, 2013, <http://www.japantimes.co.jp/news/2013/10/11/business/abe-wants-japan-to-play-leading-role-in-tp-deal/#.Uo8ENpQpbtU> (accessed November 22, 2013).

continuing to overshadow Japan by providing more leverage to negotiate terms in other FTAs such as the trilateral Regional Cooperative Economic Partnership (RCEP)<sup>46</sup> with China and South Korea. Despite this, it appeared that the lack of transparency with the TPP negotiations could have prevented Abe from successfully convincing the concerned parties, which included members of his LDP.

Abe was in a most precarious situation politically. He boldly placed himself in a position from which there was no return. Abe's economic policies only allow room for nothing less than complete success if he wants to retain any political influence during his tenure. If the TPP fails to revitalize the Japanese economy, Abe may even be forced to rescind his prime minister seat once again in response to the assured backlash that is to come from those who resisted joining the FTA. At the very least, Abe will not be able to pass any more bills during the remainder of his incumbency, hindering, if not wholly extinguishing, any hopes to amend Article Nine. The world is watching to see if Japan can overcome this hurdle and take their seat as a legitimate opposition to the current undisputed China or whether they will let the old-regime, with their outdated policies, stonewall their return as a regional power.

### **The Sun Rises from Tokyo**

Nothing is guaranteed. Shinzo Abe faces considerable obstacles: domestic opposition may stymie his plans, or they may not work as intended, failing to lift the country out of stagnation. Even more fearful a possibility is that Japan may surge ahead, but that the powerful nationalist forces, which brought Shinzo Abe to power, will reassert more aggressive policies, and Asia falls to tension and conflict. Still another possibility is that China's rise may be more powerful or rapid than expected, and uncontested hegemony renders Japan a second-tier power before Abenomic policies even play out. These are real possibilities. However, what our paper describes is an optimistic future, a future that we believe Shinzo Abe and the LDP seek to actualize using Abenomics as the propelling force. While the many moving parts of Asia, ASEAN's identity crisis, and the South China Sea Islands render it a quixotic task to predict what may come to pass, the reader should identify in our paper an interpretation of what the often-reviled Japanese leadership sees as the future and use this conception as a predictor of the economic

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46 Prime Minister of Japan and His Cabinet, "Press Conference by Prime Minister Naoto Kan Following the APEC Economic Leaders' Meeting in Yokohama," November 14, 2010.

and foreign policies that Japan will tend towards. Bismarck said politics is the art of the possible, and that has never been more true: there is a possibility for Asia, a future of cooperation, peace and pluralism, and we search amongst the tangled vines of intra- and intergovernmental trends to find that the roots lie in Shinzo Abe's plan. **Y**

# THE PROCESS OF DECOLONIZATION, THE EMERGENCE OF INTERNATIONAL HUMAN RIGHTS, AND THE CURRENT DE FACTO INEQUALITY OF INTERNATIONAL LAW

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*An analysis of the process of decolonization in the Cold War decades after World War II offers two fundamental insights about the undercurrents of modern international law. Firstly, as developing 'Third World' states acquired formal sovereignty, the international legal system of European origins had truly become universal. Secondly, through this acquisition of statehood, the international community no longer solely consisted of the traditional club of European states. This article analyzes the ramifications of developing states subscribing to the Euro-centric international legal system. In light of its foundations in exclusively catering to European interests, it is contemplated whether modern international law can adequately accommodate the desires and needs of the new non-European states, who collectively represent over half of the global community. The analysis focuses on the emergence of international human rights to find that formal sovereign equality of developing states has not translated into actual power equality on the international plane. The article endeavors to provide a foundation for future scholarship by proposing a search for an approach that first and foremost values functional harmony and compatibility.*

Following the period of the Cold War deadlock that mired the operational capacity of the United Nations, the end of the political strife and ideological conflict re-enabled the political consensus necessary for the United Nations Security Council (UNSC) to resume its mandates. However, significant formative changes had taken place within the global landscape during Cold War decades. In particular, the process of decolonization and the internationalization of the scope of human rights had irreversibly altered the dynamics of international reality.

The wave of decolonization following WWII and the emergence of international human rights provide fascinating areas of detailed study in their own right. Their rapid membership into the international community has indisputably changed and in many ways made this community of states truly 'international.' Prior to this process, the international community primarily consisted of European powers. The international legal system was therefore developed to regulate the interstitial relations between these European sovereigns. Rather than radically constructing their own system of international reality, the new states elected to join the existing one by acquiring the necessary concepts of sovereignty and statehood. Decolonization therefore refers to the complex and often painful process in which colonies gain independence from their withdrawing colonial powers.<sup>1</sup> This shift in the constituency of the global community exposed with increasing clarity the underlying tensions between the dominant hegemonic bloc and the rest of the community. In other words, it has brought to light questions of why a clear imbalance of power exists between equal sovereign entities on the international plane and how this has manifested in practice.

During the interwar period of the 1920s and 1930s, the key principle of self-determination of peoples, primarily developed in reference to the people in Eastern Europe, gained increasing traction in international rhetoric.<sup>2</sup> This movement was largely credited to American President Woodrow Wilson, who shortly after his famous Fourteen Points, claimed that, "National aspirations must be respected; people may now be dominated and governed only by their own consent. Self-determination is not a mere phrase; it is an imperative principle of action..."<sup>3</sup> The essence of this sentiment was recapitulated in the Atlantic Charter of 1941, protecting "...the right of all peoples to choose the form of government under which they will live; and [seeing] sovereign rights and self-government restored to those who have been forcibly deprived of them."<sup>4</sup> This principle was canonized in the post-war international consciousness through its enshrinement in the UN

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- 1 "Inquiring Minds: Studying Decolonization," The Library of Congress Blog, <http://blogs.loc.gov/loc/2013/07/inquiring-minds-studying-decolonization/> (accessed September 1, 2015).
  - 2 Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2004), 196.
  - 3 "February 11, 1918: President Wilson's Address to Congress, Analyzing German and Austrian Peace Utterances," Great War Period Document Archive, <http://www.gwpda.org/1918/wilpeace.html> (accessed September 2, 2015).
  - 4 Atlantic Charter, August 14 1941, Clause 3, Courtesy of the Illinois Digital Archives, <http://find.galegroup.com/gic/infomark.do?&idigest=fb720fd31d9036c1ed2d1f3a0500fcc2&type=retrieve&tabID=T0011&prodId=GIC&docId=CX2687500060&source=gale&userGroupName=itsbtrial&versi on=1.0> (accessed September 1, 2015).

Charter, as well as the two International Human Rights Covenants of 1966.<sup>5</sup> In a pivotal moment in 1960, the United Nations General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples.<sup>6</sup> It formally recognized the right to self-determination, and called for all powers to be transferred, without any conditions or reservations, to the non-self-governing territories, as well as all other territories which have not yet attained independence. It effectively concluded the League of Nations system of mandates, which had been absorbed by the UN under its trusteeship program.<sup>7</sup> Throughout this process, the composition of the international community ballooned to roughly 130 states by the end of 1960s, almost half of which were newly independent states.<sup>8</sup>

During the Cold War paradigm, the international community had generally been fractured into the West, Soviet, and the new “Third World.”<sup>9</sup> Although there were two polar ideologies, as well as the increasing constituency of the Third World, it became increasingly clear that the international system was constructed strongly in favor of the Western bloc. They retained the majority of the permanent positions in the UNSC, and through concepts such as weighted voting, controlled the international financial institutions.<sup>10</sup> This concentration of privilege was reinforced by the underlying military and political strength of the West. Unlike the existing blocs of the West and the Soviet, many newly constituted states in Africa and Asia did not subscribe to a common overarching political ideology or cultural identity; they encompassed a wide political spectrum, with diverse cultural and economic circumstances. The main uniting commonality amongst these diverse states was their emotive perception towards the international system. As they were under colonial rule during the formative stages of international law, they were not able to participate in shaping it.<sup>11</sup> Rather than rejecting the operation of international law on these grounds, however, these states openly adopted

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5 UN Charter, Article 1(2); International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966 entry into force January 3, 1976, Article 1; International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of December 16, 1966 entry into force March 23, 1976, Article 1.

6 UN Doc. A/RES/1514(XV) December 14 1960.

7 UN Doc. A/RES/1514(XV) December 14 1960, Clause 5; The Covenant of the League of Nations, Article 22; see UN Charter, Chapter XII.

8 Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (New York: Routledge, 1997), 28.

9 French demographer Alfred Sauvy is credited with having coined the term ‘Third World’ in the 14 August 1952 edition of the magazine *L'Observateur*, where he drew a comparison between the third world countries and the third estate of the French Revolution.

10 Malanczuk, *Akehurst's*, 28.

11 Malanczuk, *Akehurst's*, 29.

it as the default medium of inter-state interaction. In doing so, international law, which had originated in Europe to benefit European states, was finally deemed to have become universal.<sup>12</sup> Instead of constructing a radically new form of international reality, the priority of these new states was to expose and change the laws and trends in international law that were inherently and intentionally disadvantageous to the new states.

The new states, who had finally acquired sovereignty and therefore formal equal standing on the international plane, had been optimistic about autonomy over their political and economic affairs. Further, they had looked forward to engaging in the international system as equal participants by either engaging in diplomacy to change old doctrines and principles that were unfairly in favor of the colonial powers or by making use of the existing framework to actualize their interests. These states adapted to the international landscape, and formed their own blocs to offset the existing ones of the West and the Soviets. The Non-Aligned Movement and the Group of 77, in particular, were created to improve their collective bargaining positions and pursue shared economic goals. The doctrine of permanent sovereignty over natural resources is an example of how these developing states attempted to utilize the rules of international law to limit the colonialist past and reaffirm their sovereign claim.<sup>13</sup> However, this particular example proved to be representative of the underlying orientation of the international system. In this case, the Western powers equally employed international law to curb these attempts at equality and autonomy; they claimed that the new states were acting in breach of classical principles of international law.<sup>14</sup> The new sovereigns claimed their exclusive right to the resources within their territory, and wanted to either modify or even annul existing legal arrangements that had been made previously by foreign investors.<sup>15</sup> The Western powers resisted these assertions of sovereignty and claimed that the new sovereigns were bound by these old contracts under the principle of *pacta sunt servanda*.<sup>16</sup>

These tensions between the Western states and the increasing number of frustrated Third World states had set the contest when it came to laws relating to self-determination, human rights, state responsibility, state succession, acquired rights, sources doctrine and the international law of

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12 Anghie, *Imperialism*, 196.

13 UNGA, Permanent Sovereignty over Natural Resources, December 17, 1973, UN Doc. A/RES/3171.

14 Anghie, *Imperialism*, 198.

15 N. Schrijver, *Sovereignty over Natural Resources* (Cambridge: Cambridge University Press 1997) 1

16 UN, Vienna Convention on the Law of Treaties, May 23, 1969, United Nations, Treaty Series, vol. 1155, 331, Article 26.

development.<sup>17</sup> Through these encounters, it became increasingly clear that although developing states had acquired the notion of sovereignty, it did not equate to real power on the international plane.

The pivotal question was whether international law, originally designed to serve the club of European states, could now accommodate the needs, desires, and priorities of the new global membership. As the traditionally unfettered right to initiate war was prohibited by the post-war international order as set by the UN, the contest between the powerful and the subjugated could not legitimately be resolved by acts of physical and military coercion. Rather, change would have to come internally through diplomatic and democratic channels within the community of states.

### **The International Human Rights Regime**

Concurrently and related to the process of decolonization was the increasing recognition of human rights on the international plane. The post-war construction of the UN system fundamentally altered the concept of international law from being an interstitial network between states to a supranational forum of existence. As catastrophic human tragedy had provided the catalyst for its creation, the UN system spearheaded the codified protection of individuals within the international plane. Human rights principles were enshrined in the Universal Declaration of Human Rights in 1948, which provided the basis for subsequent global and regional instruments. In light of the new capability to address individuals globally without the necessary nexus to a state, developments in the international protection of refugees, as well as in international humanitarian law in armed conflict, were able to flourish. The essence of the post-war movement at the time was to proclaim that individuals worldwide intrinsically possessed certain inalienable and legally enforceable rights, which offered them protection from the state.<sup>18</sup> These rights were not seen as rising from the relationship between the individual and the state, but rather from the virtue of merely being human.

The Allies' experience of protecting German Jewish and other minorities during WWII, in particular, facilitated in severing the traditional notion that human rights arose from an individual's membership in a society and therefore were strictly internal matters for each state. The International Military Tribunal in Nuremberg was forced to set aside sovereign safeguards of non-interference in domestic affairs. By modifying the definition of crimes

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<sup>17</sup> Anghie, *Imperialism*, 198.

<sup>18</sup> Malanczuk, *Akehurst's*, 209.

against humanity to include prohibited acts undertaken against any civilian population, it was able to hold the German state leadership accountable. Therefore, the gross failure of the German state to protect its population led to the Allies to intervene and deliver human rights that did not stem from citizenship or any other traditional grounds.

The growing discourse of international human rights is layered by at least three generations of civil and social rights. The first two generations, encompassing individual freedoms from state interference and social rights to claim welfare benefits from the state, respectively, are recognized as the 'traditional' rights. The more contentious third generation rights are said to include, *inter alia*, individual rights to peace, common heritage of mankind principle, right to development, right of minorities, and right to a clean environment.<sup>19</sup> Enforcement of these rights internationally remains significantly more difficult than legislating and codifying. Although the new supranational forum of the United Nations was able to aggregate and articulate the international human rights framework, its design based on a community of equal consenting sovereigns could not employ intrinsic measures to enforce compliance and sanction violations. Furthermore, though the rhetoric of the universality of human rights could be agreed upon, it was increasingly debatable as to which specific rights and principles were in fact deemed to be universal. Attempts at reaching consensus were made difficult, as different societies inherently projected their own priorities and perspectives. Western capitalist societies generally emphasized individual civil and political freedoms against state interference and governmental abuse of power. In contrast, socialist societies from the Cold War and onwards focused less on individual claims and more on collective rights that were to be guaranteed by the state, such as economic rights. In contrast again, developing states had priorities firmly fixated on the alleviation of poverty and the development of the economy. It was rationally articulated that 'fundamental' freedoms, such as the freedom of speech, could only come after having enough food to eat.<sup>20</sup>

Creating a general human rights framework to encompass all states was desirable in concept, but consensus on the specific protections simply could not be found. Consensus was paramount, as such a framework would by design violate the Westphalian safeguard of non-interference in internal affairs by external states. The discussions fell firmly within the contest between the developing states and the Western powers. Urgency and the

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19 Ibid., 210.

20 Ibid.

undeniable universality of the concept of human rights protection was repeatedly emphasized, coursing through legal moralism. It was supported by the underlying presupposition that there existed a singular and unified corpus of human rights that were to be enshrined. In reality, it either ignored or failed to consider the compatibility of the perspectives of other cultures representing significant portions of the international community. Examples of the views of Islamic and East Asian societies in particular provide interesting insights. These societies have long possessed their own internal views on matters such as the freedom of religion, rights of women, concepts of social cohesion, and the social role of the individual. It was argued by Asian scholars and politicians that human rights of 'Western origins' focused excessively on individualism and decadence.<sup>21</sup> The concept of 'Asian values' were proposed as better representing their local communities based on social harmony of the group rather than conflict of individuals. In a similar vein, Islamic schools of thought resented what they viewed as Western pressures to force liberal transformation of their culture.<sup>22</sup> These societies, having had histories outside European secularization and the Age of Enlightenment, have naturally upheld different values and priorities as appropriate for their locality. Diverse examples over various cultures exist to illustrate the variations in how a particular community has prioritized their internal values, as appropriate for their circumstances. For example, Asian states in particular have elected to employ the concept of duties over rights, as they are believed to be less adversarial, while encouraging virtue.<sup>23</sup> African cultures similarly focused on the overall wellbeing of the community and prioritized respect, restraint, responsibility, and reciprocity over individual rights.<sup>24</sup> What becomes clear from the above snapshot of heterogeneous values is the increasingly difficult task of distilling a universal human rights regime based on consent. However, these relativist positions must necessarily be counterbalanced by the Western view that these cultural contexts are mere façades for facilitating authoritarian rule and blatant violations of established human rights.

The tension inevitably mounted as the rhetorical universality of human rights justified the dissemination of principles that were almost exclusively representative of 'Western' ideals. An extreme example was the right to a paid

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21 Daniel A. Bell, "The East Asian Challenge to Human Rights: Reflections on an East West Dialogue," *Human Rights Quarterly* 3 (1996): 641-67.

22 Y. Ghai in W. Twining, *Human Rights, Southern Voices* (Cambridge: Cambridge University Press, 2009), 111.

23 Ibid.

24 Shashi Tharoor, "Are Human Rights Universal?" World Policy Institute, [www.worldpolicy.org/tharoor.html](http://www.worldpolicy.org/tharoor.html) (accessed September 1, 2015).

vacation; the degree of incompatibility to their own culture could only bemuse the developing states. Under normal treaty rules, only signatory states could be held bound by these 'Western' human rights instruments, which could have perhaps alleviated some pressure by clearly demarcating its scope. However, it was further instigated that non-consenting states still incurred international human rights obligations under two avenues. By ratifying the UN Charter, they had implicitly given consent to the ramifications of articles 55(c) and 56, which laid out the foundations for general human rights obligations. The subsequent human rights instruments were perceived as merely elaborating this general obligation, rather than creating new ones.<sup>25</sup> In addition, customary international law was argued to have developed in parallel to specific human rights, and therefore endowed international entities the jurisdiction to monitor, encourage, and even enforce these rights within non-consenting states.<sup>26</sup> It is not difficult to understand from these legal acrobatics why many states felt that the philanthropic nature of human rights was being subverted by dominant states as a way to enforce cultural imperialism or neocolonialism through non-violent means. Traditional requirements such as state consent and democratic legitimacy became a mere illusion, as other tools of international law provided effective circumvention. Together with democracy, human rights was becoming a benchmark standard for Western states to assess the 'performance' of their sovereign equals in the international community.<sup>27</sup> Further exacerbating the discrepancy between formal equality through acquisition of sovereignty and 'real' equality, Western states had undertaken forms of interventions under humanitarian grounds, with varying degrees of legality, to forcibly install democracy in what they concluded were 'illegitimate regimes.'<sup>28</sup> It was supported by the political belief that there was a direct correlation between democratic governance and effective guarantee of human rights. These highly controversial expeditions of powerful states had re-introduced physical coercion and violence within interstate relations, albeit under legitimate and legalized guise. It was said to be for the betterment of humankind, by imposing transformation of non-conforming states in line with the Western form.

In his analysis of the peculiar trajectory of international human rights

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25 M. Byers, *Custom, Power, and the Power of Rules* (Cambridge: Cambridge University Press, 2004), 43.

26 *Ibid.*

27 Francis Deng, *Human Rights, Southern Voices*, ed. W. Twining, (Cambridge: Cambridge University Press, 2009), 36.

28 Malanczuk, *Akehurst's*, 31.

after WWII, Samuel Moyn puts forth the proposition that human rights was not a foundational truth latently waiting to be discovered, but was rather forged through opportune circumstances.<sup>29</sup> In doing so, he disproves idyllic notions that an established core content of human rights had existed in parallel to human society, ranging back to ancient Greece, and had simply awaited the recognition and legislation. His narrative distinguishes the traditional conceptions of human rights from the modern expressions; the central dividing factor is that modern forms do not require state involvement, as either the source of human rights or its regulator and enforcer. The momentum of human rights and its current successes often conceal its roots and developmental history, but Moyn identifies a curious phenomenon that human rights did not thrive immediately after WWII but rather decades later. This is made more peculiar by the fact that the underlying rhetoric of human rights decades later based itself on the atrocities of WWII. He explains this phenomenon through the usage of utopias; the body of human rights was able to offer an alternative utopia than the ones offered by the global superpowers during the Cold War stalemate.<sup>30</sup> It capitalized on the disillusionment and disappointment of the masses from the waning appeal of Western capitalism and Soviet socialism. It projected an apolitical reality that did not require subscription to these ideologies. In doing so, it provided a common and neutral framework that could conjoin global communities across language, culture, and state boundaries. Since the inceptive Universal Declaration of Human Rights in 1948, the human rights movement had been associated with movements emphasizing favorable agendas of Western Christianity, anti-communism, anti-colonialism, and anti-totalitarianism. Through his narrative, Moyn attempts to clarify his understanding of the 'actual' story of human rights. He asserts that modern human rights, having severed the prerequisite nexus to a sovereign state, now exist in international law to protect individuals as part of a 'general international regime.'<sup>31</sup> The post-Cold war era is viewed as the 'golden age' of the discipline, and the human rights trajectory continues to rise as a morally attractive mechanism for social change.<sup>32</sup>

Moyn's account arrives at introducing the human rights framework as an established system on the international plane, without necessarily detailing how this coexists with Westphalian principles, and more pointedly, how it

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29 Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge; Harvard University Press, 2012), Prologue.

30 *Ibid.*, 121-122.

31 *Ibid.*, 176.

32 *Ibid.*, 179.

will shape the future international legal order based around sovereignty. While it is true that this is not necessarily in the scope of his work, it is of importance to the current scholarship on ascertaining what implications the human rights framework may have on the international community of equal sovereigns. This is increasingly pertinent given the underlying contest between the dominant and developing states. This project proposes an alternate understanding of the development of human rights. Rather than focusing on the concept of utopias and pseudo-escapism, it focuses on the availability of forums as a marker for human rights developments. Prior to WWI, the supranational forum did not exist in the modern sense. The highest level of legal reality then was the national state forum, as international law merely governed the relations within the constellation of states suspended in an anarchic vacuum. Therefore, to contemplate human rights in a context separate from the state was unimaginable. In the re-construction of the international framework after WWII, with the advent of the United Nations, a new forum of legal existence transformed the vacuum in between and above the sovereigns. This supranational forum provided the basis for the rhetorical and positivist projection of human rights as an identifiable and globally applicable framework. By being adopted and codified at the supranational level, it was able to circumvent the concept of sovereignty and focus on individuals. Westphalian boundaries were further eroded by the supranational commitment to protect individuals globally irrespective of sovereign boundaries. However, although it was able to construct the human rights framework, either by direct consent of states or through indirect legal acrobatics, the supranational forum could not introduce direct measures for compliance, as it ultimately lacked unilateral coercive capabilities.

This discrepancy between the universal call for human rights and the technical inability of enforcement merely exposes the tensions between international legal morality and the limitation of the Westphalian foundations of international law. It is not in itself fatal to the current human rights momentum, as consenting states can collaborate to circumvent the legal obstacles. However, when it is further articulated that the specific content of these human rights being called upon engages only the conscience and desires of the dominant Western powers, it necessarily changes the equation. The tension is shifted from a conscionable international society aspiring for more yet unable to escape the archaic trappings of the old system, to a legalized hegemony creating and enforcing arbitrary international principles to aggravate non-conforming states who have not had the same historical developments as they have had. The latter perspective becomes even more complex when military interventions are often 'legalized' by the Euro-centric

international legal system to instate a more Western friendly government in the non-conforming states. Even with this articulation, it is far from being conclusive; it cannot satisfactorily assuage the Western suspicion that these non-conforming violators of human rights are merely justifying their crimes through their culture, religion, and heritage. The central problem with relativism is that it inherently makes a plea for any deviation from the set standard, some of which may include violations. Its counterpart, universalism, suffers from an inherent arrogance in its exclusive claim to applicability across all context and circumstances. Neither design is perfect, as selectivity and arbitrary application in both regimes often suggest underlying political agendas and extralegal sensitivities.

There cannot be a simple answer that can satisfy both factions, irrespective of which global reality one subscribes to. However, there can be an attempt to find a functional answer, one that attempts to integrate the *status quo* without passing judgement as to whether it is rightful or wrongful. Such a functional answer would perhaps in time facilitate further exchanges and cross-fertilization of viewpoints. Gradually, it is hoped that compatible views could one day be found to usher in the utopia of human rights to which everyone has agreed. One possible articulation of a functional approach could utilize the strengths of legal pluralism in international law. Perhaps a balance can be struck between universalism and relativism by collectively agreeing to uphold the central tenets of human rights protections without necessarily dictating its exact application in each diverse circumstance. This would encourage the developing states to adopt the core values of human rights, albeit being probably a narrower body than the existing regime, and apply it to their communities. It is imperative that these protections are absorbed by each state and its applications remain consistent with the local culture and heritage of the community. Although in its inceptive stage, a possible solution along this articulation allows Western states to extend the coverage of human rights law while permitting the contextualization of its implementation to have real effect on the subject society.

The power struggle is an inevitable condition of international existence, whether between communities, states, or blocs. Dominant parties will strive to maintain and strengthen their position, while weaker parties will seek to overthrow the former and seek to improve their own standing. A reoccurring theme seems to be that the Third World has not had the opportunities and experiences that the West has had. It is proposed that at the current junction, even if these states factually wanted to implement the full spectrum of human rights, they would not be effectively supported by the existing infrastructures, as these states have designed their societies to

realize other priorities. Though less than perfect, the key seems to be finding a compromise that may facilitate functionality and compatibility in hopes that such tentative collaboration may one day amount to cross-cultural understanding and faith in one humankind. **Y**

# ON CHINA'S NEW ERA ANTI-TERRORISM GOVERNANCE IN THE MIDDLE EAST

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*Safeguarding core national interests, building China's image and the effective implementation of the "One Belt and One Road" strategy are the main initiatives in China's recent participation in anti-terrorism governance in the Middle East. China has not attached much clear strategic significance to its efforts, but it has been engaged in anti-terrorism management in the Middle East through the use of various tactics, with an advantage in terms of morality, image and flexibility. However, China's efforts are more or less restricted by other factors such as its prestige and determination, its limited influence in the Middle East, and relevant cooperation mechanisms. In its future efforts, China should pass on its experience to other participants of global anti-terrorism governance, while maintaining its strengths. In addition, China needs to pursue creative participation to increase acceptance of governance with Chinese characteristics by the international community.*

Terrorism in the Middle East<sup>1</sup> is one of the toughest issues for countries around the world, and has become increasingly difficult to solve because of the rise and expansion of the Islamic State of Iraq and al Shams (ISIS). China, as a permanent member state of the UN Security Council, has long garnered global attention for its stand and actions taken against terrorism. It is undeniable that China has already actively introduced herself into various anti-terrorism campaigns, including building the Shanghai Cooperation Organization to counter Sherqiy Türkistan or Chinese Turkistan Separatism.

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1 Note: The concept of "the Middle East" in this paper refers to the "Greater Middle East," including 22 Arab countries, Israel, Iran, Turkey, Pakistan, Cyprus and Afghanistan. See "Greater Middle East" as defined in V. Perthes, "America's 'Greater Middle East' and Europe: Key Issues for Dialogue," *Middle East Policy* XI, no.3 (2014): 85-97.

The discussion of *whether* China should take part in global anti-terrorism governance therefore should be one of *how* China should take part in the global anti-terrorism governance.

Anti-terrorism governance as part of global governance mainly includes three aspects: anti-terrorism policy, anti-terrorism mechanism-providing and restraining factors from other actors in the implementation of anti-terrorism policy and mechanism-providing.<sup>2</sup> Due to diverse understandings of China's position in the international community and the policies and actions taken by China, different and even contradictory views on China's current participation in anti-terrorism governance in the Middle East are presented in academia. One scholar says China should be more involved in anti-terrorism governance by directly dispatching troops to the Middle East. He listed five advantages for taking such an action, namely, safeguarding the national security, gaining combat experience, extending China's influence in that area, improving its image and enhancing the Sino-US relationship.<sup>3</sup> Another group insists that China should learn from America's lesson in the Middle East by staying away from getting involved with terrorist organizations like ISIS.<sup>4</sup> There also exists a third opinion, in which China may offer spiritual and economic support to global anti-terrorism cooperation, while staying outside of the anti-terrorism military alliance led by America, since China always follows a non-alliance principle.<sup>5</sup>

The divergence of opinions demonstrates a multi-dimensional aspect to the populace's understandings of China's role anti-terrorism governance in the Middle East. Those opinions are shaped both by the current policies and corresponding actions of the Chinese government aside from the influence of the scholars' own career ambitions, preferences and values. Therefore, in order to achieve a clearer view of how China should be part of anti-terrorism governance in the Middle East, we need to conduct a deeper study on the motivations and the actions of the Chinese government in anti-terrorism governance, along with the obstacles it has to face.

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2 Chen Guangsheng, *Towards Good Governance* (Hang Zhou: Zhe Jiang University Press, 2007), 124-125.

3 Dingding Chen, "China Should Send Troops to Fight ISIL," *The Diplomat*, September 12, 2014, <http://thediplomat.com/2014/09/china-should-send-troops-to-fight-isis/> (accessed November 29, 2015).

4 Kristina Fernandez, "Why China Should Not Get Involved in ISIS Fight?," September 12, 2014, <http://www.chinatopix.com/articles/9932/20140911/why-china-should-not-get-involved-in-isis-fight.htm>; Mei (accessed August 26, 2015); Xinyu, "It is not Benefited for China to Openly Attack IS", *Global Times*, September 10, 2014.

5 "Should China Attack IS OR Not?," <http://v.ifeng.com/mil/arms/201411/0199a79f-d0fd-440e-9329-c70ed3846836.shtml> (accessed August 26, 2015).

## Motivations

First of all, China's core national interests are menaced and impaired by terrorism. This is the ultimate reason and the most direct one pushing China to pursue anti-terrorism governance in the Middle East. It is pointed out in the white paper *On China's Peaceful Development* that the core interests of China include national sovereignty, national security, territorial integrity, national unity, the stability of state institutions stipulated by the national constitution and a stable society which provides a ground for sustainable economic and social development.<sup>6</sup> The threats from terrorism to these core interests can be more or less perceived in the following three aspects.

The spread of Islam fundamentalism defames the Chinese government. Since the 1990s, extreme Islamic thought has been propagated throughout China's Xinjiang region, hampering the implementation of government policies and menacing the political and economic security in the area. At present, that extreme Islamic thought is spreading quickly through Xinjiang via the Internet with videos as the most popular tool, a fact which gravely disturbs the public. In the videos, many speakers are renowned Imams from Egypt, Saudi Arabia and Turkey with wide influence among the Islamists. The Han people and Muslim women without veils are often the targets of street attacks.<sup>7</sup> Such violence has caused hundreds of deaths and prompted investors to flee out of this region. The local economy is deteriorating. Local security thus is greatly threatened and economic development is largely hindered.

Quite a few Islamic extremist groups in the Middle East have openly supported the violent terrorist attacks and events that aim to split the country apart and defame the central government. For example, after the July 5 incident,<sup>8</sup> Abu Yahya al-Libi, a senior leader of Al-Qaeda's North Africa branch, accused China of "cruelly oppressing Muslims"<sup>9</sup> and of "plundering their wealth,"<sup>10</sup> and he even threatened to take revenge by attacking the 50 thousand Chinese working in Algeria, all the Chinese living in Southwest

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6 *White Paper on China's Peaceful Development*, China's Information Office of State Council, September 6, 2011, <http://politics.people.com.cn/GB/1026/15598619.html> (accessed August 26, 2015).

7 Wu Ruru and Gao Wenjun, "Investigation on 'Holy War' Videos on the Internet," *Phoenix Weekly* 15 (2014): 29-35.

8 Note: "The July 5 Incident" refers to the terrorist attack that occurred in Urumqi, Xinjiang, China on July 5, 2009. This attack caused 197 deaths and left 1721 injured.

9 Shirley A. Kan, *U.S.-China Counterterrorism Cooperation: Issues for U.S. Policy*, CRS for Congress, May 7, 2010, <http://fas.org/sgp/crs/terror/RL33001.pdf> (accessed November 29, 2015).

10 Ishaan Tharoor, "Al-Qaeda Leader: China, Enemy to Muslim World," *Time*, October 9, 2009, <http://content.time.com/time/world/article/0,8599,1929388,00.html> 9 (accessed September 1, 2015).

Africa, as well as the projects invested in by Chinese people.<sup>11</sup> Evidence shows that, since 2013, fifteen terrorist attacks in China had close connection with terrorists in the Middle East, including the terrorist attack in Kunming, the train station explosion in Urumqi, the Guangzhou railway-station blood rampage, and more. These attacks were all planned and carried out under the direction of overseas Islamic Jihadist groups.<sup>12</sup> Currently, ISIS and Al-Qaeda have openly expressed their stand against the Chinese government. In July 2014, ISIS declared China as its attack target and announced that the Xinjiang area was part of its territory, while Al-Qaeda has long held that the Xinjiang Uyghur Autonomous Region is an independent region wrongfully occupied by China. It declared war against China in October 2014.<sup>13</sup>

Terrorism in the Middle East poses a severe threat to China's overseas interests in that area, which negatively affects China's economic and social development. China's overseas interests in the Middle East include personnel security, economic investment and energy supply, among which energy supply in the Middle East is closely tied to China's core national interests, since effective energy supply is the foundation for long-term economic and social development. For the moment, the wide spread of terrorism in Iraq has started to produce a negative effect on China's oil imports and related investments. Although the effect has not yet seriously influenced China's oil imports, there will be a severe impact if the unrest in Iraq spreads to the whole Gulf area.

Secondly, ensuring the implementation of "the Silk Road Economic Belt and the 21<sup>st</sup> Century Maritime Silk Road" initiative ("One Belt and One Road"<sup>14</sup>) is another one of China's motivations for participating in anti-terrorism governance in the Middle East. In order to actualize the "One Belt and One Road" initiative raised by Xi Jinping, President of China, a secured environment is one of the prerequisites. However, in China, the East Turkistan separatists have close contact with the terrorists in the Middle East and pose a grave threat to the social stability of West China. If the

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11 Kan, *U.S.-China Counterterrorism Cooperation: Issues for U.S. Policy*.

12 Jacob Zenn, "Beijing, Kuming, Urumqi, Guangzhou: The Changing Landscape of Anti-Chinese Jihadists," Jameston Foundation, *China Brief* 47 (2014) (accessed July 12, 2015).

13 Zachary Keck, "Al-Qaeda Declares War on China, Too," *The Diplomat*, October 22, 2014, <http://thediplomat.com/2014/10/Al-Qaeda-declares-war-on-china-too/> (accessed September 19, 2015).

14 Note: "One Belt and One Road" is a development strategy started by the Chinese government in 2013. It refers to the New Silk Road Economic Belt, which will link China with Europe through Central and Western Asia, and the 21st Century Maritime Silk Road, which will connect China with Southeast Asian countries, Africa and Europe. Neither the belt nor the road follows any clear line geographically speaking; they serve more as a roadmap for how China wants to further integrate itself into the world economy and strengthen its influence in these regions. For further details: "One Belt and One Road," Xinhua Finance Agency, <http://en.xinhuanet.com/html/OBAOR/> (accessed October 25, 2015).

investment environment were to be destroyed in Xinjiang, the strategic pivot of the blueprint, the trade between China and Central Asian regions, would be hindered and, accordingly, the economic development of West China would be impeded. Meanwhile, outside of China, the terrorist groups in Pakistan, Afghanistan, and Kazakhstan have an intimate relationship with the terrorists in the Middle East. Thus, these countries run a high risk of being turned into a second battlefield by ISIS, which, if this were to become reality, would have a gravely negative impact on the implementation of the “One Belt and One Road” initiative.<sup>15</sup> Therefore, China’s participation in anti-terrorism governance in the Middle East is essential.

Thirdly, building up China’s image as a country with a sense of international responsibility is one of the driving forces for China to take part in anti-terrorism governance in the Middle East. It is stated in the *Report to the Eighteenth National Congress of the Communist Party of China* that China will “get more actively involved in international affairs, play its due role of a major responsible country, and work jointly with other countries to meet global challenges.”<sup>16</sup> The whole international community is beset by terrorism in the Middle East, and China is no exception. A defined stance on the terrorism issue is one of the major criteria for a responsible country becoming committed to common issues of humanity. At the moment, China plays an important role in the world arena, but China’s peaceful development, national rejuvenation, and the realization of the Chinese dream needs support and resources both at home and abroad, and a proper image can facilitate access to such resources. Hence, China’s active participation in anti-terrorism governance in the Middle East is, on the one hand, an attempt to fulfill its duty as a permanent member state of the UN Security Council and, on the other hand, an opportunity to build a good image.

## Strategy and Tactics

China’s participation in anti-terrorism governance in the Middle East is an essential part of China’s foreign policy. Since the end of the Cold War, China has adhered to a foreign policy of safeguarding world peace and security in order to create a sound external environment for its national interests, which also serves as a guideline for China’s anti-terrorism governance in the Middle East. Therefore, the policies and tactics adopted by the Chinese government

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15 Charles Lister, “Profiling the Islamic State,” Analysis Paper for Brookings Doha Center, no. 13, November 2014, (accessed November 29, 2015)

16 Hu Jintao, *Report to the Eighteenth National Congress of the Communist Party of China* (Beijing, People’s Press, 2012), 38.

in its anti-terrorism governance have all represented this strategic stance, despite the lack of a clear strategy statement.

In terms of policy and principle, the Chinese government has held a clear-cut stance and has laid out unambiguous policies, which is quite different from China's neutral standing in the past. The policies and principles can be summarized as follows: 1) China is against terrorism of all forms; 2) China will spare no effort to eradicate terrorism from its roots; 3) China opposes attaching terrorism to any specific ethnic group or religion and is against the "double standards" in the anti-terrorism campaign; 4) China insists that the UN should play a leading role in the international anti-terrorism campaign; and 5) the Chinese government promotes a new conception of security and international cooperation.<sup>17</sup> Under the guidance of the above principles and policies, China has adopted the following set of tactics.

The first tactic is to join the formal international multilateral system in the UN framework. China has mainly taken two paths to the anti-terrorism mechanism with a view to fitting anti-terrorism governance in the Middle East into a global anti-terrorism mechanism. One is to join the UN anti-terrorism convention, abiding by the principle of international laws. Until the end of 2014, China has approved and implemented almost all of the items from the 13 international anti-terrorism conventions issued by the United Nations. At the moment, China is advancing communication on the UN *Comprehensive Convention on International Terrorism (Draft)*.

The other approach is to demonstrate China's anti-terrorism stance and policy by supporting the UN Security Council's anti-terrorism resolutions. Since 2008, China has voted for every anti-terrorism draft decision proposed by the UN Security Council. Among those decisions, some are repetitions of general principles and their implementation, while others lay down more concrete measures; some may have set clear objects, while others may be a demonstration of attitude and stance. To the UN, these decisions not only enrich the content and connotation of anti-terrorism principles and policies, but enhance the authority and prestige of the UN. Meanwhile, to China, this is a display of its long-held stance and principles that form the legal grounds for its participation in the international anti-terrorism campaign today.

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17 Zhu Weilie, "Terrorism in the Middle East, Global Governance and China's Anti-terrorism Policy," *Arab World Studies* 28, no. 2 (2011): 4-6.

*Table 1 (by the authors): China's Voting Results on the UN Security Council's Terrorism Resolutions (2008-2015)*

Resolution No.	Target(s) of Resolutions	Resolution Time	Vote
1805	Terrorism	March 20, 2008	Yes
1822	Al-Qaeda, Taliban, Bin Laden	June 30, 2008	Yes
1904	Al-Qaeda, Taliban	December 17, 2009	Yes
1988	International Terrorism, Al-Qaeda, Taliban, Illegitimate Armed Groups	June 17, 2011	Yes
1989	Al-Qaeda, etc.	June 17, 2011	Yes
2083	Al-Qaeda	December 17, 2012	Yes
2129	Terrorism	December 17, 2013	Yes
2133	Al-Qaeda, etc.	January 27, 2014	Yes
2161	Terrorism	June 17, 2014	Yes
2170	ISIS, Al-Qaeda	August 15, 2014	Yes
2178	Terrorism, preventing foreign fighters from entering Iraq and Kuwait to support ISIS	September 24, 2014	Yes
2195	Terrorism	December 19, 2014	Yes
2199	ISIS, Al-Nusra and all those attached to Al-Qaeda and other groups	February 12, 2015	Yes

Source: UN Security Council Documents March 2008 to August 2013, <http://www.un.org/zh/sc/documents/volumes/>; UN Security Council Scripts September 2013 to February 2015, <http://www.un.org/zh/sc/meetings/> (accessed August 10, 2015).

The second tactic is to participate in the process of anti-terrorism governance through the construction of some other bilateral or multilateral formal/informal mechanisms. One approach is to construct formal bilateral or multilateral mechanisms with some Middle Eastern countries with a view to including anti-terrorism governance as an essential part of the effort to

promote cooperation (refer to Table 3). By the end of September 2015, many countries in the region have upgraded their common multilateral or bilateral cooperative relations with China to a strategic cooperative partnership, including the Sino-Arab Strategic Cooperative Partnership, the Sino-Saudi Arabia Strategic Friendly Cooperative Partnership, the Sino-Egypt Strategic Friendly Cooperative Partnership, the Sino-Turkey Strategic Friendly Cooperative Partnership, the Sino-UAE Strategic Cooperative Partnership and the Sino-Pakistan All-weather Strategic Cooperative Partnership. Among all the upgraded or newly built partnerships, China has prescribed the anti-terrorism campaign as an important part of national cooperation, and concrete objects and targets are clearly stated in the Sino-Egyptian and Sino-Pakistan partnerships.

*Table 2 (by the authors): Strategic Cooperation Relations between China and Middle East states*

No.	Title	Time of Establishment	Concepts of Anti-Terrorism and Security Cooperation
1	China-Arab Strategic Partnership	May 14, 2010	Opposes terrorism, separatism and extremism in all its manifestations; opposes linkage of terrorism with specific nations, religions
2	China-Turkey Strategic Partnership	October 8, 2010	Maintain regional security and peace, including opposing terrorism, separatism and extremism in all its manifestations
3	China-Saudi Arabia Strategic Partnership for Long-term Friendship	January 15, 2012	Firmly oppose terrorism in all its manifestations, which are threatening peace and stability in the world. Suppression should be approached via international cooperation without consideration of its origins
4	China-United Arab Emirates Strategic Partnership	January 17, 2012	Strengthen each other's cooperation & exchange in law enforcement security and anti-terrorism, combating commitment of crimes
5	China-Afghanistan Strategic Partnership of Long-term Friendship	June 8, 2012	Both states firmly oppose terrorism, separatism and extremism in all its manifestations; Combat trans-territory activities, such as terrorism; China firmly supports Afghanistan's efforts to fight against terrorism, while Afghanistan restates its firm support for China in combating terrorism, separatism and extremism
6	China-Pakistan All-weather Strategic Partnership of Cooperation	May 23, 2013	China will assist Pakistan in strengthening its capacity for fighting terrorism and ensuring security, and work with Pakistan to tackle rising non-traditional security risks. Pakistan restates its intention to firmly counter terrorism and promise to continue coordinating with China to suppress The Eastern Turkistan Islamic Movement.

7	China-Qatar Strategic Partnership	November 3, 2014	Both sides will strengthen communication and cooperation in the implementation of law security and anti-terrorism, establish a long-term security cooperation mechanism enhance the information communication level, as well as technical cooperation and personnel training. Also, both sides condemn and oppose terrorism in all its manifestations, oppose double standards and the linkage of terrorism with a specific country, nation and religion.
8	China-Egypt Comprehensive Strategic Partnership	December 22, 2014	Both sides firmly oppose and condemn terrorism in all its manifestations, suppress the financing of terrorism, oppose double standards and the linkage of terrorism with a specific country, nation and religion. Also, counter-terrorism should adhere to the Charter of the United Nations and principles of international laws, upholding each other's sovereignty, independence and territory integrity. Both sides will also strengthen cooperation in terrorism, including pursuing and capturing terrorists, cutting the source of their funds, as well as punishing them within a legal framework.
9	China-Sudan Strategic Partnership	September 1, 2015	Both sides firmly oppose and condemn terrorism in all its manifestations, suppress the financing of terrorism, oppose double standards and the linkage of terrorism with a specific country, nation and religion. Under the framework above, both sides oppose the use of economic sanction as a weapon in international relations to undermine the security and stability of other countries, and will work toward strengthening each other's communication and cooperation in the fields of information, security and implementation of laws.

Source: No. 1, <http://www.cascf.org/chn/gylt/zywj/t694800.htm>; No. 2-9, <http://www.xinhuanet.com/> (accessed August 11, 2015)

Another approach within this secondary tactic framework is for China to exchange information and share its experience of anti-terrorism governance with other countries by joining in informal mechanisms, such as anti-terrorism conferences, forums and high-level meetings. China has taken initiatives to participate in or host international anti-terrorism conferences, exchanging information and experiences, and learning about the latest terrorist movements. Besides the UN anti-terrorism conferences, China has made full use of other communication platforms, as well. For example, China attended the Istanbul International Anti-terrorism Conference hosted by the Council of Europe and the Turkish government in October 2013, and in March and December 2014, Chinese deputies were present at the First Baghdad International Anti-terrorism Conference and Syria International Anti-terrorism Conference. Meanwhile, China has hosted two high-level anti-terrorism conferences targeting the new development of ISIS, namely,

“The International High-end Forum for Anti-terrorism Countermeasures and Emergency Management” (organized by the Ministry of Public Security of China) and the “Global Anti-terrorism Forum—Against Internet Terrorism” (organized by the Ministry of Foreign Affairs of China) in October and November of 2014, respectively. Besides this, China has attached great significance to high-level communication with the countries standing at the forefront in the battle against terrorism, and to the cultivation of its own anti-terrorism capacities. In November 2014, Meng Jianzhu and Guo Shengkun, members of the Bureau of the Central Committee of China, visited Egypt, Iran, Turkey and Afghanistan, offering economic and other material aid to the Afghan and Iraqi governments, which clearly demonstrated China’s anti-terrorism diplomatic goals.

The third tactic is to thoroughly carry out anti-terrorism cooperation with the countries haunted by terrorism, such as Pakistan and Israel, so as to enhance the effectiveness of joint cooperation. China and Pakistan have kept up comprehensive anti-terrorism cooperation for years, and this can serve as a model for national cooperation. The two countries have conducted quite a few anti-terrorism drills since 2004, including cooperation in the areas of information exchange, economic aid, personnel training, repatriation of Chinese terrorists, and the like. Cooperation between the two countries has yielded impressive results, proving to be particularly effective in preventing terrorists in the Middle East from penetrating China. In May of 2009, the Pakistan military listed the East Turkistan group as a terrorist organization, and the Pakistan government handed over six core members of that group to China in April 2012.<sup>18</sup> Anti-terrorism cooperation between Israel and China has also witnessed substantial progress, as seen in Israel’s aid to China by training anti-terrorism troops, armed police and doctors.

The fourth tactic is to deal with each case using different measures based on its specific characteristics. Confronted with new conditions and problems caused by Al-Qaeda, ISIS, and the Taliban, China has adjusted its policies and adopted various tactics in dealing with different cases. As for the Taliban group, China is striving to solve problems through negotiation and has proposed specific solutions. China made a proposal for a “Peace and Reconciliation Forum” in November 2014, aiming at reconciliation among various Afghanistan forces, including the Taliban. The proposal has received a positive response from the Taliban.

### **Advantages and Disadvantages**

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18 “China Asks Pakistan to Hand Over Uighur Terrorists,” *TheHindu*, April 6, 2012, <http://www.thehindu.com/news/international/article3287906.ece> (accessed September 24, 2015).

Undoubtedly, China has introduced herself into various anti-terrorism campaigns. China's advantages and disadvantages have fully been revealed in the process.

China's national image has been improved. In most Middle Eastern countries, China has formed a not-so-grand, yet positive image among the governments as well as the public, for China has long maintained friendly relations with the Middle Eastern countries throughout history.<sup>19</sup> In recent years, the Chinese government has won the trust of many parties of different interests by playing a more active role in the participation of political affairs in the Middle East, such as by mediating the reconciliation of the Republic of Sudan and the Republic of South Sudan, conciliating Palestine and Israel,<sup>20</sup> contacting the Afghan Taliban group, etc. These actions, a historical breakthrough for China in its Middle East affairs, have helped China accumulate very valuable experiences for its future participation in anti-terrorism governance.

China's image has been strengthened by its abidance to certain sets of rules. China participates in anti-terrorism governance mainly by joining UN authorized multilateral mechanisms or bilateral anti-terrorism cooperation mechanisms, which are highly recognized by the participating parties. Hence, in the participation of anti-terrorism governance, China is free from the problems that trouble the US. While to America these mechanisms are fetters, to China these mechanisms represent the grounds for actions and possibilities, and should thus be properly maintained and operated. Therefore, in practice, China sticks to the laws and norms of mechanisms and wins support in operations because of its cooperation with the other members of these mechanisms, while America in following its own pathway has ended up with a mess that lacks proper mechanisms.

Objectively, however, China can only share limited participation in anti-terrorism governance in the Middle East since it is greatly restrained by a number of factors.

The first restraining factor is the multiple participants in anti-terrorism governance. The various participants in anti-terrorism governance in the Middle East, including state actors and non-state actors, will inevitably lead to divergence in opinions, because of respective interests. It is very hard for China to shake off or transcend such restrictions from other participants.

To begin with, there are the restraints from America. The Western countries led by America are the dominant powers in anti-terrorism governance in the

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19 Chen Jie, "China's Image in Arab Media," *Arab World Studies* 5 (2011): 54-58.

20 Sun Degang, "Motivations of China's Mediation Diplomacy in the Middle East," *Global Review* 3 (2013): 14-33.

Middle East, but due to diverse opinions on terrorism, these countries adopt entirely different tactics from China's in the governance of terrorism. America has long complied with double standards in anti-terrorism governance for its own political needs, thus exclusiveness and its political purpose can be clearly traced in its standards, including the definition of terrorism and terrorist groups, the organization of anti-terrorism alliances, etc. There are many different voices that can be heard regarding China's stance on anti-terrorism, but the mainstream disposition in America is condemnatory. In August 2014, Obama denounced China as an irresponsible hitchhiker in anti-terrorism governance in the Middle East when meeting with New York Times journalists.<sup>21</sup> And in September 2014, Susan Rice, the US National Security Advisor, visited China and invited China to take part in the campaign against ISIS, but before China made any commitments with the US, the latter disregarded China's interest in a cooperative effort, as revealed later in a list of anti-terrorism alliance participants that excluded China.<sup>22</sup> The double standards held by the US were revealed in this case. Such double standards and suspicion of others will severely hamper the effectiveness of anti-terrorism governance. Besides, when China made an effort to contact the Taliban with a view to restoring peace in Afghanistan, some Western media outlets started to discredit China by claiming that China intended to assume leadership over America in anti-terrorism governance in the Middle East. And in order to compete with China and defend its leading position, the White House spokesman even changed America's long-term stance and denied that the Taliban was a terrorist group during a press conference in January 2015.<sup>23</sup> Based on the above examples, it is evident that America is setting barriers to block China's participation in anti-terrorism governance in the Middle East.

In addition, the divergence between China and some other countries on how to deal with the "three forces" (separatism, religious extremism, and terrorism) is another restraining factor. The Middle East is the distributing center for these three forces, and many countries in the area, like Turkey, in particular, are glad to offer shelter to forces such as the key members of "The Eastern Turkistan Islamic Movement" (ETIM). According to a report from July 2013, there were more than 20 separatist groups overtly supporting

21 "Obama Labeling China as 'Free Rider' in Iraq Issue," *China Daily*, September 4, 2014. [http://www.chinadaily.com.cn/world/2014-09/04/content\\_18543889.htm](http://www.chinadaily.com.cn/world/2014-09/04/content_18543889.htm) (accessed October 22, 2015).

22 "US invites China to join in anti-terrorism, China has no response," *Observer*, September 11, 2014, [http://www.guancha.cn/politics/2014\\_09\\_11\\_265877.shtml](http://www.guancha.cn/politics/2014_09_11_265877.shtml) (accessed October 24, 2015).

23 "Taliban Not a Terrorist Group? White House Official Says It's 'Armed Insurgency,'" January 29, 2015, <https://www.rt.com/usa/227487-white-house-taliban-terrorists/> (accessed October 25, 2015).

Xinjiang's independence in Turkey,<sup>24</sup> and General M. Beghin, a former senior officer of the Turkish government, spared no effort to support the World Uyghur Congress and was even named its honorary chairman. In addition, the Turkish government keeps issuing entry visas to Xinjiang independence activists, while sheltering Chinese citizens who illegally leave the country. The Turkish Embassy in China even offers blank passports to East Turkistan separatists, which allows them to travel freely between Turkey, Syria, and Iraq. These divergences will inevitably impose negative effects on China's participation in anti-terrorism governance in the Middle East.

What is more, the serious disagreements on terrorism among Middle Eastern countries also prevent China from performing its function in anti-terrorism governance.<sup>25</sup> Due to the complexity of Middle East issues, Arab countries, Iran, Israel, and some other countries are apparently divided on the issue of identifying terrorism, because of respective national, ethnic and religious interests. The phenomenon in which one nation's heroes are terrorists in the eyes of another is common in the Middle East Region, which requires China to keep alert at every moment and act with prudence.

The second restricting factor is China's own international prestige. In the current international situation, a group of newly developed countries have changed the international pattern and China also plays an increasingly important role in the world arena. Nevertheless, China's international influence, in terms of economic force or ideological influence, is far from overwhelming. China's prestige, which has been accumulating since its declaration of participation in the reform of global governance mechanisms, is relatively limited, and China's international prestige and governing capacity ranks fifth, following behind America, France, Russia, and the UK, as per *The States' Participation Index of Global Governance* issued by the East China University of Political Science and Law in November 2014.<sup>26</sup> This limitation, which is also reflected in anti-terrorism governance, indicates that China is not in a leading position in anti-terrorism governance and that there is still much space for improvement for China in its participation of global governance, due to its restricted political, economic, and cultural influence. Although economic growth has stirred China's ambition to take an active part in global governance, the public goods it can offer are still limited, especially

24 Su Weili and Jin Feng, "Why has Turkey Been a Shelter for the Extremists of 'East Turkey,'" July 14, 2013, [http://www.china.com.cn/military/2013-07/24/content\\_29514812\\_2.htm](http://www.china.com.cn/military/2013-07/24/content_29514812_2.htm) (accessed October 25, 2015).

25 Zhao Jun, "The Current Situations and Prospects of Anti-terrorism Governance in the Middle East," *Arab World Studies* 3 (2013): 54-55.

26 Comparative Political Research Institute, "State's Participation Index in Global Governance," <http://psi.ecupl.edu.cn/spigg/> (accessed October 24, 2015).

with regards to its military capacity, in particular. However, China cares more about international common interests rather than its own benefit and supports a non-exclusive principle. In a word, China's international prestige is not high enough, and that is why China insists that the UN should take the leading role in anti-terrorism governance in the Middle East.

The third restricting factor is China's limited influence in the Middle East and surrounding area. At the moment, China is not influential enough in these regions. In terms of economy, China is the biggest trade partner and the largest oil importer of the Middle East, and the Middle East is the major oil supplier for China. However, the Middle East has a relatively low reliance on, and sensitivity to, Chinese products, and China's direct investment on the low-technique-content products and economic aid to the Middle East are less than those of America, European countries, and Japan, which explains China's lack of influence in the area. In terms of politics, China's political influence is comparatively higher than its economic impact in the area because of a similar historical development pattern and mutual political support shared between many Middle Eastern countries and China. But "in military affairs, China's influence in the Middle East can be entirely neglected, whether in the aspect of military garrison, military alliance, arm sales, military maneuver, military exchange, or in terms of China's military resources."<sup>27</sup>

The fourth restricting factor lies in the malfunctions of governance mechanisms. If China intends to be more deeply involved in anti-terrorism governance in the Middle East, it has to face the failings of mechanisms, for the existing anti-terrorism governance mechanisms in the area are severely lacking in coherence and coordination, making malfunctions unavoidable.<sup>28</sup> For instance, the global anti-terrorism governance mechanism under the UN framework has been out-of-order for a long time period since it was abandoned by America and its allies. There is no effective anti-terrorism mechanism that can cover the whole area, and the sub-area mechanisms available, such as the Arab League and the Gulf Cooperation Council, seldom work effectively. The Sino-Arab Cooperation Forum may bear the possibility of anti-terrorism cooperation, but there is still a long way to go before it can produce effective results. Some bilateral cooperation networks between Israel, Egypt, Saudi Arabia, Turkey and other Middle East countries have obtained a certain level of effectiveness, but whenever these cooperative

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27 Niu Xinchun, "On China's National Interests and Influence in the Middle East," *Contemporary International Relations* 10 (2013): 44-52.

28 Zhao Jun, "The Current Situations and Prospects of Anti-terrorism Governance in the Middle East," *Arab World Studies* 3 (2013): 55.

efforts involve the national interests or political ideology of the participants, they fail to overcome such obstacles.

## Reflections

In sum, China's participation in anti-terrorism governance in the Middle East is both a positive response to the menace that terrorism poses to its national core interests and a strategic choice to carry out its "One Belt and One Road" strategy, as well as a way to shoulder its international responsibility and build its image. The orientation of China's strategy for participating in anti-terrorism governance, though ambiguous, complies with its foreign policy and can be traced from its various tactics. Despite the advantages to its image, China also faces restricting factors, including various participants of governance, China's own willingness, prestige and influence in the Middle East, and the malfunction of cooperation mechanisms. While these restrictions confine China's participation within a certain scope, they also require that China not only see through the essence of anti-terrorism governance to maintain its advantages, but to think creatively and pass on its specific experience to other participants of global anti-terrorism governance, in order to shape an internationally-acknowledged governing mode that is distinctly Chinese.

It is important to point out that China is not a major target of the global jihad led by Al-Qaeda or ISIS, although these terrorist groups have posed threats to China's national interests. Besides, in terms of public goods supply, China cannot be classified as one of the major members among other global anti-terrorism governance participants. Therefore, China needs to have a clear agenda and make an objective evaluation before choosing a proper tactic of participation. Meanwhile, in the process of participation, China should follow a feasible and visionary policy to ensure a multi-win result that will not only protect itself, but be shared by other participants. The policies adopted are supposed to theoretically elaborate China's world view on handling global problems and practically propose solutions. Hence, the authors of the paper believe that the Chinese government needs to stay alert in the following aspects.

First, two facts need to be clearly recognized by the Chinese government. One is that terrorism in the Middle East will persist for a long time and that foreign forces alone are unable to uproot terrorism in the area. Rome was not built in a day. Terrorism in this region has a long history that somehow justifies its existence. Different root causes will continue to sustain its longevity in the foreseeable future. These root causes for the existence of terrorism in the Middle East explain the extensive support it gains from various forces in the area. Assertively, terrorism will not die out until core

issues such as the Pakistan problem are solved. America's failure in the anti-terrorism campaign is not due to its lack of power or effort, but because of fertile land for terrorism, which serves as evidence that terrorism in the Middle East cannot be defeated singularly by any foreign force.

The other fact the Chinese government should not neglect is that the ultimate purpose of the participating governments is to realize their own political objectives and interests through anti-terrorism governance. America and its allies participate in such governance to pursue global strategic targets. In the process, although they have made an initial success, they have likewise lost the trust of the international community. Therefore, their actions not only encounter fierce resistance from the terrorists, but also from the Muslim public. Therefore, in future participation in anti-terrorism governance, China needs to adhere to moral principles and take action under the UN's authorization. In addition, China should enhance its cooperation with regional groups in the Middle East to thoroughly carry out multi-lateral and bilateral anti-terrorism governance, which means that China needs to establish an anti-terrorism cooperation mechanism with both Middle East countries like Saudi Arabia, Turkey, Israel, etc. and the organizations of neighboring entities, such as the African Union, Arab League, the Gulf Cooperation Council and Arab Maghreb Union.

Secondly, the Chinese government needs to think and act creatively to fulfill its realistic and moralistic objectives. China needs to change its current thinking pattern and think creatively to draw up a new set of rules of anti-terrorism governance. Since China is lacking in overseas governing experience, it is necessary for China to carry out further theoretical study and learn from Western countries. But as has been pointed out by some scholars, the Chinese government should only learn from the Western experience with a critical mind, in order to form its own ideas, concepts and rules. In the participation of anti-terrorism governance, China should be courageous and strong headed in the learning cycle of "learning - criticizing - establishing." An underlying prerequisite for China to participate in anti-terrorism governance in the Middle East is that it must play its due role in the creation of a mechanism. At the moment, with the growth of Al-Qaeda and the rise of ISIS, it is time to reenact international anti-terrorism rules. To more efficiently and effectively take part in such governance, China has to be ready to play its part. In terms of creative participation, new strategies and tactics in anti-terrorism governance are needed, because the Western pattern<sup>29</sup> practiced under the leadership of America is bogged down in a

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29 Pang Zhongying and Wang Ruiping, "Global Governance: China's Strategic Response,"

security predicament and stands little chance of success. The new pattern of diplomatic relations established by China has proved that the rise of a big power will not necessarily lead to war, and this pattern will be a great contribution to humanity if it can be applied to deal with terrorism in the Middle East. In fact, China's successful persuasion in getting the Taliban to sit down for a negotiation is a breakthrough, in terms of concept and of action. Though it is too early to declare the success of the method adopted by China, the philosophy behind the solution that translates into admitting and tolerating the existence of the other party, rather than eliminating it as an enemy, is of great value and profound significance.

Thirdly, it is advisable to introduce China's experience to the Middle East and even the whole world and to pass on China's wisdom, which is based on its specific social and political conditions. As is widely known, China has ample experience in dealing with violent non-state actors, such as bandits, roving rebel bands, and underworld gangs who have aimed at toppling down the government. Since the establishment of the PRC, the Chinese government has rooted out, within a short period of time, the major peace-disturbing factors which have existed for thousands of years. To explore the reasons for its success, we have found that although China has adopted similar strategic moves as other countries, such as armed intervention and deterrence, the root of Chinese success lays in its core strategy mobilizing the masses, which also shows a certain degree of success in fighting against terrorists within China. At present, the public in Xinjiang has organized self-protection groups to patrol the streets, besiege terrorists, and provide information to the police, and this has effectively prevented many potential terrorist attacks. Some scholars think that terrorists have spread all over the country, but rather, it is the success of the anti-terrorism campaign in the Xinjiang area that forces terrorists to flee to other provinces, which also proves that the haven of terrorists there is dwindling. Many terrorist groups in the Middle East share a lot in common with those traditional Chinese violent non-state actors. Therefore, at the present moment and into the future, China's task in anti-terrorism governance is to pass its experience on to the Middle Eastern countries suffering from terrorism, instead of sending its troops directly to the area to follow America's steps. If the countries in the Middle East can learn from China's experience by instigating the public to fight against terrorism from the bottom up, the terrorists in this region will lose their foothold and eventually disappear into history. **Y**



# INTERVIEW

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## **IN THE PUBLIC EYE: MONITORING HUMAN RIGHTS IN NORTH KOREA**

*Interview with Signe Poulsen*

Representative at the United Nations Human Rights  
Office Seoul

# IN THE PUBLIC EYE: MONITORING HUMAN RIGHTS IN NORTH KOREA

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*Interview with Signe Poulsen*

*Representative at UN Human Rights Office Seoul*

*The Commission of Inquiry (COI) on Human Rights in the Democratic People's Republic of Korea, established by the United Nations Human Rights Council, released a ground-breaking report in February 2014. The Yonsei Journal of International Studies was able to interview the Hon. Michael Kirby, the Chair of the Commission of Inquiry in our Vol. 6 no. 2 Issue "Modern Conflicts". As a follow up to interview with Hon. Michael Kirby, the Yonsei Journal's Editor Gene Kim sat down with the Representative of the United Nations Human Rights Office in Seoul which was established as a follow-up to the COI Report.*

## **Y: Please tell us about your current position in Seoul**

Our office, which opened in June, is in a way is a follow-up to the Commission of Inquiry report that came out in 2014. In that report, the Commission of Inquiry did a lot of research on the situation of human rights in the Democratic People's Republic of Korea (DPRK) and concluded that the human rights violations committed there in many cases amounted to crimes against humanity. So, following that very strong statement and that very strong report, the Human Rights Council issued a resolution in which it agreed to set up an office to follow up on COI recommendations but more than that to look into the human rights situation in the DPRK more broadly. That resolution also specifies that we have other tasks. One of them is technical cooperation, and that can mean working with relevant governments, including the DPRK government, if that should be possible, but also the governments of Japan, the Republic of Korea, the US and others who are involved, to implement human rights standards in relation to the DPRK.

And also to engage in outreach, keeping the issue in the media, getting the correct information out there, working with civil society, hosting seminars, all of those kinds of things. In terms of both the monitoring and outreach mandate, we have worked very closely with civil society and other institu-

tions that exist in Seoul already and beyond Seoul, too, because a lot of them have so much information and experience in this. We are sort of the new people coming in, and we don't have as much expertise in the Korean context. But we do have the UN context, and I think that's what we are trying to contribute, to bring the human rights situation in the DPRK into the international arena as a true international human rights problem.

**Y: Please tell us about your background**

I started out in the UN about ten years ago. My background is mainly in peacekeeping operations, so I worked mainly in Liberia and East Timor for many years, but I also had postings in Kyrgyzstan and in Papua New Guinea most recently. So I've worked mainly in Asia and in peacekeeping. Before joining the UN, I was involved with international human rights organizations and civil society organizations like Amnesty International and International Commission of Jurists.

**Y: How is that previous work informing what you are doing now?**

I think it's really important to look at human rights situations in their contexts—each context is unique and has its own challenges and own complexities. It's important to, of course, be knowledgeable about those, and the cultural, political, historical, economic contexts, but also by having been in different contexts, hopefully to be able to take a step back and say as human beings, what's similar and what lessons can we learn from each other. Things like justice and accountability, yes victims experience these in different ways but in the end, in many different contexts, you hear victims wanting recognition of their suffering. I don't think that necessarily matters whether you are in East Timor or Papua New Guinea or the DPRK or the ROK for that matter. That's just one example. What matters to them may be different to different people and that's not for us to dictate; meaningful justice is also victim-centered. But I hope that's one of the things I can bring.

**Y: The Commission of Inquiry on Human Rights in the DPRK (COI) published in February 2014 a report of their findings, including reports of crimes against humanity. What influence has this report had on the human rights situation in the DPRK and discussions about the issue?**

Civil society and others have known about and documented the serious violations of human rights in the DPRK for a long time. But what the COI report did was to bring this information to a different level, to put that information together in one place. It verified some of the information that had been col-

lected by different sources and put them together in one report, and then managed to get the UN backing for that report through resolutions and adoptions. I think that really has highlighted the DPRK issue not as a Korean peninsula issue but as a global human rights issue. Because once we have crimes against humanity, it's a concern to all of us, and that, I think, is perhaps the greatest contribution that the COI made, rather than individual facts that may have come out, because I think those are well-documented by many different sources. Perhaps particularly here in the ROK, but even beyond.

**Y: The current UN Special Rapporteur, Marzuki Darusman, was appointed by UN General Secretary Ban Ki-Moon in 2010. What are some of the initiatives that he has undertaken during his tenure as the UN representative for this issue?**

He was on the Commission of Inquiry so that is one major achievement. But there are many issues that he's brought out as human rights issues. One of that is the issue of separated families, and that's very topical now with the "reunions" going on, a very positive step, something even the Secretary-General has welcomed in a statement, welcoming these from the UN. The other issues he's raised is that of international abductees, also very important in that it highlights the international nature and impact of the system. And I think during his most recent visit last month, he was looking into highlighting things like accountability and how that might play out in the future.

**Y: What are some ways that the UNHR office monitors and documents the situation of human rights in North Korea?**

It's difficult. Ideally we would have access and then it would be much easier to verify our information. We do talk to people who have come from the DPRK and who are now living in the ROK, and there are lots of them. But also when we travel we try to take the opportunity to speak to people who have left the DPRK and are living in other places. And we try to get information from all sources we can and then triangulate it so that at least we have some verification that the stories are not just made up but actually are true. That can be very difficult and painstaking work, but it has to be done.

**Y: And some of those stories were included in the Commission of Inquiry report.**

Yes. I mean we're not repeating what the report did, but we are following up and trying to broaden the knowledge in there.

**Y: Pyongyang has occasionally sponsored events intended to attract large groups of foreigners for short periods of time, such as the Pyongyang Marathon, the last of which was just held in April of this year. What influence do such events have on public perceptions of North Korea?**

I don't know what they do to public perception, but maybe more broadly what I would say is interactions between peoples builds trust, and it's a bit like family reunions. Will it bring some positive credit to the DPRK? Yes, but those interactions are incredibly important. And so I think it has to be carefully thought about. However, in terms of person-to-person interactions, sporting events, all of those things, I think they can be very important in fostering trust and reconciliation and understanding, and also understanding within the DPRK about what the rest of the world is actually like. Because that's what we really want people to know. Whether that's propaganda, I don't know.

**Y: What are some of the challenges of doing human rights work? What are some areas for improvement that you see in the way a large organization like the United Nations investigates human rights abuses?**

No country is perfect when it comes to human rights. One of the issues is to keep that balance. I think things like accuracy, cooperation, and collaboration, to make countries understand why human rights compliance is helpful to them and not just difficult is one of the challenges. In terms of collecting information, of course we try to be as careful and as meticulous as we can, but it can be challenging because in the end, like in the case of the DPRK we are relying on individual statements a lot of the time, not only, but much of the time. So not having access is a big challenge.

But what I'm thinking is that working the way we do is such a luxury. When we talk about challenges, there are people at the grassroots level in many countries who get on and do the human rights work without a salary or computer or electricity. Those individuals probably exist within the DPRK too, and they may not be calling it human rights, they may be assisting people in their local communities. So I think those are the people who really have the frontline challenges. Our challenge is how to support those people. **Y**



# REVIEW

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**WAR-MONGER OR JUDICIOUS REALIST?  
LIU MINGFU AS A HISTORICALLY-MINDED  
AMERICA WATCHER**

*A Review of *The China Dream: Great  
Power Thinking and Strategic Posture in  
the Post  
American-Era*  
Niv Horesh*

# WAR-MONGER OR JUDICIOUS REALIST? LIU MINGFU AS A HISTORICALLY-MINDED AMERICA WATCHER

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Niv Horesh

University of Nottingham

Liu Mingfu, *The China Dream: Great Power Thinking and Strategic Posture in the Post American-Era* (New York: CN Times Books, 2015); 288 pages; \$24.95

The publication of Liu Mingfu's *China Dream* in English this month makes for an opportune occasion to take stock of his ideas critically.<sup>1</sup> In 2010, when the original book was published in Chinese, it caused quite a sensation due to the sub-title reading: "soldiers must speak out."<sup>2</sup> Though it is said to have foreshadowed, even informed, President Xi Jinping's first use of the term *China Dream* in November 2012,<sup>3</sup> the original book never received the kind of page-by-page detailed critical and semantic analysis it deserved in the West, perhaps because its rhetoric seemed misaligned with Hu Jintao's administration, which adhered for the most part to a "low profile" in foreign affairs. Instead, Liu was mostly dismissed in the Western media as a typically loose-lipped PLA commissar: triumphalist, anti-American, hawkish and conspiracy-obsessed.<sup>4</sup> Aside from Chris Hughes and Philip Saunders' online overviews – no serious attempt to my knowledge has been made to engage with Liu's rationale in detail, particularly as regards his

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1 Liu Mingfu, *The China Dream: Great Power Thinking and Strategic Posture in the Post-American Era* (New York: CN Times, 2015).

2 Liu Mingfu, *Zhongguo meng: ZhongMei shiji duijue, junren yao fayan* [The China Dream: Soldiers Must Speak Out on the Coming Sino-American Showdown] (Hong Kong: Zhonghua shujiu, 2010).

3 For an authoritative study of the term, see e.g. William Callahan's, *China Dreams: 20 Visions of the Future* (New York: Oxford University Press, 2013).

4 Isaac Stone Fish, "Col. Liu and Dr Pillsbury Have a Dream," *Foreign Policy*, June 4, 2015, <http://foreignpolicy.com/2015/06/04/col-liu-and-dr-pillsbury-have-a-dream-the-inevitable-clash-between-china-and-america/> (accessed November 30, 2015).

insistence that China is inherently “war averse” or his historical heurism.<sup>5</sup>

The following passages try to cast a deliberative sidelight on the book by engaging with the Chinese original version rather than the recently published English version, which is now being promoted in the US.<sup>6</sup> Far from re-dismissing Liu off-hand as a sensationalist, the aim here is to show the extent to which Liu dwells on other Chinese and Western thinkers in reading international relations, and the extent to which his ideas are shared by others. It is hoped that Liu’s narrative can thereby be more lucidly interpreted and its policy relevance better construed. The review will be taking issue with the paradox of Liu’s calling for greater military budgets, whilst clinging to a self-perceived Chinese tradition of “war aversion” (*bu duwu*) as the most desirable strategy for the country.<sup>7</sup>

In the West, Liu’s positions were perhaps understandably cast as militaristic without due reference to their underlying historical mainspring. In fact, that streak of militarism is for Liu a counterweight to what he sees as a “scholarly-civilian” (*yanwu xiuwen*) ethos that came to over-script Chinese society since the fall of the Northern Song Dynasty (1127) and the subsequent entrenchment of what Liu sees as pernicious, superstitious and effete neo-Confucian tendency through much of the late-Imperial era.<sup>8</sup> The historical generalisation offered here is hardly unique. It is reminiscent to one degree or another of ideas pronounced in two other highly popular books that have been published in China over the last decade and have gained some notoriety in the West: *Wolf Totem* and *China Can Say No*. The former, whilst written by Tiananmen democracy-movement veteran Jiang Rong (pseud.), is a novel that nevertheless idealizes throughout the martial spirit of the nomadic steppe people living on the fringes of the Chinese sedentary heartland.<sup>9</sup>

5 Chris R. Hughes, “In Case You Missed It: The China Dream,” *The China Beat*, April 5, 2010, <http://www.thechinabeat.org/?p=1814> (accessed November 30, 2015); Philip C. Saunders, “Will China’s Dream Turn into America’s Nightmare?,” *The Jamestown China Brief*, April 1, 2010, [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=36217#.VXbTKc9Vikp](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=36217#.VXbTKc9Vikp)

6 Liu Mingfu, “The World Is Too Important to be Left to America,” *The Atlantic*, June 4, 2015, <http://www.theatlantic.com/international/archive/2015/06/china-dream-liu-mingfu-power/394748/> (accessed November 30, 2015).

7 Liu Mingfu, *Zhongguo meng: ZhongMei shiji duijue, junren yao fayan* [The China Dream: Soldiers Must Speak Out on the Coming Sino-American Showdown] (Hong Kong: Zhonghua shuju, 2010), 99. The term as used by Liu is a negative derivation of the ancient idiom *qiongbing duwu* which describes trigger-happy, war-mongering generals. In a modern sense, the term *bu duwu* can also connote avoidance of militarism or peace-loving.

8 *Ibid.*, 235-238. The idiom itself, *yanwu xiuwen*, emerged almost a millennium before the Song.

9 On Jiang Rong, see e.g. Anonymous, “Living with Wolves,” *The Guardian*, November 22, 2007, <http://www.theguardian.com/world/2007/nov/22/china.features11> (accessed November 30, 2015).

Described at once as a novel of nomads and settlers and their relationship with wolves, a guide to doing business in New China, an ecological handbook, as well as a piece of military strategy, *Wolf Totem* is partly based on the author's own experiences as a Red Guard who left Beijing during the Cultural Revolution to work with Mongolian shepherds. Indeed, Jiang Rong repeatedly condemns his own Han ethnic in-group for their placid "sheep-like" Confucian obedience to authority and ignorant destruction of nature. Ironically, Jiang Rong may have been imprisoned a number of times by the Chinese authorities for his non-conventional views, yet his idealization of the martial spirit has brought Wolfgang Kubin, a world leading expert on Chinese literature, to label *Wolf Totem*, as no less than "fascist."<sup>10</sup>

*China Can Say No* is a collection of sensationalist anti-American political essays rather than a novel. Yet it, too, was authored by individuals who are thought to have at least in part been sympathetic of the Tiananmen democracy movement back in 1989 only to turn to the nationalistic tide less than a decade later.<sup>11</sup> The essays are by and large devoid of overt pokes at Confucianism or prevailing Chinese societal norms. In fact, they can be read as scathing critiques of American individualism rather than a rallying cry for more thereof in China. But they do share a platform with Jiang Rong and Liu Mingfu in calling for more assertive Chinese foreign policy, particularly vis-à-vis the USA and Japan.<sup>12</sup>

Where Liu arguably innovates beyond the two aforementioned books is in the analogies he draws from Western history. The case is not made for more military power alone but for the right balance between military and scholarly (read: economic) power. Liu's example is the Dutch Republic, which had been a great rival to England in the 17<sup>th</sup> century but – in his somewhat idiosyncratic account – then invested too heavily in peacetime mercantile prowess to the neglect of its fighting navy until it was finally subdued in 1713. The Dutch parable is told, it seems, specifically so as to warn Chinese leaders of focusing on GDP growth alone and letting their people become too livelihood-oriented (*jingji minzu*).<sup>13</sup>

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10 Clifford Coonan, "Jiang Rong's Wolf Totem," *The Independent*, September 18, 2011, <http://www.independent.co.uk/arts-entertainment/books/features/jiang-rongs-wolf-totem-the-year-of-the-wolf-768583.html> (accessed November 30, 2015).

11 Shannon Tiezzi, "The 'China Can Say No' Effect," *The Diplomat*, August 7, 2014, <http://thediplomat.com/2014/08/the-china-can-say-no-effect/> (accessed November 30, 2015).

12 Song Qiang, et al., *Zhongguo keyi shuo bu: Lengzhanhou shidai de zhengzhi yu qinggan jueze* [China Can Say No: Political and Mental Choice in the Post-Cold War Era] (Beijing: Zhonghua Gongshang, 1996).

13 Liu Mingfu, *Zhongguo meng: ZhongMei shiji duijue, junren yao fayan* [The China Dream: Soldiers

The Anglo-Dutch preoccupation speaks to a broader research agenda among Chinese scholars of international relations. At Tsinghua University, Sun Xuefeng has argued for example that the common Western perception of democratic countries as less likely to go to war with one another ('democratic lineage theory') was irredeemably naïve. Notably, Sun pointed to the three Anglo-Dutch wars, fought over hegemony of global maritime trade during the latter part of the seventeenth century, as a classic counter-example. England had been at the time a nascent parliamentary democracy and the Netherlands was a progressive Republic but neither showed 'liberal trust' in its neighbour and mutual draconisation was rampant. As its power declined in the early twentieth century, the British Empire did not go into war with an ascendant US: this was *not* because the two countries shared cultural baggage, but because containing the Kaiser was considered a more achievable goal by Britain. By 1900, America's GDP was nearly double than that of Britain, but Germany's GDP had just edged above Britain's and so the temptation to check the advancement of that Middle-European Power was more compelling.<sup>14</sup>

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Underlying Liu's narrative is a frustration often expressed in private by many Chinese: China is big and populous, has illustrious imperial history and has posted stellar reform achievements over the past three decades. Yet, it is still packing well below its weight on the world stage from sports through to science, popular cultural or military might. In order to bear out the illustriousness of pre-modern China, and in construing Sino-American relationship in the modern era, Liu draws heavily *not* on Chinese authors but in fact on English-language literature from Paul Kennedy, through Warren I. Cohen to Angus Maddison. The latter's quantitative work is popular in China but controversial in the West because it suggests China remained the biggest economy in the world as late as the 1830s.

Neither is Liu's book simplistic to the extent he tars all facets of American life with the same brush in the manner of *China Can Say No*. He heaps superlatives on the Clinton Presidency, for example, for unleashing America's creative spirit and community mobilisation. He also favorably

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Must Speak Out on the Coming Sino-American Showdown] (Hong Kong: Zhonghua shujiu, 2010), 246-249. Incidentally, most Western standard historical accounts of Dutch decline in 1713 do tend to ascribe it to the country's over-investment in land forces to curb French encroachment.

14 For a comprehensive discussion, see Niv Horesh, "In Search of the 'China Model': Historic Continuity vs. Imagined History in Yan Xuetong's Thought," *China Report* 49 (2013): 337-355.

compares the stability of post-bellum America with the incessant revolutions in 19<sup>th</sup> and 20<sup>th</sup> century Europe. For Liu, America – in contrast to the older European powers (*lieqiang*) – is a relatively *benign* imperialistic power that aims at cowing strategic competitors rather than occupying them outright.<sup>15</sup> Nevertheless, China in Liu’s view would make an even more benign world power because it has a track record of “internalising” conflict: whilst European over-population, religious dissent, social inequalities and scarce resources led in the 16<sup>th</sup> century to outward expansion – demographic stress and scarce resources are resolved in China through peasant rebellions.<sup>16</sup>

More specifically, Liu praises Abraham Lincoln for his abolition of slavery, interpreting it above all as a pragmatic exercise in nation-building rather than an expression of morality. He uses the American Civil War as a rallying cry with which to denounce the rationale of Taiwanese independence and US arms sale to Taiwan. China, he avers, would never contemplate selling arms to Hawaii separatists.<sup>17</sup>

In a departure from mainstream prominent Chinese foreign-policy commentators like Wang Jisi or Shi Yinhong, Liu seems to be expressly arguing that a Sino-American showdown is inevitable in the long-run despite economic and other geo-strategic complementarities.<sup>18</sup> Nevertheless, in his view, that either side has recourse to nuclear weapons means the showdown would be determined in points rather than knock-out; indeed, precisely like his personal friend but ideological arch-enemy, Pentagon insider Michael Pillsbury, Liu likens Sino-American rivalry to a “marathon.” In the face of popular Chinese adulation of Putin as “macho,” Liu seems to discount Russia as a global contender, when averring that the choice for the world is between America and China. He predicts China would eventually win the hearts and minds of people elsewhere because China does not seek to shape the world in its own image, hence it is more difficult for Americans to demonise China than it was for them to demonise the now-defunct USSR.<sup>19</sup>

What is then China’s aspirational narrative of global leadership? China, in Liu’s view, would create a fairer world for the great bulk of humanity because it is not hobbled by an “original sin” – colonialism in

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15 Liu Mingfu, *Zhongguo meng: ZhongMei shiji duijue, junren yao fayan* [The China Dream: Soldiers Must Speak Out on the Coming Sino-American Showdown] (Hong Kong: Zhonghua shuju, 2010), 39, 47.

16 *Ibid.*, 118.

17 *Ibid.*, 35.

18 *Ibid.*, 170-173.

19 *Ibid.*, 56-58.

the European case and slavery as well as Native-American annihilation in the US's case. Liu then reverts to classic Maoist clichés in suggesting China would not seek hegemony but would instead rid the world of any kind of hegemony; he uncharacteristically signs off with overt chauvinism when stating that China possesses “superior cultural genes” (*zui youxiu de wenhua jiyin*) that would help it stake a claim for global leadership.<sup>20</sup>

Hardly trigger-happy, Liu counsels China above all patience in dealing with the US. Its ultimate decline may be inevitable, but it would be a long process and obituaries this decade are premature. History teaches Liu that the USA had in fact been written off many times in the past – most recently in the waning days of the Carter presidency – only to come back on the world stage with a vengeance.<sup>21</sup>

The secret of that vitality, in Liu's historical judgement, is the fact that the USA had a much longer “hide and bide” incubation than Deng Xiaoping's China. It announced the Monroe Doctrine after half a century of unique isolationism (*Meiguo de tese taoguang yanghui*) during which successive presidents strove to disentangle themselves from European strife. In that sense, the USA nurtured hegemonic aspirations in a low-cost, surreptitious manner.<sup>22</sup> Moreover, Liu tells his readers China must emulate the American historical trajectory when it comes to isolationism. Like Sun Xuefeng, Liu suggests American economic might, for example, had long overtaken Britain's by 1900; yet the US did not out itself as the global power *par excellence* until 50 years later.<sup>23</sup>

Contrary to how Liu is sometimes depicted in the West then, he is in fact extremely wary of overt Chinese triumphalism. The best way forward for China, in his view, would be to fight complacency. Chinese leaders should continue to be, Liu hints, haunted by paranoia and embrace a crisis mentality as drivers of self-improvement. In that sense, US “China imminent collapse” seers are rendering an important service to the cause of China's rise as they help obfuscate the true dimensions thereof. Furthermore, for Liu, a continual, haunting sense of crisis would ensure China's leadership would not degenerate into Brezhnev-like mediocracy and conservatism.<sup>24</sup>

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20 Ibid., 73-76.

21 Ibid., 134, 144-147, 192.

22 Ibid., 151-158. N.B.: elsewhere, Liu credits Deng with lifting up China's fortunes on the world stage dramatically. Nevertheless, he is trenchantly avers it had been Mao who more significantly helped China rid itself of servile mentality, see 174-175.

23 Ibid., 81-82.

24 Ibid., 268-282.

Granted, Liu does repeatedly call for China to increase its military budget. But he emphasises throughout the book that this should be used as a deterrent only. The point is that for China to deter the USA from all-out war it would need a stronger army.<sup>25</sup> Perhaps unsurprisingly, all the paragons of military vitality (*gaishi wenwu*) in his narrative are from pre-Song era: the First Emperor of Qin, the Wudi Emperor of the Han, and Emperor Li Shimin of the Tang.<sup>26</sup>

Yet, what China desperately needs in equal measure in his narrative is a vigorous set of values with which to re-vitalise society as a whole. Liu observes that in the US, organised faith tempers heady capitalism and individualism. He seems to be hinting here at his displeasure at the growing inequalities and materialism within Chinese society. To him, that most Chinese are mildly secular leaves a vacuum that needs to be filled, yet he stops short of suggesting more nationalism is the answer. What he does explicitly decry, however, is the paucity of new Chinese works of literature that are translated into other languages, as opposed the plethora of translated material at any Chinese bookshop.<sup>27</sup>

In trying to come up with new sources of societal inspirations, Liu even comes close to hinting at a CCP need to share more power with other parties by way of curbing abuses of power. Yet, more discerning readers aware of the “China Model” discourse can easily tell this is trite, non-committal lip service to CCP “United Front” tactics.<sup>28</sup> Prominent Chinese international-relations expert Yan Xuetong, who is also well known for his hawkish views, is on record saying much the same non-committedly:<sup>29</sup>

Although China supports the one-party leadership of the Communist Party, it still retains the consultative system of having eight democratic parties, so the Chinese government proclaims that China is a multiparty state...China must make the moral principle of democracy one of those it promotes.

Oblivious to the Judeo-Christian equivalent, Liu then cites the Confucian adage “do not do unto others as you would not have them do unto thee” (*Ji suo bu yu wu shi yu ren*) as unique Asian wisdom, which is presumably a guarantee China would not bully weaker countries when it supplants

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25 Ibid., 250-260.

26 Ibid., 233-234.

27 Ibid., 88-89.

28 Ibid., 286-287.

29 Yan Xuetong, *Ancient Chinese Thought, Modern Chinese Power* (Princeton, NJ: University Press, 2011), 212-221.

the US. If anything, it should more proactively come to the rescue of the oppressed (*dabao buping*). Here, Liu perceptively draws on Sun Yat-Sen's more vehement anti-colonial tracts depicting China as a follower of *wangdao* ('enlightened kingly way') as opposed to the Western penchant for *badao* ('hegemonic bullying').<sup>30</sup> Yet, Liu's postulation of the PRC as a 20<sup>th</sup>-century power that never attacked first is otherwise historically problematic; indeed, many in the West would contend this argument is easily belied by PRC intervention in Korea in the early 1950s as well as its flash campaigns against India in 1962 and against Vietnam in 1979.<sup>31</sup>

Liu's efforts in exhorting against PRC complacency and triumphalism come across on balance as fairly genuine even to the Western eye. By far, the least palatable aspect of his narrative to lay Western readership could turn out to be *not* his military bent – after all he is a retired PLA officer – but rather his penchant for conspiracy theories, one he seems to share with a many other best-selling PRC-born authors.<sup>32</sup> Citing the influential strategist Nicholas J. Spykman (1893–1943), Liu contends for example, that America had set its sights on pre-emptive containment of China as a future competitor long before the CCP had come to power.<sup>33</sup>

Indeed, the conspiracies Liu marshals can be seen as the real culmination of the book rather than its putative chauvinism. Perhaps most thought-provoking of these is the contention that the USA had cunningly foiled Japan's rise in the 1980s as a warm-up for its China showdown this century. By way of warning China of succumbing to US pressure for devaluing the RMB, Liu controversially argues that Japan's "Lost Decade" did not arise in fact from internal weaknesses of the Japanese economy. Rather, it was supposedly a result of the Americans dropping a "financial atomic bomb" on Japan in the image of the 1985 Plaza Accord. In Liu's view, the Accord forced Japan to revalue the Yen, absorb subsequent damage to its exports, pay more in return for US military deployment and enhance its ODA to Western-favored destinations.<sup>34</sup>

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30 Liu Mingfu, *Zhongguo meng: ZhongMei shiji duijue, junren yao fayan* [The China Dream: Soldiers Must Speak Out on the Coming Sino-American Showdown] (Hong Kong: Zhonghua shujiu, 2010), 98, 129. Elsewhere, Liu is critical of Sun Yat-Sen for naively believing the USSR or Japan would help China rid itself of Western imperialism, e.g., 166-167.

31 *Ibid.*, 102.

32 Jin Shengrong, *Shei xiang ganjiao Fengtian: Meiguoshi yinmo fujide zhenxiang* [Kill Toyota] (Beijing: Xin shijie chubanshe, 2010).

33 Liu Mingfu, *Zhongguo meng: ZhongMei shiji duijue, junren yao fayan* [The China Dream: Soldiers Must Speak Out on the Coming Sino-American Showdown] (Hong Kong: Zhonghua shujiu, 2010), 169.

34 *Ibid.*, 183-185.

Nevertheless, despite his many incendiary claims, Liu chooses to strike a somewhat more judicious tone at the conclusion of his book. That perorational quality of his work went perhaps unnoticed in the West and is therefore worth highlighting in the teeth of sensationalism.

Toward the end, Liu actually confides in his readers: the US is *neither* devil *nor* angel. After all, for all its faults, it did fight the Japanese enemy in World War II alongside China. Rather, for Liu the problem is the US itself is prone to Manichean rhetoric, *not* China; the US needs a fearsome, imaginary ideological enemy with which to galvanise its populace and to oil the wheels of its military-industrial complex. Liu therefore predicts China, before long, would be demonized in the US with racial overtones, and that it would one day in the near future find itself in the dock, accused of being a leading member of the 'Axis of Evil.'<sup>35</sup> Y

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35 Ibid., 210-224.



# GUIDELINES

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