

PEAR

PAPERS, ESSAYS, AND REVIEWS

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CONTENTS

LETTER FROM THE EDITOR **197**

Gene Kim

MEET THE CONTRIBUTORS **201**

Author Biographies

PAPERS

**FACING A BLOW TO SOVEREIGNTY, WHY COMPLY?
AN ANALYSIS OF COMPLIANCE AT THE
INTERNATIONAL COURT OF JUSTICE** **206**

Bo Won Kim

**PRESIDENTIAL SCANDALS IN SOUTH KOREA SINCE
1993: AN ANALYSIS OF RESOLVE IN DECISION-
MAKING** **231**

Kangkyu Lee

**RISK PERCEPTION, TRUST, AND LEGITIMACY: THE
INTERACTION OF STATE AND SOCIETY IN CHINESE
GENETICALLY MODIFIED FOOD GOVERNANCE** **255**

Iris Kim

ESSAYS

- SCARLET FEVER IN NORTH KOREA: PUBLIC HEALTH AS A MOTIVATING FACTOR FOR CHINA TO REPATRIATE DEFECTORS** 276
David K. Tian
- THE “RED SHIRT” MOVEMENT: PEASANT POLITICS IN THAILAND** 288
Sydney Piggott
- CULTURAL DIPLOMACY AND GLOBAL MIGRATION: A CRITICAL ANALYSIS OF JAPAN’S CULTURAL DIPLOMACY FROM THE PERSPECTIVE OF SOCIAL INTEGRATION** 299
Erina Kimura
- THE WTO TRADE FACILITATION AGREEMENT** 304
Matthew Pullen

INTERVIEW

- WRITING ABOUT TWO KOREAS** 319
Interview with Daniel Tudor

REVIEWS

- THE CHINA CHALLENGE**
Shaping the Choices of a Rising Power 325
Jackie Wong

LETTER

FROM THE EDITOR

As 2017 draws to a close, voices around the world are questioning, “Are we witnessing the end of the global liberal order?” It is a question that has prompted an outpouring of articles, and recently a book by a similar title, ranging from cautiously optimistic to downright gloomy. Such an atmosphere has provided all the more reason for greater scrutiny of US President Donald Trump’s visit to Asia. Trump’s continued focus on “America First” has elicited concerns from some observers that the United States has relinquished its place at the helm of the liberal world order. Regardless of one’s take on the state of the current liberal order, it is unquestionable that societies across the globe are questioning long-standing traditions, practices, and institutions. Understanding the changes that are happening in politics, societies, and cultures today is an imperative. To this end, we have assembled a collection of submissions on the theme of nations in transition.

Opening our “Papers” section is Bo Won Kim’s “Facing a Blow to Sovereignty, Why Comply? An Analysis of Compliance at the International Court of Justice,” which comes at an important moment for international institutions, at a time when nationalisms in many countries have asserted their enduring appeal and force. Kim gets at the heart of the question of why states choose to comply with international court rulings despite the lack of enforcement mechanisms. Comparing a case of compliance with one of non-compliance, she finds that high levels of obligation and precision of rulings make compliance more likely. The next paper takes us to South Korea. Kangkyu Lee’s “Presidential Scandals in South Korea since 1993: An Analysis of Resolve in Decision-Making,” and indeed this issue itself, comes at the heels of political transition in South Korea following the impeachment

of Park Geun-hye and election of Moon Jae-in. Lee explores the perennial issue of presidential scandals in South Korea, and through comparative case studies finds a strong link between the trait of “self-control” in a president’s formative years and resolve in office. Meanwhile, Iris Kim’s “Risk Perception, Trust, and Legitimacy: The Interaction of State and Society in Chinese Genetically Modified Food Governance” paper takes us to China in an interesting look at the intersection of technology, state, and society. Kim questions shifts in Chinese public perception of the risks of genetically modified foods and the responsiveness of the Chinese state to such perceptions. She argues for the role of increased media and NGO presence in China in altering notions of the state’s obligations. It will be interesting to observe further changes in the “new era” declared by Xi Jinping at the 19th Communist Party Congress held this year.

David Tian opens our “Essays” section with his work “Scarlet Fever in North Korea: Public Health as a Motivating Factor for China to Repatriate Defectors.” Tian takes a novel approach towards the issue of North Korean defectors in China by incorporating a public health perspective. Despite international condemnation, China has persisted in repatriating North Korean defectors. Tian suggests public health concerns may factor into Beijing’s calculus on defector policy and argues that addressing this issue may lead to productive results. Moving on to Southeast Asia, Sydney Piggott situates recent political crises in Thailand within its broader political history and identifies peasant rebellion movements in rural areas. Piggott traces the rise of the peasant uprising known as the “Red Shirts Movement” and finds its roots in the context of economic growth, rural diversification, and regime change in Thailand. Erina Kimura covers a different kind of phenomenon that is developing in Asia. Kimura questions the practices of cultural diplomacy and the exclusionary effects these may have on minorities in Japan that are not deemed as being “authentic” Japanese. She argues that this issue is particularly important when considered in conjunction with the phenomenon of global migration and offers suggestions for reconsidering the dangers of such practices. Finally, returning to the international level, Matthew Pullen offers an important analysis of the Trade Facilitation Agreement of the World Trade Organization, which was passed in 2013 but only entered into force in February of this year. Pullen evaluates the ostensible goals of the agreement and potential economic impact, and uses regressions to determine patterns in countries’ willingness to adopt such reforms. Pullen’s essay thus contributes to discussions on the changing international economic order.

It is no easy feat to put together a journal that covers so wide a variety of topics as this one aims to do. Even the category of “international studies” remains broad, as the content of our journal’s issues have demonstrated. Managing such a journal and ensuring high quality work gets published can only be made possible through the dedication of many people. Editors-in-chief of this journal in recent years have served short terms, but the devotion of the editorial team has remained a constant. As I have witnessed through my semester as editor-in-chief, it is only through the tireless work and support of the editorial team semester after semester that make this journal possible. For that, I am immeasurably grateful and wish future editors-in-chief as great of a team as with which I have been blessed.

Sincerely

A handwritten signature in black ink, appearing to read "Gene Kim". The signature is fluid and cursive, with the first name "Gene" being more prominent and the last name "Kim" written in a more compact, connected style.

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Editor in Chief

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PAPERS

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FACING A BLOW TO SOVEREIGNTY, WHY COMPLY?

AN ANALYSIS OF COMPLIANCE AT THE INTERNATIONAL COURT OF JUSTICE¹

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The effectiveness of international courts is frequently viewed with skepticism, as no clear enforcement mechanisms exist to ensure the compliance of states. Some scholars argue, however, that states have complied fairly well with the rulings of the International Court of Justice despite the absence of enforcement (Colter, 1987; Mitchell and Hensel, 2007; Schulte, 2004). Why states might do so remains a puzzle. To answer this question and to build on previous studies, I test five hypotheses provided in existing literatures to determine why states comply with the International Court of Justice. I apply a structured, focused case study and compare a case of compliance (Nigeria v. Cameroon, 1994) to a case of non-compliance (Nicaragua v. Colombia, 2001). Based on resources from first-hand materials as well as news articles, the case analysis shows that easy implementation, democracy, reputation costs, and compulsory jurisdiction do not account for why states have complied with rulings delimiting territorial jurisdiction. Rather, the degree of obligation and precision in previous treaties, upon which the ruling of the ICJ was based, best explains why states comply with the rulings.

Introduction

On May 31, 2016, a preliminary ruling was made in the International Court of Justice (ICJ) regarding the case of *Costa Rica v. Nicaragua* on the territorial delimitation between the Caribbean Sea and the Pacific Ocean. This court case began two years earlier, in February of 2014, when Costa Rica requested that the ICJ provide specific coordinates to delimit the two bodies of water.²

¹ This paper has been further developed from a paper presented in the MPSA 74th Annual Conference poster presentation titled "Why is the International Court of Justice Effective? Focusing on the Case Studies of Compliance in ICJ".

² International Court of Justice, *Costa Rica institutes proceedings against Nicaragua with regard to a dispute concerning maritime delimitation in the Caribbean Sea and the Pacific Ocean*, 2014, 11 ac-

The complaint concerned whether or not experts' site evaluations were necessary. While Nicaragua maintained that site visits and expert opinions were unnecessary, Costa Rica welcomed the prospect of experts and even tried to provide logistical comments.³ The court decided that expert opinions would be required for the delimitation. This case highlights important concerns over sovereignty. While issues of sovereignty are integral to states' national interests, countries nevertheless often resort to the ICJ to solve these disputes. As in this case, countries may apply for a court ruling because they have met an impasse in diplomatic negotiations and need a third party to adjudicate the process. However, after legal disputes and court procedures, a verdict is issued that may benefit one country over the other. In this circumstance, do countries comply despite suffering a blow to their national interests? The question can thus arise over whether the International Court of Justice is effective at all.

In international law literature, two opposing views address the effectiveness of international law and institutions. On the one hand, scholars such as Louis Henkin argue that international laws are effective because rational and deliberately calculated acts of nations lead them to avoid the costs of not complying with international rules.⁴ In other words, international law itself functions as a policy constraint on countries. In contrast, other scholars like Abram Chayes, Thomas Ehrlich, and Andreas Lowenfeld assert that international law is a process of policy justification and authoritative decision-making.⁵ Both groups, however, agree that compliance with international law can be explained with close attention to state interactions.⁶ As these debates persist in international law scholarship, scholars of International Relations have also begun to explore similar issues, focusing on the effectiveness of international law and the compliance behavior of states. Surprisingly, scholars have concluded that states comply fairly well with the verdicts of international courts.

For example, Constanze Schulte, after examining ICJ judgments from 1946 to 2003, concludes that while the case of *Nicaragua vs. United States* (1986) is an exception, the rest of the ICJ verdicts have been fairly well complied with.⁷ Similarly, Mitchell and Hensel, after exploring land dispute cases in the

cessed 6 July 2016, <http://www.icj-cij.org/en/case/157/institution-proceedings>.

3 International Court of Justice, *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean Order*, 2015, 31, accessed 6 July 2016, <http://www.icj-cij.org/en/case/157/oral-proceedings>.

4 Harold H. Koh, "Why Do Nations Obey International Law?" *The Yale Law Journal* 106, no. 8 (June 1997): 2599-659.

5 *Ibid.*, 2618.

6 *Ibid.*, 2617-2619.

7 Constanze Schulte, *Compliance with Decisions of the International Court of Justice* (Oxford, New York:

similarly situated Permanent Court of International Justice (PCIJ) and the ICJ, note that the verdicts were accepted in a vast majority of cases.⁸ According to their database, states almost always complied with the judgements of the PCIJ and the ICJ, while there was only one case of non-compliance.⁹ Other scholars have also reached the same conclusion regarding compliance with court decisions.¹⁰ Critics such as Yuval Shany claim that a simple compliance rate may not be sufficient because states may only bring easy-to-resolve cases to international courts.¹¹ However, this criticism overlooks the fact that the above-mentioned scholars include sensitive territorial cases in assessing the effectiveness of courts. Given the tendency of states to accept court decisions even regarding costly cases, the puzzle remains: why do states comply with the verdicts of international courts?

This question is important for four reasons. First, it is puzzling why states might comply with international court rulings despite the absence of explicit sanctions or coercion. The existence and function of coercive power has been regarded as an important prerequisite for compliance as coercive power is what ensures compliance domestically when laws are enforced by the state. Yet state compliance with court rulings often occurs even without coercion. Understanding this pattern thus has important ramifications for the study of International Relations. Second, scholars have not yet reached a consensus regarding why states comply with international law. In this article, I contribute to the existing literature by evaluating the strengths and weaknesses of existing theories and weigh their explanatory power. Third, existing studies rely primarily on quantitative methods to test their claims.¹² An in-depth comparative case

Oxford University Press, 2004).

- 8 Sara McLaughlin Mitchell, and Paul R. Hensel. "International institutions and compliance with agreements." *American Journal of Political Science* 51.4 (2007): 721-737.
- 9 Paul. R. Hensel, *The Issue Correlates of War Project* (2004). Available at <http://www.paulhensel.org/icow>.
- 10 Colter Paulson, "Compliance with final judgments of the International Court of Justice since 1987," *American Journal of International Law* (2004): 434-461; *Compliance with Judgments of International Courts*, ed. Mielle K. Bulterman and Martin Kuijer (The Hague, Netherlands: Kluwer Law International, 1996), 9-46.
- 11 Yuval Shany. "Assessing the effectiveness of international courts: A goal-based approach," *American Journal of International Law*, 106:2 (2012): 225-270.
- 12 Refer to: Marit Brochmann and Paul R Hensel, "The Effectiveness of Negotiations Over International River Claims." *International Studies Quarterly* 55:3 (2011): 859-82; Stephen E. Gent and Megan Shannon, "The Effectiveness of International Arbitration and Adjudication: Getting into a Bind," *Journal of Politics* 72:2 (2010): 366-80; Holley E. Hansen, Sara McLaughlin Mitchell, and Stephen C Nemeth, "IO Mediation of Interstate Conflicts Moving Beyond the Global Versus Regional Dichotomy," *Journal of Conflict Resolution* 52:2 (2008): 295-325; Paul K. Huth, Sarah E. Croco and Benjamin J. Appel, "Does International Law Promote the Peaceful Settlement of International Disputes? Evidence from the Study of Territorial Conflicts since 1945," *American Political Science Review* 105:2 (2011): 415-36;

study can provide supplementary evidence by exploring the dynamics of state compliance in actual cases before the ICJ. Finally, this paper introduces new cases and updated records of compliance that have not yet been subjected to close study. ICJ cases that began around 2000 have been recently concluded, and these cases have not yet been examined in detail. Therefore, introducing new comparative cases and exploring the compliance choices of involved countries may contribute to the field of compliance literature by updating the patterns in the ICJ case load.

In this article, I find that compliance with the verdicts of the ICJ is not dictated solely by the interests of the state, but rather is influenced by the state's awareness of international law based on the level of legalization of previous treaties. Legalization here is defined as "a particular form of institutionalization characterized by three components: obligation, precision, and delegation."¹³ I draw from the literature on legalization provided by Goldstein et al. to suggest that the degree of obligation and precision of the treaties upon which rulings of the ICJ are based creates a certain compliance pull that influences countries to comply with rulings that affect their national interest. This is due to the fact that states are unable to refute the legitimacy of the ruling if the obligation and precision of former treaties they have signed clearly delineate disputed territories.

This article is composed of three sections. I first review the various theories that account for why states comply with ICJ verdicts. I then outline the research design of this study. Lastly, I test five hypotheses related to ICJ compliance through a comparative case study of two ICJ cases: *Cameroon v. Nigeria* (1994) and *Nicaragua v. Colombia* (2001). The case analysis suggests that previous studies may not fully account for why states comply with ICJ verdicts when it comes to territorial concessions. This study further suggests that the legalization of treaties that countries have made before the court procedures represents an influential factor in state compliance.

Why Do States Comply with Court Rulings?

Three distinct perspectives explain state compliance with international court rulings, each corresponding to a mainstream theory in International

Harold Hongju Koh, "Why Do Nations Obey International Law?" *The Yale Law Journal* 106:8 (1997): 2599-659; Beth A. Simmons, "Capacity, Commitment, and Compliance International Institutions and Territorial Disputes," *Journal of Conflict Resolution* 46:6 (2002): 829-56; Krista E. Wiegand and Emilia Justyna Powell, "Past Experience and Methods of Territorial Dispute Resolution," Paper presented at the APSA 2009 Toronto Meeting Paper, 2009.

13 Judith Goldstein, *Legalization and World Politics*, (Cambridge: MIT Press, 2001), 17.

Relations. Realists contend that state interests are the basis of compliance and non-compliance, specifically state interests in relation to their own power resources. Liberals, conversely, focus on institutional or domestic factors in explaining both compliance and non-compliance. Finally, constructivists appeal to the 'logic of appropriateness'.

Realism

For realists, international legal obligations are weak at best. Realism is based on the idea that national interests defined by power determine state behavior.¹⁴ This assumption leads to a logic of disregarding international law and obligations, since they lack enforcement mechanisms.¹⁵ In terms of compliance, if state's power interests are greater in not complying with the verdicts of international courts, it is likely that states will not obey rulings.¹⁶ Nevertheless, when the interests of states are not challenged by international obligations, or states power resources may be enhanced through compliance states may obey international law.¹⁷ This would not be a function of international obligations, as states may not comply in an absence of material pressures or might comply when "coercion or coincidence of interest" exists.¹⁸ Instead, the crux of the argument is that international law is inconsequential and epiphenomenal, and that states obey international law only when they are themselves willing to implement the verdicts for national interest, or if it is simply easy to do so.¹⁹

Liberalism

For liberals, two major streams explain compliance, focusing on regime type and international institutions. To start, liberal scholars typically rely on domestic factors in explaining the compliance of states.²⁰ Some discuss the importance

14 Hans J. Morgenthau, "The U.S. and the Mideast". *The New Leader*, 13 (1967): 3-6.

15 Jack L. Goldsmith, and Eric A Posner. *The Limits of International Law*. Vol. 199: Oxford University Press Oxford, 2005.

16 Ibid.

17 Andrew T. Guzman, "A Compliance-Based Theory of International Law," *California Law Review* 90(6), (2002, December): 1823-1887. He provides an example of how states are obligated by international law not to develop satellite-based weapons, but states will simply not develop them because technology is lacking, not because they are obligated by international law.

18 Goldsmith and Posner, *The Limits of International Law*.

19 George W. Downs, David M. Roake and Peter N. Barsoom, "Is the Good News About Compliance Good News About Cooperation?" *International Organization*, 50:3 (1996): 379-406.

20 Andrew Moravcsik, *Liberalism and International Relations Theory*, Center for International Affairs, Harvard University Cambridge, MA, 1992. Similar arguments can be seen in Beth A. Simmons, "Capacity, Commitment, and Compliance International Institutions and Territorial Disputes," *Journal of Conflict Resolution* 46:6 (2002): 829-856.

of the rule of law as a factor that affects countries' compliance with international law.²¹ There are also strategic explanations. In a democratic country, leaders tend to prefer a formal process of legal dispute resolution because the formal institutions can shield the domestic leader from criticisms regarding territorial concessions.²² In cases where leaders are aware of the relatively minimal legal advantages in terms of a dispute, they may thus opt for a more formal process of dispute resolution to shield themselves from domestic criticism.²³ This is especially likely in cases of interstate security disputes, where the domestic audience may be particularly sensitive. This framework has value in explaining the domestic process regarding territorial disputes, but it does not provide an explanation for non-democratic countries that also resort to international legal procedures in territorial disputes.

Neoliberal Institutionalism

Some scholars focus on the role of international institutions to explain state compliance. States comply because international institutions decrease verification costs, punish cheaters, and increase the repeated nature of interactions, thus advancing cooperation.²⁴ Scholars focusing on institutions suggest three factors that make states more or less likely to comply: reputation costs, transaction costs, and the bargaining process. First, states' compliance depends on the level of reputation costs. States comply when those costs are high, but if the costs are deemed irrelevant, states do not comply. Second, centralization and independence of international institutions also increase efficiency, which eventually leads to a decrease in transaction costs. Thus, the role of institutions in integrating managerial and enforcement measures ensures the compliance of states.²⁵ Finally, the bargaining process occurring in international institutions affects state compliance. For example, joint membership increases interaction opportunities and lengthens the shadow of the future.²⁶ Moreover, international institutions directly involved as third

21 Beth A. Simmons, "Compliance with International Agreements," *Annual Review of Political Science* 1:1 (1998): 75-93. The details are explained well on pages 83 to 85.

22 Paul K. Huth, Sarah E. Croco and Benjamin J. Appel, "Does international law promote the peaceful settlement of international disputes? Evidence from the study of territorial conflicts since 1945," *American Political Science Review* 105:2 (2011): 415-436.

23 *Ibid.*, 417.

24 Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton: Princeton University Press, 2005).

25 *Ibid.*, 26.

26 Paul R. Hensel, in *The Issue Correlates of War Project* (2004). Retrieved from <http://www.paulhensel.org/icow.html>, at 725.

parties try to support compliance through agreements, binding techniques of arbitration and adjudication.²⁷

Constructivism

For constructivists, neither the imposed constraints suggested by realists nor the rational calculations suggested by liberals play an essential role in influencing state compliance. Instead, the most important determinant of a state's decision to comply or not is the existence of "internalized identities and norms of appropriate behavior."²⁸ If states internalize the core value and legitimacy of international law and institutions, a higher possibility exists that the states will comply with those international laws and procedures. Intersubjective meanings are developed through a constant process, and normative expectations like other norms, coherence, legitimacy and a process of persuasion lead to the acceptance of these norms.²⁹ State compliance is ultimately explained by a repeated habit of obedience that shapes the interests of states leading them to value compliance.³⁰

However, constructivists do not provide a unidirectional explanation in which international normative structure unilaterally influences state behavior. States are not simply affected by international norms but also consciously try to "create information, ideas, norms, and expectations; to carry out and encourage specific activities; to legitimize or delegitimize particular ideas and practices; and to enhance their capacities and power."³¹ In addition, legal scholars like Koh propose a more complex step of compliance referred to as "transnational legal process." Here, Koh adds the complexity of domestic processes and argues that a state's obligation to "obey an international norm becomes an internally binding domestic legal obligation when that norm has been interpreted and internalized into its domestic legal system."³² Thus, only when a state internalizes the legal norms and implements them domestically does it comply with international law.

27 Ibid., 724.

28 Kal Raustiala and Anne-Marie Slaughter, "International Law, International Relations and Compliance," *International Relations and Compliance: Princeton Law & Public Affairs Paper 02-2* (2002).

29 Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47:2 (1993): 175-205.

30 Harold H. Koh, "Why Do Nations Obey International Law?", 2599-659.

31 Kenneth W. Abbott and Duncan Snidal, "Why states act through formal international organizations," *Journal of conflict resolution* 42:1 (1998): 3-32.

32 Harold H. Koh, "Why Do Nations Obey International Law?" *The Yale Law Journal* 106:8 (June 1997): 2659.

Research Design

Methods and Hypotheses

First, in order to test the theories explaining compliance, I apply a comparative case study described as a “structured, focused comparison.”³³ “The method is structured in that the researcher writes general questions that reflect the research objective and that these questions are asked of each case under study to guide and standardize data collection, thereby making systematic comparison and accumulation of the findings of the cases possible.”³⁴ A structured and focused comparison requires the same class of events to be analyzed, research objectives to be identified, and variables driven from theory to be explicated.³⁵ In this case, the class of events would be the compliance behavior of states after ICJ verdicts from two cases, *Cameroon v. Nigeria* (1994) and *Nicaragua v. Colombia* (2001). The purpose of this study is to examine the factors that influence states to comply. The variables are driven by the existing literature’s explanations for compliance.

As the *Cameroon v. Nigeria* case represents a case of compliance, while the case of *Nicaragua v. Colombia* represents non-compliance, a clear contrast is available in terms of why states choose to comply with a verdict of the ICJ. In this literature, I define compliance as both accepting the judgment of the court (in cases where the countries were not asked to implement anything), and, if relevant, implementing the rulings provided by the ICJ. Operationalizing compliance in cases of ICJ rulings can be quite complex given that the types of rulings can differ drastically from case to case.³⁶ For instance, a ruling may order countries to accept the interpretation of a certain treaty, or to cooperate and negotiate acceptable terms. In the case of some rulings, there is little to implement, and states must simply accept it. The court may also provide rulings for states to implement through some action like ceding territory or removing personnel from certain areas.

In the case of territorial delimitations, the ICJ adjudges the delimitations of territory and requests that the countries abide by such rulings through certain logistical implementations. Therefore, in this case, whether countries

33 Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences*. (MIT Press, 2005), 67-72.

34 *Ibid.*, 67.

35 *Ibid.*, 69.

36 Constanze Shulte, *Compliance with Decisions of the International Court of Justice* (Oxford: Oxford University Press, 2004), 29-35.

have accepted and implemented positive rulings can be easily observed; non-compliance would mean that states refused to accept the ruling or to implement the recommendations that the ICJ provided. Considering that the ICJ does not impose time-limits³⁷, as long as the country eventually implements or accepts the ruling the ICJ provided in the judgment, this will be considered as compliance.

In this case study, I test five hypotheses derived from previous explanations. The first hypothesis is in line with the realist explanation for compliance. As realists perceive state interests to be integral to their behavior, compliance explanations are based on state interests.

H1: If verdicts are beneficial to state interests, states will comply with the verdict of the ICJ.

Therefore, if this hypothesis holds, an ICJ verdict that bestows economic or territorial benefits on a state will lead that particular country to comply with the verdict. On the contrary, we should see that a verdict detrimental to a state's interests will most likely lead to that country refusing the ruling and thus demonstrating behaviors of non-compliance.

Two separate hypotheses, divided into domestic and international factors, can be derived from the liberal perspective on state compliance with ICJ rulings. First, as stated above, liberals believe that domestic factors influence state compliance. Therefore, if a country is democratic, a leader who wishes to gain legitimacy while shielding him or herself from public dissent will resort to international institutions and will comply. From this, we can derive the second hypothesis.

H2: If the leader of a democratic country fears public dissent regarding the dispute, the leader will state the importance of compliance and abide by the verdict of the ICJ.

If this hypothesis is true, leaders of democratic countries should resort to the ICJ to legitimize the result of the dispute as an important step in abiding by international law, in order to shield themselves from the harsh criticism of

37 Ibid.

the media. The state would thus comply with verdicts of the ICJ even if they undermine the national interests of the state.

Second, in terms of neoliberal institutionalism, neo-liberals argue that international institutions decrease the bargaining process and transaction costs and raise reputation costs. Thus, states would comply to avoid reputation costs and the possibility of harming future reciprocity. From this the following hypothesis emerges:

H3: If states fear reputation costs from non-compliance after the verdict of the ICJ, states will comply with the verdict.

If this hypothesis is true, we should see that countries concerned about reputation costs comply with the verdicts of the ICJ. As the ICJ is one of the principal organs of the UN, this reputation cost could bear consequences within the UN for countries that do not abide by the verdict of the ICJ. Thus, the countries that fear reputation costs like retaliation and international criticism would be more likely to comply with the outcome of the rulings.

Constructivists highlight the importance of inter-subjectivity, internalization of norms and the state's view of international law as part of a "logic of appropriateness." Therefore, considering the importance of the internalization of these norms, the following hypothesis can be derived.

H4: If states have agreed to compulsory jurisdiction, they will comply with the verdict of the ICJ.

If this hypothesis were to hold, we would see countries that have internalized norms of international law abide the rulings of the ICJ. Indications of norm internalization may be seen in countries that have domestically legalized the norms, or countries that avidly take part in international treaties and abide by them. In this case, it could be countries that have already experienced the procedures of the ICJ, and have experienced compliance.

The last hypothesis emerges from a middle-ground between liberalism and constructivism; it derives from the concept of legalization inherent in the ICJ. In short, the decisions of states to comply with the ICJ or not may be influenced both by normative concerns and calculated costs related to legalization. The concept of legalization is characterized by the three elements of obligation, precision, and delegation. Through domestic means, compliance pulls, or levels of embeddedness, it is postulated that the level of legalization has an

effect on compliance and international cooperation.³⁸ Although, the effects of legalization on compliance are contested among authors,³⁹ I borrow from this literature and hypothesize that the degree of obligation and precision in the treaties upon which ICJ verdicts are based will influence compliance. This follows because the ICJ's rulings are based on previous treaties that states have made, and if none exists, the decisions are based on customary law. The fact that states have delegated the issue to the court, and that the treaties used to obtain a ruling are obligatory and precise, may prevent states from providing excuses to refuse implementation of the rulings.

H5: If the treaties or agreements upon which the ICJ has based its rulings are high in levels of obligation and precision, states will comply with the verdict.

Delegation is absent from this hypothesis because the states have already delegated the issue of adjudication to the ICJ. The ICJ is considered to be moderate in terms of its level of delegation,⁴⁰ but the treaties or agreements upon which the rulings are based may have different levels of obligation or precision, thus creating potentially greater compliance pull. This may affect how states receive the ruling of the ICJ, and it could affect their compliance behavior. According to the literature, obligation is considered highest when it requires unconditional obligation, or when a political treaty implies obligation.⁴¹ Obligations are low when there are few legally binding expectations.⁴² In the case of precision, agreements are considered high in precision when the rules leave little room for interpretation, and low in precision when it is difficult to decide whether the treaty could be applicable.⁴³

Case Selection

I use for purposes of comparison the cases of *Cameroon v. Nigeria* (1994) and *Nicaragua v. Colombia* (2001). These cases represent a clear contrast in terms of compliance: Cameroon and Nigeria have complied with the verdict of the ICJ and continue to implement the logistics to this day. In contrast,

38 Judith Goldstein, *Legalization and World Politics* (Cambridge: MIT Press, 2001), 9-96.

39 Ibid.

40 Ibid., 85.

41 Ibid., 26.

42 Ibid., 26.

43 Ibid., 35.

Colombia has stated that it will be unable to implement the verdict of the ICJ, and that delimitation provided by the court will not be accepted. As both cases were extremely contentious, it is useful to explore the factor that influenced the variance in outcomes. Furthermore, the fact that the verdict and implementation of these cases have been fairly recent contributes to the literature by adding new examples of compliance and non-compliance.

In terms of unit homogeneity, the two cases may seem dissimilar given the regional and yearly differences, as well as variance in the political contexts. However, several key features make them prime cases for comparison, including the similarity in ICJ procedures, the topic of contention, and the proximity of the two countries in dispute. Given the aim of theories in the literature to explain compliance in general terms, moreover, they should be able to account for cases across a variety of contexts. If a theory is able to explain slightly different cases for compliance, this would constitute a more robust explanation of empirical cases. The criticism remains in regard to selecting cases from the ICJ, as doing so requires that the states have chosen to go to court. While this could be interpreted as states taking only easy cases to court, for a number of reasons, the cases presented below clearly indicate that this is not the case.

First, cases involving territorial disputes are typically brought to the ICJ because diverse diplomatic and institutional negotiations have failed miserably. In this case, the countries are hoping to reach a solution to delimiting the regions of dispute that was unattainable through bilateral means. Second, in cases of permanent jurisdiction, countries are often 'dragged to court.' When reviewing the preliminary objections provided by countries that have been sued, countries often seek to avoid going to court by arguing that the ICJ does not have jurisdiction. Yet the ICJ has almost always overruled these objections, suggesting that there are cases in which countries are obliged to go to court despite their desire not to. Third, the price of going to court is quite expensive for states involved in a dispute. Costs regarding court procedures include, but are not limited to: experts, hiring of lawyers, costs for providing evidence to support their arguments, costs in regards to written pleadings in which some may have to be translated, legal research costs, expenses from oral proceedings and so forth.⁴⁴ For instance, in the case of *Costa Rica v. Nicaragua*, it is known that Costa Rica planned to use over one million dollars in the ICJ litigation process in 2015 alone, an expense that has been heavily criticized due to its impact

44 José Quintanaand and Juan Aranguren, *Litigation at the International Court of Justice: Practice and Procedure*. Vol. 10. (Leiden, The Netherlands: Hoteli Publishing, 2015), 228.

on the national budget within the fiscal commission.⁴⁵ These factors help to mitigate concerns that the cases suffer from selection bias.

Case Analysis

A case study using a focused, structured comparison was applied to analyze the two cases below. The first case is the *Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria, 1994)*, in which both states complied with the ruling. The second case is the *Territorial and Maritime Dispute (Nicaragua v. Colombia, 2001)* where Colombia refused to comply with the verdict of the ICJ. The results show that hypotheses one through four⁴⁶ do not explain why states have complied with the verdict of the ICJ. Observing the variables through Mill's method of difference and comparing the two cases shows that the variables were consistent in both cases. Therefore, it is safe to say that at least within the boundaries of these two cases, existing theories explaining the compliance behavior of states do not apply and may not provide a generalizable explanation. Table T1 briefly summarizes the contents of the cases to be explained in detail. These contents indicate that the key explanatory factor explaining variation in the outcome is the degree of obligation and precision of the treaties that were used for the ICJ rulings.

Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria, 1994)

On March 29, 1994, the Republic of Cameroon (from now on Cameroon) filed an application instituting proceeding against the Republic of Nigeria (from here on Nigeria) requesting the court to adjudge on the sovereignty of the Bakassi Peninsula, as the hostility between the two countries had been unresolved. Cameroon requested that the court determine the maritime boundary including Lake Chad to the Sea, with an additional application made on June 6, 1994.⁴⁷ Nigeria objected that the court did not have jurisdiction, and that

45 "Costa Rica Spends over 1m Dollars at ICJ on Cases against Nicaragua," *PrensaLibre* (San Jose), October 2, 2014. BBC Worldwide Monitoring.

46 H1: If verdicts are beneficial to state interests, states will comply with the verdict of the ICJ.

H2: If the leader of a democratic country fears public dissent regarding the dispute, the leader will state the importance of compliance and abide by the verdict of the ICJ.

H3: If states fear reputation costs of non-compliance after the verdict of the ICJ, states will comply with the verdict.

H4: If the states have agreed to compulsory jurisdiction, they will comply with the verdict of the ICJ.

H5: If the treaties or agreements upon which the ICJ has based its rulings are high in levels of obligation and precision, states will comply with the verdict.

47 International Court of Justice, "Application Instituting Proceedings Filed in the Registry of the Court

Table T1

Variables	Cameroon v. Nigeria (1994)	Nicaragua v. Colombia (2001)
H1	Economically and territorially costly for the losing state	Economically and territorially costly for the losing state
H2	Intense public dispute within a democratic country; the leader stated the intention to abide by the ruling	Intense public dispute within a democratic country; the leader refused to comply with the ruling
H3	Fear of reputation costs, as the United Nations Secretary General fostered further implementation	Fear of reputation costs as the non-complying state, Colombia, initially needed the full support of the UNSC to broker a peace deal with FARC.
H4	Joined the Compulsory Jurisdiction	Joined the Compulsory Jurisdiction
H5	Ruling of the ICJ based upon a treaty with high levels of obligation and precision in delimiting the territory	Ruling of the ICJ based upon UNCLOS and neither country was a party to UNCLOS
Compliance	Complied	Did not Comply

maritime delimitation was to be settled by bilateral means, as the Lake Chad Basin Commission existed to solve such problems while taking into account third state interests.⁴⁸ The Court rejected this preliminary objection, and the case continued.

Costs of compliance

From the beginning of the court case Nigeria tried to refuse to go to court as the case was sensitive and contentious. Ramifications of the verdict could heavily affect the national interests of both countries. According to the ICJ, “this was the first time that the Court had been called upon to rule on a request

on 29 March 1994, Land and Maritime Boundary Between Cameroon and Nigeria,” March 29, 1994. <http://www.icj-cij.org/docket/files/94/7201.pdf>.

48 International Court of Justice, “Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria, Preliminary Objections of the Federal Republic of Nigeria,” December, 1995. <http://www.icj-cij.org/docket/files/94/8598.pdf>

for interpretation of a judgment on preliminary rejections.”⁴⁹ This issue was so critical for both countries’ national interests that even before the case was presented to the ICJ, the United Nations Security Council had an urgent meeting requested by Cameroon to address its concerns. The territorial dispute had also already been referred to the Committee for Conflict Management and Resolution of the Organization of African Unity.⁵⁰ In fact, the dispute reached levels extreme enough that Nigeria and Cameroon exchanged fire, and the ICJ issued preliminary measures for both countries to commit to their cease-fire agreement.⁵¹

Nigeria and Cameroon both considered the Bakassi peninsula crucial, as losing this territory would incur critical political and economic costs. For Nigeria, it was politically important because many Nigerians lived in the disputed area. The safety of Nigerians was thus a key issue if the case were to go to court. The Bakassi peninsula was also replete with oil, natural resources and minerals that would be economically resourceful for both countries. Losing the land would mean losing the possibility to tap into these resources that could be profitable for the country. Considering these possible ramifications, Nigeria’s compliance with the ruling of the ICJ in the end and handing over the Bakassi peninsula is curious. This compliance behavior clearly contradicts the claim that states only comply with easy cases, insofar as the ruling resulted in heavy economic and political costs for Nigeria.

The Degree of Legalization

On the tenth of October in 2002, it was decided that Nigeria would have to hand over the Bakassi peninsula. The ruling was based on the 1920-1930 Thomson-Marchand Declaration and the Anglo-German Agreement of March 11, 1913 in which the coordinates of the territories were delimited.

The Thomson-Marchand Declaration was an agreement signed by the Governor of the Colony and Protectorate of Nigeria and by the Commissioner of Cameroon, which was under France. After World War I, France and England

49 International Court of Justice, “Request for Interpretation of the Judgment of 11 June 1998 In the Case Concerning the Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria), Preliminary Objections (Nigeria v. Cameroon) Judgment of 25 March 1999,” March 25, 1999. <http://www.icj-cij.org/docket/files/101/7633.pdf>.

50 International Court of Justice, “Application Instituting Proceedings Filed in the Registry of the Court on 29 March 1994, Land and Maritime Boundary Between Cameroon and Nigeria,” March 29, 1994. <http://www.icj-cij.org/docket/files/94/7201.pdf>.

51 Case International Court of Justice, “the Land and Maritime Boundary of Cameroon and Nigeria, Order of 15th March 1996,” March 15, 1996. <http://www.icj-cij.org/docket/files/94/7427.pdf>.

specifically delimited territories, and this agreement was a part of that effort.⁵² Its degree of precision was high enough that the delimitation had an overall influence upon the ruling of the ICJ. Furthermore, the agreement was high in obligation, as it was a binding international agreement. The states that consented to the agreement would thus have had little choice but to comply. Although the treaty was signed decades earlier, it still applied to both Nigeria and Cameroon due to statutory succession. The Anglo-German Agreement was more directly linked to the Bakassi peninsula. Before World War I took place, Germany and England had officially delimited the territory of Nigeria.⁵³ At that time, Bakassi belonged to Germany, and this was the only treaty that clearly and precisely delimited the boundary before Nigeria and Cameroon became independent.⁵⁴ The agreement was thus used as a blueprint to divide the current territory of Nigeria and Cameroon. Both the Thomson-Marchand Declaration and the Anglo-German Agreement were high in obligation and precision, and both clearly demonstrated that the Bakassi Peninsula was under the sovereignty of Cameroon. It would have been difficult for Nigeria to discredit the ruling, as it was based on previous agreements that had the status of international treaties.

As a result, Cameroon was to gain the Bakassi Peninsula and Nigeria had to withdraw all police forces and its administration. Likewise, for the territories belonging to Nigeria, Cameroon had to remove its personnel from the Nigerian territory.⁵⁵ According to the ICJ, the two treaties mentioned constituted precise evidence beneficial to delimiting the territory. Therefore, considering the level of obligation imposed by the previous treaties, it would have been difficult for Nigeria to argue that the treaty was unsound, or that the verdict was unfair. As there were no legal grounds to dispute the ruling of the ICJ, Nigeria thus decided to give up on contesting the ruling.

Reputation Costs & Retaliation

Both presidents Olusegun Obasanjo of Nigeria and Paul Biya of Cameroon promised to abide by the decision of the ICJ.⁵⁶ To see this implementation through, Kofi Annan, the UN Secretary General at the time, convinced Nigeria

52 International Court of Justice, "Land and Maritime Boundary Between Cameroon and Nigeria, Judgment of 10 October 2002," October 10, 2002. <http://www.icj-cij.org/docket/files/94/13803.pdf>

53 Ibid.

54 Ibid.

55 International Court of Justice, "Land and Maritime Boundary Between Cameroon and Nigeria, Judgment of 10 October 2002," October 10, 2002. <http://www.icj-cij.org/docket/files/94/13803.pdf>

56 "Cameroon; How Nigeria Lost Bakassi," *Africa News*, October 15, 2002. Lexis Nexis.

and Cameroon to sign the Green Tree Agreement in 2006, ensuring a peaceful handover of the territory. The mediation of Kofi Annan meant that the UN itself was focused on this matter. If Nigeria were to refuse the ruling, it would mean that the rulings of an official UN organ would be dismissed, which could cause reputational repercussions and could signal to other countries that the states were unfaithful to the principles of the UN. As the Secretary General (a symbolic figure of the UN) and the UNSC were heavily involved in this case, it can be postulated that compliance with the ICJ ruling may be due to fear of retaliation or costs to reputation.

Furthermore, theoretically, retaliation for refusal to comply could occur based on article 94 of the UN charter, which states that

“if any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

However, the guideline could be viewed as obscure in this particular case, considering the fact that it does not explain the senate of Nigeria nullifying the ruling of the ICJ in 2007.⁵⁷ After the ruling of the ICJ and UN Secretary General Kofi Annan’s participation in the initiation of the Green Tree Agreement, the Nigerian senate refused to comply with the ICJ ruling. Thus, it is difficult to say that reputation costs of the state or possibilities of UN retaliation led to Nigeria’s compliance. Theoretically, it is plausible that the president called for compliance with the rulings of the ICJ in fear of the shadow of the future as well as the fear of reputation costs. However, the senate in Nigeria heavily criticized Obasanjo for signing the Green Tree Agreement and then nullified the treaty. This shows that reputation costs were not a consideration for domestic politics in deciding whether to comply, so that hypothesis does not seem to stand in this case.

Domestic Dissent and Compulsory Jurisdiction

As seen above, heavy domestic dissent existed regarding the issue of compliance within Nigeria, but the president nevertheless called for abiding by the ruling, as it was an international obligation. The hypothesis that leaders

57 “Nigeria; Senate Cancels Bakassi Handover.” *Africa News*, November 23, 2007. Date Accessed: September 27, 2016. www.lexisnexis.com/hotttopics/Inacademic

of a democratic country strive to decrease domestic criticism by stating the importance of complying with international law thus makes some sense; the hypothesis that internalization of norms leads to compliance is also plausible. However, these variables were quite similar in the case of non-compliance explained below, so those factors are held as constant. Considering the case of non-compliance, then, these two hypotheses may not be generalizable.

Both Nigeria and Cameroon had accepted compulsory jurisdiction. On April 1998, Nigeria declared that it would accept the jurisdiction of the ICJ without special agreement, and it made reservations in cases regarding domestic matters. While consent had been given much earlier, a declaration was submitted in 1998. The court deemed that Nigeria had consented to compulsory jurisdiction at an earlier time, and had commenced with the case.⁵⁸ Cameroon had declared compulsory jurisdiction a littler earlier, in March of 1994, without specific reservations. Thus, one might argue that the internalization of international norms could explain the compliance behavior of the states. This understanding of international law is observable: during the feud between the senate and the former president Obasanjo, the Nigerian president at that time, Umaru Musa Yar' Adua, stated in a letter to the senate that:

You may kindly note that having subscribed to the jurisdiction of the International Court of Justice, Nigeria became duty bound to respect its judgment of 10th October 2002, which confers the sovereignty of Cameroon over the Bakassi Peninsula. Similarly, recall that in furtherance of that, and, as a responsible member of the comity of nations as directed by the International Law and procedure, Nigeria entered into the Green Tree Agreement with Cameroon on the modalities of implementation of that judgment.⁵⁹

Despite the domestic disagreement, handover of the Bakassi peninsula took place on August 14, 2008. After handing over the Bakassi peninsula, the issue seemed to have been resolved, although the internal dissent regarding compliance has been continuous. The senate of Nigeria later urged President Goodluck Jonathan to file an appeal to the ICJ before the case expired on October 9, 2012. Senate President David Mark stated:

58 Stanimir A. Alexandrov, "The Compulsory Jurisdiction of the International Court of Justice: How Compulsory Is It?" *Chinese Journal of International Law* 5:1 (2006): 29-38.

59 "Nigeria; Yar'Adua Seeks Senate's Ratification." *Africa News*. December 12, 2007. Date Accessed: September 27, 2016. www.lexisnexis.com/hottopics/lnacademic.

"We have obeyed the international court to this point, but we still do not accept it. It is not that we accept it, we have simply obeyed their decision. We have not accepted it. There is a lot of pressure at home here and I think it is the belief of every Nigerian that we should not cede Bakassi, not the way it has happened. I think that is really where the problem is."⁶⁰

President Goodluck Jonathan stated in the United Nations General Assembly that "what the President said is that as the judgment stands, we will obey it. That does not mean that we cannot appeal the judgment."⁶¹ As of 2016, the implementation of the agreement, including moving of inhabitants residing in the area, still continues and the current Nigerian President Muhammadu Buhari conceded that "Since Nigeria allowed the case to go to court, and we lost, we have to abide by it."⁶² In a joint conference that took place on May 5, 2016, President Buhari further stated that

"On this Bakassi Peninsula issue, I'd like the government and people of Cameroon to keep their minds at peace, Nigeria is an internationally respectful and law abiding nation, somehow there was a crisis between the two nations on Bakassi Peninsula over the hydro carbon exploitation, but this issue has been dealt with by the International Court of Justice."⁶³

Some have filed suits for proper relocation;⁶⁴ have requested that the Abuja Federal High Court restrain the federal government from handing over the territory until safe relocation has been ensured; and continue to claim that their livelihoods are being threatened due to hunger, rape and threats to their safety.⁶⁵ Despite this internal dissent, the implementation is still taking place,

60 "Senate to FG: Appeal Bakassi Judgment Now." *Vanguard*, September 27, 2012. Accessed September 28, 2016. <http://www.vanguardngr.com/2012/09/senate-to-fg-appeal-bakassi-judgment-now/>.

61 "Senators Ask Jonathan To Appeal ICJ Judgment On Bakassi." *PM News*, September 26, 2012. Accessed September 28, 2016. <http://www.pmnewsnigeria.com/2012/09/26/senators-ask-jonathan-to-appeal-icj-judgment-on-bakassi/>.

62 Nda-Isaiah, Jonathan. "Nigeria Will Abide By Decision of ICJ On Bakassi - Buhari." *All Africa Global Media* (Abuja), August 2, 2016. Lexis and Nexis.

63 "Nigeria; Nigeria Will Comply with ICJ Judgment On Bakassi - President." *Africa News*. May 5, 2016. Date Accessed: September 27, 2016. Lexis Nexis.

64 Number FHC/13/2007

65 "Nigeria; Bakassi People Cry for Help." *Africa News*. June 6, 2016 Monday. Date Accessed: September 27, 2016. Lexis Nexis.

and subsequent presidents have stated their will to abide by the rulings of the ICJ and to acknowledge international law.

States may comply with difficult cases despite notable costs to state interests, and that reputational costs may not heavily influence the compliance behavior of states. Heavy domestic dissent in Nigeria regarding compliance to the ICJ ruling has persisted, but internalization of international law and consent to the ICJ's compulsory jurisdiction seems to be present. The high degree of legalization is also apparent in this case. While viewing only this case may blur the explanatory power of the hypotheses provided above, a comparison with the case below clarifies the key explanatory factor in ICJ compliance.

Territorial and Maritime Dispute (Nicaragua v. Colombia, 2001)

Nicaragua filed an application against Colombia on December 6, 2001, arguing that its territory has been breached by Colombia and that its fishing activities suffered due to Colombia's military activities. While Nicaragua had tried to resolve this issue through bilateral means, those attempts resulted in failure numerous times. Nicaragua thus requested that the ICJ adjudge and declare that Nicaragua has sovereignty over the San Andrés and Santa Catalina islands, Roncador, Serrana, Serranilla and the Quitasueno keys, and to determine the maritime boundary between the two states. Furthermore, Nicaragua requested that Colombia compensate it for the losses it had suffered.⁶⁶

Cost of Compliance

The territories in dispute were replete with the natural resources of hydrocarbon and natural gas; losing this land would be costly in terms of the economic profit that could be drawn from those natural resources. In the event of a ruling in favor of Nicaragua the country stood to gain about 75,000 square kilometers of the Caribbean, along with economic rights.⁶⁷ This would have resulted in a huge economic loss for Colombia, as the area that was to be given to Nicaragua included oil for which Nicaragua planned to obtain exploration licenses.⁶⁸ Furthermore, 54 percent of the area was declared an extensive ocean production system by UNESCO in 2000,⁶⁹ meaning that natural

66 International Court of Justice, "Application Instituting Proceedings filed in the Registry of the Court on 6 December 2001, Territorial and Maritime Dispute (Nicaragua v. Colombia)." December 6, 2001.

67 "Colombian, Nicaraguan Dispute Reignites Despite International Court Ruling," *BBC Monitoring Latin America - Political Supplied by BBC Worldwide Monitoring*. September 16, 2013.

68 Ibid.

69 "Colombian Daily Views Dispute with Nicaragua Over Nature Reserve," *BBC Monitoring Latin America - Political Supplied by BBC Worldwide Monitoring*. May 29, 2013.

resources are extremely abundant. For Colombia, implementing the ruling of the ICJ would not have been an easy task. Colombia had much to lose, and it had deemed the territory under dispute to be within its sovereign holdings for many years. Furthermore, the land that was considered a part of Colombian territory allowed fishermen to continue their livelihoods.⁷⁰

Thus, Colombia worked feverishly to keep this case away from court, and when it failed, it refused to comply with the ruling provided by the ICJ. Colombia provided a preliminary objection based on the Bogota pact stating that the ICJ has no jurisdiction over the case. According to Article XXXIV of the Bogota pact, if a dispute has already been settled, the ICJ is not entitled to jurisdiction, and there is no such dispute regarding territorial claims.⁷¹ The court found the 1928 treaty and the 1930 Protocol to be valid, allowing Colombia to retain sovereignty over San Andrés, Providencia and Santa Catalina, the rest of the islands have not been clearly delimited by previous treaties.⁷² Thus, the court still has jurisdiction over determining the sovereignty of the rest of the islands mentioned by Nicaragua. Based on customary international law and the principles of maritime delimitation in UNCLOS (United Nations Convention on Law of the Sea) Articles 74, 83 and 121, the court decided that Colombia has sovereignty over the islands of Alburquerque, Bajo uervo, East-Southeasty Cays, Quitasueno, Roncador, Serrana and Serranilla. Furthermore, the Court provided the coordinates to delimit the continental shelf between Columbia and Nicaragua.

The Degree of Legalization

The degree of legalization of the treaty that the ICJ based its ruling on was quite low. This is in keeping with the hypothesis that low levels of legalization may provide a country with the room to refuse the ruling by providing excuses not to oblige. Unlike the case of *Cameroon v. Nigeria*, no relevant treaties directly allowed the ICJ to delimit the maritime boundary during the litigation. Despite the fact that Colombia was not a party to UNCLOS, the ICJ relied on UNCLOS and customary international law to delimit the exclusive economic zone between Colombia and Nicaragua.⁷³ Although UNCLOS does have a customary nature,

70 "Can Nicaragua Protect the Waters It Won?; A ruling at the UN's highest court redrew maritime boundaries around the Colombian island of San Andrés and Nicaragua. Security analysts say it could lead to unintended consequences like increased trafficking." *The Christian Science Monitor*, March 9, 2013.

71 International Court of Justice, "Territorial and Maritime Dispute (Nicaragua v. Columbia) Preliminary Objections, Summary of the Judgment of 13 December 2007." December 13, 2007.

72 Ibid.

73 International Court of Justice, "Reports of Judgments, Advisory Opinions and Orders, Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgment of 19 November 2012," November 19, 2012..

Colombia did not sign this convention. Therefore, it could be said that the level of obligation was low for Colombia, as the verdict was based on a convention to which Colombia was not a party. Furthermore, whilst UNCLOS provided guidelines in delimiting the territory, those guidelines were not precise since disagreements could arise on the actual implementation of these guidelines, leaving room for interpretation. The precision of the convention in delimiting the territory between Colombia and Nicaragua was thus quite low.

This is apparent from the argumentation that Colombia employed to explain why it could not comply. President Juan Manuel Santos argued that the ICJ ruling over the maritime dispute could not be implemented because it goes against the constitution.⁷⁴ Santos argued that the ICJ was 'inapplicable' since there was not a preexisting treaty ensuring the rights of Colombians in the region, "because the maritime limits of Colombia can't be modified automatically by an ICJ ruling."⁷⁵ With some caution in regards to Colombia's international reputation, Santos stated that Colombia respects the international law. However, due to technicalities and domestic law, the ceding of sovereign territory would be impossible. The foreign ministry also declared that the territory delimitation as understood by Colombia would remain the same even after the ICJ ruling.⁷⁶ Colombia further requested that Nicaragua open up diplomatic channels so that a treaty could be negotiated in regards to this land. After the ruling, the Nicaraguan president stated that he may negotiate a treaty with Colombia as long as it enforces the ICJ's mandate.⁷⁷ Based on this argument, President Santos of Colombia asked Nicaragua to start negotiations for a new treaty for delimitation. Had the level of legalization been high in terms of obligation and precision, Colombia as a party to the treaty would not have been able to employ this kind of tactic used for non-compliance.

Reputation Costs

While the president of Colombia refused to implement the ruling based on domestic difficulties, he tried to evade the position by disregarding the court outright. For Colombia, there were possible reputation costs for non-compliance. Furthermore, Colombia tried to frame the issue as Nicaragua's intent to redraw boundaries with its neighboring countries including Panama,

74 "Colombian, Nicaraguan dispute reignites despite international court ruling," *BBC Monitoring Latin America - Political* Supplied by BBC Worldwide Monitoring, September 16, 2013.

75 Ibid.

76 "Colombian foreign minister says maritime border with Nicaragua unchanged," *BBC Monitoring Latin America - Political* Supplied by BBC Worldwide Monitoring, March 14, 2008.

77 "Panamanian president says Nicaragua wants to 'grab' state's territorial waters," *BBC Monitoring Latin America - Political* Supplied by BBC Worldwide Monitoring, September 12, 2013.

Costa Rica, and Jamaica. In fact, Colombia was willing to deliver a letter complaining about Nicaragua's expansionist intent to the Secretary General of the UN, along with a signature from the President of Panama.⁷⁸ This effort aimed to deflect the criticism of Colombia's non-compliance and to frame the issue as Nicaragua's constant intention toward territorial gains. These actions show that Colombia was indeed considering its international reputation. Thus, the idea that considerations of reputation costs lead a state to comply with the rulings of the ICJ does not seem applicable in this case.

Furthermore, Colombia was indeed positioned to care for the shadow of the future. Colombia was pursuing international initiatives to foster a domestic peace deal with the internal insurgent group Revolutionary Armed Forces of Colombia (FARC). To broker such a peace deal for disarmament, the participation of the United Nations Security Council was critical: the FARC had been active since 1964, and Colombia struggled to achieve internal peace in dealing with the insurgent group since then. Considering that the ICJ is a principal UN organ and that non-compliance may lead to a referral to the UNSC, it is understood that this issue would have been a concern for Colombia, had it refused to comply with the ICJ. While Colombia disregarded the rulings, Colombia's active call for the UN's participation in the issue of disarmament resulted in the unanimous Security Council resolution of 2261.⁷⁹ In sum, while there were possible reputational concerns, as well as concerns for the shadow of the future, Colombia still did not comply with the ruling of the ICJ.

Domestic Dissent and Compulsory Jurisdiction

The verdict entailing a loss of territory and possible economic loss created significant domestic dissent within Colombia, largely because Colombia had to cede a large part of the territory that it had deemed its own. In the face of this dissent, the President of Colombia stated that Colombia would not comply with the verdict of the ICJ. This goes against the explanation that domestic dissent should lead the president to decrease domestic criticism by stating that international law is binding. At that time, while most Colombians disagreed with complying with the verdict of the ICJ, some right-wing Colombians believed that complying with the ICJ was necessary for improving its international standing.⁸⁰ A right-leaning Colombian newspaper stated:

⁷⁸ Ibid.

⁷⁹ "Security Council Decides to Establish Political Mission in Colombia Tasked with Monitoring, Verifying Ceasefire, Cessation of Hostilities," United Nations Meetings Coverage and Press Releases, January 25, 2016.

⁸⁰ "Paper views Colombia's Response to Court Ruling on Nicaragua Dispute." *BBC Monitoring Latin America - Political* Supplied by BBC Worldwide Monitoring, September 14, 2013.

“Are we going to draw up a list of courts which, in Colombia’s view, are either to be trusted or not in order to decide which of them we turn to? More than that: what credibility does a government signing a peace agreement have when it only abides by those agreements which suit it?”⁸¹

Furthermore, both Nicaragua and Colombia were parties to compulsory jurisdiction. Thus, internalization of norms leading to compliance does not explain why Colombia refused the ruling of the ICJ. Nicaragua joined the compulsory jurisdiction of the Permanent Court of International Justice on September 24, 1929. On October 24, 2001, Nicaragua again joined this particular treaty, recognizing the compulsory jurisdiction of the ICJ. Colombia joined the compulsory jurisdiction of the ICJ through the Bogota treaty of 1948.

However, directly after Colombia notified the Secretary General of the Organization of American States (OAS) that it would be backing out of the Pact of Bogota. This pact is what allowed the ICJ to have jurisdiction over Colombia regarding relevant cases.⁸² While Colombia internalized international law in the past, the devastating ruling of the ICJ led Colombia to fear that it could be dragged back to court in the future, as well. While this fear was proven correct when Nicaragua filed a new application in regard to the alleged violations of sovereign rights and maritime spaces in the Caribbean Sea on November 26, 2013, this incident shows that internalization of norms did not by itself lead Colombia to comply with the verdict of the ICJ.

In the case of *Nicaragua v. Colombia*, the observable implications of reputation costs, internal dissent, and internalization of norms were all present. Considering Mill’s method of difference, when comparing this to the case of *Cameroon v. Nigeria*, the degree of legalization is the only factor in which variance of outcomes exists. The treaties relevant to the ruling were high in obligation and precision in the case of compliance, but low in the case of non-compliance. This means that the rulings based on a high degree of legalization may have led the states to comply with the verdict, as there are no means to dispute the technicality or the precision of the ruling. On the other hand, in the case of *Nicaragua v. Colombia*, the ruling was rejected on the grounds of impossible domestic implementation. Had the previous treaties required a certain degree of obligation and precision that already affected the states prior to the ICJ ruling, this argumentation would not have made sense.

81 “Editorial says Colombian government’s reaction to UN court’s ruling ‘worrisome’.” *BBC Monitoring Latin America - Political* Supplied by BBC Worldwide Monitoring, March 23, 2016.

82 “Colombian, Nicaraguan dispute reignites despite international court ruling,” *MercoPress*, September 16, 2013, British Broadcasting Corporation.

Conclusion

By comparing a case of compliance and non-compliance, five hypotheses for compliance with ICJ rulings were analyzed. The case of *Nigeria v. Cameroon* (1994) showed that the variables of reputation costs, the degree of legalization, internal dissent, and internalization of norms could have led Nigeria to cede territory in compliance with the ICJ ruling. This was compared to the case of *Nicaragua v. Colombia* (2001), in which it was revealed that, except for the variance in the degree of legalization, other factors were similarly present. This analysis suggests that the first four hypotheses were held constant across the compared cases and thus may not account for why states comply with the verdicts of the ICJ.

This study concludes that the sole remaining factor—the degree of legalization of treaties that the ICJ uses as the basis for its verdicts—is critical in influencing states to comply with the given verdict. High levels of obligation and precision, explicated by the delegated authority of the ICJ, increases compliance pull and denies states the possibility to reject the ruling based on unfairness. While the existing literature explaining compliance may be applicable to other areas of international law, in these two cases, that literature is not fully generalizable in explaining the compliance behavior of court rulings from the ICJ. One more interesting factor to consider in future studies would be to categorize the type of applications states use in order to bring their cases to court. While this study has focused on territorial disputes that were initiated based on the compulsory jurisdiction clause, there will be other cases based on special agreements between two countries, or cases in which explicated treaties other than compulsory jurisdiction bind states to the ICJ.

As this paper analyzes only two cases, it may be difficult to broadly generalize from the suggested hypothesis. To enhance the robustness of the argument, a further study utilizing process tracing is needed to determine how the detailed dynamics influenced the outcome of compliance; a large-n analysis incorporating many cases of compliance and non-compliance will also be needed. If the correlations can be demonstrated across multiple cases, this will contribute greatly to the literature on compliance, international law, international institutions, and treaty making behavior. The central implication of this study is that the treaties upon which the ICJ bases its ruling have an important influence on the compliance behavior of states. It will be important going forward to determine whether this correlation is also apparent in the compliance behavior of other international courts and tribunals.

PRESIDENTIAL SCANDALS IN SOUTH KOREA SINCE 1993: AN ANALYSIS OF RESOLVE IN DECISION-MAKING

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The impeachment and arrest of President Park Geun-hye has galvanized a renewed interest in discourse covering political scandals in South Korea. A terse, historical appraisal of the Republic of Korea will illustrate that South Korean leadership has been perennially mired in political scandal since its transition to democracy. From the Kim Young-sam to Park Geun-hye administrations, allegations of direct or indirect involvement in corruption have plagued the legacies of South Korea's presidents. What prompts political scandals to be so recurring? While traditional scholarship discusses corruption à la institutional arrangements, this paper seeks to analyze the role leadership and behavioral characteristics play in non-rational decision-making of South Korea's presidents. I offer resolve as an explanatory variable to quantify the significance of certain dispositional and situational variables that affect a leader's decision to engage or refrain from iniquitous activity. Utilizing an interactionist framework, I isolate honor orientation and trait self-control for my dispositional variables and security and chaebol presence as my situational attributes. By comparing case studies of political scandals throughout ROK presidencies since 1993, this paper ascertains that trait self-control, largely affected by the formative years of a president, has the most substantial impact on resolve. I also contend that the tallied resolve of each president demonstrates a behavioral tendency of overconfidence and that South Korean decision-making cannot be evaluated under traditional cost-benefit and domestic audience cost frameworks.

In 1993, the first civilian, democratically-elected South Korean President Kim Young-sam pledged that he would eradicate the "Korean disease" of corruption.¹ Citing the unchecked military rule of decades past, Kim Young-sam embarked on a quest of reform that sought to mitigate the unfettered

1 With the understanding that while Roh Tae-woo's election was technically democratic, Roh was personally a remnant of Chun Doo-hwan's military regime; nor was his election entirely free of influence from said establishment.

dominance of the *chaebol*.² While he failed to meet his grand ambitions, he was fêted as a symbol of democratic progress after his death, having instituted stringent anti-graft legislation during his tenure. Twenty-three years later, the reverberations of the most recent scandal involving Park Geun-hye has attracted a return of discourse covering the pestilence of corruption.

As numerous pundits have already pointed out, presidencies in the Republic of Korea are no stranger to scandals: every South Korean president since the country's democratic transition has been directly or indirectly involved in a scandal.³ It is also evident that these leaders consequently leave office with public baggage and shame; at this point, one can argue the image of ROK leadership has become nigh-inextricable from the rhetoric of corruption, begging for a central question: why do South Korean presidents consciously choose to engage in potentially scandalous affairs, despite knowing their image as a leader would be irreparably besmirched and despite being well-aware of the expected vitriolic response of their domestic audience, both the public and media?

Traditional scholarship, either through comparative study or methods, has carved a niche in political science connecting corruption to institutional patterns or policy making. This paper seeks to study presidential scandals in South Korea after 1993 from the lens of leadership, utilizing tools such as behavioral analysis and case studies to identify patterns in the presence of both situational and dispositional factors that may persuade South Korean leaders to engage in ignominious activities, despite the massive costs of being caught.

Literature Review

Political Scandals

Extant political science literature defines a *scandal* as an activity that violates norms governing elected office holders – Apostolidis and Williams provide observations of sexually involved scandals and supplement that political scandals include “activity that seeks to increase political power at the expense of process and procedure.”⁴ Their interpretation is important, however, founded off heavily positivist observations that may be difficult to quantify or measure

2 Jinwung Kim, “Both Koreas in a New Phase,” in *A History of Korea: from ‘Land of the Morning Calm’ to States in Conflict* (Indiana: Indiana University Press, 2012), 519-521.

3 “Why South Korea’s Corruption Scandal is Nothing New,” *BBC News*, November 24, 2016.

4 Paul Apostolidis and Juliet A. Williams, “Introduction: Sex Scandals and Discourses of Power,” in *Public Affairs: Politics in the Age of Sex Scandals* (Durham, NC: Duke University Press, 2004).

from 1993 to present day South Korea. Korean presidential scandals often have nationwide consequences, involve *chaebol* (business conglomerates), and receive a visceral reaction from the public. These responses make sense considering the politically turbulent development of South Korean democratic institutions during what David Fowler called, *cycles of liberalization*.⁵

It's a cultural touch. In Korean culture, when something goes wrong, if you're the boss you have to express your regrets," said a close aide to Lee Myung-bak, after President Lee apologized for his brother's acceptance of illegal funds on July 24, 2012.⁶ Indeed, such cultural idiosyncrasies are rather consistently portrayed across Asian countries and even in the United States. In Susan Pharr's trenchant and comprehensive appraisal of Japanese media, she underscores the way public-private interactions and image management transformed to closely emulate the American television politics.⁷ According to Pharr, Liberal Democratic Party politicians in Japan copied this formula to attenuate public ire in the face of their own scandals.⁸ While these models did not last past the 1990s, improvisation and the importance of taking responsibility has evolved from Western guilt culture into a necessity in Asian countries.

From a behavioral analysis perspective, Rosa Chun's take is also of interest: she asserts Asian political dimensions have empirically been affected by the *chaebol* in Korea and *zaibatsu* (business conglomerate) in Japan. As such, the practice of Asian corporate atonement is starkly different than a political one. In Korea or Japan, an apology is a sign of personal remorse – equivalent to redeeming an individual's honor. To the public eye, a leader recovers honor "...through a deep, bowing apology..."⁹ This shame culture is what may have influenced President Roh Moo-hyun to commit suicide. The rapid propagation of social media and other technologically distributed news renders this perception management all the more important.¹⁰

The interaction between the *chaebol* and media is also of fundamental importance in ascribing the interrelation between scandals and South Korean political leadership. In his seminal research on South Korean and Filipino institutional corruption, David Kang underscores the prevalence of "money

5 David Fowler, "The United States and South Korean Democratization," *Political Science Quarterly* 114:2 (1999), 265-270.

6 Simon Mundy, "South Korea's President Lee Myung-bak Apologizes for Corruption Scandal," *The Washington Post*, July 24, 2012.

7 Susan J. Pharr and Ellis S. Krauss, *Media and Politics in Japan* (Honolulu: University of Hawai'i Press, 1996).

8 Ibid.

9 Rosa Chun, "Samsung, Shame, and Corporate Atonement," *Harvard Business Review*, May 17, 2017.

10 J. Hyejung, "The Nature of Nationalism in the "Korean Wave: A Framing Analysis of News Coverage about Korean Pop Culture," *National Communication Association*.

politics” in South Korea that have both empowered and crushed politics in the country since the 1950s.¹¹ The clear and intrinsic role the *chaebol* play in South Korean politics has shaped the zeitgeist and political attitudes of the citizenry and modern netizens. The concept of ‘pay to play’ is thus well-noted. This study is less about the political stranglehold of the *chaebol* in political scandals, but more about the leader-based attributes that lend themselves as determining factors for a decision to engage in immoral behavior.

Methodology

The emergence of political psychology in political science literature offers an opportunity to scrutinize decision-making in scandals through a fresh lens. Research emphasizing leadership and the gravity of situational factors on decision-making is lacking in the context of East Asian political systems. Especially in the context of comparative work, South Korean leadership warrants further study. While the challenge of political psychology still very much lies in its applicability, the prevalence of scandals in South Korea since 1998 offers ample case studies to determine patterns that may offer answers concerning leader engagement in political scandals.

For this study, I define political scandals to be intentional acts of corruption that directly or indirectly involve the president and receives nationwide media attention. I will be analyzing both the internal (behavioral/dispositional) and external (situational/environmental) factors that may have affected the decision-making of each South Korean president since 1993. To this end, I will be utilizing Joshua Kertzer’s model of resolve and study each president’s “state of firmness or steadfastness in purpose,” and the “extent to which (s) he maintains...intention despite contrary inclinations or temptations to back down.”¹² I quantify resolve as the dependent variable primarily to establish a threshold: what level of resolve is necessary for a president to refrain from engaging in a political scandal? And considering how damaging the discovery of a political scandal can be, what factors reduce the resolve of leaders from resisting improvident decisions?

While Kertzer offers multiple dispositional and situational variables, not all of them are applicable to this study (for example, time preferences and costs of fighting). Thus, I default to choosing only two variables from his dispositional and situational experiments.¹³ Regarding dispositional factors, I will conduct a longitudinal assessment of each leader and the implications of their

11 David C. Kang, *Crony Capitalism: Corruption and Development in South Korea and the Philippines* (Cambridge: Cambridge Univ. Press, 2002), 1-3.

12 Joshua D. Kertzer, *Resolve in International Politics* (Princeton, NJ: Princeton University Press, 2016), 3.

13 Ibid., 143-165..

behavioral traits via biographical analysis. For these behavioral inquiries, I will illustrate each leader's *honor orientation* and *trait self-control*. Borrowing from anthropologist Organski, Kertzer defines honor orientation as an "ideological system that places a strong emphasis on honor or face, maintaining reputation for toughness, and standing up to perceived slights."¹⁴ Second, I observe trait self-control – an attribute Kertzer likens to the psychological phenomena of willpower, in which leaders demonstrating high levels of trait self-control also display commensurate levels of resolve.¹⁵ Both these attributes will be scored on a scale of 0.1 to 0.5. Higher scores represent greater commitment to honor orientation and willpower, meaning it should be less likely for a leader to engage in ignominious behavior.

As it pertains to the situational variables, I submit two strings of inquiry. First, I will analyze the president's foreign policy and survey the resultant security environment, including relations with neighboring countries and the US. The second variable I measure is the relative presence of chaebols in scandals affecting the leader in question. Both these attributes will also be scored on a scale of 0.1 to 0.5. Higher scores for the security variable means the leader has skillfully maintained relations and has managed security threats well, rendering it less likely for the leader to engage in scandalous behavior – doing so would only undermine their international image and jeopardize the domestic foundation (s)he set up. This variable will better ascertain the effect of implementing sound foreign policy on a president's decision to engage in a political scandal. Lower scores for the chaebol presence variable means there is greater interaction with conglomerates, making it less likely the leader will refrain from scandalous behavior simply due to the overwhelming influence of chaebol.

The four scores (two dispositional, two situational) will be totaled to represent the leader's resolve on a scale of 0.4 to 2.0. The higher the number, the more resolve a leader has in refraining from scandalous activity. It is through this two-pronged framework that I hope to identify the presence of systemic variables that have pushed South Korean presidents to engage in discreditable behavior. Kertzer's research indicates that dispositional traits have stronger impacts on resolve than situational ones. Namely, in a laboratory-experiment, Kertzer labels trait self-control as the largest influence on an individual's decision making.¹⁶ Lastly, resolve is affected by incentives – that is economic

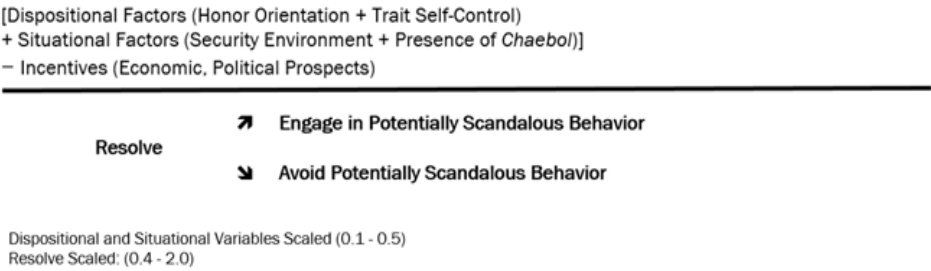
14 In the aforementioned analysis by Rosa Chun and David Kang, honor orientation has importance in public and media attitudes. Presidents in South Korea incessantly interact with an audience of high honor cultures and ergo, face caustic reputation costs with every misstep. Honor orientation is also why any involvement with the *chaebol* elicit particularly acerbic backlash.

15 Kertzer, 44-45.

16 Ibid., 107.

or political benefits to be gained from engaging in scandalous behavior. In the leader’s mind, the perceived benefit of engaging in a scandal would have to expressly outweigh the consequences of being caught.¹⁷ However, this variable is difficult to accurately quantify as details concerning such prospects would be delineated in a surreptitious setting. So, while incentives are also represented as a variable in the ideal equation in Figure 1 below, it will not be calculated in the results.

Figure 1: Equation of Resolve – Factors Affecting a South Korean President’s Decision to Engage in a Political Scandal



Case Studies: South Korean Leaders and Political Scandals

All five Presidents since 1993 have been directly or indirectly associated with a political scandal, and excluding Kim Young-sam, have received accusations of involvement in corruption. In lieu of conducting an extensive evaluation of every scandal and the decision-making process behind each, I will be categorizing the ROK presidents since 1993 into two groups based on the ramifications the political scandal(s) in question ultimately had on their transition out of presidency.

One group labeled “traditional exits” include Presidents Kim Young-sam, Kim Dae-jung, and Lee Myung-bak. The second group contains Presidents Roh Moo-hyun and Park Geun-hye, who have experienced “non-traditional exits” from Presidency. President Park was involved in a scandal that the South Korean public viewed as egregious enough to elicit grave consequential action. The label “non-traditional exit” is a slight *faux facteur* in President Roh’s case, as his suicide was a personal decision that occurred after ceding office to Lee

17 James D. Fearon, “Domestic Political Audiences and the Escalation of International Disputes,” *American Political Science Review* 88:3(1994): 577-92.

Myung-bak in a traditional fashion, but is still categorized as such because his suicide was the final ramification. Comparing the two groups will better underscore which variables are most important in a leader-centered analysis that seeks to quantify resolve.

Figure 2: The Impact of South Korean Presidential Scandals since 1993

South Korean Presidents	Knowledge of/ Participation in National Scandals	Exit-type	Ramifications	Public Perception Leaving Office [†]
Kim Young-sam	No	Traditional	Null	Negative
Kim Dae-jung	Yes	Traditional	Null	Negative
Roh Moo-hyun	Possible	Non-traditional	Suicide	Negative ^{††}
Lee Myung-bak	Possible	Traditional	Null	Negative
Park Geun-hye	Yes	Non-traditional	Arrested	Negative

[†] 'Negative' containing a value of < 50% approval rating in the Gallop Poll just before leaving office.

^{††} Roh Moo-hyun's approval rating before his suicide; though it is noteworthy that post-mortem, Roh elicited fonder public perception. A similar observation can be made regarding Kim Dae-jung and Kim Young-sam.

Traditional Exits:

*Scored Format: (Honor orientation; Trait self-control), (Security; *Chaebol* presence)¹⁸

Kim Young-sam: (0.5; 0.5), (0.3; 0.4)

It bears repeating that President Kim Young-sam is the only South Korean leader who did not involve himself in a political scandal with the intent of deriving economic or political benefit. What unfortunately marred the final few years of his leadership was an ineffectual response to the 1997 Asian Financial Crisis, the subsequent bankruptcy of Hanbo Steel Company, and a scandal involving his son's acceptance of illegal funds.¹⁹ His son's complicity

¹⁸ Scores are self-determined via content analysis of case studies, utilizing Kertzer's four traits.

¹⁹ Andrew Pollack, "Korean Chief's Son Held on Graft Charges," *The New York Times*, May 17, 1997.

in the slush fund scandal was particularly ruinous to Kim's reputation because it undermined the legitimacy of his anti-corruption reforms.

Kim Young-sam's storied history of protesting military rule and nefarious government since the era of Park Chung-hee contributes to his high levels of both honor orientation and trait self-control.²⁰ This is a self-evident observation based on first, the absence of any direct involvement in corruption and second, his immediate acceptance of responsibility and apologies for the "severe shock and disappointment" caused by his son.²¹

However, for Kim Young-sam, situational variables have played a larger role in besmirching his presidential legacy, likely subtracting greatly from his resolve. Foremost, in his memoirs, Kim Young-sam expressed regret in playing safe on North Korea and importuning President Bill Clinton from bombing nuclear sites in 1994.²² He bemoans destiny and asserted that his legacy would have been much different should he have met Kim Il-sung.²³ Kim Young-sam, at the time confident that the North would collapse (famine, Kim Il-sung's death) damaged US relations and contrasted American policy. The resultant lack of cooperation during the Agreed Framework did him no favors.

Most importantly, his handling of the 1997 Asian Financial Crisis irrevocably damaged his reputation as the collapse of chaebol such as KIA forced Kim to accept a \$58 billion bailout from the International Monetary Fund. The public lambasted the government and its interactions with the chaebol and believed that "97.8 percent of political news, 76.5 percent of social news, and 75.5 percent of economic news" were propagated by the hands of the government-chaebol coalition.²⁴ Ultimately, negative public opinion of Kim very much stemmed from the perception that his administration was gridlocked and inept on both the security and economic fronts. Thus, despite his high honor orientation, trait self-control, and low chaebol presence scores, Kim left office with record-low approval ratings of 6 percent. This is an immutable irony as he is the only leader who definitively has not perpetrated a political imbroglio.²⁵ As a case study, Kim Young-sam represents a fascinating interaction between scandals involving family and unfortunate leadership in times of international crisis. If anything, these observations lend credence to the magnitude and

20 Jon S. T. Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?* (Singapore: ISEAS Publishing, 2011), 310-321.

21 Pollack, "Korean Chief's Son Held on Graft Charges."

22 Sang-Hun Choe, "Kim Young-sam, South Korean President Who Opposed Military, Dies at 87," *The New York Times*, November 21, 2015.

23 Ibid.

24 Quah, *Curbing Corruption*, 324.

25 Yoon Young-ho, "Chong Tae-soo wa komun ton," (Chong Tae-soo and Black Money), *Shindonga*. March 1, 1997, 201.

importance of situational variables on the effect on a South Korean president's resolve and public image.

Kim Dae-jung (0.3; 0.1), (0.5; 0.1)

A veteran combatant against military rule alongside Kim Young-sam, Kim Dae-jung was notorious for his vigorous devotion to spreading liberal norms and is known as the 'Nelson Mandela of Asia.'²⁶ Kim endured much hardship, being jailed, forcibly kidnapped, and exiled numerous times at the hands of Rhee Syng-man, Park Chung-hee, and Chun Doo-hwan.²⁷ Many Koreans sympathized with his tribulations, and Kim entered Presidency as the first left-leaning candidate. He practiced great accountability and prioritized reform that held chaebol to transparency and dramatically cut subsidies to conglomerates, earning him high points in honor orientation.²⁸

President Kim is of course famous for winning the 2000 Nobel Peace Prize, awarded for his sage devotion to human rights and for his reconciliatory Sunshine Policy towards North Korea.²⁹ With regard to foreign policy, few South Korean leaders can claim to have done better. His decision to formally initiate détente with North Korea led to a historic meeting between himself and Kim Jong-il in 2000.³⁰ Under President Kim Dae-jung, bilateral relations with Japan were also at their best: his state visit to Japan in October 1998 served as an emblematic gateway to friendlier ties.³¹ Under Kim Dae-jung, South Korea maintained amicable relations with all Six-Party nations for the first time.³² As such, President Kim scores highly on the security variable: his administration was not impeded by any existential threat and instead was surrounded by cooperative neighbors.

Three years later, however it was discovered that President Kim's greatest achievement, the 2000 summit, involved a transaction of \$500 million to North Korea through Hyundai Asan.³³ Kim's Chief-of-staff and two leaders of

26 "Mandela meets 'Asia's Mandela'," *BBC News*, March 12, 2001. <http://news.bbc.co.uk/2/hi/asia-pacific/1216234.stm>.

27 Don Oberdorfer and Robert Carlin, *The Two Koreas: A Contemporary History* (New York: Basic Books, 2014), 34.

28 Jiho Jang, "State Activism Toward the Big Business in Korea, 1998-2000: Path dependence and Institutional Embeddedness," *Midwest Political Science Association* (April 2001): 2-6.

29 "Kim Dae-jung: Dedicated to Reconciliation," *CNN*, June 14, 2001.

30 "Kim Dae-jung: Dedicated to Reconciliation". *CNN*. 14 June 2001. <https://web.archive.org/web/20060922050400/http://archives.cnn.com/2001/WORLD/asiapcf/east/06/12/bio.kim.dae-jung/>

31 Brad Glosserman and Scott A. Snyder, *The Japan-South Korea Identity Clash: East Asian Security and the United States*, (New York: Columbia University Press, 2015), 394.

32 Interview with Michael Green concerning Kim Dae-jung's leadership and legacy, January 2016.

33 "S Koreans charged over summit cash," *BBC News*, June 25, 2003. <http://news.bbc.co.uk/1/hi/world/asia-pacific/3018874.stm>.

Hyundai Asan were convicted for falsifying transfers and records. The summit scandal offers insight on the interaction between dispositional and situational variables in that Kim Dae-jung scored high on security, but involved himself in a massive scandal involving chaebol to secure such foreign policy ambitions in the first place – grounds for a low trait self-control and chaebol presence score.

Would Kim have been awarded the Nobel Peace Prize if the transactions were discovered earlier? The scandal became the largest blemish on Kim Dae-jung's presidency and demonstrates he possessed low levels of resolve. President Kim did apologize to the nation for the advance payment to the North, but he prevaricated and ultimately implied he wasn't responsible, decreasing his honor orientation score.³⁴ What's more, all three of Kim Dae-jung's sons were implicated in bribery scandals, forcing Kim to leave the Millennium Democratic Party.³⁵ While difficult to prove Kim Dae-jung was privy to his sons' malfeasance, it is reasonable to doubt that Kim was completely ignorant, especially in the backdrop of the summit scandal. While President Kim believed strongly in the principles of democracy (and thus demonstrates high levels of honor orientation), he evaded responsibility. Unlike Roh Moo-hyun and unlike Kim Young-sam, he intentionally involved himself in the summit scandal.

Lee Myung-bak (0.3; 0.2), (0.5; 0.1)

Lee Myung-bak, former CEO of Hyundai Engineering, was the first businessman to become President and he brought with him a style of leadership befitting said background. The Lee administration was renowned for its promotion of business-friendly policy and tougher North Korea stance. President Lee easily receives a high score in the security variable. During a time when the Democratic Party of Japan was rapidly swapping Prime Ministers and being aloof with the US, Lee Myung-bak became the East Asia anchor and stalwart partner to President Obama.³⁶ Additionally, in the face of a series of dangerous provocations from North Korea including the 2009 nuclear test, 2010 Cheonan Incident, and the Yeonpyeong Island shelling, Lee showed sangfroid and rational judgment that earned him trust as a commander-in-chief.³⁷ President Lee had the least to gain from jeopardizing his legitimacy due to his solid

34 Rebecca MacKinnon, "S. Korean Leader Sorry for Summit Scandal," CNN, February 14, 2003. <http://edition.cnn.com/2003/WORLD/asiapcf/east/02/13/kim.scandal/>.

35 "How Do Analysts View Kim Dae-Jung's Administration?" *Voice of America*, May 9, 2002, updated 2009. <https://www.voanews.com/a/a-13-a-2002-05-09-11-how/296809.html>.

36 Jeffrey A. Bader, "Chapter 3," in *Obama and China's Rise: An Insider's Account of America's Asia Strategy*. (Washington, DC: Brookings Institution Press, 2012).

37 Jayshree Bajoria, and Youkyung Lee, "The U.S.-South Korea Alliance," Council on Foreign Relations, October 13, 2011. <https://www.cfr.org/backgrounder/us-south-korea-alliance>

foreign policy. He racked up considerable international sympathy and wide coalitions of support, likely strengthening his resolve.

However, his business persona made him a natural target for his domestic opponents when he ran for election in 2008. Public opinion of Lee has been driven by the perception that he was an ally to the chaebol. This was a view especially invigorated by the departure of progressivism once Roh Moo-hyun left office. With these initial attitudes being the backdrop, Lee Myung-bak very early on faced allegations of corruption. Lee's ties to a subsidiary company called BBK were raised; the founder of BBK was being investigated for embezzlement and prosecutors sought to implicate Lee for co-founding a securities firm called EBK which invested close to \$2.5 million in BBK.³⁸ But as Lee's presidential victory grew evident, the investigation became sporadic and ultimately dissolved, despite the discovery of a video that depicts Lee discussing the co-founding of EBK.³⁹ In 2011, members of Lee's family were also found to have shares in DAS, a company related to BBK, transforming into a situation that even involved the US Supreme Court.⁴⁰

Lee was also criticized for his poor handling of the "Four Rivers Project," which sought to consolidate South Korea's major rivers via a canal.⁴¹ The project cost an exorbitant \$20 billion and was impaired by subpar implementation and construction. By the end of his presidency, critics accused Lee of intentionally neglecting the project and distancing himself from environmental issues.⁴² The speculation was that the extravagant cost was simply a form of kickback for Lee's construction-based cronies. As treasurer for Somang Church, Lee's endowed position in Korean-Christian society, a sector that is no stranger to scandals, was also suspect.⁴³

However, the political scandal that had the most salient impact on President Lee was an incident involving his elder brother who was arrested for accepting a bribe of \$500,000 from two bank chairmen.⁴⁴ The arrest prompted President

38 "A Look into the BBK Scandal," *The Korea Herald*, April 05, 2010. <http://www.koreaherald.com/view.php?ud=20071117000029>.

39 "BBK Video Clip Revives UNDP-GNP Tensions," *The Donga Ilbo*, December 17, 2007. <http://english.donga.com/List/3/all/26/256403/1>.

40 "미 연방법원 '다스, BBK 상대 140억 민사소송 취하' 최종승인" (US Federal Court Withdraws BBK Litigation Case Worth 14 Billion Won), *Kyunghyang Shinmun*, December 2, 2011. http://news.khan.co.kr/kh_news/khan_art_view.html?artid=201112021709461&code=970201

41 Sang-hun Choe, "Controversial Canal Tests South Korea's New Leader," *The New York Times*, March 11, 2008. http://www.nytimes.com/2008/03/12/world/asia/12canal.html?_r=1&ref=asia&oref=slogin.

42 Min-sik Yoon, "Government to Address Faults in Four-river Project," *The Korea Herald*, December 27, 2014. <http://www.koreaherald.com/view.php?ud=20141228000142>.

43 Youngmi Kim, *The Politics of Coalition in Korea: Between Institutions and Culture* (New York: Taylor & Francis, 2011), 181; "For God and Country," *The Economist*, October 15, 2011. <http://www.economist.com/node/21532340>.

44 Simon Mundy, "South Korea's President Lee Myung-bak apologizes for corruption scandal," *The*

Lee to make a public apology regarding scandal allegations for the first time. But while President Lee did apologize, he worded his statement in a way that he expressed regret for the situation, not necessarily implicating himself or admitting knowledge of the scandal.⁴⁵

Both of President Lee's dispositional variables and the level of chaebol presence are tricky to determine with certainty. Due to his extensive network and background, it is difficult to conclude to what extent Lee Myung-bak was cognizant of the scandals he, his administration, or his family were implicated in. He was a veritable socialite, glib in mannerism, and an expert negotiator and many individuals close to Lee were indicted on corruption. "[These individuals] include three relatives, four senior presidential aides and several former senior officials in the cabinet and government-run companies," – far more than just the family members involved in scandals concerning Roh Moo-hyun or Kim Young-sam.⁴⁶ The circumstances behind the BBK and Four Rivers Project also naturally render Lee suspicious. Is it so unbelievable that Lee was able to pull strings and keep key individuals silent about these back-deals? Likewise, is it believable that Lee somehow had absolutely zero knowledge on any of the incidents involving himself and his aides?

Ultimately however, Lee was not convicted for intentional involvement in a scandal and he did not need to apologize for a political scandal he himself was accused of. Simply due to the sheer number of individuals incriminated in association with President Lee and the number of conglomerates involved, Lee receives a low score on chaebol presence. 'Innocent until proven guilty' being the default framework, the combination of clashing narratives (in that there are both very convenient conclusions to investigations and a lack of definitive evidence concerning Lee's involvement) renders it sensible to assign Lee Myung-bak neither an extremely high or low score in both honor orientation and trait self-control.

Non-traditional Exits:

Roh Moo-hyun: (0.5; 0.1), (0.2; 0.4)

President Roh Moo-hyun's suicide marks itself as one of the most significant political tragedies in South Korean history.⁴⁷ Coming from humble and

Washington Post, July 24, 2012. https://www.washingtonpost.com/world/asia_pacific/south-korean-president-lee-myung-bak-apologizes-for-corruption-scandal/2012/07/24/gJQAKlSk6W_story.html

45 Sang-hun Choe, "South Korean President Apologizes for Corruption Scandals," *The New York Times*, July 24, 2012. <http://www.nytimes.com/2012/07/25/world/asia/lee-myung-bak-of-south-korea-apologizes-for-corruption-scandals.html>

46 Ibid.

47 Justin McCurry, "Former South Korea president Roh Moo-hyun Leaps to Death in Ravine," *The Observ-*

penurious beginnings and working passionately as a civil rights activist and human rights lawyer, Roh Moo-hyun entered politics with grand ideals and a background in progressivism.⁴⁸ His presidential campaign resonated deeply with the Korean public and he emphasized values in his platform. However, these characteristics would land President Roh into trouble as he tended to pursue controversial policies in his attempts to assimilate a sundry of ideologies in his economic and political reforms.

Though not a scandal, one would be remiss to gloss over Roh Moo-hyun's impeachment, as this series of events provides insight into Roh's dispositional attributes and his association with the public. President Roh confronted a major socio-cultural cleavage at the time between the more traditional power blocs in domestic politics and the younger 386 generation that supported him.⁴⁹ The ideological chasm between President Roh and the establishment came to a watershed when Roh seemingly abrogated the rules of "political neutrality" by openly supporting the greenhorn Uri Party.⁵⁰ This fomented the first-ever impeachment of a South Korean leader, passing with an overwhelming 193-2 vote from the National Assembly.⁵¹

However, President Roh received an unexpected deluge of public support, with citizens conducting civic protest (including the first mass candlelight vigil in favor of a political party member) with peak numbers around 130,000 people across 50 cities.⁵² The public fiercely punished the establishment in the National Assembly, voting heavily in favor of Uri Party candidates, overthrowing the Grand National party majority. Only a month later, on May 2004, the South Korean Constitutional Court rescinded the impeachment charges of executive mismanagement and reinstated President Roh.⁵³ The impeachment of Roh Moo-hyun is a case study that exhibits the resounding success of people politics (alongside the Park Geun-hye scandal) in South Korea: a testament to the very real consequences of inciting the Korean public's fury.

Roh Moo-hyun possesses high honor orientation in that he displayed true commitment to the principles he campaigned on: a quality no doubt shaped and refined from his years in activism and law. Akin to both Kim Young-sam

er, May 23, 2009. <https://www.theguardian.com/world/2009/may/24/south-korea-former-president-suicide>.

48 "Roh Moo-hyun: A Life of Challenges," *The Chosun Ilbo*, May 25, 2009. http://english.chosun.com/site/data/html_dir/2009/05/25/2009052500537.html

49 Emanuel Pastreich, "Strategic Thought toward Asia in the Roh Moo-hyun Era." *South Korean Strategic Thought Towards Asia* 3:8 (2008): 101-26.

50 Ibid., 9.

51 Da-sol Kim, "Revisiting Roh Moo-hyun impeachment," *The Korea Herald*, December 08, 2016. <http://www.koreaherald.com/view.php?ud=20161208000727>.

52 Ibid.

53 Anthony Faiola, "Court Rejects S. Korean President's Impeachment," *The Washington Post*, May 14, 2014. <http://www.washingtonpost.com/wp-dyn/articles/A25441-2004May13.html>.

and Kim Dae-jung, Roh has a history steeped in altruism and perseverance, defending student and labor activists who opposed the military regime and chaebol hegemony. President Roh's conscientiousness and history appealed greatly to the South Korean public both during his campaign and throughout the impeachment process. While public opinion would eventually disavow him because of his maladroit foreign policy and bribery allegations, these emotions would again revert after his suicide. Two films have been released memorializing Roh Moo-hyun's years of activism and leadership: "The Attorney", the second highest-grossing Korean film of all time and a documentary-film released June 2017 titled "Our President".⁵⁴ The domestic audience remember President Roh with affection and eulogize him as a political saint, perceiving his suicide as the ultimate sacrifice and proof that he remained committed to the principles he stood for until the very end.

Roh's Foreign Policy

On the other hand, many senior foreign policy officials in the US remember Roh Moo-hyun in lesser graces. For better or worse, President Roh, following in the footsteps of Kim Dae-jung, sought to establish warmer relations with North Korea and ushered in foreign policy that was disconcerting to America.⁵⁵ President Roh believed strongly in the Sunshine Policy, to the point it caused distress to the US-ROK alliance and discord amongst counterparts in leadership. What's more, Kim Jong-il's general recalcitrance to cooperation and the inefficacious Six Party Talks left a hapless scar on Roh's record.

In their memoirs, former US Secretary of State Condoleezza Rice and former Secretary of Defense Robert Gates commented on President Roh's stubborn insistence on amicability with North Korea and disclosed there had been a lack of cooperation from the South Korean administration on key foreign policies.⁵⁶ In the final year of the Roh administration, the reemergence of bellicose rhetoric from North Korea made clear that the Six-Party Talks were breaking down. Things only got worse for President Roh, as it became evident to the domestic audience that his grand ambitions of peace had failed. In addition, despite a good start in 2005, Roh was unable to maintain amiable relations with Japan.⁵⁷ By the end of his tenure, Roh's image as an anti-American did him no favors for his credibility as a commander-in-chief. His long-term goals of

54 "Box office: Documentary on Roh Moo-hyun off to flying start," *Korea Times*, May 27, 2017. http://www.koreatimes.co.kr/www/art/2017/05/689_230137.html.

55 Young Wan Kihl, "The Past as Prologue: President Kim Dae Jung's Legacy and President Roh Moo-Hyun's Policy Issues and Future Challenges," Asia-Pacific Center for Security Studies, 2005.

56 Condoleezza Rice, *No Higher Honor* (New York: Crown Publishers, 2011), 528–529; Robert Gates, *Duty: Memoirs of a Secretary at War* (New York: Alfred A. Knopf, 2014), 416

57 Pastreich, "Strategic Thought," 12.

peace with North Korea became unsustainable, even as Roh grew ostensibly stubborn on the issue, alienating the progressive base he established after 2004. Recognizing his declining political capital, the resurgent Grand National Party pushed the narrative that Roh was pro-North Korea and intent on endangering the integrity of the American alliance.

Most interestingly, Roh's foreign policy mishaps illustrates the public's obsession with security issues and domestic well-being. However, in the case of Kim Young-sam, he was unlucky in being handed a regional financial crisis that involved chaebol beyond his knowledge and control. And in Kim Dae-jung's case, despite the summit scandal, he was able to reconcile and cooperate with his domestic opponents, enhance foreign relations, and adroitly generate successful foreign policy that matched his long-term goals with North Korea.

Roh Moo-hyun scores low in both the security and trait self-control variables for demonstrating inconsistent leadership, and an ineptitude for diplomacy and patience, as was prominently demonstrated by his foreign policy. The aftermath of his foreign policy would reverberate down to his domestic policy. By 2005, it became clear that political viability went hand-in-hand with maintaining healthy bilateral relations with the US. President Roh pursued a combination of exotic domestic and foreign policies without proper control over his own political base.⁵⁸ Unlike with Kim Dae-jung who scored very highly on security, Roh showed an inflexibility that produced a detrimental environment that cost him his political influence and popularity: an environment that likely pushed him into a corner as domestic and foreign allies abandoned him left and right. It is not so hard to believe these factors played a role in weakening President Roh's resolve and high honor orientation against malfeasance.

The Scandal

Roh Moo-hyun and his family were pulled into a corruption scandal involving bribery accusations, in which the family accepted a total of \$6 million from a shoe manufacturer.⁵⁹ His wife took \$1 million and his son-in-law, \$5 million. Roh initially denied these allegations in his final year of presidency. However, as police investigations closed in, a year later in April 2009, Roh made a blog post titled "I Apologize," submitting that his wife accepted the funds to settle a household debt and his son-in-law made a business investment.⁶⁰ Roh maintained this story up to his suicide in May 2009.

The implications of the political scandal involving Roh Moo-hyun are not so much about the sheer scale or magnitude of the iniquity or volume of cash

58 Ibid., 13.

59 McCurry, "Former South Korea president Roh Moo-hyun Leaps to Death in Ravine."

60 "Roh Moo-hyun," *The Economist*, May 30, 2009. <http://www.economist.com/node/13726814/>.

transferred, but more about Roh's principles. The shoemaker involved, while having ties to Nike, is arguably not a chaebol, rendering possible levels of chaebol involvement low. Indeed, after his suicide, netizen debates erupted and pundits speculated whether Roh Moo-hyun truly knew about the \$6 million prior to the accusations. On the other hand, after Roh's suicide, high-profile figures in politics and business also committed suicide during or after their own investigations of graft, such as Busan Mayor Ahn Sang-yong, Chung Mong-hun of Hyundai, and later former deputy head of the Prime Minister, Kim Yung-chul in 2012.⁶¹

Most importantly, this case study reemphasizes that Roh Moo-hyun possessed a high level of honor orientation, possibly to the point he felt compelled to commit suicide as a form of apology and taking responsibility. There is no definitive proof or closure on whether Roh was cognizant of the funds in the scandal – the closest investigators have as evidence of guilt is self-admission on Roh's blog and vague insinuations contained in his suicide note. However, under current assumptions, Roh's principles and trait self-control did not necessarily stop him or his family from accepting these bribes. Nevertheless, very few people are privy to the full story, making a final judgment far from impartial.⁶² Extolled today, Roh Moo-hyun undoubtedly displayed high honor orientation, declaring in a self-effacing blog post that he himself believed he could no longer represent the ideals he had once envisioned in his youth.⁶³

Park Geun-hye: (0.1; 0.1), (0.5; 0.1)

Park Geun-Hye was removed from office in March 2017, after being impeached by the National Assembly in December 2016.⁶⁴ The scandal involving Choi Soon-sil and former President Park has been covered ad nauseum by political scientists and media alike. But as far as original analysis goes, the Choi scandal is a revealing case study for understanding Park Geun-hye's dispositional proclivities and her reasons for associating with Choi.

Lucian Pye argues that since the end of World War II, South Korean leaders were forced into a position that required bold and adamant action.⁶⁵ This is

61 "Former PM Secretary Kim Dead in Apparent Suicide," *Korea Times*, October 10, 2008. http://www.koreatimes.co.kr/www/news/nation/2008/10/117_32488.html.

62 "노 전 대통령, 돈문제 대신 인정하려 했다 (Late President Roh Wanted to Acknowledge the Money Issue)," *Hankyoreh*, June 1, 2009. http://www.hani.co.kr/arti/society/society_general/358136.html

63 Sang-hun Choe, "Despair Overwhelmed Former South Korean Leader Embroiled in Scandal," *The New York Times*, May 23, 2009. <http://www.nytimes.com/2009/05/24/world/asia/24roh.html>.

64 Se-Woong Koo, "South Korea's President Must Go," *The New York Times*, November 09, 2016. <https://www.nytimes.com/2016/11/10/opinion/south-koreas-president-park-must-go.html?mcubz=3&r=1>.

65 Lucian W. Pye, and Mary W. Pye, "East Asia: Varieties of Confucian Authority," in *Asian Power and Politics: The Cultural Dimensions of Authority* (Cambridge: Belknap Press, 1985), 58.

because through history, they were geographically and politically bullied as the ‘shrimp amongst whales.’ This has produced a high-risk, high-reward style of leadership in South Korea.⁶⁶ Sociologist Karl Mannheim posits in his theory of generations, that leaders affected by traumatic or otherwise substantial historical experiences will subsequently shape their political landscape and leadership styles in a way responsive to those experiences.⁶⁷

Enter Park Chung-hee: his influence on South Korea’s economic and political development is incontrovertible – as his daughter, Park Geun-hye adopted a superstar status that paved her road to presidency, doubling as a reputation she felt the need to uphold. In other words, the high-risk and bold leadership style of Park Chung-hee has translated to her own beliefs. Within Mannheim’s generation theory, interaction theory postulates that a younger generation of leaders acts in response to the preceding generations of leaders.⁶⁸ Mannheim’s experiential theory further posits that each generation of leaders is stamped by a unique experience that permanently alters their new world view.⁶⁹

Park Geun-hye’s individual perceptions and actions were affected by belief systems based on the experiences of her past.⁷⁰ Her belief systems became the very lens through which her calculations concerning the physical and social environment was conducted. In this sense, Park’s attitude and policies were a byproduct of the environs created and left by Park Chung-hee, rendering her own decisions in domestic and foreign policy only explicable via dispositional characteristics. In the same way, Mannheim and Pye’s theories also explain the high levels of honor orientation in Kim Young-sam, Kim Dae-jung, and Roh Moo-hyun – their attitudes towards democracy were refined by decades of resistance against the military regime.

How Park Geun-hye carried herself in bolstering the US alliance, her pursuit of the comfort women agreement in 2015 with Japan despite domestic uproar, toughness with North Korea, and her power play with China provides ample evidence to suggest Park truly made decisions based on her own calculations. This strategy Victor Cha called “Diplomacy 2.0”: a flexible pursuit of alignment with any nation that suits the national interest at that very moment. Park aggressively ventured to better relations with nations in a strategy that appears

66 Ibid., 59-62.

67 Brent J. Steele, and Jonathan M. Acuff, *Theory and Application of the “Generation” in International Relations and Politics* (New York: Palgrave Macmillan, 2012).

68 Akira Ogawa, “Normalizing the Relationship Between Japan and the ROK: Etsusaburo Shiina and Park Chung Hee,” in *The Miracle in 1965* (Higashiyama: Okazaki Institute, 2011).

69 Ibid.

70 Takashi Inoguchi, *Japanese and Korean Politics: Alone and Apart from Each Other* (New York: Palgrave Macmillan, 2015), 75.

counterintuitive.⁷¹ Park was very successful in this regard, earning her high marks in the security variable. Indeed, aside from North Korea, Choi Soon-sil had almost no influence on Park's foreign policy. But how does Park fare with the remaining three variables?

Park Geun-hye scores low in honor orientation, trait self-control, and chaebol presence (Samsung merger) and Mannheim and Pye's theories offer a simple explanation to Choi's "complete control over Park's body and soul."⁷² Covering the Choi scandal, Robert Kelly inquired, "how does one ascend to the presidency of a major country while simultaneously being a marionette to some weird Rasputin character?"⁷³ Considering the Choi family took in Park Geun-hye after the trauma of having both her parents assassinated, it is little wonder that Choi Soon-sil had such deep-seated influence on Park's agenda and chaebol related behavior. In a way, Park had no trait self-control to begin with. What's clear is that the Choi scandal was completely unforeseeable and Park's foreign policy was in a league of its own. The Choi connection can literally only be explained by the deeply personal motivations of Park Geun-hye and the behavioral byproducts of her formative years. In that regard, the utterly unorthodox manner of Park's downfall rings in dulcet tones of tragedy.

Analysis: Presidential Resolve in South Korea

A comparative look at the dispositional and situational attributes of South Korean leadership since 1993 demonstrates that four of the five Presidents possessed the tendency to directly or indirectly engage in a political scandal. The final tally of resolve found in Figure 3 depicts Kim Young-sam with the highest level of resolve to refrain from participating in iniquity and Park Geun-hye with the lowest level of resolve. A resolve of 1.6 is likely the threshold for resisting scandalous behavior; this conclusion is both empirically corroborated through case studies and supported by the fact that none of the remaining four Presidents come close to said threshold. Possessing a high score in at least three traits appears necessary to maintain sufficient resolve to refrain from political scandal.

71 Victor Cha, "A Path Less Chosun," *Foreign Affairs*, October 08, 2015. <https://www.foreignaffairs.com/articles/china/2015-10-08/path-less-chosun>.

72 Ser Myo-ja, "Shamanistic Cult Linked to President," *Korea JoongAng Daily*, October 28, 2016.

73 Robert E. Kelly, "South Korea's Most Bizarre Corruption Scandal Yet," *The Diplomat*, November 04, 2016. <http://thediplomat.com/2016/11/south-koreas-most-bizarre-corruption-scandal-yet/>.

Figure 3: Quantitative Representation of South Korean Presidents' Resolve

South Korean Presidents	Dispositional Variables (Honor Orientation; Trait Self-control)	Situational Variables (Security; <i>Chaebol</i> Presence)	Resolve	Public Approval Leaving Office
Kim Young-sam	0.5; 0.5	0.2; 0.4	1.6	6%
Kim Dae-jung	0.3; 0.1	0.5; 0.1	1.0	24%
Roh Moo-hyun	0.5; 0.1	0.2; 0.4	1.2	27%
Lee Myung-bak	0.3; 0.2	0.5; 0.1	1.1	23%
Park Geun-hye	0.1; 0.1	0.5; 0.1	0.8	12%

Dispositional and Situational Variables Scaled (0.1 - 0.5), Resolve Scaled: (0.4 - 2.0)
 Public Approval Leaving Office: "Gallup Korea Daily Opinion Polls"⁷⁴

The following conclusions about South Korean presidential resolve can be drawn from these results: first, South Korean leaders tended to score best on the security variable, averaging 0.38. The experiences of Kim Young-sam and Roh Moo-hyun demonstrate that poor foreign policy judgment greatly detracts from a leader's credibility. The resultant negative environment may pressure the leader to engage in malfeasance, either to save face or for gratification. Roh perceived the importance of bettering relations with North Korea as paramount at the expense of relations with the US and Japan, crumbling his domestic support. An environment with existential threats and tense foreign relations creates domestic pressure on a leader and is conducive to non-rational decisions.

At the same time, scoring highly on the security variable also seems to negatively impact a leader's resolve in resisting a scandal. Or at least, the experiences of Kim Dae-jung, Lee Myung-bak, and Park Geun-hye demonstrate that ROK leaders are proficient in keeping domestic and foreign policy separate. Maintaining regional security may actually strengthen a leader's desire to engage in iniquity due to positive domestic opinion and international feedback that South Korea is a stalwart partner (Kim Dae-jung

74 한국갤럽 역대 대통령 직무 수행 평가 1988~2017 (Korean Gallup Poll of Korean Presidential Approval Ratings 1988-2017). 한국갤럽 데일리 오피니언 (*Gallup Korea Daily Opinion*), Issue 261. June 1, 2017. <http://www.gallup.co.kr/gallupdb/reportDownload.asp?seqNo=836>

and Lee Myung-bak). Comparing the cases of these three leaders also reveals that political affiliation means nothing: both Kim Dae-jung's Sunshine Policy and Lee and Park's hardline stance created stability because they were a reflection of the foreign policy zeitgeist. However, both high and low scorers engaged in political scandal. Ergo, it appears that while South Korean leaders on average prioritized stability and the US alliance, this was neither an impediment nor a catalyst to scandalous behavior. From what is observable, the security variable detracts from a leader's resolve in either good or bad foreign policy.

Second, the presidents scored worst on trait self-control with an average of 0.2. Aside from Kim Young-sam, all leaders scored extremely low. Trait self-control is a *de facto* attribute in that if a leader is found to have engaged in scandalous activity, they evidently have low levels of self-discipline. Park Geun-hye and Kim Dae-Jung's cases lend credence to Mannheim and Pye's theories concerning generational and formative experiences having the largest impact on trait self-control. Ergo, matching Kerzer's experimental conclusions, trait self-control also has the largest influence on South Korean resolve. The undeviatingly low scores also neatly fit with the observation that the four presidents do not reach the resolve threshold of 1.6 set by Kim Young-sam.

Third, as it pertains to the dispositional attributes of South Korean leaders, these results demonstrate there is no observable relation between honor orientation (0.34 average) and trait self-control. While Kim Young-sam and Roh Moo-hyun's experiences are indicative of this, Kim Dae-jung's summit scandal is the strongest representation of this incongruity. Fighting dictatorship and conscientiously striving for progressive ideals does not preclude one from engaging in impropriety once in a position of power.

Fourth, high honor orientation only seems to positively affect resolve so long as the president remains credible. As the cases of Kim Young-sam, Roh Moo-hyun, and Lee Myung-bak most evince, even if the president is not definitively proven to be personally involved in a scandal, incidents involving family members or staff will still undermine the reputation of the president. The difficulty in appraising honor orientation as a component of resolve lies in whether the leader in question was actually cognizant of these back-deals. In that regard, analyzing the influence of honor orientation is especially interesting because the South Korean domestic audience also displays high honor orientation due to South Korea's tempestuous modern history.

Fifth, chaebol presence remains one of the easiest ways to determine presidential culpability in a scandal. While Kim Young-sam and Roh Moo-hyun did not personally involve themselves with chaebol, the remaining three leaders scored the lowest possible, indicating that the impact of the chaebol has nearly the same destructive power on a leader's resolve as trait self-control, its average score being 0.22 points, just .02 points above trait self-

control. As was made abundantly clear with the Choi scandal, Rosa Chun and David Kang's scholarship concerning chaebol dominance in Korean politics remains ever pertinent.

Broader Implications of Resolve on South Korean Leadership

The conclusions concerning resolve also have applicability in general scholarship about Korean domestic politics. First, it demonstrates that South Korean Presidential decision-making cannot be explained through traditional literature on domestic audience cost and the two-level game. Fearon and Putnam conclude in their frameworks that the domestic audience or interest groups have a restrictive role on leadership. However, apart from Kim Young-sam, none of the ROK presidents have demonstrated a resolve strong enough to refrain from participating in a political scandal, despite knowing how negatively it would affect their legitimacy.⁷⁵

Second, even under a theoretical framework that assumes South Korea's leadership interacts normally with its domestic audience, getting caught would incur costs too high to feasibly consider, rendering the perceived benefits of such behavior moot. The fact that every President after 1998 engaged in impropriety, despite knowing the tarnishing impact it would have demonstrates they either underestimated the costs or believed they wouldn't get caught in the first place. To this end I offer Robert Jervis' interpretation of overconfidence as a compelling explanation. Through experimental methods, Jervis argues that leaders tend to overestimate their cognitive capabilities and often have an inaccurate understanding of facts concerning their environment.⁷⁶

Based on the observations made in the presidential case studies, it is possible each South Korean president (aside from Kim Young-Sam) felt overconfident in their disparate approaches to backroom deals: they trusted that their individual networks and understanding of politics would ensure they wouldn't be caught, causing them to overestimate their capabilities. This also makes most explanatory sense for our non-traditional exit group: in Roh Moo-hyun's case in particular, his high honor orientation mismatches greatly with his decision in allowing his family to accept bribes or not apologizing for his family's deals before they were publicly discovered. The suicide demonstrates that Roh understood the immorality of his actions, but if he was willing to sacrifice his life to repent, why wasn't his resolve strong enough to resist in the first place? Roh possibly overestimated himself and expected not to be caught

75 Robert D. Putnam, "Diplomacy and Domestic Politics: The Logic of Two-level Games," *International Organization* 42:3 (1988): 427.

76 Robert Jervis, *How Statesmen Think: The Psychology of International Politics* (Princeton, NJ: Princeton University Press, 2017), 204-206.

in the first place; these observations also correlate with his obdurate pursuit of unpopular foreign policy.

Third, South Korean leaders practice non-rational decision-making because they refuse to learn from their predecessors. As an extension of overconfidence, Jervis asserts that leaders do not engage in the accumulation of information because they overestimate their capabilities.⁷⁷ Again, the presidential case studies demonstrate a general disregard for the consequences of scandalous behavior: President Park's impeachment and jailing being the most striking display. In addition to her unique behavioral attributes, her decision to continue helping Choi can in part be explained by ignoring the consequences that affected her predecessors. George Williams argues that the environment surrounding a leader naturally fosters these types of non-rational thought processes – an idiosyncrasy that can only be understood by other leaders.⁷⁸

Public Approval Leaving Office: "Gallop Korea Daily Opinion Polls"⁷⁹

Figure 4 demonstrates that having a low score in any of the four attributes of resolve will negatively influence public approval of a leader; all five presidents have left office with lower than 30% approval ratings.⁸⁰ Additionally, aside from

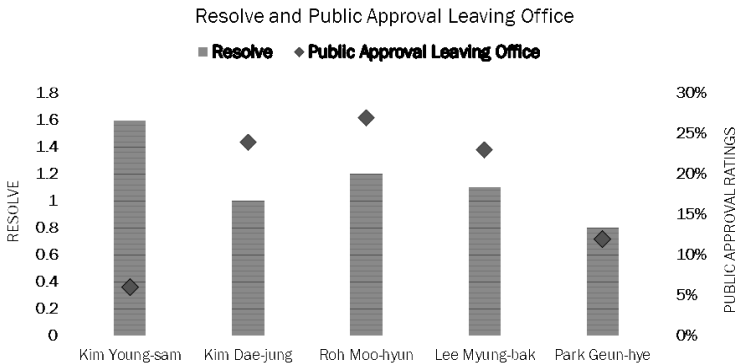


Figure 4: Graphical Representation of Resolve in Relation to Final Public Approval

77 Ibid., 207-212.

78 George Williams, "Why Leaders Lose Their Way," *Harvard Business School: Working Knowledge*, June 6, 2011. <http://hbswk.hbs.edu/item/why-leaders-lose-their-way>.

79 한국갤럽 역대 대통령 직무 수행 평가 1988~2017 (Korean Gallop Poll of Korean Presidential Approval Ratings 1988-2017).

80 Roh Moo-hyun and Kim Young-sam's cases depict an interesting relationship. Kim Young-sam had the highest resolve, which suggests involvement in political scandals for the traditional exits group is not the most important factor to the domestic audience, but rather the stability and livelihood provided. Roh's ratings rebounded post-suicide, solely based on high honor orientation.

Kim Young-sam, the graph shows a correlation between low resolve to low approval ratings.

That is to say, discovery of a public scandal negatively impacts a president's reputation. This also explains the consistently low scores of trait self-control: it should be intuitive that resolve is adversely influenced by non-rational thought, but Figure 4 demonstrates that low approval ratings are the norm. It is difficult to label the prevalence of scandals as a coincidence, but it makes sense if each president refused to learn from the mistakes of their predecessor and engaged in a scandal anyways.

Conclusion

To better understand the motivations that may drive South Korean presidents to consistently engage in political scandals, this paper embraced a leader-centric framework to analyze the behavioral and environmental attributes that may explain the decision-making of leaders and the resultant prevalence of iniquitous behavior. Utilizing Joshua Kertzer's interactionist framework and comparative case studies, I focused on two dispositional (honor orientation; trait self-control) and two situational variables (security; chaebol presence) to measure the resolve of five South Korean presidents since 1993 in resisting malfeasance and graft. The intent was to isolate the presence of behavioral factors or conditions that may have been conducive to non-rational decision making.

Foremost, while ROK leaders on average prioritized a stable security environment and warm relations with the US, the case studies demonstrated that resolve was adversely affected in both extremely positive and negative threat environs. Second, apart from Kim Young-sam, leaders scored consistently low on trait self-control. Third, there was no observable relation between the two dispositional attributes of honor orientation and trait self-control – instances of both high and low levels of honor orientation had little effect on a leader's resolve. Fourth, high levels of honor orientation only mattered so long as the president maintained trust of the domestic audience. If this trust was lost, either through poor foreign policy or bribery allegations against family members, honor orientation served as a gossamer defense and did not strengthen resolve. Last, chaebol presence continues to be a reliable predictor of culpability in scandal involvement. Traditional scholarship remains correct on the matter of conglomerate dominance in Korea, rendering low scores in this variable an almost definitive representation of feeble resolve.

These observations of resolve also lend support to broader conclusions concerning domestic politics and leadership in South Korea. First, these results demonstrate that presidential decision-making does not abide by the

traditional cost-benefit analysis or domestic audience framework. Second, they showcase that ROK presidents tend to be overconfident in their capabilities, consequently decreasing their resolve against immoral activity. Third, empirically, it appears that South Korean leaders disregard the consequences of scandalous behavior that have affected their predecessors, suggesting they do not actively accumulate and learn from such information.

The findings in this paper can benefit greatly from experimental methods. Surveys of random South Korean and international participants would gauge which situational or dispositional attributes participants believed were the most significant in defining resolve in the context of resisting political scandals. Furthermore, there is potential for further comparative research by analyzing domestic trends that explain the similarities between non-traditional exits in both South Korea and Japan. Finally, as was alluded to early in the paper, perhaps there are deeper, behind-the-scene variables that more strongly damage resolve, such as the one-term presidential limit.

Nevertheless, the paper's findings indicate that ultimately, South Korean presidents engage in political scandals because of low trait self-control; these findings are consistent with Kerzter's experimental results. As exhibited by the case studies of Kim Dae-jung, Roh Moo-hyun, and Park Geun-hye, the unique, behavioral quirks of a president developed in their formative years have the most salient impact on their resolve. Kim Dae-jung prioritized reconciliation with North Korea to the point the other three variables became moot. And Park Geun-hye's ambition and ties with Choi defined her leadership because of her traumatic, formative years. Nevertheless, in a vacuum, all four attributes can still decisively impact resolve. Lee Myung-bak demonstrates that neither trait self-control nor honor orientation is necessary as long as he could avoid assuming direct responsibility through his extensive chaebol network. In direct contrast, despite his poor foreign policy and trait self-control, Roh Moo-hyun's high honor orientation and repentance in a scandal absent of chaebol presence, has earned him lasting adulation from the public. Finally, Kim Young-sam demonstrates that being unable to maintain stability in times of international crisis will still effortlessly overrule high honor orientation, trait self-control, and low chaebol presence.

RISK PERCEPTION, TRUST, AND LEGITIMACY: THE INTERACTION OF STATE AND SOCIETY IN CHINESE GENETICALLY MODIFIED FOOD GOVERNANCE

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Societal acceptance of genetically modified organisms (GMOs) lies at the core of a politicized quagmire of state, society, and scientific actors. China presents a special case for study of the GMO issue because public opinion and state regulations on biotechnology have shifted to oppose each other. This research seeks to answer the following questions: 1.) Why has the Chinese public grown more suspicious of the risks associated with genetically modified foods since the 1990s, and 2.) To what extent is the Chinese state responsive to societal perceptions of the risks of genetically modified foods? It will seek to answer these questions with state-society relations frameworks of performance and responsibility-based legitimacy. This paper concludes that increasing media and NGO presence in Chinese society has changed how it conceives of the obligations of the Chinese state. Examining acceptance of genetically modified crops in the Chinese state and society reveals the views of a rapidly transforming state and society actors. This research presents a critically important case that adds to the understanding that Chinese market liberalizations and economic reforms have changed Chinese society and the way it interacts with its state institutions. It also lies within a growing body of necessary literature that examines the interactions of scientific issues, state, and society in an increasingly globalized and technologically advanced world.

Keywords: state-society relations, China, risk regulation, genetically modified food

Introduction

Background: China and Modern Biotechnology

In 1988, China commercialized a virus-resistant tobacco plant, becoming the first country in the world to commercialize a genetically modified (GM)

plant.¹ A genetically modified plant, also known as transgenic, has modified or engineered DNA so as to have desirable characteristics, such as resistance to a certain disease. The discovery of manipulating genes has created an entirely new field of science with applications in medicine, manufacturing, and agricultural sectors. However, in any society, new technologies bring about divisive reactions within society and government. With recent advances in biotechnology, such as CRISPR and CAS-9 gene editing capabilities, the change in cost and efficiency of genetic modification is expected to further accelerate in coming years.² However, the safety of genetically modified crops and food products for the environment and for human consumption is widely contested in developed and developing countries, as well as by regional and international organizations. Though the scientific community has reached a consensus that GMOs have no adverse health effects, regulation still must err on the side of caution.³ In China, genetic modification may prove to be a large part of the country's agricultural future as its economy continues to liberalize, while its population ages.⁴

Food security and self-sufficiency have haunted China since the time of Mao's Cultural Revolution and Great Leap Forward policies championed by the Chinese Communist Party (CCP) that resulted in mass starvation. Scholar Lester Brown's book, "Who Will Feed China?" presents a sensationalistic survey of the Chinese agricultural industry. Brown argues that a hungry China and an inability to produce its own grain would mean shocks to the world's grain supply as China seeks grain from other markets. A 1995 Chinese government white paper entitled "China's Grain Issues" (中国的粮食问题), responds directly to Brown's work in its conclusion, stating: "Practice will prove to the world: the Chinese people can not only feed themselves, but also make their quality of life better and better year by year. Instead of forming a threat to the world's grain supply, China will make ever greater contributions to it."⁵ The white paper highlights the extent to which the Chinese central government considers food

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- 1 Richard Falkner and Aarti Gupta, "The Limits of Regulatory Convergence: Globalization and GMO Politics in the South," *International Environmental Agreements: Politics, Law and Economics* 9, no.2 (2009): 121.
 - 2 Heidi Ledford, "CRISPR, the Disruptor," *Nature*, June 3, 2015, accessed May 4, 2017, <https://www.nature.com/news/crispr-the-disruptor-1.17673>.
 - 3 Joel Achenbach, "107 Nobel Laureates Sign Letter Blasting Greenpeace over GMOs," *The Washington Post*, June 30, 2016, accessed May 4, 2017, <https://www.washingtonpost.com/news/speaking-of-science/wp/2016/06/29/more-than-100-nobel-laureates-take-on-greenpeace-over-gmo-stance/>.
 - 4 Kenneth Rapoza, "China's Aging Population Becoming More of a Problem," *Forbes*, February 21, 2016, accessed May 4, 2017, <https://www.forbes.com/forbes/welcome/?toURL=https://www.forbes.com/sites/kenrapoza/2017/02/21/chinas-aging-population-becoming-more-of-a-problem/&refURL=https://www.google.co.uk/&referrer=https://www.google.co.uk/>.
 - 5 "The Grain Issue in China (Zhong Guo Liang Shi Wen Ti)," Information Office of the State Council's Annual White Papers, October 1996, accessed May 4, 2017, https://www.iatp.org/files/Grain_Issue_in_China_White_Paper_The.htm.

security, food self-sufficiency, and independence from agricultural imports a national priority.

Today, China has about 21 percent of the world's population and must feed it with 9 percent of the world's arable land. China currently relies heavily on agricultural imports to sustain its food supply, but not to the extent that its imports threaten to unbalance global grain markets.⁶ However, taking into account China's transition to a more market-based economy since 1978, and an increased demand for manufacturing jobs, China's agricultural sector is under pressure to increase efficiency. By producing grain and soy seeds that require less agricultural inputs, genetically modified crops present an important opportunity for greater efficiency in agriculture, and thus less reliance on soy imports from the United States.

In 2000, the Chinese government began a de facto moratorium on granting licenses for commercializing genetically modified foods.⁷ However, it reversed course on this policy in 2009 with a licensing grant to grow *Golden Rice*, a genetically modified strain with more Vitamin A than normal rice. This particular genetically modified rice prevents blindness in children, a preventable side effect of malnutrition. The approval to grow Golden Rice signifies an important shift in the Chinese central government's regulation of transgenic crops.

The importance of genetically modified foods to China's future thus presents questions that require close scrutiny. This research seeks to answer the following questions: (1) Why has the Chinese public grown more suspicious of the risks associated with genetically modified foods, and (2) To what extent is the Chinese state responsive to societal perceptions of the risks of genetically modified foods? It will seek to answer these questions using state-society relations as frameworks for performance and responsibility-based legitimacy. Examining the central government's regulations of genetically modified foods and changing public sentiment through the lens of these frameworks reveals that a changing Chinese society has influenced the way in which the Chinese government communicates with its public. This research adds to the understanding that Chinese market liberalizations and economic reforms have changed Chinese society and the way that it interacts with its leaders.

1.2 Defining GMOs: Grounds and Justification for Research

The Cartagena Protocol, the largest international framework for biosafety regulations, defines modern biotechnology as the following:

6 John Wang and Yanjie Huang, "China's Food Security and Its Global Implications," *China: An International Journal* 10, no. 1 (March 2012): 115.

7 Robert Falkner, "International Sources of Environmental Policy Change in China: the Case of Genetically Modified Food," *The Pacific Review* 19, no. 4 (2006): 473-474.

The application of: a. in vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or b. fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection.⁸

The terms “modern biotechnology,” “genetic modification,” and “transgenic” all are used interchangeably in this paper to describe the aforementioned definition. The term “genetically modified organism” will also be used in this paper to describe the Cartagena Protocol’s definition of a “living modified organism,” which is “any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology.”⁹

The justification for this study stems from a dilemma that the Chinese central government faces regarding the safety of genetic modification. On one end, GMOs clearly present an answer to China’s food security dilemma in years to come, especially as its economy transitions from manufacturing to service based. On the other, public acceptance of genetically modified foods would provide a major hindrance to the success of biotechnology endeavors in the food sector. In a 2014 survey of source credibility on the issue of GM crops, 49.2 percent of respondents said that they trust biotechnology research institutes as credible regarding GMOs.¹⁰ Additionally, government offices devoted to the management of NGOs, such as the Chinese Ministry of Agriculture (MOA), had 48.1 percent of respondents’ trust. Environmental organizations, such as Greenpeace, had 49.4 percent of respondents’ trust on the issue of GMOs.¹¹ NGOs, Chinese regulatory bodies, and research institutes have more relative support than GMO technological experts, who had 37.8 percent of respondents’ trust.¹² Additionally, social reforms during this time period have also created a more highly educated public that consumes larger amounts of media, especially in forms of social media, such as Weibo or WeChat. Open markets and a more highly educated public have also led to Chinese public exposure to genetically modified food products common in the United States. China’s status as an authoritarian state, although moving toward a trend of decentralization, means that on social media platforms and in the press, GMO discourse is a state-society interaction. Specifically, the government is able to

8 “Cartagena Protocol on Biosafety, 3i,” United Nations Convention on Biological Diversity, January 2000, accessed May 4, 2017, <https://bch.cbd.int/protocol>.

9 Ibid., 3g.

10 Zhang Mingyang et. al., “Influence of Source Credibility on Consumer Acceptance of Genetically Modified Foods in China,” *Sustainability*, 8 no. 9 (2016): 9.

11 Ibid., 14.

12 Ibid., 14.

see and respond to anything published in the Chinese press or social media platforms. GMOs also present an ideal case for examining current state-society interaction in China because they are an issue that garners public interest quickly due to the personal and familiar nature of food.

Genetically modified foods contain unbounded potential as a technology, but societal acceptance of their safety has not followed as quickly as the technology has advanced. Thus, understanding the contention of the issue, as well as wider study of state-society interactions about technology and risk perceptions is vital to proper risk regulation at the state and international level. While the applications of modern biotechnology contain wide and far-reaching potential for uses in modern medicine and pharmaceuticals, their presence in the agricultural market has caused the greatest stir among consumers. Consumer right campaigns in the US, the EU, and China have all demanded labeling on products containing GMOs. Thus, civil society around the world, including in China, has played an important role in pressuring the relevant regulatory bodies to maintain transparency of genetically modified food products. This state-society interaction will only increase in importance as technology advances, as consumers are left to consider the implications of what repercussions such advancement incurs, and how government can react and regulate such technologies responsibly.

2. State-Society Interactions Frameworks

This study utilizes public discourse, acceptance, and regulation of genetically modified foods as a specific case where the Chinese state institutions and civil society interact. the United Kingdom's Department for International Development defines state-society relations as: "Interactions between state institutions and societal groups to negotiate how public authority is exercised and how it can be influenced by people. They are focused on issues such as defining the mutual rights and obligations of state and society, negotiating how public resources should be allocated and establishing different modes of representation and accountability."¹³ In applying a state-society relations framework to China specifically, Zhao Dingxin puts forward a state and society relations framework with his examination of the 1989 Tiananmen Student Movement.¹⁴ Zhao's framework identifies the key underlying issues that led to the student movement being ineffective against state control measures that stemmed from "conflicting views of state legitimacy in the minds of top

13 "State-society Relations and Citizenship: Topic Guide, April 2016," Governance and Social Development Resource Centre, accessed May 4, 2017, <http://www.gsdr.org/topic-guides/state-society-relations-and-citizenship/state-society-relations-overview/>.

14 Zhao Dingxin, *The Power of Tiananmen: State-society Relations and the 1989 Beijing Student Movement* (Chicago, IL: University of Chicago Press, 2004).

state elites, movement activists, and the rest of Beijing's population."¹⁵ This study relies on Zhao's framework, which links social protest, discourse, and movement to state legitimacy in the interactions between state and society. Indeed, with regulations of genetically modified foods, civil society and the state have grown to understand the state's role of government regulation differently. Thus, Zhao's framework of state and society interactions fit with this study about genetically modified foods.

In Tong and Lei's understanding, state responses both reflect, and are constrained by, the relationship between the state and society. However, if one of these entity changes, the structure and nature of the relationship is subject to change. This creates a series of dynamic interactions between society and state, especially given ongoing reforms in China's political and economic system. The first way to conceive of state-society relations is to perceive state and society as antagonists. This is performance-based legitimacy, in which the legitimacy of the government is based on past performance of government behaviors and oversights.

A second framework for viewing state-society relations in China is to view the role of the state as multilayered and responsibility-based. This responsibility-based legitimacy theory is rooted in China's political tradition and it emphasizes that the state and society engage with and change each other when they interact, rather than antagonize each other.¹⁶ The responsibility-based approach of state-society interactions portrays state and society in terms of three layers: the morality of the ruling elite, benevolent governance of the ruler, and state responsibility for the well-being of its people. These themes echo ideas of the mandate of heaven and the morality of the ruler; that is, in order to maintain his mandate from Heaven, or legitimacy, the emperor must maintain their morality. If the emperor does not fulfill his obligations, it gives peasants the right to rebel. In terms of the GMO issue and other issues of science, the state has a particular obligation to fulfill in the view of the public in order to keep the unknown risks of new technologies at bay and cautiously regulated. In understanding the case of genetically modified foods, elements of both frameworks are useful in analyzing the state-society interactions in how public opinion has changed and how the state has demonstrated responsiveness to a change in public opinion. Some case studies in this work find that society does indeed directly question the performance of the government in the case of GMOs. Other case studies instead highlight the changing and dynamic

15 Ibid., 209.

16 Tong Yanqi and Shaohua Lei, "Analyzing Social Protest," in *Social Protest in Contemporary China*, ed. by Routledge (2014): 18-46.

interactions between state and society given the transforming nature of the two over the last twenty years.

3. Case Studies

3.1 Introduction to Case Studies

Concerns about food safety caused the public to call into question the central government's ability to keep the public safe from potentially dangerous food. They also question the credibility and legitimacy of science and the overall scientific knowledge of policymakers. Cases such as the Nestle China case and the 2013 Golden Rice Scandal have revealed the indecision and uncertainty of Chinese officials on whether and how to regulate production, testing, and labeling of genetically modified foods. The following case studies highlight Chinese public views of genetically modified food and their safety. Additionally, they are examples of a changing Chinese state and society relationship, which expresses itself in a series of dynamic bilateral interactions.

3.2 Nestle China: Lack of Consensus in Regulation and the Rise of Consumer Awareness

In 2003, Zhu Yanling, a mother from Shanghai, brought a case against Nestle China Co. in Shanghai Intermediary People's Court. She argued that Nesquik powder milk was not labeled with GMO components on the package and that, as a mother and consumer, she had a right to know whether the product contained GM components. Greenpeace is widely credited for publicizing the case and for funding Zhu's trip to Nestle's headquarters in Switzerland. This case has revealed, through media and NGO involvement, that Chinese regulations and standards for GM food were not well maintained or fully decided upon at the time.¹⁷ Publications by Greenpeace about the case also portrayed Nestle as an unscrupulous multinational corporation with double standards towards Chinese and European consumers. The case of Zhu vs. Nestle first highlighted a prominent consumer rights campaign that garnered worldwide media attention. Secondly, it highlighted that in 2003, methods of testing for GM products and subsequent labeling practices were not widely known—a government oversight on regulation.

She claimed that, "Nestle is unconvinced that Chinese consumers are as unconcerned as European consumers on food safety and consumer rights."¹⁸

17 Xi Wang, Qin Tianbao, and Lu Fu, "Cartagena Protocol on Biosafety and China's Practice," *Asia Pacific Journal of Environmental Law* 8, no. 3 (2004): 93.

18 "Zhu Yanling's Long March for Consumer Rights: Chinese Consumer Challenges Nestle," Greenpeace International, January 7, 2004, accessed May 4, 2017, <http://www.greenpeace.org/international/en/>

Zhu's statement indicates her perception that Nestle had a double standard in labeling its GMO products in the EU and Chinese marketplaces. Zhu made a powerful statement for Chinese consumer rights and the media support she garnered from fellow Chinese consumers speaks to the emergence of the consumer rights consciousness in the Chinese markets. With the emergence of these rights consciousness, Zhu claims that the standards that multinational corporations have for EU markets should be the same as those for the Chinese markets.

Ultimately, the court ruled inconclusively on the case because there was no Chinese national standard of labeling GM food products at the time. The case used two methods of testing for GM components at different stages of the legal process. In one method, there was enough trace evidence of genetically modified particles to label the Nesquik milk as a GM product. However, in another testing method, there was not. Because there was no accepted standard in Chinese state law in testing for GM foods and traces in these products, the case could not reach a resolution. The Zhu Yanling case ultimately exposed the lack of Chinese regulation on GM foods, which served to only increase public anxiety over the issue.

At this time, the United States and the EU had labeling regulations on GM products. Thus the failing of the Chinese government to not have national standards for testing products for genetic modification indicates either a lack of government oversight on the issue or stark divisiveness within the relevant regulatory bodies on how to conduct testing. With Greenpeace's role in the case, it seems that the original motivation for the case was to expose Nestle's role in keeping information from consumers about whether their food contained genetically modified food products. In doing so, Nestle also exposed the lack of Central Government regulation on genetically modified food. By 2003, genetically modified foods were not new to the Chinese public or to the Chinese government. Thus, a lack of standards on how to test for GM foods gave rise to a consumer perception of the central government's responsibility in regulating proper food labeling.

3.3 GMOs in Chinese Media: The Case of Cui Yongyuan

Cui Yongyuan, an outspoken media personality and ardent critic of GMOs in Chinese households, has an extensive social media following and has played a pivotal role in the media impact on Chinese public opinion. In 2013, he and Fang Zhouzi, a chemical biology expert, engaged in a prolonged debate on Weibo regarding the commercialization and safety of GMO foods. In the next

year, the feud between Cui and Fang escalated when Cui claimed Fang was operating an illegal trust fund, and Fang responded with a libel lawsuit. Cui has also produced an investigative documentary about the regulation of GM foods in Japan and the United States. In a 2015 talk at Fudan University, Cui also questioned a life science professor's credentials, claiming that the professor's lack of knowledge about broadcasting "did not qualify him to debate on the same level."¹⁹ Cui Yongyuan's following, over 10 million on Weibo as of April 2017, is testament to the degree to which the Chinese public consumes the media he produces.

Extensive media coverage in China on GM crops, both positive and negative, has influenced public perception of genetically modified foods, perhaps contributing to the diversity of public views on the issue. More highly educated members of contemporary Chinese society and avid consumers of media tend to have more negative viewpoints of GM foods. One study found that a higher education level of a person meant that they were less likely to accept soybean oil from GM soybeans with age, health, and household income having no correlation.²⁰ The same study also found that media presence on the issue of GM crops "has resulted in a negative view of GMFs [genetically modified foods], due to dissemination of faulty information throughout the country."²¹ The prominent presence of GMOs in social media, as well as in traditional print media, has contributed to divided public opinion on genetically modified foods. While there are studies that do show that biotechnology is well received in the public and that the government is the most trusted source in terms of information about technology, media certainly has shaped public opinion of GMOs. In the information age, stories have become harder to verify.

Cui Yongyuan and his feud with biotechnologist Fang Zhouzi have publicized the rifts of an issue new to society, genetic modification. Both Cui and Fang fervently advocate for the public's right to know the truth about GM foods: Cui from a consumer safety standpoint, and Fang from a scientific one. Cui holds that, "It's exactly because there are so few people who are willing to speak up that I must continue to do so."²² A *China Daily* article highlights the public exchange between Cui and Fang as an exchange "focused on rights—the right to question the authority of science."²³ Indeed, this exchange between

19 "Fang Zhouzi Vs. Cui Yongyuan: How an Online Spat about GM Foods Ended in the Courts," *eChinaCities*, August 7, 2014, accessed May 7, 2017, <http://www.echinacities.com/china-media/Fang-Zhouzi-Vs-Cui-Yongyuan-How-an-Online-Spat-about-GM-Foods-Ended-in-the-Courts>.

20 Zhang et al., "Source Credibility," 14.

21 Ibid., 18.

22 "Tell It like It Is: China Delegate Rips Meek Congress," *AFP News*, March 14, 2017, accessed May 2, 2017, <https://sg.news.yahoo.com/tell-china-delegate-rips-meek-congress-085310883.html>.

23 Raymond Zhou, "The Truth is Out There Somewhere," *China Daily*, 2 August 2014, accessed May 7, 2017, http://www.chinadaily.com.cn/opinion/2014-02/08/content_17896965.htm.

a journalist and a scientist highlights the degree to which media in Chinese society has grown in capacity to hold public debate with opposing viewpoints on an issue which technologists around the world are still debating.

Since his feud with Fang, Cui Yongyuan continues to expose government failures and lack of oversight in regulation of GM seed uses. In particular, he has cited a Greenpeace report exposing widespread illegal use of GM seeds in Northeast regions of China. Greenpeace found that 93% of grain samples from Chinese supermarkets contained GMO traces.²⁴ Cui posted that “some people are openly lying, and they should be fired.”²⁵ Cui Yongyuan’s debates and promotion for more stringent regulation of GM foods because of the safety risks they pose serve as a way in which the media has demanded accountability of the Chinese state and regulatory bodies.

3.4 Golden Rice Trials: Ethics and Scientific Advancement

In 2013, it was discovered that scientists at Tufts University conducted trials on the nutritional value of the Golden Rice with young children in rural China. They conducted the trial without explanation to Chinese families what potential health benefits the rice had, or what was in it that created more nutritional value.²⁶ This incited public outrage after a Greenpeace exposé of the experiment, as the public felt that the crop could have potentially carried risks to their children. Tufts University eventually admitted that it had violated ethics rules in the trial, and that Chinese families and test subjects had a right to know what was in the product being tested. As a result of the scandal, three Chinese officials overseeing the project were dismissed from their posts for their lack of oversight on the experiment.²⁷ The Golden Rice Scandal again revealed a large government oversight in the regulation and general knowledge about GM crops. It also opened the Central Government to criticism that commercialization and testing of a product took precedence over public safety. The Golden Rice scandal has thus further added to the negative stigma around GM foods, and laid the groundwork for lack of trust in scientists.

24 Yap Chuin-Wei, "Ban or Not, GMOs May Already Be On China's Table," *The Wall Street Journal*, January 7, 2017, accessed May 2, 2017, <https://blogs.wsj.com/chinarealtime/2016/01/07/ban-or-not-gmo-corn-may-already-be-on-chinas-table/>.

25 Ibid.

26 Dan Charles, "Golden rice study violated ethical rules Tufts says," *National Public Radio*, September 17, 2013, accessed December 5, 2016, <http://www.npr.org/sections/the-salt/2013/09/17/223382375/golden-rice-study-violated-ethical-rules-tufts-says>.

27 Jon Entine, "Greenpeace Hysteria Campaign Scares Chinese into Retreat on Nutrition-Enhancing GMO 'Golden Rice,'" *Forbes*, December 11, 2012, accessed December 5, 2016, <http://www.forbes.com/sites/jonentine/2012/12/11/greenpeace-hysteria-campaign-scares-chinese-into-retreat-on-nutrition-enhancing-gmo-golden-rice/#15ce040ac994>.

The 2008 Baby Formula Scandal, in which tainted baby formula caused kidney stones in small children, has made the public especially sensitive to food scandals even before the Golden Rice scandal emerged. The Golden Rice scandal in 2013, provoked public outrage in much the same way, though the responsible regulatory bodies differed in this instance. GM food issues, because they involve food safety issues within the family, can especially strike the hearts of the Chinese public and any society around the world. It undermines consumer confidence in parents who feed their children in hopes of raising a healthy family, and tainted food has served as an attack on the traditional ideals of Chinese family values. Golden Rice in particular explains Chinese society's skepticism of the state's credibility in keeping food safe for public consumption, and GM crops serve as an easy scapegoat. It also adds to the confirmation bias of the Chinese public, based on public memory from the 2008 baby formula crisis.

Applying the public reaction to the Golden Rice scandal to the framework of state-society relations, the failure of government regulatory oversight in small details of the study (such as how trial families were given information about the nature of the technology they were testing) highlights a failing of the government to uphold its responsibility to its people. This ultimately adds to the failure in government performance to serve in a protective capacity regarding questions of such risks as scientific trials on young children. The study involved young children, which also added to the perception that the government prioritized scientific advancement over the safety of children and family, and the notion that public officials who endorsed the scientific advances associated with the study lacked the same morals as the Chinese public. The Golden Rice trials thus introduced the debate about the tension between scientific advancement and ethics to the Chinese public. It has also raised awareness and portrayed the issue as a dichotomy between scientific advancement and economic growth as a challenge to the safety of families and children. In many ways, the Golden Rice trials exposed the rights of society to question the advancement and legitimacy of science and at what cost economic development and improved technology is achieved. The Golden Rice case also highlights a means by which critics of GMOs portray scientists as unethical. The fact that the scientists and regulators in charge of the study lost their job reflects a state sensitivity and responsiveness to how the public perceived the issue.

4. Discussion and Analysis of Case Studies

4.1 Society vs. State: Performance-Based Responsibility

Past governance failures in food safety regulation give rise to public dissatisfaction with the central government's approach in dealing with the unknown regulatory risks of genetically modified foods. Understanding Chinese societal perceptions and discourse surrounding GMOs particularly highlights the degree to which interactions between state and society in China have changed. First, Chinese society is changing with respect to how it interacts with its government due to a rise in a consumer rights consciousness and the emergence of civil society actors. Second, the Chinese state is changing in how it deals with the future of biotechnology, taking public opinion into account. These two changes highlight larger implications about the interaction between science, state, and society in China. In applying the aforementioned case studies to the state-society relations framework and the different elements of Chinese society they encompass, the Chinese public has grown more suspicious of genetically modified foods because the rise of non-governmental actors in Chinese society is leading the people to question the Chinese government's performance in the regulation of genetically modified foods.

GMOs remain mostly in public discourse on social media platforms rather than in public demonstration, but the aforementioned case studies highlight that lackluster government performance and weak oversight in food and environmental regulations have awakened a rights-based consciousness in the average Chinese consumer. This consciousness manifests itself in exposure to open criticisms of the Central Government and its lack of transparency on the GMO issue. The awakening of this consciousness has sprung from demonstrated discontent with the central government's willingness to compromise public health and safety with economic growth. Environmental pollution protests in China indicate wide public sentiment that the central government has failed to perform its duty of maintaining economic livelihood while also protecting well-being. Environmental issues have successfully risen in the public eye because the issue is highly visible in the form of smog over Beijing and other major cities, and is a tangible public health threat. These factors also exist for genetically modified foods. Food safety affects all people in the Chinese marketplace, and is easily relatable as an issue in the media. The issue also underpins agricultural and economic livelihoods, family values, and public health.

The Nestle case of 2003 revealed that the government had been using inconsistent methods to test products for how much genetically modified product they contained. The underlying issue of lack of government oversight

in the Nestle case indicates an awakening of a rights consciousness in Chinese society regarding the safety of food products. From a state-society relations perspective, society has begun to demand to know whether a crop contains a genetically modified food product. This signifies a growing Chinese consumer base with demands to certain rights as consumers and a transition toward a consumer-centered market. The China of today is no longer the “strong state, weak society” model. Instead, Chinese society has vocally expressed its doubts about government credibility with regard to genetically modified foods because of past public health crises regarding GMOs, meat, and baby formula. The Chinese government has thus lost its credibility with keeping food safe for public consumption because of poor past performances with food safety scandals magnified by media. Zhu, with Greenpeace’s help, successfully questioned the government and revealed an important oversight and failure in performance, chipping away at the legitimacy of the state in properly performing its regulatory due diligence.

Cui Yongyuan, the journalist and TV personality, has capitalized on social media and his status as a celebrity to deliberately and vocally question the performance of the government in its regulation and oversight of genetically modified food products. Cui’s feud with renowned biotechnologist Fang Zhouzi continued the emergence of a consumer rights based consciousness that existed at the intersection of a new technology, civil society consumer rights, and the right for transparency from the government. The feud between Cui and Zhou reveals two aspects when considered at the level of state-society interaction. First, it represents a continuity of the rights-based consciousness awoken with the Nestle Zhu Yanling case, which questioned the performance of the government in keeping the public informed and satisfied with genetically modified food regulations. Second, the feud represents the appearance of the media, especially social media, as a new platform for Chinese state and society interactions.

The Golden Rice trials incited public outrage because the study failed to provide details of the nature of the study, and the possible genetically modified food products in the rice that would be fed to children. The case is thus linked to a lack of transparency and also a lack of ethics in informing parents of the nutritional content that children would be consuming in the study. Understandably, the nature of scientific trials, such as testing for nutritional content, does not allow for all test subjects to know whether they are consuming the tested material or control items in order to avoid the placebo effect. However, in this particular case, the outrage was linked to a parent’s right to know about what their children was consuming. Thus, the Golden Rice trials demonstrate a continuation of the demand for transparency in regard to genetically modified food and food products.

The case studies of genetically modified organisms comprise two main common threads consistent with conceptions of performance-based legitimacy. First, new actors have emerged in Chinese civil society by means of new platforms of expression. Cui Yongyuan and the Chinese media, as well as Greenpeace, clearly demonstrate that Chinese state-society interactions are no longer comprised of active protest movements per se. Social media propagates news of Cui and Greenpeace and the Golden Rice trials faster than ever before. Second, these new actors and platforms in Chinese civil society produce new ways to question the government's performance in regulating genetically modified food. The awakening of a consumer market and consumer rights consciousness in China, as well as the demand for transparency in GM regulations, have come as a result of vast changes in the landscape of China's development and social fabric. Public perceptions of GMOs were incredibly positive in the beginning of the 1990s, when the public was less aware of their associated risks that were subsequently exposed by the media. However, as China has achieved large amounts of its economic potential and proved an international paragon of economic growth in a short period of time, the public has grown disenchanted with its economic growth. Food safety is one such issue in which public sentiment is manifested clearly and consciously in the media. The public has also grown more aware of international opinions about genetically modified foods because the China of today has had more international exposure to non-governmental actors, such as outside media and NGOs. Declining public sentiment of GMOs indicates a trajectory in which the Central Government has lost legitimacy in its performance on food safety because of changes in Chinese civil society as a result of these economic reforms and 'opening up'. The case of declining sentiment of GMOs is thus a result of China's quick economic growth in such a short period of time, and the growing pain of a transitioning Chinese society as a legacy of economic and social reforms beginning in the 1980s and continuing into the early 1990s.

4.2 Balancing Economic Growth and Responsibility-Based Legitimacy

The responsibility-based legitimacy idea predicts that social protest could occur when there are perceived breaches in the state's responsibility to fulfill a certain duty. Thus, the responsibility-based legitimacy conception of state and society interaction necessitates close examination of the government reaction to the aforementioned case studies, namely how the state has breached or fulfilled its responsibilities to society. Examining these case studies of genetically modified foods in Chinese society reveals exactly what the public demands from the Chinese state, and Chinese state's reactions reveal how it hopes to reconcile goals of economic growth with the responsibility of

transparency and public health and safety. The Chinese government has grown more embracing of genetically modified food products in order to root out influence of foreign biotechnology firms in its agricultural market and to respond to public skepticism about the transparency of genetically modified food regulations.

In the case of the Golden Rice trials, the Chinese Ministry of Agriculture dismissed three public officials in response to widespread outrage about the means by which the Golden Rice study was conducted. This has proven to be a remarkable hindrance to the continuation of commercializing Golden Rice in China. Given that the experiment involved the nutrition of children, the trials and following scandal about how they were conducted raised questions of family values in China in direct contrast to the value of scientific knowledge for economic growth. The government, in its willingness to dismiss officials over the study, communicated clearly the extent to which it was responsive to the public's outrage in the Golden Rice matter. In the central government's response to public outrage, the government took action to reassure the public that it continued to be a moral and responsible governing body with direct consequences to oversight in large institutions such as the Ministry of Agriculture.

The cautiousness with which the Chinese government is moving forward with increased investment in biotechnology especially involves courting public opinion, a reflection of the government's awareness of public opinion regarding genetically modified foods. ChemChina, a state-owned biotechnology enterprise, has bought Syngenta, a leading Swiss biotechnology firm that specializes in pesticide-resistant plants. Media speculation indicates that this deal was an attempt by the central government to increase public trust if a Chinese company were to provide GM seed varieties.²⁸

The central government has openly communicated a desire to re-educate the public on the facts surrounding genetically modified technology in order to quell fears about their safety. State Council Information Office (SCIO) spokesman Han Jun spoke in detail about how China hopes to progress with agricultural biotechnology, admitting that policy makers around the world face regulating issues of science and technology: "Those who are not actually doing the research, like us, may only know a little bit about it and will have to rely on scientific articles to acquire more knowledge of it."²⁹ With regards to genetically

28 Charlie Campbell, "U.S. Approval of Syngenta Deal Brings GMO Food a Step Closer to China," *Time Magazine*, Aug 23 2016, accessed April 19, 2017, <http://time.com/4462394/syngenta-chemchina-gmo-foods/>.

29 "SCIO Briefing on Agricultural Modernization on 2015-02-04," State Council Information Office, February 4, 2015, accessed December 5, 2016, http://english.agri.gov.cn/hottopics/cpc/201502/t20150204_24960.htm.

modified crops and foods especially, technology often becomes a social issue. In this statement, the SCIO draws a clear distinction between the role of the state and the role of science as independent from each other in motivation. It also highlights the role that science must play in creating a regulatory framework that keeps the public safe. In this briefing, the SCIO communicates to the public and foreign media that the state is proceeding with greater investments in biotechnology, a move with great potential. However, it makes sure to communicate in parallel reassurance towards the same audience that the state aims to do so with caution and with an awareness that the public has serious misgivings about the risks associated with genetically modified crops.

In addition, the No. 1 Central Government Document released in 2015 regarding China's plans for increased investment in biotechnology carefully communicates its intention to reassure the public about the safety of genetically modified crops.³⁰ The way in which the SCIO has communicated the stipulations of the No. 1 Central Document is to frame the issue of genetically modified crops as both a scientific and social issue, and appeals to the scientific community as a group to rely on in creating policy that regulates the safety of genetically modified foods, even as the government increases its investment in agricultural biotechnology. The No. 1 Central Document also asserts an effort to "lift the veil" on GM technology in order to quell public sentiment. This displays the government re-taking its responsibility-based legitimation, and clearly it has accounted for public opinion in creating a biotechnology strategy in coming years. In addition to elements of education and public awareness as a matter of government responsibility in the No. 1 Central Document, President Xi Jinping has also appealed to a sense of nationalism in order to regain responsibility-based legitimacy in the realm of genetically modified foods. He said in a 2013 speech to a Chinese farming organization that he intended to increase funding in biotechnology in order not to "yield ground to foreign firms."³¹ The SCIO briefing aforementioned also discusses the need to not let foreign firms that are dominating China's agricultural market win. Indeed, in the 2014-2015 fiscal year, China imported more than 70 million tons of genetically modified soybeans from the US.³² The Chinese state has decided to utilize public awareness, nationalism, and acquisitions of foreign companies as ways to reassure public worry about the uncertainties of genetically modified food.

30 Lu and Chen, "Chinese Public's Risk Perceptions of Genetically Modified Food," 112.

31 "Gene-policy Transfer: China May Relax its Almost Total Ban on Growing GM Food." *The Economist*, April 3, 2016, accessed December 5, 2016, <https://www.economist.com/news/china/21697272-china-may-relax-its-almost-total-ban-growing-gm-food-gene-policy-transfer>.

32 Karen Braun, "China Imports Will Keep U.S. Soybean Market on Its Toes: Braun," *Reuters*, September 9, 2016, accessed December 5, 2016, <http://www.reuters.com/article/us-china-soybeans-braun/china-imports-will-keep-u-s-soybean-market-on-its-toes-braun-idUSKCN11F2GT>.

The way in which the central government has responded to regulating genetically modified crops, and the way in which it is moving forward with pursuing biotechnology demonstrates its awareness of the linkage between responsibility to society and its legitimacy. With its policies in the past, especially with poorly enforced and inconsistent seed laws that allowed loopholes in the Nestle lawsuit, the Chinese central government suffered a great blow to its responsibility-based legitimacy in that governance had not yet adequately dealt with the uncertainties of a new technology. However, the way in which President Xi Jinping is communicating China's new biotechnology strategy indicates that the Chinese central government has acknowledged its awareness of its responsibility for protecting the well-being of its people. On another end, though, is the incentive of economic growth. Thus, the Chinese state has been in a delicate position regarding genetically modified crops, since they present a commercial opportunity but also present a huge blow to public perception of the state's responsibility. In its biotechnology strategy, the government moves forward cautiously, courting public opinion and seeking to re-educate it. The way in which the government is moving forward with its biotechnology strategy indicates that it hopes to maintain its responsibility to the well-being of its people.

With the commercialization of the virus-resistant tobacco in 1988, China has proved that it is set to be a world leader in innovation, science, and technology. Its major strides in biotechnology are motivated first by the sensitivity that the Chinese state has undergone in issues of subsistence. The scars of these times remain within the collective memory of society, and influence the extent to which the Chinese central government has considered food security a significant issue. The biotechnology craze that began in the 1980s proved a great strategic opportunity for the Chinese state to feed its people with less crop inputs. Issues of food scarcity and subsistence pose a great threat to Chinese society's well-being even today with the level of economic development that the Chinese economy has achieved. Chinese society today has increased its labor in the manufacturing sector, with less employment in the agricultural sector. This has increased the need for greater production efficiency, and biotechnology presents the central government a strategic opportunity.³³ These changes in the economy have also created and exposed deep rifts in society over the trajectory of the nation. The case of genetically modified crops with the interaction of the Chinese public and state is one such example.

33 Lester Brown, *Who Will Feed China?: Wake-Up Call for a Small Planet* (The Worldwatch Environmental Alert Series. New York: W.W. Norton & Company), 1995.

Public opinion of genetically modified foods in Chinese society has reversed dramatically since the 1990s, when public sentiment surveys revealed that the Chinese public was most enthusiastic about the potential that GMOs presented in terms of economic development. Today, food safety scandals have created disenchantment with the government's involvement in Chinese food sources. This has indicated that Chinese society is not in fact apathetic to the governance and performance of the Chinese state. Instead, Chinese society has lost its faith in the legitimacy of the government in its capacity to regulate food and keep it safe. Instead, the rapid economic development of the 1990s is seen as a "growing pain" to China's modernization.

The government biotechnology strategy has incorporated responsibility-based legitimation in order to restore faith in its society. Several government communications, such as the No. 1 Central Document and Xi Jinping's 2013 speech to rural workers, acknowledge the Chinese state's responsibility to the public. Chinese policy regarding increased investment in biotechnology has been to change public opinion about genetically modified crops, and to keep the negative influence of NGOs at bay. In order to do so the government has acquired foreign firms in hopes of gaining public trust if GM seeds are produced in China, and has also conveyed an intention to launch public awareness campaigns and increased transparency in the information available about genetically modified crops. Before the Chinese government decided to increase its dedication to biotechnology it was largely inconsistent about enforcement and regulation surrounding genetic modification of foods. Since the MOA's approval of licensing of genetically modified rice, the central government has put forward a more united front on its decidedly more enthusiastic stance on genetically modified crops. This indicates that while Chinese society has changed, so has the state. Close examination of the discourse surrounding genetically modified food thus reveals a confluence of interaction between a rapidly transforming society and state.

5. Concluding Remarks

The conclusions and analysis of the case studies in this work thus reveal important findings about the nature of a transforming Chinese state and society. First, emerging non-state actors in civil society have increased their influence over public opinion. This finding adds to the understanding that social and economic reforms in China since 1978 have made profound changes to the actors present within Chinese society. Second, by examining government reactions to genetically modified foods in the Chinese news outlets the government has grown responsive directly to the public, acknowledging its public accountability. This finding means that while society has changed, the

state has also changed in response, affirming the notion that Chinese state and society interact dynamically in the long run. In a more internationalized context this also means that the Chinese state, while conscious of its economic growth relative to the rest of the world, publicly acknowledges its own accountability to Chinese society in pursuing this economic growth and status as an economic superpower. Examining state and society interactions over the GM food debate in China does not only reveal profound changes over time; rather, close examination and research reveal that the structure and nature of Chinese state and society have changed since the emergence of genetically modified foods in consumer markets.

Genetically modified food in Chinese society has the potential to accomplish greater efficiency of agriculture and to free China from presence of foreign biotechnology firms in its seed markets. However, public opinion and widespread belief of the harmful and long-term health effects of genetically modified foods constrain the degree to which the government can move forward. With the four case studies applied to a state-society interactions framework, this research demonstrates that while the Chinese state has grown more open to the potential of biotechnology, rising actors in a rapidly changing Chinese society have played a role in shifting public opinion against GM foods.

In examining cases of the role of genetically modified foods in Chinese society, including cases in the Chinese legal system, the increased influence of NGOs and the media, and China's dependence on GM soybean imports, it is clear that Chinese society is changing. Examining state-society relations in China can expose the weak points, or "growing pains" present in a transitioning society. Chinese consumers are given the space to react to new changes in their lives—such as exposure to the products of international markets—on new platforms of social media. Additionally, non-governmental actors are able to influence society and play a role in public opinion and how society has demanded accountability from the government regarding genetically modified foods. From the perspective of the government, the Chinese state has been placed in a position where it must treat the commercial viability of biotechnology and GMOs with extreme caution, so as not to risk its previously lost legitimacy.

The case of genetically modified foods has presented such a case in which the interactions between state and society have changed since their advent in the early 1990s. This case is more generally applicable to the cycle of new technologies. Increased modernization since the 1980s and 1990s has brought about societal resistance—particularly in biotechnology. This is understandable since the risks of new technologies such as genetically modified foods are not fully understood. This also creates wider uncertainties with the state, since even at the highest levels of government policymakers

remain uncertain about to what extent they must balance scientific consensus and public opinion in their policies regulating new technologies. In the case of the European Union and regulation of GMOs, policymakers have proven particularly sensitive to public opinion, since their re-election depends on it.³⁴ Elements of this sensitivity to public opinion are becoming more present in the China model of regulation, since Chinese society has made the central government more aware and conscious of its responsibility to public safety in its governance.

The case of genetically modified organisms in China, accounting for factors such as risk perception, trust in the government, and the government's attempts to regain legitimacy, is simply one case in which the gaps between the scientific community, the public, and the government need to be bridged. These three actors in a nation-state have their own stake in new issues facing the 21st century, such as addressing issues of climate change, renewable energy, food scarcity, and other resource scarcity. Thus, the need for increased communication and understanding of these three elements in society will only grow in coming years, not only in China, but also in other developed countries. As a developing nation, China displays a particular need to bridge these gaps in order to regain the state's legitimacy in the eyes of its society and its scientific community as it hopes to advance in coming years. As China will move forward with investments in biotechnology and its attempt of food self-sufficiency, the findings of this research clearly demonstrate that in pursuing new innovation strategies, the Chinese government will take public opinion into account in its decision-making. As China becomes a global leader, a deep and potent understanding of the relationship and interactions between science, technology, and society will facilitate China's rise as an economic and social powerhouse, and world leader in agricultural biotechnology.

The advancement of new technology necessitates regulation that balances advancement with safety and also public confidence in the safety of such a technology. State-society interactions on scientific issues illustrate a new and increasingly common interaction in governments around the world, not just in China's authoritarian regime. This research highlights these interactions utilizing existing frameworks of state and societal interaction, but further research could build upon this work by establishing a framework specifically taking into account state-society interactions in issues of new science and technology.

34 Shane H. Morris and Charles Spillane, "GM Directive Deficiencies in the European Union," *European Molecular Biology Organization reports* 6 (2008): 501.

ESSAYS

SCARLET FEVER IN NORTH KOREA: PUBLIC HEALTH AS A MOTIVATING FACTOR FOR CHINA TO REPATRIATE DEFECTORS

David K. Tian

THE “RED SHIRT” MOVEMENT: PEASANT POLITICS IN THAILAND

Sydney Piggott

CULTURAL DIPLOMACY AND GLOBAL MIGRATION: A CRITICAL ANALYSIS OF JAPAN’S CULTURAL DIPLOMACY FROM THE PERSPECTIVE OF SOCIAL INTEGRATION

Erina Kimura

THE WTO TRADE FACILITATION AGREEMENT

Matthew Pullen

SCARLET FEVER IN NORTH KOREA: PUBLIC HEALTH AS A MOTIVATING FACTOR FOR CHINA TO REPATRIATE DEFECTORS

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Despite facing severe denunciation as well as being a signatory to several international refugee treaties, China refuses to recognize North Korean defectors as refugees and instead repatriates them to North Korea, where they likely face persecution from the regime for leaving the country. Previous theories to explain China's behavior have included its alliance with North Korea, North Korea's role as a "buffer zone" between American troops in South Korea and China, and the fear of an influx of refugees destabilizing Northeast China. However, what has not received enough attention is the fact that the poor sanitation and lack of effective healthcare in North Korea lead to the spread of communicable disease, which the Chinese government seeks to prevent from penetrating into its borders. Hence, this paper argues that another reason China does not seem to be willing to cooperate on the issue of North Korean refugees is because of public health, and perhaps by addressing China's health concerns, the international community can expect cooperation from the Chinese government on this issue.

Keywords: North Korean defectors, communicable disease, refugees, repatriation, public health

Introduction

The Democratic People's Republic of Korea (DPRK), also known as North Korea, considers leaving the country without official state approval a criminal offense, and punishments for crossing the border without prior permission can be severe.¹ The North Korean regime systematically violates the human rights of its residents, including the right to adequate food, the right to life, freedom of expression, and freedom of movement.² People thus defect from North

1 Roberta Cohen, "China's Forced Repatriation of North Korean Refugees Incurs United Nations Censure," *The Brookings Institution*, July 7, 2014.

2 Chang-Hoon Shin and Myong-Hyun Go, "Beyond the UN COI Report on Human Rights in North Korea,"

Korea to escape hunger and persecution, among myriad other reasons, and under the North Korean penal code, punishments for doing so can range from a minimum of seven years in prison camps to the death penalty.³ Although the human rights abuses for repatriated defectors are well documented, the Chinese government regards all North Korean defectors in its territory as illegal economic migrants rather than asylum seekers. As a result, the Chinese government systematically repatriates them to North Korea in accordance with the 1986 Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas between the two countries, which states that “individuals who illegally cross the border...shall be turned over to the other side.”⁴

Why then, despite facing international condemnation, and despite being a signatory to both the 1951 Convention Relating to the Status of Refugees (CRSR) as well as the subsequent 1967 Protocol Relating to the Status of Refugees, does China refuse to grant refugee status to defectors from North Korea?⁵ Moreover, why does China cooperate with North Korea in the repatriation of defectors even though doing so seriously undermines China’s international prestige and damages its credibility in its commitment to international treaties and accords to which it is a signatory? Previous explanations for China’s unwillingness to cooperate with international refugee norms include any one of the following: 1) that they are ideologically aligned, with China being North Korea’s closest ally, and China does not want to betray the trust and loyalty of its ally;⁶ 2) that China does not want to lose its “buffer zone” against American troops in South Korea, an American ally, in the event that a flood of people defecting from North Korea leads to a collapse of the regime⁷; and 3) that China does not want an influx of refugees to destabilize the northeastern part of its territory.⁸

However, these explanations do not fully capture the situation. Though China and North Korea are *de jure* allies, North Korea’s provocations and continued nuclear tests have not only created a delicate diplomatic

The Asan Institute for Policy Studies, November 3, 2014, 18.

3 Victor Cha, *The Impossible State: North Korea, Past and Future*, (New York: Harper Collins Publishers, 2013).

4 Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, PRC-DPRK, Aug. 12, 1986, Article 4, Clause 2

5 T. Kumar, “China’s Repatriation of North Korean Refugees,” *Amnesty International*, March 5, 2012; “China’s Relationship with United Nations High Commissioner for Refugees (UNHCR),” Permanent Mission of the People’s Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, last modified April 16, 2004.

6 Eleanor Albert, “The China-North Korea Relationship,” *Council on Foreign Relations*, September 27, 2017.

7 Ibid.

8 Ibid.

environment for the Chinese government, but also threaten China's own security. Additionally, though they are both communist regimes by name, the divergence in ideology among leaders in China and North Korea is becoming increasingly palpable.⁹ Furthermore, one of the main reasons the United States has a military presence on the Korean Peninsula is ostensibly because of North Korea's military and security threats. If the North Korean regime were to collapse and its nuclear weapons and other security concerns were properly addressed, the United States would respond by withdrawing much of its armed forces from the peninsula, and China would have virtually no need for a "buffer zone."¹⁰ Finally, in the event of a refugee influx, other powers with security and economic interests in the Asia-Pacific region, notably the United States, South Korea, and Japan, among others, as well as international organizations such as the United Nations and The World Food Program, would be able to provide humanitarian aid and help manage the situation.¹¹ Finally, there have also been instances where China did not return every escapee back across the border, which implies that there are reasons other than an influx of refugees that China refuses to cooperate with international refugee norms.¹²

Few, if any, researchers have thoroughly explored the idea of public health as a motivating factor for China in its treatment of North Korean defectors. Because of the lack of an effective healthcare system and rampant malnutrition, the North Korean populace suffers from severe problems like tuberculosis, malaria, and other communicable diseases,¹³ all of which could have devastating effects if introduced to China. In addition, the malnutrition leaves many people in North Korea with weakened immune systems and renders them unable to fend off these diseases. China has a long record of facing disease outbreaks and frequently denies entry to foreigners who bear communicable diseases, and is already fighting its own epidemics of AIDS and tuberculosis.¹⁴ Furthermore, China wants to eliminate malaria within its borders by 2020,¹⁵ and has made great strides in doing so, and will therefore not be likely to enact policies that have the potential to hamper or even reverse its progress. Considering North Korea's many public health problems and

9 Tianyi Wang, "Small State, Big Influence: China's North Korea Policy Dilemma," *Georgetown Journal of Asian Affairs*, 1, no. 1 (Fall/Winter 2014): 5-27.

10 Ibid.

11 Ibid.

12 Cha, *The Impossible State: North Korea, Past and Future*, 181.

13 Yo Han Lee, Seok-Jun Yoon, Young Ae Kim, Ji Won Yeom, and In-Hwan Oh, "Overview of the Burden of Diseases in North Korea," *Journal of Preventive Medicine & Public Health*, 46, no. 3 (May 2013): 111-17.

14 César Chelala, "TB in China: a New Epidemic of an Old Disease," *The Globalist*, May 31, 2014. <https://www.theglobalist.com/tb-in-china-a-new-epidemic-of-an-old-disease/>.

15 "Malaria in China," World Health Organization, accessed October 20, 2017. <http://www.wpro.who.int/china/mediacentre/factsheets/malaria/en/>.

China's reluctance to take on foreign-borne illnesses, this article advances the argument that North Korea's poor state of national health as well as its failing public healthcare system largely contribute to China's policy of repatriating North Korean defectors. This paper will first demonstrate the severe health problems that affect North Korea. Then, it moves on to illustrate China's own health epidemics, as well as present evidence indicating that China actively tries to block disease-bearing foreigners from entering its borders. Following that, it will address a potential counterargument to the paper, before finally presenting its conclusion. The terms "North Korean defector," "North Korean refugee" and "North Korean escapee" will be understood to mean "an individual who has willingly left and/or abandoned North Korea" and will be used interchangeably.

North Korea's Chronic Public Health Problems

North Korea is one of the world's poorest nations, whose people suffer not only from the brutal and systematic oppression by the state, but also from pervasive malnutrition. Though the worst of the Arduous March—the great North Korean famine of the 1990s that claimed the lives of between 600,000 and 2.5 million people¹⁶—was largely over by around 1999, the country has since settled into, and remains in, a long-lasting and prolonged state of food crisis. Although the food situation has improved in recent years, there is still widespread hunger,¹⁷ and the Arduous March has left an entire generation malnourished, in what has come to be known as the "stunted generation."¹⁸

Because of its poverty and the regime's inability to tend to the well-being of its people, North Korea likely has one of the world's worst health environments, with diseases such as tuberculosis (TB) and malaria as the major health problems of the country.¹⁹ The prevalence and incidence of TB, which reputedly has the highest fatality rate of all communicable disease,²⁰ is almost three times higher in North Korea than the global average.²¹ In fact,

16 Joshua Stanton and Sung-Yoon Lee, "Pyongyang's Hunger Games." *The New York Times*, March 7, 2014. <https://www.nytimes.com/2014/03/08/opinion/pyongyangs-hunger-games.html>.

17 Scott A. Snyder, "North Korea's Food Situation: Stable and Improving," *Council on Foreign Relations*, February 17, 2015.

18 Colin Freeman, "Eight reasons why North Korea should be charged with crimes against humanity," *The Telegraph*, November 18, 2014. <http://www.telegraph.co.uk/news/worldnews/asia/north-korea/11238975/Eight-reasons-why-North-Korea-should-be-charged-with-crimes-against-humanity.html>.

19 Yo Han Lee, Seok-Jun Yoon, Young Ae Kim, Ji Won Yeom, and In-Hwan Oh, "Overview of the Burden of Diseases in North Korea," *Journal of Preventive Medicine & Public Health*, 46, no. 3 (May 2013): 111-17.

20 Mi-young Kim, "Contagious diseases critical in North Korea," *ReliefWeb*, November 29, 2001. <https://reliefweb.int/report/democratic-peoples-republic-korea/contagious-diseases-critical-north-korea>.

21 Yo Han Lee, Seok-Jun Yoon, Young Ae Kim, Ji Won Yeom, and In-Hwan Oh, "Overview of the Burden of

from the mid-1990s until the mid-2010s, the rate of incidence of TB *increased*. This increase in the rate of TB was obvious even though during this same period, North Korea has seen its levels of national food waste decrease to the point where North Korea is actually outperforming other similarly low-income nations in East Asia and the Pacific.²²

Tuberculosis is far from being the only malady that threatens the people of North Korea. The low levels of nutrition, poor sanitation, and scarcity of medicine, particularly antibiotics, greatly contribute to the spread of other diseases in the country. Scarlet Fever, one of the world's deadliest diseases throughout much of the late twentieth century, has largely been eliminated throughout the world, primarily because of the use of antibiotics. However, as recently as 2006, there was an outbreak of Scarlet Fever in several areas of North Korea,²³ which also prompted DPRK authorities to close parts of the Sino-North Korean border in an effort to contain the disease and stop it from spreading further.²⁴ The result of all of these issues is that infant and maternal mortality have increased, and life expectancy has decreased in North Korea.²⁵

Other communicable and deadly diseases that have emerged in North Korea in recent history include paratyphoid, measles, cholera, and smallpox. Many of these are preventable or treatable with simple antibiotics, and others, such as smallpox, were thought to have been eradicated several decades ago.²⁶ Without an effective healthcare system, and without medicine readily available, these diseases can become deadly. The prevalence of these diseases, in tandem with the poor healthcare infrastructure in the country, implies that defectors from North Korea into China are at an increased risk for carrying diseases into China and increasing the healthcare burden. Rather than providing medical care to its citizens or disseminating antibiotics, North Korean Public Health officials instruct residents to "drink boiled water" as treatment for diseases like Scarlet Fever.²⁷ The ensemble of these factors—from poor healthcare to the prevalence of communicable diseases—means

Diseases in North Korea," *Journal of Preventive Medicine & Public Health*, 46, no. 3 (May 2013): 111-17.

22 Hazel Smith, "Nutrition and Health in North Korea: What's New, What's Changed and Why It Matters," *North Korean Review*, (October 2016) Vol 12(1): 7-34.

23 Young-jin Han, "Spread of Scarlet Fever? Yangkang in Isolation," *DailyNK*, December 15, 2006. <http://www.dailynk.com/english/read.php?catald=nk01500&num=1432>.

24 Robert Neff, "Four Deadly Epidemics Plague North Korea," *Ohmynews*, November 17, 2006. http://english.ohmynews.com/ArticleView/article_view.asp?no=329454&rel_no=1.

25 John Grundy, Beverly-Ann Biggs, and David B. Hipgrave, "Public Health and International Partnerships in the Democratic People's Republic of Korea," *PLoS Med* (December 2015) 12(12): e1001929. <https://doi.org/10.1371/journal.pmed.1001929>.

26 Mi-young Kim, "Contagious diseases critical in North Korea," *ReliefWeb*, November 29, 2001. <https://reliefweb.int/report/democratic-peoples-republic-korea/contagious-diseases-critical-north-korea>.

27 Kwon-Jeong Hyun, "North Koreans '1 out of 10 Households Have Diseased Patients,'" *DailyNK*, July 23, 2006. <http://www.dailynk.com/english/read.php?catald=nk01500&num=925>.

that the public health problems plaguing North Korea are highly severe and chronic.

China's Own Public Health Concerns

China already faces many problems with diseases within its borders, notably Severe Acute Respiratory Illness (SARS), tuberculosis, and malaria. In the interest of public health and well-being, the Chinese government has a long history of denying entry to foreigners who bear or who have had exposure to contagious diseases, for fear of dangerous diseases entering its borders.

The SARS epidemic can be traced back to a Chinese businessman from Guangdong province in China, and it quickly spread across the country until it reached other countries in different continents across the globe. Since the World Health Organization first identified the virus in 2003, SARS has infected around 8,000 people worldwide and has claimed the lives of about 750, a large portion of which occurred in China. SARS induces death in about 9 to 12% of all patients diagnosed with the virus, and among those aged 65 and older, over 50% have perished. In fact, the SARS epidemic was so deadly that it became a global health concern, so much so that it even affected national economies and induced a wave of panic across China. Though the virus is getting increasingly manageable, it appears that SARS will not be fully eradicated any time soon and will continue to cost governments a great deal of money and other resources to battle each case, with each new case having the potential to trigger another epidemic. SARS has had significant, devastating effects on China's economy and public health; undoubtedly, the Chinese government will do whatever is in its power to ensure that such a severe epidemic does not happen again, whether with SARS or a different disease. It would appear logical for China to fear that systematically granting asylum to North Korean defectors could result in another epidemic.

In addition to SARS, China currently has the world's second largest TB epidemic, behind only that of India,²⁸ with an estimated one million new cases each year. Although the incidence rate of TB in China has declined at about 4.7% each year since 1990,²⁹ it is still highly communicable and poses serious risks to anyone exposed to it. Additionally, HIV and AIDS immensely diminish the efficacy of the immune system of anyone infected with them, which makes it all the more difficult for the human body to control TB-causing bacteria. Accordingly, anyone with HIV who becomes exposed to TB-causing bacteria will

28 César Chelala, "TB in China: A New Epidemic of an Old Disease," *The Globalist*, May 31, 2014, <https://www.theglobalist.com/tb-in-china-a-new-epidemic-of-an-old-disease/>.

29 "Tuberculosis in China," World Health Organization, accessed October 20, 2017, <http://www.wpro.who.int/china/mediacentre/factsheets/tuberculosis/en/>.

automatically be at increased risk of infection. Unfortunately, the prevalence of AIDS has grown tenfold in China since 2004, with recent estimates of its incidence at 3.06 per 100,000 persons as of 2013.³⁰

Though AIDS and TB are still ongoing, China has made great strides in its battle against malaria and seeks to eliminate malaria entirely by 2020.³¹ It would be significantly against Chinese interests to introduce potentially communicable foreign-borne illnesses to the country, including those from North Korea. Doing so would hamper the progress China has made, and indeed the Chinese government frequently denies entry visas to foreigners at risk for introducing disease to the country.

China's Denial of Entry to Disease-Bearing Foreigners

China has a history of not admitting people with diseases, or those it fears could potentially carry infectious diseases, into its territory. In 2014, the rapidly spreading Ebola epidemic in West Africa caught the world's attention, and the three nations that were hardest hit were Sierra Leone, Burkina Faso, and Liberia.³² Although Nigeria had only a small number of confirmed cases, which were successfully contained, and was declared Ebola-free by The World Health Organization on October 20, 2014, Nigerians also had to experience the prohibition of entry along with other African nations with severe Ebola cases.³³ Despite fierce anger, outrage, and a potential compromise of diplomatic relations between China and Nigeria, Chinese authorities decided to deny entry visas to Nigerian students from Ekiti State University due to the threat of Ebola.³⁴ Whether or not this was the right decision for Chinese authorities to make, they did so in the interests of China's public health. If the threat of Ebola from Nigeria, even though evidence points to it being contained and limited in number, is what prompted Chinese authorities to deny the Nigerian students entry visas, then the much less controlled risk of disease from North Korea serves the same motivating function to deny entry to North Korean defectors.

30 Yuanyong Xu, Guang Yang, Huihui Liu, Xinxin Li, Lixue Song, Yanan Li, Yong Wang, Shenlong Li, and Hongbin Song, "Epidemiologic Features of AIDS in China, 2004–2013," *Clinical Infectious Diseases* 60, no. 1. (January 2015): 167–169, <https://academic.oup.com/cid/article/60/1/167/2895784/Epidemiologic-Features-of-AIDS-in-China-2004-2013>.

31 "Tuberculosis in China," World Health Organization, accessed October 20, 2017, <http://www.wpro.who.int/china/mediacentre/factsheets/tuberculosis/en/>.

32 Anne Gulland, "Fifteen Countries are at Risk of Ebola Outbreak, says WHO," *BMJ*, (2014) 349 : g6305, <http://www.bmj.com/content/349/bmj.g6305>.

33 "2014-2016 Ebola Outbreak in West Africa," Centers for Disease Control and Prevention, accessed October 20, 2017, <https://www.cdc.gov/vhf/ebola/outbreaks/2014-west-africa/>; "Nigeria is now free of Ebola virus transmission," World Health Organization, accessed October 20, 2017, <http://www.who.int/mediacentre/news/ebola/20-october-2014/en/>.

34 Kamarudeen Ogundele, "Ebola: China denies Nigeria's champion visa," *The Punch*. October 7, 2014.

The example above of China's denial of entry visas to Nigerian students is just one example of its official visa policies. In explicit language, the Chinese government also stipulates that anyone suffering from mental disorders, leprosy, AIDS, venereal diseases, contagious tuberculosis or other diseases shall not be allowed to enter China.³⁵ Presumably, the denial of entry to people with contagious diseases is to prevent their spread within China's borders. Accordingly, China's official national policies indicate that China is wary of allowing entry to those who might be at risk for carrying foreign pathogens, which includes North Koreans, who have likely not received much in the way of antibiotics or other medication.³⁶

Finally, there contains specific language used in the 1986 Bilateral Agreement between China and North Korea – an agreement to which China still considers itself bound³⁷ – demonstrating that public health is a significant factor in policies in relation to North Korean defectors. Article 1, Clause 3 of this Bilateral Agreement states that:

In the event that in one side's border area, there occurs an **infectious disease** or insect infestation or the other side's area is in danger of being contaminated, the other side must be immediately notified. When necessary, **passage through the border area may be temporarily prohibited** through negotiations of both sides.³⁸
[emphasis added]

Thus, from this document, it appears that the Chinese government has already reached an explicit agreement with North Korean government about the passage of diseases between the two neighboring countries. Generally, Chinese citizens, who have better access – even those in poor or rural areas – to medical care than their neighbors across the Tumen River, are presumably not trying to cross the border into North Korea. As a result, this treaty is effectively one-sided, with China being the one responsible for closing its borders to access from North Koreans in the event of a breakout of disease.

35 "Order of the President of the People's Republic of China No. 57," Ministry of Foreign Affairs of the People's Republic of China, accessed October 20, 2017, <http://cs.mfa.gov.cn/zlbq/flfg/crjxg/t1054650.shtml>.

36 Daniel Schwekendiek, *A Socioeconomic History of North Korea* (Jefferson, North Carolina: McFarland, 2011), 67.

37 Roberta Cohen, "China's Repatriation of North Korean Refugees," *The Brookings Institution*, March 5, 2012, <https://www.brookings.edu/testimonies/chinas-repatriation-of-north-korean-refugees/>.

38 Mutual Cooperation Protocol for the Work of Maintaining National Security and Social Order in the Border Areas, PRC-DPRK. (1986). Article 1, Clause 3.

Counterargument

One counterargument is as follows: Why does the Chinese government not simply state that China fears an influx of communicable diseases penetrating its borders?

In the 1951 Convention on the Status of Refugees and the subsequent 1967 Protocol, both of which China is a member, a refugee is defined as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”³⁹ Under this definition, North Korean defectors into China qualify as legitimate refugees because they have a “well-founded fear of being persecuted” if sent back to North Korea. Additionally, North Korea considers it treason to leave the country without prior authorization, no matter the reason, and doing so is a severe political crime.⁴⁰

However, by describing them as “economic migrants” rather than as “refugees,” China attempts to alleviate itself of any duty to grant North Korean defectors asylum. Because an economic migrant is simply someone who goes to another country in search of opportunities for a higher standard of living or better quality of life as a result of the lack of job opportunities or poor living conditions in his or her home country, economic migrants do not generally qualify for refugee status.

Although it is true that many North Koreans do defect for reasons such as hunger and poverty, and indeed, the food situation is the “key driver for the outflow of North Koreans,”⁴¹ the moment they step across the border, they have committed a severe political offense punishable by death under North Korean penal code.⁴² As a result, regardless of the original reason for defection, North Koreans who have crossed the border qualify for asylum.

Furthermore, economic migrants are those who leave their home country willingly in search of a better life, but, particularly for female defectors, who constitute the majority of defectors and who are often more vulnerable than their male counterparts, life in China is not necessarily better than life in North Korea. They often suffer from extremely cruel treatment at the hands of locals and even Chinese authorities, exhibit signs of post-traumatic stress disorder,

39 The UN Refugee Agency, “Convention and Protocol Relating to the Status of Refugees,” 2010. p. 3.

40 Roberta Cohen, “China’s Forced Repatriation of North Korean Refugees Incurs United Nations Censure,” *The Brookings Institution*, July 7, 2014. <https://www.brookings.edu/opinions/chinas-forced-repatriation-of-north-korean-refugees-incurs-united-nations-censure/>

41 Cha, *The Impossible State: North Korea, Past and Future*, 187.

42 “Treason,” Death Penalty Database, Cornell Center on the Death Penalty Worldwide, last modified June 3, 2014. <http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=north+korea>.

or even engage in prostitution to earn a living.⁴³ The case of Eunsun Kim⁴⁴ and her mother and sister is a prime example. Before finally reaching South Korea and being granted asylum in 2006, Kim and her mother and sister were sold to a Chinese farmer, where they faced physical, verbal, and sexual abuse for nearly a decade.⁴⁵ Indeed, Kim's story is a common fate that befalls upon many North Korean defectors. Owing to their illegal status, refugees from North Korea, particularly women, are highly susceptible to falling prey to human trafficking; estimates of up to around 80% of these refugees are women and 90% or more of these women fall prey to human traffickers.⁴⁶ Many of them, including young children, are then subjected to inhumane conditions such as forced sex work in establishments such as brothels and karaoke bars.⁴⁷

China does not publicly state that its policies are due to health reasons because neither the 1951 CRSR nor the 1967 Protocol contain any language that exempt people bearing diseases from being granted asylum. If the Chinese government were to say this is the reason why it sends back North Korean defectors, it would be openly admitting to violating its obligations. Furthermore, even if there were language that made an exception for people bearing diseases, China would still need to grant North Korean defectors due process before expelling them from the country. The CRSR states that the expulsion of any refugee "shall be only in pursuance of a decision reached in accordance with due process of law."⁴⁸ Hence, it follows that China cannot simply declare that it is repatriating defectors out of concerns for public health.

Conclusion

Many world leaders and heads of international human rights organizations have criticized China's policies towards North Korean defectors who cross over into Chinese territory. Indeed, many of these leaders and other human rights groups have already urged China, to little or no avail, to cease repatriating defectors back to North Korea.⁴⁹

43 Gisoo Shin and Suk-Jeong Lee. "Mental Health and PTSD in Female North Korean Refugees." *Health Care for Women International* 36 (April 2015): 409-423.

44 For safety reasons, Eunsun Kim is a pseudonym, and this paper will not reveal her real name.

45 Eunsun Kim and Sébastien Falletti, *A Thousand Miles to Freedom: My Escape from North Korea*, trans. David Tian (New York: St. Martin's Press, 2015).

46 Jane Kim, "Trafficked: Domestic Violence, Exploitation in Marriage, and the Foreign-Bride Industry," *Virginia Journal of International Law* 51, no. 2 (2011): 443-508.

47 Kim and Falletti, *A Thousand Miles to Freedom: My Escape from North Korea*.

48 The UN Refugee Agency, "Convention and Protocol Relating to the Status of Refugees," 2010, 29.

49 Sang-Hun Choe, "China Should Not Repatriate North Korean Refugees, Seoul Says," *The New York Times*, February 22, 2012, <http://www.nytimes.com/2012/02/23/world/asia/seoul-urges-china-to-not-return-north-korean-refugees.html>

It would be in the best interests for nearly all parties involved, including China itself, but perhaps not the Kim regime in North Korea, for China to be able to adopt policy that grants defectors due process as well as the protection afforded by their status as asylum seekers. Recognizing defectors as legitimate refugees rather than labeling them as “economic migrants” would help bolster China’s international image and prestige, help Beijing maintain a good reputation among other national governments, as well as honor its duties to international refugee law as established by the 1951 Convention Relating to the Status of Refugees and its subsequent 1967 protocol.

Trafficking is a serious blemish on China’s record, with China being placed on the Tier 2 Watch List in the 2016 Human Trafficking Report.⁵⁰ What this means is that China does not fully comply with the Trafficking Victims Protection Act’s (TVPA) minimum standards, although it is making efforts to do so. The Watch List designation indicates at least one of the following:

- 1) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; 2) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, or; 3) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.⁵¹

Therefore, another reason for China to cooperate with the international community on the issue of North Korean defectors is that granting defectors protected status as asylum seekers can help reduce China’s severe human trafficking problem, and one of the most immediately obvious ways to accomplish this is to grant asylum to escapees from North Korea. Although doing so would not be a panacea for all the trafficking of persons that takes place in China, granting North Korean defectors asylum would help contribute to its reduction.

The issue of how to deal with North Korean defectors coming into China is important and highly complex. If the most desirable outcome in relation to defectors is for China to begin recognizing them as refugees and granting them asylum in accordance with the Convention Relating to the Status of Refugees, all interested parties must understand the root, rather than proximate, causes of China’s behavior. There already exists ample literature in academia, think tanks, and the media that have examined previous theories including China’s

50 “Trafficking in Persons Report,” U.S. Department of State, 2016, 129.

51 *Ibid.*, 39.

ideological alliance with North Korea, Chinese fears of destabilization in the region from a sudden influx of defectors, and losing the buffer zone of North Korea that separates the Chinese border from American armed forces. However, as experience has shown, these explanations have not been sufficient to explain China's reluctance in granting defectors asylum. This paper adds an important but overlooked element to the literature: the idea of maintaining public health in China as a motivating factor for repatriating North Korean defectors. If human rights groups, other regional powers, and the international community at large seek cooperation from China on this issue, and want China to grant asylum to North Korean defectors and turn them over to South Korea instead of North Korea, they would also do well to understand China's health concerns and properly address them. Perhaps by adequately addressing this concern can the international community expect cooperation from China on the issue of granting refugee status to North Korean defectors. Future studies could further explore this subject, as well as examine potential concrete policy recommendations to address China's concern for maintaining public health while ensuring the safety and well-being of defectors.

THE “RED SHIRT” MOVEMENT: PEASANT POLITICS IN THAILAND

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This paper explores the political history of Thailand, specifically as it relates to the peasant rebellion in the last decade. Thailand has fallen back under military rule following mass protests in Bangkok in 2013 and 2014. The current crisis has been portrayed as an unexpected political regression when, in fact, several signs from popular uprisings in the past ten years have indicated that the former Prime Minister Yingluck Shinawatra’s regime was not as stable as it seemed. In short, the following will present a historical analysis of the political events that led to the 2014 coup with a focus on the development of the Red Shirt movement among rural populations in northern Thailand. It will also explain the economic impacts of the protests on the Thai economy, as well as the particular effect the regime had on ethnic minorities and refugee populations within Thai borders.

Thailand presents a unique case among the politics of developing countries. Not only has it historically never been colonized by Western powers, but it is also one of the fastest growing economies in the world.¹ What is even more striking is that Thailand’s rural population is better off economically and politically than peasants elsewhere in Southeast Asia. Figure-1 illustrates the rural population living under the national poverty line in Thailand as compared to similar countries in the region from 2000 to 2013. With the exception of Malaysia, Thailand has the lowest headcount ratio of rural poor and it has the most significant reduction in rural poverty in the last 15 years. Likewise, the Thai Rak Thai (“Thais Love Thais” or “Thais for Thais”) party led by Thaksin Shinawatra came to power at the turn of the millennium with a platform that supported largescale rural development programs.² Traditionally, both in industrialized and lower-income countries, the transition to democracy means a loss of power for rural populations. This is due either to the over-representation of urban elites in politics or to state interest in promoting economic growth in

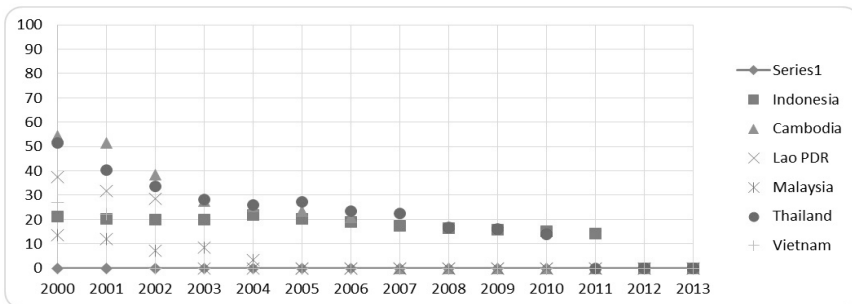
1 World Bank, “Thailand Overview,” 2017, <http://www.worldbank.org/en/country/thailand/overview>.

2 Duncan McCargo and Ukrist Pathmanand, *The Thaksinization of Thailand*. (Copenhagen: NIAS, 2010) 217-218.

cities based on a Western model for development.³ In post-2000 Thailand, the urban elite – located mainly in the region around the capital city of Bangkok – have found it difficult to assert dominance over the peasant population in the north of the country. In fact, the beginning of the twenty-first century saw a rise in the political power of rural peasants coupled with significant rises in income for peasant households. Figure-1 demonstrates that the percentage of rural poor dropped from 51.4 percent in 2000 to 13.9 percent in 2013. Not surprisingly, this led to ideological clashes with the urban elite who felt they were being under-represented in national politics. The uprising of the peasant class that followed from these clashes has been labeled the “Red Shirt Movement.” Protests in Bangkok in 2010 attracted international attention and in 2014 more protests forced Thailand into a state of emergency.

In this paper, I will discuss how the Red Shirt Movement emerged out of a context of rapid economic growth, rural diversification, and regime change in Thailand. I will begin by outlining Thailand’s path to democracy. Next, I will explain how rural populations came to dominate national politics under the populist leader Thaksin Shinawatra. Then, I will give a brief account of the evolution of the Red Shirt Movement from the 2010 protests to the more recent 2014 uprising. Finally, I will discuss how these protests have affected Thailand’s economic growth and minority populations.

Figure-1: Rural poverty headcount ratio at national poverty lines (% of rural population), 2000 to 2013



Source: The World Bank, "Rural poverty headcount ratio at national poverty lines (% of rural population)," <https://data.worldbank.org/indicator/SI.POV.RUHC>.

3 Bates, Robert H. . *Markets and States in Tropical Africa the Political Basis of Agricultural Policies: Updated and Expanded with a New Preface*. (Berkeley: University of California Press 1981), 106-107. Although Bates’s study is on developing states in Africa, his theory on political marginalism applies to most developing countries. In essence, political marginalism maintains that the political voice of rural populations becomes increasingly suppressed in the process of development as agriculture becomes less important as a share of gross domestic product.

Thailand's Political History

Thailand has been a monarchy since the twelfth century and the palace still remains an important actor in national politics. Today, Thailand is bordered to the east by Laos and Cambodia, to the west by Myanmar, and to the south by Malaysia. However, these borders are highly fluid and have expanded and contracted over the last millennium.⁴ In 1932, Thailand transitioned from an absolute monarchy to a constitutional monarchy in a military coup that claimed to favor democracy. However, the elected parliament following the coup was largely a puppet government controlled by the military that aimed to suppress royal and civilian power in decision-making. Following the Second World War, the military formed an alliance with the monarchy out of necessity and awarded some broader democratic rights to citizens. For example, in 1947 political parties became legal in Thailand for the first time despite the continued military manipulation of elections.⁵ In the 1970s, inflation in Thailand made the price of staple foods including rice far too high for the average Thai household. By 1973, students and leftist activists mobilized in the streets of Bangkok and eventually overthrew the military government. Unfortunately, this civilian coup only suspended military power for three years as the army regained control in 1976. Although these protests were ultimately a failure, the 1973 protests marked the first time in modern Thailand that civilians took control of the government in an attempt to establish representative democracy.⁶

In 1992, increasing dissatisfaction with the military government led to pro-democracy demonstrations in Bangkok again. Reminiscent of the events of 1973, the Thai army violently ended these protests in what has been called "the Black May Massacre". A confirmed 52 people died and several hundred either disappeared or were severely injured. Over three thousand people were arrested and allegedly tortured by army officials.⁷ Thailand's king at the time, Bhumibol Adulyadej who passed away in late 2016,⁸ successfully ended the protests and limited the power of the military in the face of international scrutiny of the regime. Slowly, civilians gained more democratic rights as the

4 James C. Scott, *The Art of not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven, CT: Yale University Press, 2011).

5 Paul Chambers, "Where Agency Meets Structure: Understanding Civil-Military Relations in Contemporary Thailand," *Asian Journal of Political Science* 19, no. 3 (2011): 294, doi:10.1080/02185377.2011.628150.

6 Sudarat Musikawong, "Thai Democracy and the October (1973–1976) Events," *Inter-Asia Cultural Studies* 7, no. 4 (December 2006): 713, doi:10.1080/14649370600983360.

7 Ibid., 714.

8 Charlie Campbell, "Thailand Bids Farewell to Beloved King Bhumibol Adulyadej," *Time Magazine*, October 13, 2016, <http://time.com/4043989/thailand-king-dead-obituary-bhumibol-adulyadej/>.

military junta was broken down. In 1997 the People's Constitution of Thailand was drafted that allowed for free and fair elections and removed the direct involvement of the military in parliament.⁹ Though the monarchy has always been an important actor in Thai politics, the role of the King has been even more significant since 1992. By 1997, it seemed as if representative democracy in Thailand had finally been achieved. Prime Minister Chuan Leekpai of the Democrat Party won the 1997 election, but it was clear soon after that the Democrat Party favored the urban elite, many of whom had ties to the military.¹⁰

The Thaksin Era and the Rise of the Red Shirts

In 2001, the Thai Rak Thai party in Thailand led by populist leader Thaksin Shinawatra won the general election with large support from rural farmers in the northeastern region of the country. The Thai Rak Thai party won 55 percent of the parliamentary seats in northeastern Thailand, which accounted for 28 percent of the party's total seats in the House of Representatives.¹¹ Furthermore, Thaksin was able to capitalize on his northern roots to garner support for his party using his siblings as party representatives in the north to cement support in the region.¹² Prior to entering politics, Thaksin made a fortune as a telecommunications mogul whose primary client was the Thai government and police force. Despite making his wealth in the modern sector, Thaksin originates from the city of Chiang Mai, the capital of a province by the same name in the northwestern region of Thailand. Farmers and some ethnic minorities known as "hill-tribes" who practice subsistence farming largely populate this area and Thaksin himself comes from a family of wealthy farmers.¹³ Unlike the Democrat Party and the military, the Thai Rak Thai party won the 2001 and 2005 elections based on their interest in improving the livelihoods of peasants in the north. Some of Thaksin's most popular policies involved subsidizing small-scale farming when farmers allowed for cash crop production between four and six months of the year. He also encouraged the diversification of peasant crops giving more plots to farmers who were willing to plant more than rice on their land.¹⁴ Furthermore, Thaksin made cheap credit available in rural areas in the north and northeast allowing small-scale agriculturalists to purchase more modern farming equipment.¹⁵ The farmers

9 Chambers, "Where Agency Meets Structure," 294.

10 McCargo and Pathmanand, *Thaksinization*, 1.

11 Somchai Phatharathananunth, "The Thai Rak Thai Party and Elections in North-eastern Thailand," *Journal of Contemporary Asia* 38, no. 1 (February 2008): 115, doi:10.1080/00472330701651986.

12 McCargo and Pathmanand, *Thaksinization*, 235.

13 Ibid., 7.

14 Andrew Walker, *Thailand's Political Peasants: Power in the Modern Rural Economy* (Madison, Wis: University of Wisconsin Press, 2012), 38.

15 Yoshinori Nishizaki, "Peasants and the Redshirt Movement in Thailand: Some Dissenting Voices," *The*

who benefitted from Thaksin's policies would later become the driving force behind the Red Shirt Movement.

Before discussing the Red Shirt protests, it is important to understand the economic and political situation from which modern peasant politics emerged. In the first phase of development, annual gross domestic product (GDP) in Thailand was growing at a rate of approximately seven percent annually between 1960 and 1980 due to "a 70 percent increase in the area of agricultural cultivation" fostered largely by the monarchy and who supported food production for import-substitution industrialization (ISI).¹⁶ During the second phase in the 1980s, Thailand shifted its interests from agricultural production to manufacturing and telecommunications in order to attract foreign investment making it the fastest growing economy in the world for almost a decade.¹⁷ As a result of this rapid increase in GDP, Thailand went from being among the poorest countries to being ranked among the World Bank's middle-income nations.¹⁸ But growth was by no means equal throughout the country. The urban elite benefitted the most from the second phase of development, while rural farmers fell significantly behind. Urban poverty declined from 15.5 percent in 1981 to 12.1 percent in 1986; meanwhile, rural poverty increased from 43.1 percent to 56.3 proceeding the same period.¹⁹ However, with the introduction of the pro-poor policies by the Thai Rak Thai party mentioned above, peasant incomes rose dramatically. In 1960, 96 percent of the rural poor were below the poverty line.²⁰ In 2007, under 30 percent of the rural poor were below the threshold, even with better-adjusted measurements for poverty.²¹

This new class of rural dwellers is referred to as middle-income peasants as they no longer rely on their own produce for survival. This is mainly due to two recent phenomena in the rural economy. The first is that government subsidies supporting peasant farmers encouraged diversification that allowed for small-scale farms to produce crops for both personal consumption and for local and global markets. Second, new opportunities stemming from national economic growth allowed farmers to gain nonagricultural income. In 2012, only about 20 percent of rural farmers relied solely on agriculture for income.²² Some of these opportunities were gained from a new demand for goods and services

Journal of Peasant Studies 41, no. 1 (January 30, 2014): 11, doi:10.1080/03066150.2013.873409.

16 Walker, *Thailand's Political Peasants*, 37.

17 Ibid.

18 Ibid., 36.

19 Peter Warr, "Globalization, Growth, and Poverty Reduction in Thailand," *Asean Economic Bulletin* 21, no. 1 (April 2004): 4, doi:10.1355/ae21-1a.

20 Ibid., 39.

21 Ibid.; See Figure-1.

22 Ibid., 8.

created by the rise in peasant income; others come from the rise in tourism in the northern regions of Thailand. Despite rising incomes for peasants, rural populations still experience significant relative poverty as the income of urban dwellers increases much faster.²³ During the Thaksin regime, peasants felt that they were being given the support they needed to help elevate their living standards. In fact, it has been reported that many middle-income peasants made use of credit to purchase things like televisions and cellphones, which for them was a symbol of urban modernity.²⁴

Though Thaksin was growing more and more popular among middle-income peasants, the urban middle and upper classes felt that they were being neglected by the Thai Rak Thai party. Rumors began circulating about Thaksin using his own wealth to preserve his position and about a potential plot to overthrow the King. However, it was not until 2006, shortly after his second landslide victory, that any action was taken against him. In his first term, Thaksin used a policy of appeasement in order to keep the volatile Thai military on his side. He gave prestigious government positions to retired military and granted "autonomy to soldiers in the area of internal security."²⁵ In his second term, he reduced the armed forces budget, seemed prepared to privatize military assets such as the Royal Thai Army Radio and Television Channel 5, and increasingly sought to influence senior military promotions.²⁶

In September of 2006, the military staged a coup against the Thai Rak Thai party, claiming that they were protecting the King's authority. With support from urban activists, known as the People's Alliance for Democracy (PAD) or "Yellow Shirts," the military took control of the government following former Prime Minister Thaksin Shinawatra's forced exile.²⁷ In late 2007, the military allowed elections to take place in which the Democrat Party won with heavy support from the army and monarchy. The peasantry who had benefited much from Thaksin's policies felt that the reemergence of the military in politics meant the end of state assistance in the countryside. In response, an organization called the United Front for Democracy Against Dictatorship (UDD), popularly known as the "Red Shirts," started garnering support in the north and northeastern regions of Thailand. Red Shirt protests started in late 2008 when thousands of peasants occupied important government buildings and the international airport in Bangkok.²⁸ These protests continued sporadically and hit a peak

23 Ibid.

24 Nishizaki, "Peasants and the Redshirt Movement," 11.

25 Chambers, "Where Agency Meets Structure," 298.

26 Ibid.

27 Ibid. Yellow is the colour of the long-reigning King Bhumibol Adulyadej. It is used by the PAD to show their support for the monarch against the populist leadership of Thaksin Shinawatra (Nishizaki, "Peasants and the Redshirt Movement in Thailand," 2).

28 Ibid., 299.

from April 10 to May 19, 2010 when the city of Bangkok was entirely shut down due to clashes between Red Shirts and Yellow Shirts. When the protests had finally ended, 91 people had died and over two thousand were injured.²⁹

The Reemergence of the Red Shirts

Following the events in the spring of 2010, many Thais, including the Red Shirts, hoped that nothing of the sort would happen again. But in November 2013, protests started in Bangkok.³⁰ Though the political situation was similar to what it had been in 2006, the UDD was better organized and more committed to a fully fleshed out idea of what it meant to be a Red Shirt. The rural, pro-Thaksin support base remained strong in the country and in 2011 the Pheu Thai Party won the general election under Prime Minister Yingluck Shinawatra, Thaksin's sister.³¹ Initially, Yingluck was able to balance power between rural and urban voters, maintaining her strong support in the north while keeping Bangkok and the military in check. This quickly changed in late 2013 when the Pheu Thai Party proposed to offer amnesty to Thaksin who had been in exile since the 2006 coup. This proposition was met with mass mobilization from the Yellow Shirts in Bangkok starting on November 24, 2013.³² In January 2014, Prime Minister Yingluck called a state of emergency in the country as well as a general election to take place on February 2, 2014.³³ Despite anti-government protests at several polling stations across the country, the Red Shirts remained strong and the Pheu Thai Party won a majority again.³⁴ However, the Constitutional Court ruled in mid-March 2014 that "the election was unconstitutional because voting failed to take place on the same day around the country."³⁵ As a result, Prime Minister Yingluck was not only leading an interim government with reduced power until new elections took place, but was also subject to an anti-corruption commission initiated by the Constitutional Court.³⁶ Furthermore, anti-government protests, drive-by shootings, and random bombings continued sporadically across the country.³⁷

29 Ibid., 300.

30 Jonathan Head, "Thailand's 'Red Villages' Eye Bangkok Protests," *BBC News*, December 19, 2013, accessed September 21, 2017, <http://www.bbc.co.uk/news/world-asia-25426248>.

31 Nishizaki, "Peasants and the Redshirt Movement," 1.

32 "Thailand Protests: Anti-government March in Bangkok," *BBC News*, March 29, 2014, accessed September 21, 2017, <http://www.bbc.com/news/world-asia-26798407>.

33 Ibid.

34 Head, "Thailand's 'Red Villages'."

35 Amy Sawitta Lefevre, "Thailand in Limbo After Election Annulled; Economy Suffering," *Reuters*, March 21, 2014, <http://www.reuters.com/article/us-thailand-protest/thailand-in-limbo-after-election-annulled-economy-suffering-idUSBREA2K05520140321>.

36 Ibid.

37 Head, "Thailand's 'Red Villages.'"

Though the Red Shirts were not the driving force behind the 2014 demonstrations in Bangkok, they had an active role to play in upholding the Yingluck government. So how did the Red Shirt movement in 2014 compare to the violent and disruptive Red Shirt movement of 2010? When the UDD was founded in 2006, it was a large, disorganized group of disgruntled peasants across a vast area in Thailand's north. In later protests, the Red Shirt movement adopted a historical narrative that organized them based on a communal past. The Red Shirts established a shared history that is rooted in the pre-democratic Kingdom of Siam. Traditionally, there were two classes in Siam: the *amat* that was the aristocracy aligned with the palace and the *phrai* or the serf class that served this elite group. In the 2014 demonstrations, rural peasants wore shirts labeling them *phrai* as a symbol of continued urban-rural inequality.³⁸ The movement evolved from disorganized rebellion to a call for class struggle against Bangkok.³⁹ As a result, the Red Shirts largely remained off the streets despite several attacks on UDD activists.⁴⁰ Instead, the Red Shirts used a historical narrative of oppression and an emphasis on class struggle to keep constituent participation high.⁴¹

The Consequences of the Movement

The outcome of the 2014 protests was a military coup that has seen Thailand under army control for the last three years.⁴² Furthermore, the coup has had adverse effects on Thailand's economy and foreign investment. Thailand is the second largest economy in Southeast Asia and has generally been able to recover quickly from global recessions and national unrest.⁴³ However, the 2013 protests started in a context of slowing exports and local demand for goods in Thailand that already threatened the usually prosperous economy.⁴⁴ GDP growth rates from December 2013 to February 2014 were at only 0.6 percent compared to 2.7 percent at the same time last year.⁴⁵ The Bank of Thailand cut interest rates and predicted that growth would only decline further

38 Jim Taylor, "Remembrance and Tragedy: Understanding Thailand's 'Red Shirt' Social Movement," *Journal of Social Issues in Southeast Asia* 27, no. 1 (April 2012): 128, doi:10.1355/sj27-1d.

39 Nishizaki, "Peasants and the Redshirt Movement," 3.

40 Head, "Thailand's 'Red Villages.'"

41 Taylor, "Remembrance and Tragedy," 123.

42 Janjira Sombatpoonsiri, "The 2014 Military Coup in Thailand: Implications for Political Conflicts and Resolution," *Asian Journal of Peacebuilding* 5, no. 1 (2017): 139-140, doi:210.101.116.15.

43 Sawitta Lefevre, "Thailand in Limbo."

44 Lucy Williamson, "Thailand Protests: Economic Impact Explained," *BBC News*, November 21, 2013, accessed on September 21, <http://www.bbc.com/news/world-asia-25132556>.

45 Timothy McDonald, "Thailand Protest May Cast Cloud Over Economic Growth," *BBC News*, February 17, 2014, video, <http://www.bbc.com/news/av/business-26221371/thailand-protests-may-cast-cloud-over-economic-growth>.

as the protests continued.⁴⁶ Most importantly, investor confidence declined significantly after the protests began and military rule was enforced. Thailand's economy depends largely on private foreign investment both internationally and regionally. When the state of emergency was declared, Thailand experienced capital flight, especially from large Japanese corporations. There was a reported withdrawal of US\$3.7 billion worth in assets by foreign investors in the month of November 2014 alone.⁴⁷ Tourism has become an important part of Thailand's economy and has been growing rapidly since the 1990s, but tourism revenue declined nearly 15 percent in the months immediately following the state of emergency.⁴⁸ Fortunately, growth rates have since increased and are hovering around 3 percent annually; however, it can be expected that economic growth, local business, and tourism revenue will continue to be unpredictable until democratic rule is restored.⁴⁹

Marginalized Populations and the Red Shirt Movement

The Red Shirt movement draws its support from the north and northeastern regions where most of Thailand's ethnic minorities and refugee populations are located.⁵⁰ The extent to which these marginal populations are included in politics is dependent on how willing they are to be part of the Thai state and how assimilated they are in the dominant Thai culture. Consequently, there are three ways in which these groups can be addressed in policy making. Some may benefit directly because they have assimilated into Thai culture. Others will benefit indirectly from Thaksin's policies and any rise in income for minorities is a result of general improvement in regional income. Finally, some will remain excluded entirely from the rights and benefits awarded to rural populations under Thaksin and pro-Thaksin parties. This is usually the case for refugee populations, such as the Shan from Myanmar located in the northwestern borderlands, and for hill-tribes whose traditional lifestyles attract Western tourists.⁵¹

On Thaksin's first day as Prime Minister, he met with Thailand's Assembly of the Poor (AOP), an organization that has been arguing for environmental rights,

46 Sawitta Lefevre, "Thailand in limbo."

47 Nathan Vanderklippe, "Protests threaten to derail economic powerhouse Thailand," *The Globe and Mail*, January 10, 2014, accessed on September 20 <http://www.theglobeandmail.com/news/world/protests-threaten-to-derail-economic-powerhouse-thailand/article16287967/?page=all>.

48 Ibid.

49 "Thailand Overview," World Bank.

50 Paul Francis, "Where There Is Thunder There Should Be Rain," *Mountain Research and Development* 24, no. 2 (May 2004): 119, doi:10.1659/0276-4741(2004)024[0119:wtitts]2.0.co;2.

51 Kayoko Ishii, "The impact of ethnic tourism on hill tribes in Thailand," *Annals of Tourism Research* 39, no. 1 (January 2012): 292, doi:10.1016/j.annals.2011.05.004.

land rights, and the preservation of rural livelihoods since the 1970s.⁵² The AOP had acted as the main voice for northern Thai farmers prior to the Thaksin era and provided policy suggestions, many of which the Thai Rak Thai party implemented between 2001 and 2006.⁵³ The AOP firmly supports indigenous rights to land in rural areas and, as a result, many of Thaksin's policies included minorities and noticeably improved their livelihoods. However, interviews with local people suggest that the benefits from these policies were not equally distributed and many of the improvements in income were due to trickle-down effects of growth in the area.⁵⁴ This is especially true for the Lahu and Hmong farmers whose plots of land are much smaller than those of Thai farmers.⁵⁵

In recent years, Western tourists have become attracted to the traditional lifestyles of ethnic minorities in several Southeast Asian countries. The phenomenon has been called cultural or ethnic tourism defined as "the search for authentic encounters with other ethnicities."⁵⁶ The Thai government has capitalized on this new demand for authentic experiences by popularizing tours of hill-tribe villages located at the heart of Thaksin's support base in the province of Chiang Mai. Though tourism in these regions has improved the incomes of ethnic minorities, it has also kept villages largely underdeveloped in order to maintain authenticity.⁵⁷ As a result, these villages that arguably require the most investment in infrastructure are excluded from policies that improve agricultural production and rural livelihoods. Other times, ethnic minorities choose not to accept government help in order to remain detached from the state. Furthermore, many of them, including the large Akha and Lahu populations in the north, do not hold Thai citizenship.⁵⁸ Several regions in Chiang Mai now have large refugee populations and the numbers are only growing.⁵⁹ These minorities, namely the Shan people, do not benefit at all from pro-poor policies because they do not hold citizenship rights. In fact, Thaksin and pro-Thaksin parties have often persecuted them for trafficking illicit drugs, mainly opium, from Burma into northern Thailand.⁶⁰ The Shan have also been excluded from Assembly of the Poor efforts because they do not hold indigenous rights to land.

Conclusion

52 McGargo and Pathmanand, *Thaksinization*, 1.

53 Rungrawee Chalermripinyorat, "Politics of Representation," *Critical Asian Studies* 36, no. 4 (2004): 543, doi:10.1080/1467271042000273239.

54 Nishizaki, "Peasants and the Redshirt Movement," 12-13.

55 Ibid.

56 Van der Berghe in Ishii, "Ethnic Tourism," 291.

57 Ibid., 291-292.

58 Nishizaki, "Peasants and the redshirt movement," 16.

59 Ibid., 8.

60 Ibid., 11.

The rural-urban conflict in Thailand is ongoing and the polarizing nature of political parties in the country only exacerbates the issue. The Pheu Thai Party and other pro-Thaksin institutions cannot hope to function under a policy of improving rural livelihoods at the expense of urban representation in government. Similarly, the Red Shirt movement has proven that the Democrat Party cannot continue to overlook the relative inequality between the northern and southern regions of Thailand. With increasing civilian dissatisfaction and declining economic growth, the country is faced with limited possibilities. As we have seen from Thailand's past, military government is not sustainable. More broadly, the urban-rural divide in Thailand has overshadowed the marginalization of ethnic minorities and refugee populations in the north, whose voices have been overpowered by the UDD both regionally and nationally. The hope for Thailand is that the adverse effects and international attention drawn by popular protest and military authoritarian rule will encourage the government to work in harmony with the many voices of the poor and rich, the rural and urban, the minority and majority, in order to bring political stability and resume its status as a model for development.

CULTURAL DIPLOMACY AND GLOBAL MIGRATION: A CRITICAL ANALYSIS OF JAPAN'S CULTURAL DIPLOMACY FROM THE PERSPECTIVE OF SOCIAL INTEGRATION

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This research examines Japan's cultural diplomacy at the international level in the context of global migration and at the domestic level from the perspective of social integration. Specifically, the research focuses on the relationship between the construction and "dispatch" of Japanese national identity through cultural diplomacy. This paper argues that cultural diplomacy at the domestic level could lead to social and political exclusion of cultures and communities when it only represents "national cultures," which only belong to particular groups in a society. Moreover, this research sheds light on the tension between de facto multiculturalism in Japan and the seemingly intolerant attitude of the Japanese society toward migrants, refugees, and foreigners. This paper ultimately aims to offer a critical perspective of the process, which could dictate which cultures should be considered "authentic Japanese" cultures and which ones should be excluded from such a notion of authenticity through the activities of cultural diplomacy. Furthermore, this paper shows how Japan's cultural diplomacy responds to the contemporary global political climate that is characterized by an influx of immigrants and refugees.

Important Connections between Cultural Diplomacy and Global Migration

The phenomenon of global migration and cultural diplomacy have been rarely discussed together. However, considering the present situation where many people are forced to live as migrants or refugees, it seems critical to reassess cultural diplomacy from the perspective of social integration. People who are forced to live as refugees or migrants may face several forms of discrimination in their host countries. In this context, the us-versus-them mentality that is unconsciously propagated through the activities of cultural diplomacy may cause great difficulties for refugees and migrants. In addition, foreign public perceptions of the "Japanese" and "Japanese culture" may also wrongly

influence the identities of people in Japan. Therefore, representations of national culture should be carefully considered. For instance, Martyna Tomiczek notes that stereotypes or misjudgments commonly promulgated in the society often lead to a migrant's disapproval in the host countries they settled in.¹ Yet, according to Michael Kunczik, it is not certain whether a thing such as "national character" even exists. Kunczik argues that "certain psychological traits or features, characteristics of the citizens of a given nation, modal personality, basic personality structure, and a system of attitudes, values, and beliefs are common to the members of a given society."² Furthermore, it is highly disputable whether there is anything such as "national character" in reality. Promoting more international exchange, which the activities of cultural diplomacy often do, may play a significant role in offering opportunities to better understand other cultures. Yet, it could also lead to political and cultural exclusion in the domestic context.

Relationship between Cultural Diplomacy and Japanese National Identity

Cultural diplomacy is one of the main activities of public diplomacy. The main purpose of cultural diplomacy is to enable a better understanding of one's own country by introducing cultural art works to create a friendly diplomatic environment.³ In recent years, many countries have recognized the importance of soft power.⁴ Certainly, countries are known to pursue soft power through the activities of public diplomacy. However, these issues are not sufficiently discussed from the perspective of social integration. For instance, Iwabuchi expresses concerns about the prioritization of brand nationalism and points out the danger inherent in the process of dispatching Japanese culture through cultural diplomacy, which entails the construction of identities such as "us" and "others."⁵ In other words, using cultural diplomacy has dangerous implication: it could define which cultures should be considered "authentic Japanese" cultures and which ones should be excluded from such a notion of authenticity. However, per Iwabuchi's account, many countries focus on soft power in order to strengthen the representation of their respective national cultures. Such messages of defining inclusion and exclusion may also create categories such as "proper" or "proofed Japanese" to differentiate between

1 Martyna Tomiczek, "Diaspora Diplomacy About a New Dimension of Diplomacy: The Example of a New Emigration Non-Governmental Organization," *Journal of Education Culture and Society* no. 2, (2011): 105–123.

2 Michael Kunczik, "Images of Nations and International Public Relations," (Mahwah, N.J.: Erlbaum, 1997), 32.

3 Nicholas Cull, "Public Diplomacy: Lessons from the Past," (Los Angeles: Figueroa Press, 2012).

4 Joseph Nye, "Soft power: The Means to Success in World Politics," (New York: Public Affairs, 2004).

5 Koichi Iwabuchi, "Bunka no Chikara," (Tokyo: Nihon Keizai Shinbun Sya, 2007).

cultures that can be included and the ones that cannot. This may, in turn, endanger the cultures and communities excluded from Japanese culture especially such as: refugees, immigrants, and racial minorities.

Another critical issue is that cultural diplomacy in Japan may have been considered as a tool to characterize Japanese national identities. Vlahos points out that "Japan's public diplomacy was never in a position to effectively persuade foreign publics because it needed above all to elevate Japanese identity in contrast to others."⁶ These tendencies, however, are problematic in the context of contemporary global political climate in which migration and seeking political asylum are common phenomena especially as seen in contemporary Europe. Hun Yun and L. Toth discuss the ways in which public diplomacy and people's capacity for global mobility could be accommodated. They state that "migrants have a direct and total experience with people, culture, ideas, and domestic governance in the destination country."⁷ Further, they explain that a country's soft power resources are nakedly exposed to a migrant's living experiences, which make the quality of these resources more substantial in the conduct of public diplomacy. In discussions pertaining to public diplomacy in Japan, the roles of migrants and multicultural realities in the Japanese society have received very little attention. However, it seems necessary to reframe the discussion in order to focus more on these two factors, especially given that people's capacity for global mobility has increased. It is critical to rethink about the influence of cultural diplomacy in this respect, because again, as it has the possibility to characterize which cultures should be considered "authentic or proper Japanese" cultures and which ones should not be included in such a notion of authenticity.

Multiculturalism and the Negative Attitude in Japanese Society

Cultural diplomacy generally represents one's images of one's country. However, representations of one's own culture to international society are often biased in favor of one's own society especially when it only represents "cultures," which only belong to "particular" groups in the society. These tendencies may occur when the consciousness of "multiculturalism" is not considered well in the discussion. For instance, many researchers point out that terms such as "multicultural" are not new to Japan considering the mass migrations that have taken place in the past. Awareness of Japan as a "multicultural country" seems to be often ignored.⁸ The works of Murphy-

6 Nancy Snow and Philip M. Taylor, "Routledge Handbook of Public Diplomacy," (New York: Routledge, 2011).

7 Yun Seong-Hun and Elizabeth Toth, "Future Sociological Public Diplomacy and the Role of Public Relations: Evolution of Public Diplomacy," *American Behavioral Scientist* 53, no.4 (2009): 500.

8 Stephen Murphy-Shigematsu, "The Invisible Man and Other Narratives of Living in the Borderlands of

Shigematsu and Lee are good examples which reveal the intolerant attitudes towards multiculturalism in Japan. Their discussions explore how the idea of “homogenous Japan” developed through *Nihonjinron* has affected the Japanese identities. For instance, Murphy-Shigematsu was born as a *hafu* (a term in Japanese often used to refer to those who were born between Japanese and international parents). He recalls his experience as a *hafu* in Japan and, as a citizen of Japan, identifies himself as a Japanese; however, given his foreign racial backgrounds, he is not considered or perceived as a “real” Japanese in Japanese society. If this legal certification of Japanese citizenship testifies that the person is a Japanese, they should be acknowledged as one. Moreover, Lee expresses further skepticism at the idea of “homogeneity in the Japanese society. She offers the example of people with Korean ethnicity—also known as *Zainchi-Korean* in Japan. Lee mentions that if racial or cultural backgrounds matter in defining “Japanese,” people with Korean background but who have been living in Japan and whose lives have been highly adapted to “Japanese culture,” should be equally considered Japanese. The definition of “Japanese” dispatched through official channels to the international society is not only vague but also made without any substantial discussion.

Such negative attitudes toward multiculturalism of the Japanese society would lead to situations where the social structure of exclusiveness would be widely accepted. One of the fundamental reasons why Japanese people are intolerant of multiculturalism may be related to the influence of the idea of Japanese cultural specificity, referred to as *Nihonjinron*. It is generally purported to be a theory of what specific characteristics define Japanese people. However, Sugimoto argues that *Nihonjinron* is actually a government strategy to reinforce the popular essentialist genre of the Japanese.⁹ According to Sugimoto, the concept of *Nihonjinron* plays a significant role in creating an imagined homogenous Japan. Sugimoto suggests that the concept of *Nihonjinron* forces people to exclude the “others,” such as Westerners, the Ainu, and the Okinawan people. He also notes that exclusion of these groups is based on the idea of the Yamato race. The Yamato race here can be understood as a biological metaphor, for example whether or not a person should be considered biologically Japanese. Moreover, *Nihonjinron* puts forth another criterion for qualifying as Japanese: the “genuine” Japanese should be defined by the correct or the expected cultural and ethnic backgrounds, in addition to the biological dimensions. Yet Sugimoto also cites contradictory instances, in which “Japanese” identity appears to be a fluid idea. On the contrary, these

Race and Nation,” (London: Routledge, 2008). Soo Lee, “Diversity of Zainichi Koreans and Their Ties to Japan and Korea,” *Working Paper Series Studies of Multicultural Studies* no. 8, (2012): 1-13.

9 Yoshio Sugimoto, “Making sense of *Nihonjinron*,” (London: SAGE Publications, 1999).

Nihonjinron concepts of “homogenous Japan” seem to have affected many people’s understanding of what it means to be “Japanese.” As a result, it has significantly contributed to the nationalistic idea of “us Japanese” versus non-Japanese others, and it has the potential to reinforce social structures that favor an allegedly authentic “Japanese” population at the expense of the actual multicultural one.

Conclusion

This research examined Japan’s cultural diplomacy at the international level in the context of global migration and at the domestic level from the perspective of social integration respectively. Most importantly, this paper shows the processes by which Japanese national identity is constructed and dispatched and how this identity in turn is appropriated for the activities of cultural diplomacy. While many countries have recognized the importance of cultural diplomacy to pursue “soft power,” its activities are not sufficiently discussed from the perspective of social integration. This is an important factor considering the vast influx of immigrants and refugees that has been a defining characteristic of contemporary political climates.

Moreover, this research focused on the relation between the construction and “dispatch” of Japanese national identity and cultural diplomacy. The research pointed out the representation of “authentic Japanese cultures,” which are often represented through the activities of cultural diplomacy, may create categories such as “proper” or “proven Japanese” to differentiate between cultures that can be included and the ones that cannot. This may, in turn, endanger the cultures and communities excluded from Japanese culture especially such as refugees, immigrants, and racial minorities. Furthermore, it argued that cultural diplomacy at the domestic level could lead to social and political exclusion of cultures and communities.

Lastly, this research focused on the relation between multiculturalism and the seemingly intolerant attitude of the Japanese society. It also further mentioned that the representations of one’s “own cultures” to international society may often be biased in favor of one’s own society especially when it only represents cultures which only belong to “particular” ethnic groups in the society. This research concludes that it is critical to combine the perspectives of social integration and global migration into the discussion of cultural diplomacy, as these tendencies may occur when the consciousness of multiculturalism is not considered well in the discussion.

THE WTO TRADE FACILITATION AGREEMENT

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*The Trade Facilitation Agreement (TFA) was adopted in December 2013 at the World Trade Organisation (WTO)'s Bali Ministerial Conference. Heralded as the first multilateral trade agreement since the conclusion of the Uruguay Round in April 1994, the TFA entered into force on 22nd February 2017, having surpassed the required threshold of ratification by more than two-thirds of the WTO's 164 membership. In announcing its commencement, WTO Director-General Roberto Azevêdo described it as "the biggest reform of global trade in a generation."*¹

What is Trade Facilitation?

There exists no universally agreed definition of "trade facilitation" (TF), with its meaning highly variable across international organisations and conventions. According to Neufeld, its scope is highly dependent on the particular agreement at hand: "what some treaties label as 'TF' can have little to do with how the matter is approached in others."² In this pact, the WTO defines TF as the "simplification and harmonisation of international trade procedures", referring to "the activities, practices and formalities involved in collecting, presenting, communicating and processing data and other information required for the movement of goods in international trade."³

In drawing up the TFA, members opted for a restricted remit, choosing not to include broader TF-related issues, such as national infrastructure and transport. Instead, the Agreement concerns itself with clarifying and expanding the areas already provided for by existing GATT articles, such as Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation) and Article X (Publication and Administration of Trade Regulations).

1 "WTO's Trade Facilitation Agreement Enters into Force," (2017). https://www.wto.org/english/news_e/news17_e/fac_31jan17_e.htm.

2 Nora Neufeld, "Trade Facilitation Provisions in Regional Trade Agreements: Traits and Trends," *Journal Of International Commerce, Economics And Policy* 5:2 (2014): 4.

3 "Trade Facilitation," *Global Trade-Related Technical Assistance Database* (2012). http://gtad.wto.org/trta_subcategory.aspx?cat=33121.

The Status Quo

The “multiplicity, diversity and complexity”⁴ that characterises modern-day international customs regimes increases the transaction costs of trade, unnecessarily inflating costs at every subsequent stage. Likewise, such heterogeneity complicates the management of highly complex and interdependent global value chains, while local idiosyncrasies have the potential to isolate countries from reaping the benefits of meaningful integration. Similarly, substandard border controls heighten logistical uncertainty for businesses through procedural unpredictability. In all these regards, the fees and delays incurred as well as the time misspent satisfying cumbersome requirements represent deadweight losses, while administrative oversight provides opportunities for rent-seeking behaviours.

By way of example, trade in Zambia is plagued by interventions, created by segmentation and a lack of coordination, and serving to perpetuate a culture of administrative corruption. A small trader attempting to export goods, for instance, might have to interact with as many as 16 distinct government agencies.⁵

Goals of the TFA

In the words of the UN Conference on Trade and Development (UNCTAD), the TFA seeks to “streamline, standardise and simplify” the passage of goods across borders, with a view to making international trade “faster, easier and cheaper.”⁶ To this end, the Agreement offers a blueprint for reducing the economic and bureaucratic burden of customs-related red tape, to improve efficiency and eliminate redundancies, while preserving legitimate regulatory and standards-related concerns. In practice, this means the simplification of tariff structures and customs procedures, the adoption of internationally recognised nomenclature and product codes, the standardisation of documentation (including stamp and ink requirements), the streamlining of compliance requirements, the upgrading of infrastructure and modernization

4 Alan M. Field, “Smaller Shippers Likely Beneficiaries Of WTO Trade Facilitation Agreement,” *Journal Of Commerce* (2015). http://www.joc.com/regulation-policy/trade-agreements/international-trade-agreements/smaller-shippers-likely-beneficiaries-wto-trade-facilitation-agreement_20150428.html.

5 “Developing Countries Make Headway On WTO Trade Facilitation Agreement,” *The World Bank* (2015). <http://www.worldbank.org/en/news/feature/2015/12/22/developing-countries-make-headway-on-wto-trade-facilitation-agreement>.

6 “‘Make Trade Facilitation A Reality’ – Officials Meet At The First UNCTAD-Hosted Forum To Prepare For New Global Trade Facilitation Agreement,” *UNCTAD* (2017). <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1431>.

of existing IT systems and the promotion of cooperation between customs and other border authorities. For a meaningful outcome, these efforts should be complemented by the provision of accurate and up-to-date information on regulations, procedures and standards, made readily available and easily accessible (e.g. online, compiled in one place, provided in English or another WTO language and with a designated contact appointed to field enquiries). More ambitious initiatives being considered by members include paperless trade and a single-window system.

In appraising the outcomes of the Kennedy Round, Robert Baldwin coined a metaphor of draining a swamp, in which “the lower water level [revealed] all the snags and stumps of NTBs.”⁷ Analogously, with significant progress having been made in reducing tariffs and dismantling NTBs, the inadequacies of many present-day border controls have been exposed. In fact, these days the time and effort required to comply with customs formalities can perversely represent more of a burden than the duties to be paid. The UNCTAD describes how “the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the rekeying of 60-70 percent of all data at least once,”⁸ while the World Bank suggests that customs-related transaction costs can account for up to 10 percent of a shipment’s value.⁹ Moreover, delays and procedural unpredictability can negate modern advances in the speed of production and delivery. In this way, it might be said “at-the-border” measures were addressed in the first instance, subsequently bringing to the fore the impact of previously obscured “behind-the-border” barriers, which in turn necessitated the addressing of “the border” itself.

A Brief History of the TFA

The consideration of TF by the WTO had been preceded by decades of lower-level and fragmented efforts by such international organisations as the UNCTAD, the United Nations Economic Commission for Europe and the World Customs Organisation.¹⁰ However, it first emerged as an item for discussion under the WTO as one of the four so-called “Singapore Issues” at the Ministerial Conference in December 1996.

7 Robert E. Baldwin, (Washington, D.C.: The Brookings Institution, 1970).

8 “Briefing Note: Trade Facilitation – Cutting ‘Red Tape’ At The Border.” *World Trade Organisation* (2014). https://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_tradfa_e.htm.

9 Bernard Hoekman, *Strengthening The Global Trade Architecture For Development*. Policy Research Working Paper (World Bank Publications, 2002), 25.

10 Sujeevan Perera, *Trade Facilitation Agreement (TFA) - Implementing Implications* (The Commonwealth, 2016). <http://thecommonwealth.org/sites/default/files/inline/TradeFacilitationAgreement1008.pdf>.

With the launch of the Doha Round in 2001, the Singapore Issues were listed as subject headings, but with the proviso of only being negotiated pending “explicit consensus.” In July 2004, following the deadlock of Cancún, members agreed to separate the four issues, with TF becoming a formal topic of negotiation, while the other three were kicked into the long grass. At the time, some least developed countries (LDCs) expressed concerns that the elevation of the TFA to such prominence would detract from the nominally development-oriented items on the agenda.

In 2013, twelve years after its launch, the Doha Round had delivered no concrete results, and suffered from an uncertain fate. The TFA was identified as “low-hanging fruit” to produce an “early harvest” at the Bali Ministerial Conference,¹¹ with the hope that success might generate spillover effects in stimulating discussions in other areas and in providing momentum more broadly to revitalise the stagnant Round. More technical in nature and less controversial than other areas, it was expected that consensus would be reached more easily. As Pascal Lamy remarked, “unlike some other difficult trade negotiations in the Round, there is no risk of farmers, taxi drivers or garment workers protesting in the streets.”¹²

That being said, negotiations still encountered difficulties. From the outset, many LDCs vocalised unease about locking themselves into binding commitments that would require significant infrastructural and institutional reforms – fears exacerbated by misgivings about the credibility of funding assurances. Similarly, there was reluctance to take on additional obligations which would increase their exposure to the WTO dispute mechanism. Developing members feared that their lack of experience across many TF areas would predispose them to penalties. Vietnam, for instance, currently has no system in place for designating which companies have the legal authorisation to serve as customs brokers. In this case, inadvertent non-compliance is a non-trivial risk.¹³

Moreover, the adoption of the single-undertaking principle, whereby “nothing is agreed until everything is agreed,” meant that progress on the TFA was impeded by opposition that was tactical in nature, rather than substantive. Such disagreement was instrumentalized as a means of extracting concessions in other areas, such that issue linkage instilled rigidity in the negotiations. For instance, US negotiators perceived India’s resistance as leverage to further

11 “A Trade Facilitation Deal Could Give A \$1 Trillion Boost To World Economy – Lamy,” *World Trade Organisation* (2013). https://www.wto.org/english/news_e/sppl_e/sppl265_e.htm.

12 *World Trade Organisation* (2013).

13 Field, “Smaller Shippers.”

its objectives in the agricultural talks.¹⁴ The ambassador of Lesotho remarked that “useful and agreeable elements such as TF have [...] been held hostage.”¹⁵

Nonetheless, the TFA was concluded in Bali, representing the “centrepiece” of the package.¹⁶ The Agreement required ratification by two-thirds of all WTO Members to enter into force, which was eventually reached in February 2017. The inaugural meeting of the Committee on Trade Facilitation followed three months later. As of June 2017, seven further Members have ratified the Protocol of Amendment, which inserts the TFA into the WTO Agreement, bringing the total number of parties to 119.

The Content of the TFA

The negotiated TFA represents a compromise. It is split into two sections, demonstrating the equal importance accorded to making meaningful improvements to customs regimes worldwide, and to appreciating the capacities of all members to do so.

Section I contains substantive reforms of customs procedures. It is organised into 12 articles, comprising approximately 40 technical measures, which are divided between binding commitments on the one hand, and “best effort” clauses on the other. These “soft law” provisions expound best practice without creating legal obligations for members. Hamanaka writes that the majority of provisions under the TFA fall into this category,¹⁷ and loose language abounds, for example, “to the extent possible,” “as appropriate” and “wherever practicable.”

Section II details “special and different treatment” (SDT) provisions, as an integral part of the Agreement. According to the Brookings Institution, in contrast with previous agreements, “the TFA does not water down its requirements to accommodate less developed countries.”¹⁸ Instead, developing countries and LDCs are given significant flexibility in terms of scheduling and sequencing, in that they can self-declare a timetable for each individual commitment and are entitled to make their implementation conditional on the receipt of assistance.

14 Teresita C. Schaffer and Howard B. Schaffer, *India At The Global High Table: The Quest For Regional Primacy And Strategic Autonomy* (Brookings Institution Press, 2016).

15 Craig VanGrasstek, *The History And Future Of The World Trade Organisation*. (Geneva: WTO Publications, 2013), 437.

16 Christophe Bellmann, “The Bali Agreement: Implications For Development And The WTO,” *The Graduate Institute, Geneva* (2014). <https://poldev.revues.org/1744>.

17 Shintaro Hamanaka, “WTO Agreement On Trade Facilitation: Assessing The Level Of Ambition And Likely Impacts,” *Global Trade And Customs Journal* 9:7/8 (2014).

18 Antoni Esteveordal, *Why Trade Facilitation Matters Now More Than Ever* (Brookings Institution, 2017). https://www.brookings.edu/wp-content/uploads/2017/04/global_20170405_trade-facilitation.pdf.

This approach is novel and has been variably described as “ground-breaking”¹⁹ and “innovative.”²⁰

Eligibility for SDT is contingent on the classification and announcement of all clauses of the Agreement as one of three categories. Category A obligations were to be discharged prior to the Agreement entering into force, or within one year afterwards for LDC. Those designated as either Category B or C are to be implemented after a self-selected transition period, while the latter is also subject to the receipt of financial assistance and support for capacity building from donor countries.

The Agreement also contains additional safeguards for the benefit of developing and LDC Members. These include an early warning mechanism, the ability to shift provisions between Categories B and C and a grace period of two years in which they are exempt from disputes arising in regard to Category A measures.

Finally, the Agreement provides for the establishment of the TFA Facility (TFAF), the function of which is to support developing and LDC Members in their implementation of the TFA. Through this initiative, the WTO Secretariat makes available assistance for the evaluation of local needs and communication of the SDT categories. It also serves to publicise available funding and to coordinate donors and beneficiaries. In the absence of other sources of finance, the TFAF also extends its own grants for “project preparation” and “project implementation.”

The Potential Economic Impact of the TFA

Qualitative estimates of the potential impact of the implementation of the TFA show marked variation. These differences arise not only due to distinct methodologies, but also the large number of assumptions on which each rest. Since the objective of the TFA is the harmonisation of policies across countries, efficiency gains might be expected to be non-linear and highly sensitive to the number of Members ratifying the Agreement, as well as the extent to which they adopt the non-mandatory provisions, the depth of reforms and implementation time frames. Furthermore, the operationalization of particular variables poses difficulties for any statistical model, such as the diffuse benefits from improvements in transparency, and the extra commitment value of institutionalising reforms under the auspices of the WTO rather than pursuing them independently.

19 Perera, *Trade Facilitation Agreement*.

20 Carlos A. Primo Braga, “A Crisis Is A Terrible Thing To Waste,” *IMD* (2014). <http://www.imd.org/news/WTO-Trade-Facilitation-Agreement-imbroglgio.cfm>.

Nevertheless, there is a universal agreement that implementation of the TFA would yield significant benefits to Member states. According to the World Bank, it represents a “win-win” for all countries, and for importers and exporters alike.²¹ Its Senior Director for Trade and Competitiveness, Anabel Gonzalez, has suggested that the successful execution of TFA measures will lead to “increased trade, greater export diversification, enhanced foreign investment, improved national competitiveness,” as well as contributing to the achievement of the Sustainable Development Goals.²²

There is evidence that improvements in trade administration can achieve larger returns than a comparable investment in infrastructure. For instance, the efficient operation of an existing port can stimulate a greater increase in trade, and within a shorter time frame, than the construction of a brand-new facility. Qualitatively speaking, researchers at the World Bank report that every \$1 of aid spent on trade policy and regulatory reform in developing countries leads to an expansion of trade volume by \$6.37, making it the most effective area in which to commit Aid for Trade.²³

OECD calculations assess the impact of the TFA in two distinct scenarios: a “full” implementation – in which WTO Members put into practice all provisions, including those formulated on a non-binding “best endeavours” basis – and a “limited” implementation, in which only those obligations designated as mandatory are undertaken, but taking into account the continuation of best practices by members already in place.²⁴ Their findings suggest a reduction in the total cost of trade under a “full” implementation as 16.5 percent for low-income countries, 17.4 percent for lower middle-income countries, and 14.6 percent for upper middle-income countries. Correspondingly, estimates for savings under the “limited” regime stand at 12.6 percent, 13.7 percent and 12.8 percent. With the differences between the two coming to 3.9 percent, 3.7 percent and 1.8 percent respectively, the study suggests that low-income and lower middle-income countries would incur a larger opportunity cost from an only partial implementation of the agreement.

21 The World Bank.

22 Ibid.

23 Aid for Trade seeks to build trade capacity in developing countries, in terms of skills and infrastructure, so that they can derive maximum benefit from trade opening. In helping countries to overcome these “supply-side constraints,” the WTO identifies four elements to the Aid for Trade initiative: trade policy and regulation, economic infrastructure, productive capacity building, and adjustment assistance.; Matthias Helbe, Catherine Mann, and John S. Wilson, *Aid For Trade Facilitation*, Policy Research Working Paper (The World Bank Development Research Group, 2009), <http://documents.worldbank.org/curated/en/565271468181477262/pdf/WPS5064.pdf>.

24 “OECD Trade Facilitation Indicators: An Overview Of Available Tools,” OECD (2015), <https://www.oecd.org/tad/facilitation/TFIs-overview-available-tools-september-2015.pdf>.

Table 1. Potential savings on total trade costs

Type of country	“Full” scenario	“Partial” scenario	Opportunity cost
Low-income	16.5%	12.6%	3.9%
Lower middle-income	17.4%	13.7%	3.7%
Upper middle-income	14.6%	12.8%	1.8%

Hufbauer and Schott calculate that sincere implementation of the TFA would produce world export gains in excess of 1 trillion dollars, while developing countries would reap the lion’s share of the new jobs created, approximately 18 million out of 21 million.²⁵ In turn, the WTO also makes clear that developing countries stand to gain the most from full and expeditious implementation of the TFA.²⁶ Trading costs are disproportionately high in developing countries, with transaction costs, on average, equating to a 219 percent ad valorem tariff. In particular, they highlight the Agreement’s capacity to stimulate export diversification, both in terms of the range of goods traded and the number of destinations per product. This, they argue, would promote stability and resilience, making their economies less susceptible to trade shocks both at home and in destination markets. Moreover, the corruption prevalent at customs in developing countries hamper the integration of the country into the world economy, and make the prospect of FDI unappealing for outside investors – a situation that might be partially improved with the transparency, automation and accountability of TF. In addition, the Agreement may have a redistributive effect within countries. Firstly, the reduction in processing times and unreliability will benefit low-income farmers, whose produce is liable to spoil if its conveyance is delayed. It is estimated that approximately 60 percent of perishable goods in West Africa are lost due to red tape interrupting their delivery.²⁷ Secondly, the simplification of convoluted paperwork requirements will permit the participation of traders for whom these may pose difficulties.

Other major beneficiaries of the TFA would be small- and medium-sized enterprises (SMEs). As it stands, larger companies are more readily able to capitalise on overseas markets by virtue of their greater command of organisational resources. In practice, this relates to the manpower necessary

25 Gary Hufbauer and Jeffrey Schott, *Payoff From The World Trade Agenda 2013* (Peterson Institute for International Economics: 2017).

26 World Trade Organization, *Speeding Up Trade: Benefits And Challenges Of Implementing The WTO Trade Facilitation Agreement*. World Trade Report (2015), https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf.

27 Field, “Smaller Shippers.”

to negotiate an unfamiliar and knotty regulatory environment, and the capacity to hire external parties as and when necessary, e.g. experienced consultants to explain the practicalities of customs arrangements, and linguists to translate necessary forms and records. Therefore, since trade obstacles disproportionately impair the participation of SMEs in global markets, their removal would constitute an asymmetric advantage in their favour.

Surveys of businesses have found that the main impediments perceived by SMEs to their internationalisation include a lack of information about export channels and product standards, complex import/export processes, costly certification procedures and the heterogeneity of technical requirements²⁸ – all problems which the TFA ought to mitigate. Notably, the paucity of globalised SMEs is not a problem confined to the developing world: only 3 percent of SMEs in the EU export outside of the Union.²⁹

TF also presents opportunities to augment levels of regional trade. The European Commissioner for Trade in 2009, Catherine Ashton, remarked that it could cost more for Ugandan traders to transport their goods from their country's interior to the coast, than it did for onwards shipping to either Europe or the US.³⁰ In this vein, Bellmann suggests that the most significant gains might be derived by small developing countries, via a boost to largely untapped intra-regional trade.³¹

Notable success stories from investment in TF include the Philippines, which was able to shorten border crossing times from eight days to four hours, and Costa Rica, which slashed its times from six days to just 12 minutes.³² Similarly, Chile spent 5 million dollars automating its customs processes, but recouped this sum in a little over one year.³³

While critical voices contend that qualitative estimates of the TFA's potential impact should be taken with a pinch of salt – Capaldo contends they “depend on too many unjustifiable assumptions to be relied on”³⁴ – it is clear that implementation of the TFA will benefit all participants in global trade, with particular gains falling to the presently disadvantaged.

Patterns of Ratifying the TFA

28 Ibid.

29 Catherine Ashton, “Trade Facilitation And Africa – A European Perspective,” *European Commission* (2009), http://trade.ec.europa.eu/doclib/docs/2009/april/tradoc_142998.pdf.

30 Ashton, “Trade Facilitation And Africa – A European Perspective.”

31 Bellmann, “The Bali Agreement.”

32 Ashton, “Trade Facilitation And Africa – A European Perspective.”

33 Ibid.

34 Jeronim Capaldo, “The Uncertain Gains From Trade Facilitation,” *Global Development And Environment Institute, Tufts University* (2013), <https://ase.tufts.edu/gdae/Pubs/rp/PB13-02UncertainGains.pdf>.

Now that the TFA has entered into force, hindsight can betray the difficulties in reaching this point. The road to its entry into force has been described as “rocky”,³⁵ and Lakatos wrote in 2016 that the “ratification process by national parliaments [...] is proving challenging, despite evidence proving the link between the adoption of trade facilitation measures and the reduction of trade costs.”³⁶

As explored above, there exists unequivocal evidence, from independent researchers and international organisations alike, that there are widespread benefits to the adoption of the TFA, with the largest gains for developing countries, members who implement all TF practices, and those who do so swiftly. Nevertheless, as Lakatos observes, there seems to have been reluctance on the part of some members to commit themselves to the Agreement.

Perera puts forward numerous reasons for such disinclination:³⁷

- Insufficient understanding
- Existing legal frameworks
- The current state of infrastructure
- High implementation costs

He also gives light to a fear amongst developing countries that the Agreement will disproportionately benefit advanced nations, facilitating the influx of their imports, when they themselves might stand to gain more by addressing structural weaknesses elsewhere, e.g. productive and exporting capacities. Also, Perera points to the fact that the governments of many LDCs continue to derive significant proportions of their revenue from import duties and so may fear a reduction abiding by international standards. In response to such concerns, the WTO argues that reforms may in fact boost revenue, through more robust collection mechanisms and a greater competence for detecting fraud, in addition to the anticipated increases in throughput.³⁸

However, he identifies political cost as the main hurdle to ratifying the TFA. The implementation of many aspects of the Agreement necessarily involves disruption to existing ways of working and established practices, which are likely to be perceived negatively during the transition period.

In addition to the contributing factors suggested by Perera, this lack of political will might be a product of:

35 Cathleen Cimino-Isaacs, “Revisiting The Sizable Gains From The Trade Facilitation Agreement,” *Peter-son Institute For International Economics* (2017), <https://piie.com/blogs/trade-investment-policy-watch/revisiting-sizable-gains-trade-facilitation-agreement>.

36 Andras Lakatos, “Challenges For Implementing The Trade Facilitation Agreement,” *International Trade & Investment Review* (2016).

37 Perera, *Trade Facilitation Agreement*.

38 *World Trade Organisation* (2015).

314 YONSEI JOURNAL OF INTERNATIONAL STUDIES

- A fear of undertaking further legal obligations, exposing themselves to the dispute settlement mechanism
- A scarcity of information about the cost of reforms
- A worry about insecure funding arrangements for higher operational costs, beyond the initial costs for which they might receive support
- A self-perception of being limited by factors other than border controls, such as
- low-quality physical infrastructure throughout the country or an endemic culture of corruption
- Competing priorities on finite government resources, e.g. the optics of investing in a new IT system at the border in preference to public education or health
- A deficit of good governance
- A belief in the local “way of doing things”, cf. the lubricating value of corruption
- Vested interests – a public good jeopardising the private interests of state authorities

For all of the talk of “win-win” and universal benefit, there seems to be significant variation amongst countries as to the urgency and value of the Agreement. Using the date of TFA ratification as an indicator of interest, a regression was run against various factors which were speculated to be influential.

Table 2. A series of regressions against the date of ratification of the TFA, suggested, with some caution, to be a measure of the country's appetite for such reforms

	Date of TFA ratification					
	Reg. 1	Reg. 2	Reg. 3	Reg. 4	Reg. 5	Reg. 6
GDP	-0.0317 (-3.95)***	-0.0186 (-2.16)**	-0.0178 (-2.15)**	-0.0164 (-1.98)**	-0.0241 (-3.25)***	-0.178 (-2.29)**
Merchandise trade (as % of GDP)	-1.94 (-4.99)***	-	-	-	-1.22 (-3.13)***	-1.30 (-3.43)***
Quality of port infrastructure (1 worst, 7 best)	-	-37.4 (-3.23)***	-	-13.4 (-0.90)	-19.7 (-1.12)	-
Corruption (0 least corrupt, 100 most corrupt)	-	-	-4.11 (-4.27)***	-3.56 (-3.01)***	-	-
Mean applied tariff (across all products)	-	-	-	-	17.3 (3.08)***	-
Customs efficiency (1 lowest, 5 highest)	-	-	-	-	-	-145 (-4.97)***
Constant	20700	20700	20700	20700	20600	21000
R²	0.243	0.149	0.206	0.220	0.432	0.409
Observations	111	110	107	105	80	100

All values given to 3 significant figures. Data sources given as a reference.³⁹

39 Date of TFA ratification: "TFA Facility". "Corruption": Corruption Index 2016, produced by Transparency International. All other figures sourced from the World Bank DataBank, using the most recent year for which the data set was largely complete: "Merchandise trade" (2015), "Quality of port infrastructure" (2016), "Mean applied tariff" (2015), "Customs efficiency" (2016). Significant variation between subsequent years was not expected, so the availability of data was prioritised in order to increase the number of observations.

Some simple interpretations can be drawn from the table. The first regression shows that there is a trend whereby the larger the share of national income accounted for by trade, the sooner the Agreement was ratified. Regressions 2, 3, 4 and 5 indicate that the "Quality of port infrastructure" and "Corruption," by themselves, are significant. However, when the "Quality of port infrastructure" is run with "Corruption" (implying losses to individuals in government) or the "Mean applied tariff" (implying losses to government revenue), its significance entirely disappears. This suggests that various factors that shape political will are more important in determining the readiness of a state to commit to the TFA, rather than the size of the task to be undertaken.

Meanwhile, in regression 6, Members with the least efficient customs procedures were found to have ratified the Agreement the latest. That is, the countries which stand to benefit the most from the TFA have been the slowest to ratify it. The presence of intervening factors here is acknowledged, for instance, the general inefficiency of state bureaucracy, or the protraction of legislative processes. However, the discrepancy between the dates of the first ratification and the most recent stands at over two and a half years, exceeding the differences between ratification procedures, implying political reluctance or institutional resistance played some role.

Interestingly, GDP in every regression came out with a negatively signed coefficient. However, bearing in mind the manifold factors which determine this figure and the small magnitude of its coefficient, it can be said to account for only a small fraction of the observed effect.

This investigation is only rudimentary in nature, offering a general overview of trends and drawing careful conclusions. Further research might look to control for the intervening variables cited above, consider additional influences and examine the characteristics of Members that have not yet ratified the Agreement.

Nevertheless, these findings provide some limited evidence that a lack of political will may be significant in explaining the reluctance of some Members to ratify the TFA, qualitatively substantiating the claims of Lakatos and Perera. This has ramifications beyond the securing of further ratifications, as strong political commitment will be essential for the enacting of reforms, as well as ensuring that as many of the non-mandatory measures are implemented as locally appropriate.

The political cost of ratifying the TFA might be lessened by offering reassurances regarding the built-in flexibility of the system, and making clear the solidity of funding arrangements. However, while the flexibility accorded to developing countries and LDCs may incentivise ratification, it is a double-edged

sword. With the majority of measures formulated on a “best efforts” basis, and scheduling determined by a system of self-declaration, there is the potential that implementation is sluggish and extremely limited. For instance, in June 2017, 52.5 percent of article items have not even been declared as one of the three categories by ratifying states.⁴⁰ The onus is on the WTO to ensure that momentum is maintained post-ratification, when political opposition may manifest itself more powerfully.

To further increase participation and readiness to implement reforms, in a move away from hypothetical projections, the WTO should draw attention to success stories flowing from TF. Rather than flaunting abstract and widely varying estimates of impacts at the global level, the WTO would be well advised to publicise concrete achievements by individual countries, showcasing the tangible increases to trade flows and framing the TFA as a worthwhile investment. These may be more convincing for reluctant members in justifying the commitment and expenditure, and securing the all-important political will.

40 “Share Of Cat. A, B And C,” *TFA Database* (2017), <https://www.tfadatabase.org/notifications/by-measure>.

INTERVIEW

WRITING ABOUT THE TWO KOREAS

Interview with Daniel Tudor

WRITING ABOUT THE TWO KOREAS

Interview with Daniel Tudor

Daniel Tudor is Foreign Policy Press Advisor to the Blue House in Seoul, South Korea, and the author of Korea: The Impossible Country (2012) and North Korea Confidential (2015). He holds degrees from the University of Oxford and is a former Korea Correspondent for the Economist. He is also the co-founder of The Booth, a craft beer company.

The Journal's junior staff editor Kendra Hodapp sat down with Daniel Tudor to discuss the Two Koreas.

Y: Could you please briefly elaborate on your background, interest in Korea, and your current position in the Blue House?

DT: I came to Korea in 2002 for the World Cup at the invitation of my best friend in university, a Korean. It was the best time in my whole life. It was like going from black and white TV to color TV. It brought this new dimension to my life. After I graduated, I decided I would spend a year here and taught English, as many people do. Over time I got a few different jobs, but it was always this love for Korea that keeps me here, or when I've left [I think] "Ah! I miss it, I want to go back!". Korean society emphasizes "jǒng," helping each other, being like a brother and sister. Of course, not everyone lives up to that. I am not saying I do either, but the fact that a country, or a culture, emphasizes that means something. Say, in a place like England, we're very ironic. We cover everything in layers of irony. There is sincerity, warmth, and love, but it is hidden and it feels like there is less of it. Whereas in Korea it is very direct, and you can be direct with your emotions. I appreciate that.

Y: What is your current position in the Blue House?

DT: I advise the foreign press team about the international press.

Y: What to and to not write, essentially?

DT: Well, *they* are not doing the writing: journalists do the writing. For example, we've got a press conference coming. What kind of situations might come up? If you were a journalist, what would you want to ask? And sometimes it is

just ordinary things like making press releases. Sometimes very simple boring things, sometimes very interesting things.

Y: You've written several books on the topic of Korea, both North and South, and in ways that explored aspects of both not typically explored. What got you interested in these topics and what was your process in transferring these ideas to text?

DT: First of all, I was always interested in politics, since I was ten or eleven. Second, being a journalist, inevitably I have to write about those topics. I have to be interested in those topics. Over time, you come to know a lot. And I've always wanted to write a book about South Korea. There was no "big book" in English on South Korea, except maybe Michael Breen's book [The Koreans]. And then there was nothing else for 15 years or maybe more, though Mike has recently released an update named The New Koreans. Korea has changed. 15 years of change in Korea is like 100 years of change in my country. There is a whole lot of new material to write about. So it was necessary that someone did it. If you think something is necessary and you have the ability to do it, then it becomes your duty to do it.

As for the North Korea book, I was never really that interested in North Korea as a journalist. The only kind of story that people seemed to want was 'fat dictator' Kim Jong Un and his big rockets, or Kim Jong Il getting holes in one playing golf, and so on. There is also so much groundless speculation about North Korea, with no criteria for making even the boldest assertions. There are plenty of journalists who just make things up. It's not usually the journalists' fault – it's the editor in London or New York, who wants something 'sexy' to generate clicks.

Y: Additionally, there is the assumption that all published work is factual and a large bulk of this published text depicts Kim Jong-un as crazy.

DT: That's really dangerous as well. He's not irrational. He's bad, and his system is bad, but he's not a crazy person. The belief that his crazy is greatly reinforcing the idea that the US should preemptively strike North Korea. Conventional deterrents don't work if someone is crazy, right? But he's not crazy, he's not going to attack first. He wants to live, and he wants to stay in power. That family has been in charge for seven decades, in spite of the fall of the Soviet Union, famine, the rise of South Korea and China, and two hereditary successions. You don't achieve that by being crazy. Kim Jong Un,

like his father and grandfather, is crazy like a fox. But the Americans seem to be convincing themselves that he is crazy. This is extremely dangerous.

[About my book] I didn't really want to write about North Korea. Then my publisher contacted me and said: "Can you do a book on NK?" I drafted a reply basically saying, "No." I almost hit send and then, I thought, maybe my friend James [Pearson], a journalist who specializes in North Korea, might like to do one together? But it was never going to be a book about defectors and it was never going to be a book about "evil Kim Jong-un's big rockets," because there is a lot of [publications about] that and it's boring. But if you focus on the marketization [of the North Korean economy, which shows] how ordinary people in North Korea are living, then we'll do it. So we did.

Y: These days, North Korea has been an especially hot topic. In your most recent book *North Korea Confidential* you mention briefly that there is a lack of literature on the "real" North Korea. Why do you think there is this absence, both among scholars and the public?

DT: It's extremely hard to get information about North Korea. Can you survey 1,000 people and estimate Kim Jong Un's approval rating? No, because you can't go there and just wander around talking to people. Can you know where inflation is, or unemployment? No, because they probably can't (or don't) even measure these things themselves. Can you know how many people are in their prison camps, to any real degree of accuracy? No, because they don't want you to know.

At the same time, North Korea looks very "exotic", as well as provocative and fascinating. There's naturally huge demand for knowledge about North Korea, and yet as I said, there's a huge lack of proper information. So bullshit fills the gap. More bullshit is written about North Korea than anywhere else in the world.

Y: So you did talk more about the public in that book, and how the public is responding to this in the market, and things that people don't talk about. Do you think the current political situation will affect the "new capitalism" of the North Korean black markets, as you mentioned in your book?

DT: I suppose sanctions could hurt the 'new capitalism'. But I also think North Korea is very heavily sanctioned already. The big one is oil. I think that oil sanctions would make life harder not just for the newly emerging business people, but for the population in general. But really I don't think an oil embargo is genuinely possible because Russia, regardless of what's happened in a legal

sense, will give them oil. As I said, North Korea is heavily sanctioned already and people have become very resourceful in part because of that. They are operating as entrepreneurs under a really tough, idiosyncratic environment, and there are sanctions imposed from the outside as well. So, North Korean entrepreneurs are highly resourceful. If I could have a chance to do business with a former North Korean entrepreneur-defector, I wouldn't say no.

Y: at do you think a North Korean social revolution will look like? Especially with those markets.

DT: It's kind of starting already. People are more cynical about authority. People are taking matters into their own hands in terms of making a living, and are more interested in foreign culture. It's well documented now. They like watching South Korean TV, foreign films, makeup, cosmetics, clothing. The way young North Korean couples act, the *aegyo* kind of stuff. That's more of an emerging thing in North Korea because of the influence of South Korean TV. And guys are expected to be more romantic. North Korea has changed the way that married couples and families work, the old dynamic of the man of the house and the woman indoors. Now, it is more likely that she is making more money than him, and he is somewhat useless, because he's still working at a state-owned organization that pays him very little. (Though nowadays he can bribe his way out of the SOE and join his wife in profitable work).

Returning to the South Korean case before I end my interview, as someone working in the Blue House (although in a new position) and a long-term resident of South Korea, do you think South Korea has fostered a uniquely political environment, particularly in light of the recent candlelight vigils for the impeachment of Park Geun Hye? What would you identify as the major contributing factor towards this phenomenon?

I think Korea is different in a good way. Up until last year I was worried about Korean democracy. I thought that there was this slow drift towards what could end up being a kind of South Korean Putinism, where you still get to vote, but subtle semi-authoritarian controls make it very unlikely that there'd ever be a change in the government.

Y: I think it even could be simply complacency.

Yeah. The average person didn't seem to show much interest in politics. At the same time, press freedom was declining. You had quite an authoritarian minded government. Lots of things controlled by tight personal networks without the proper process being followed. And then suddenly out of nowhere, this scandal comes up. To have a million or however many people there in

the streets was really extraordinary. It was quite beautiful. Now, there are some negative aspects to this as well. The big one being, at what point does it become mob rule? I don't think for a minute that Park Geun-hye is innocent, but even if she had been, would she have survived? I don't know. So, this idea that the will of the people is above everything, is a bit scary sometimes. But protest is the safety net of Korean democracy, as there is a huge amount of authoritarian-mindedness among the traditional leadership class, and they sometimes need reining in.

And what would you identify as major contributing factor to this phenomenon?

Surprisingly, considering the existence of North Korea, throughout the history of Korea there have been impressive examples of the expression of people power. There have been revolutions and big protests historically. There is a long-standing culture of it. I don't know much about China—but in China there appears to be more of an acceptance of injustice. Again, this is an outsider view: I don't know much about China. But when I talk to Chinese friends and there is something that's been going on, whether some protest, or civil servant who has been expropriated, or related to someone's business, there seems to be this attitude of "well that's just what happens." In Korea, people will get mad. I don't know why that is, but people will get mad and they will protest. They will give it everything. I interviewed Park Won-soon, the mayor of Seoul, about democratization. Perhaps if you're Chinese, you would vehemently oppose this statement, but anyway here's what he said: at Tiananmen Square, when the government cracked down upon protesters, they gave up. Whereas in Korea, protesting just continues.

REVIEW

REVIEW PAPER: SHAPING THE CHOICES OF CHINA?

The China Challenge: Shaping the Choices of a Rising
Power

Jackie Wong

SHAPING THE CHOICES OF CHINA?

Jackie Wong

Hong Kong University of Science and Technology

Thomas Christensen, *The China Challenge: Shaping the Choices of a Rising Power* (W. W. Norton & Company, NY: 2016); 400 pages; \$17.93 (Paperback)

Introduction

The rise of China in the past decade has sparked widespread theoretical debates among scholars as to whether its rise would bring hegemonic war as has happened in World Wars I and II. Nonetheless, it is clear that China's recent foreign policy has become more offensive and assertive. The 2012 Sino-Japanese islands dispute, the establishment of the Air Defensive Identification Zone (ADIZ), buildup of artificial islands in the South China Sea, and the Sino-Indian standoff in 2017 all seem to be confirming John Mearsheimer's predictions that the rise of China, based on his offensive realist standpoint, will bring hegemonic war.¹ Thomas Christensen, however, disagrees with this pessimistic conclusion. In his recent publication, *The China Challenge: Shaping the Choices of a Rising Power*, he agrees that while the rise of China is real, China as a rising power will not bring hegemonic war.

Reviewing this path-breaking work will bring to light four theoretical themes that provide far-reaching implications on future policy making and reveal the underlying theoretical and policy preferences. The first theme is evolving distribution of powers and strategic challenges in Asia along with the rise of China, a theme which aims to touch upon the long debate of whether China's power is exaggerated, and if it is not, what strategic challenges would China bring to the United States. The second theme is Chinese motive and perception of states, which attempts to analyze how the authors respond to debates of the intention. The third theme is international cooperation, which responds to the longstanding zero-sum game debate among different schools of international relations. After scrutinizing the approaches taken by the authors in addressing

1 Mearsheimer suggests that the rise of China would repeat the history of WWI and WWII in that the rise of a potential regional hegemony would bring war in the long term. See John Mearsheimer, "Can China Rise Peacefully?," *The National Interest*, Oct 25, 2014, <http://nationalinterest.org/commentary/can-china-rise-peacefully-10204>.

the first three themes, I examine the fourth theme, shaping the choices of China, Christensen's novel foreign policy recommendation to the US.

Evolving Distribution of Powers and Strategic Challenges

In Chapter 3 of his book, "Why Chinese Power Will Not Surpass U.S. Anytime Soon," Christensen argues that the Chinese economy is suffering from "other institutional, legal, and normative hinders," preventing China from becoming a global leader.² By "other," Christensen convincingly argues for the problem of innovation and invention, rather than only focusing on arguing about currency policy, inflation, and corruption. Chinese academic culture that emphasizes only "numerical measures of success," hindered the creation of knowledge, which makes China "trail far behind the United States and the Europeans in international branding."³ Militarily, Christensen states that the United States still remains superior to the Chinese military force "in quality, quantity, or both."

Christensen also emphasizes a new form of power—what he terms "cyber-power." Rather than only analyzing Chinese conventional military force by quality, experience, and quantity that can challenge the U.S. position in Asia, Christensen states that "there is little doubt that China has developed a large cadre of government sponsored hackers and cyber-warriors," which enables China to penetrate, disable, and destroy the network.⁴ Yet, he also states that while the U.S. government seldom mentions its offensive capabilities, instances such as the U.S. and Israeli attacks on the Iranian nuclear Stuxnet and Flame program, and previous government statements, demonstrate to a certain degree that the U.S. has advantages over China in terms of power in the cyber sphere. However, although Christensen counts cyberpower as a form of power, Christensen fails to go beyond this argument by classifying whether this form of power can also be put into conventional international relations' offensive-defensive framework. Moreover, he does not elaborate how cyber-power can impact the traditional security dilemma.

China's Intentions and Perception of States

Besides the balance of power, the debate over intention has long occupied international relations scholars. As Sebastian Rosato argues, if states can

2 Thomas Christensen, *The China Challenge: Shaping the Choices of a Rising Power* (New York: W. W. Norton & Company, 2015), 61-69.

3 Ibid., 73.

4 Ibid., 87-89.

never understand others' intentions, "then self-help is persistent, balancing is endless, the security dilemma is intractable, and relative gains loom large."

⁵ Whereas some structural realists such as John Mearsheimer believe that intentions are inscrutable, Christensen believes that it is possible to discern the intention of China.

Christensen stresses that states can understand others' intentions. In terms of the motive of China, he provides a new and thoughtful starting point—the global financial crisis since 2009—to examine the changing motives of China. As he states, "the great recession remade Chinese popular and elite psychology."⁶ First, he quotes the sources of Chinese interlocutors to suggest that "large segments of the Chinese public and elites feel that China's global power has risen quickly since the financial collapse." He suggests that there are three factors contributing to the offensive motive of China. First, since the financial crisis, many Chinese people believe that China has been getting strong enough to challenge the United States' predominant position. Second, Xi Jinping, who has demonstrated his power as a political strongman, would want to play a more proactive role in global affairs to further demonstrate his leadership. Third, the consistent domestic instability may drive China to take a more offensive stance in international disputes in order to divert domestic discontent. He argues that "Beijing's unfortunate combination of external confidence and internal anxiety renders China more assertive internationally on occasion and more acerbic on others."⁷ Yet, also due to the presence of domestic instability, he states that China has strong intention to cooperate within the institutional framework. As he argues, "I can see few reasons why China would intentionally seek conflict with its trade and investment partners or undercut the institutional framework that has enabled its historic economic development."⁸

Another conundrum is how China's neighbors perceive this potential rising hegemony. The territorial disputes between China and its neighbors in these years in fact have created serious conflicts within the Asian security system. China has been more assertive not only in its long contentious territorial disputes with Japan, but recently also in the South China Sea. The 2014 Sino-Vietnamese standoff demonstrated that Southeast Asian states have posed skeptical or even negative attitudes towards China.⁹

5 For background on the intention debate, see, Sebastian Rosato, "The Inscrutable Intentions of Great Powers," *International Security*, Vol. 39, No. 3 (Winter 2014/2015): 48-88.

6 Christensen, *The China Challenge*, 242.

7 Ibid., 245.

8 Ibid., 40.

9 Shannon Tiezzi, "Can China and Vietnam Overcome Their Territorial Disputes?," *The Diplomat*, Oct 27, 2014, <http://thediplomat.com/2014/10/can-china-and-vietnam-overcome-their-territorial-disputes/>

Christensen, differing greatly from the conventional analysis of balance-of-power and balance-of-threat theories, does not touch much on addressing how states perceive China. Rather, he believes that East Asia today is not divided between opposing systems. This new perspective provides a unique lens to observe East Asia today. As he states, “almost all important actors in the region besides China and Russia are either formal U.S. allies or security partners.”¹⁰ Christensen’s novel view of the balance of power is unique in that he views the system itself as highly interdependent. This new perspective also challenges Waltz’s theory that a multipolar system would lead to instability.¹¹ But one counterargument is that although the United States is not relying on other Asian states to survive, and economic ties bind Asian states closer, it does not seem that Asian states have as a consequence developed a positive view on China. More importantly, they occasionally challenge China by their naval forces. Christensen may also overlook the degree of nationalism in South East Asia, where people are pushing their governments to respond aggressively to China, even in spite of strong economic ties. Economic dependence in this sense may not spillover to the security arena.

International Institutions and Co-operations

Christensen, in the chapter “This Time Should Be Different, China’s Rise in a Globalized World,” states that “rarely seen in the developing world, China has built a vibrant economy that has pulled hundreds of millions out of poverty,” and “China has opened itself up to international investment, international trade, and transnational production to such a degree that China is essentially playing by our (the United States’) rules.”¹² In this regard, “China’s willingness to help maintains the international order from which it so benefits.”

This analysis contributes to the current debate to rebut the zero-sum game in international relations. He quotes Stephen Brooks’ argument that “transnational production and FDI in manufactures rely on complex supply chains and expanded intra-industry trade,” and “now be difficulty for many countries to prosecute weapons procurement from enemy countries or from noncombatant third countries.”¹³ Going back to the case of China, trade within Asia has been dominated by China since 1990. As he states, “all things being equal, the contemporary economic realities should prove a major force for peace.”¹⁴

10 Christensen, *The China Challenge*, 51.

11 See, Kenneth Waltz, *Theory of International Politics* (US: McGill Hill, 1976).

12 Christensen, *The China Challenge*, 37-62.

13 *Ibid.*, 31.

14 *Ibid.*, 48.

Christensen also addresses the incentive of China to partake in international regimes. In the chapter, "Global Governance: The Biggest Challenge of All," he makes an interesting point by employing the United States' lens to look at the issues, writing,

"when the other great powers seek cooperation from China on international security and humanitarian, economic, environmental problems, China can undercut the efforts without even intentionally doing so."¹⁵

This new perspective is the core contribution to his theory in which non-zero sum game provides alternative peaceful resolution of the rise of China. In other words, "the United States wishes China well."

Hegemonic War and Shaping the Choices of China

Contradictory to offensive realist predictions, Christensen believes that the instance of the rise of China is different. He rebuts the pessimistic views by stating that those theories predicting hegemonic war between China and the United States are all drawing from case studies of the 19th and the 20th centuries. He advocates that "regional and global institutions also help ameliorate tension," and suggests "great powers have no incentive and no credible threat to invade and occupy each other as they had in the past."¹⁶ Simply put, Christensen believes that it is more likely that the rise of China will not lead to hegemonic war.

As the world today is highly interconnected, China's efforts in dealing with global issues is a must. Christensen suggests that not only should the United States reaffirm its Asian alliance, but it should also help shape the choices of China. Simply speaking, the United States should encourage China to cooperate in those areas that would benefit both sides, such as climate change, non-proliferation of weapons, while avoiding involvement in the territorial disputes among East Asian states. In this regard, Christensen believes that in a non-zero-sum game perspective, the rise of China would not bring war. Nonetheless, while his argument is novel and thoughtfully argued, Christensen does not mention what would happen if the United States does not engage with China, or act to "shape the choices of China"—whether this unilateral action will increase the chance of war.

Conclusion

¹⁵ Ibid., 120.

¹⁶ Ibid., 290.

By and large, Christensen's work, *The China Challenge: Shaping the Choices of China*, contributes to the long debate over the rise of China. His work provides ample analysis based on historical sources, providing up-to-date information to shed light on the understanding of China's threats and bringing new light to different longstanding debates about the rise of China. I highly recommend this work to all graduate students and scholars interested in Chinese foreign policy.

GUIDELINES

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