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Editors' Note

Welcome to the Spring 2020 edition of the *Stanford International Policy Review* (Volume 5, Issue 1). On behalf of the Freeman Spogli Institute for International Studies, we are excited to announce the re-establishment of the *Stanford International Policy Review* (SIPR), a biannual student-run international affairs and public policy journal housed in the Ford Dorsey Master's in International Policy. SIPR publishes cutting-edge policy analysis on topics spanning political economy, security, energy, public health, democracy, and development policy. Our authors provide insights, commentary, and practical solutions to pressing global challenges, drawing on their diverse academic backgrounds.

This issue covers a wide range of topics, from an op-ed piece on why the United States needs international observers during its 2020 presidential election to an analysis of European Union religious slaughter bans. The issue features work from the Stanford graduate community and faculty as well as from scholars and professionals based across the United States and world. We are grateful to this issue's authors and editors who worked diligently and digitally during a tumultuous time. We are particularly fortunate to feature an article on the geopolitics of Covid-19 from Dr. Francis Fukuyama. Dr. Fukuyama writes, "There are reasons for both pessimism and optimism in imagining the geopolitics of a post-Covid world." In this issue and those that follow, we aim to publish thoughtful pieces that reckon with an uncertain and ever-changing policy landscape.

The editorial board hopes you will enjoy the contributions and critically engage with the policy questions they grapple with. In closing, we would like to thank our advisory board, the Master's in International Policy program and the Office of the Vice Provost for Graduate Education for their continued support.

Kelsi Caywood and Adriana Stephan
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The Geopolitics of Covid

By Francis Fukuyama

The Covid-19 epidemic that emerged early in 2020 has already greatly impacted world politics, and is likely to continue to do so for many years into the future. If we look at earlier global shocks like the fall of the Berlin Wall in 1989, the September 11 attacks, or the 2008 financial crisis, the long-term consequences often took years to materialize, and occurred in ways that no one anticipated at the time. What we can do now is only sketch out some possible scenarios for the future, keeping in mind that different parts of the world could experience the crisis in very different ways.

Let's begin with the question of global democracy. Following on a generation-long expansion of democracy known as the "Third Wave," global democracy has been in what Larry Diamond has labeled a "democratic recession" now for nearly a decade and a half. It is clear that Covid has already challenged democracy and accelerated that decline in many countries. Leaders all over the world have been taking advantage of the crisis to extend their powers in ways that threaten the long-term health of democracy. This has happened the most clearly in Hungary, where Prime Minister Viktor Orbán has been granted emergency powers by the Hungarian Parliament, allowing him to rule by decree. Similar things have happened in the Philippines under President Duterte, in El Salvador under President Bukele, and in Serbia under President Aleksandar Vučić. In authoritarian countries like Egypt and China, government powers have been broadened. China has used the epidemic to tighten its grip on Hong Kong, taking advantage of the distraction of the rest of the world.

Overall, there has been no clear correlation between a country's handling of the crisis, and whether it has a democratic or authoritarian regime. There is tremendous variation with both categories. While authoritarian states like China, Vietnam, and Singapore have done reasonably well in containing the epidemic, others like Russia and Belarus have not. Similarly for democracies: while the United States, Italy, and Brazil have fared poorly, South Korea, Taiwan, and Germany have performed well.

On the other hand, people around the world are not doing careful statistical analyses of the relative performance of democratic versus authoritarian governments. They are looking at the bilateral comparison between China and America as exemplars of the two forms of government, and in this comparison, American democracy does not look that good. This perception has been strengthened in the eyes of many by the racial justice protests following the killing of George Floyd on May 25, which have been portrayed by authoritarian governments as riots and violent disorder rather than peaceful protests. This negative perception may be rectified to some extent if Donald Trump is voted out of office in November, but the underlying polarization that has weakened the United States will not suddenly disappear.

The real sources of good performance in the pandemic lie elsewhere than in the type of regime a country possesses. One clear factor is state capacity, that is, a country's possession of a qualified and well-resourced public health bureaucracy. Trust in government is also critical: compliance with difficult quarantine measures depend on citizens believing that their government is competent and legitimate. Finally, leadership at the top matters greatly. The leaders of the United States, Brazil, Belarus, Nicaragua, and Turkmenistan have all spent long periods denying that a health crisis existed in the first place, and indeed took efforts to make sure that people would continue to go to work and to mingle in defiance of the warnings of public health experts. It is not surprising that they have experienced significantly worse rates of infections and deaths.

The importance of these factors—state capacity, trust, and sound leadership—then explains why many East Asian states have come through the crisis relatively

well. East Asian countries like China, Japan, Korea, Taiwan, and Singapore all draw on a long history of consolidated state institutions, underpinned by a cultural emphasis on meritocratic bureaucracy and education. They handled the crisis well for the same reasons that they performed well over the past decades in managing rapid economic growth. South Korea's impressive performance was due to the fact that the government delegated management of the crisis to Jeong Eun-Kyeong, a professional health expert who became one of the most trusted people in Korea. Governments did not allow responses to become politicized the way they did in the United States or Brazil, where one's stance on the epidemic reflected one's identity in the larger political polarization.

This suggests that the crisis will accelerate the long-term trend towards a shift of the center of the global economy to East Asia. The states of East Asia as a whole look much better poised to reopen their economies sooner than either Europe or the United States. It is clear that there will be no V-shaped recovery anywhere, which puts a premium on a state's long-term capacity to deal with an ongoing crisis, and to manage the distributional aspects of the economic recovery fairly.

Note that I said the shift in economic activity will be towards East Asia as a whole, rather than towards China. China has been trying to take advantage of its performance in the crisis to boost its global standing, by sending, for example, PPE supplies to many countries around the world. The long-term impact of this campaign is not clear, however: countries also understand that China was the source of the epidemic in the first place, and that the Chinese government let the disease get out of control by initially suppressing news about it. Indeed, many countries have suddenly realized their degree of dependence on China for medical supplies, and have already sought to diversify their sources as a result. This will accelerate an effort to move supply chains away from China where possible, something that began as a result of the Trump administration's trade war.

Another geopolitical consequence of the crisis has to do with China's Belt and Road Initiative (BRI). Many countries like Sri Lanka, Pakistan, and Tanzania have already found themselves overextended in their dealings with China, and were seeking to renegotiate the terms of their borrowing from that country. Now that

many have fallen into large fiscal deficits as a result of the economic crisis, they are even less able to repay these debts. Unlike most Western lenders, China has frequently demanded collateral in return for its loans, and in instances where default was threatened, has seized assets in response (see for example Sri Lanka's Hambantota and City Harbor port projects). This kind of asset takeover appears to many developing countries like a new form of imperialism, and puts China in the uncomfortable position of choosing between having to write down a good portion of its loan portfolio, or else risking a serious deterioration of its global prestige.

The short-term consequences of the crisis for the United States have been, as noted above, quite negative. The longer-run picture is more complicated. The United States has been severely weakened over the past few years by its deep polarization, and by having a president who at every turn has sought to deepen that polarization. President Trump has set himself in opposition to Democratic governors in encouraging resistance to shutdown orders—indeed, he has opposed many of the initiatives taken by his own administration. In response to the killing of George Floyd on May 25, he responded by trying to order the U.S. military into the streets, and forcibly cleared the area in front of the White House of demonstrators so that he could stage a photo-op in front of a church. He has shown no solidarity with the anti-racism demonstrators, and has gone on to defend Confederate statues around the country against those that would try to take them down.

Back in January, Trump was heading towards a relatively easy re-election: the economy was booming, and employment was at an historic high. All of that was changed by his incompetent response to the epidemic; he now faces historically high unemployment levels. Many jobs will be recovered between now and the November election, but it is very doubtful that the U.S. economy will be anywhere near the position it was in last January. The Democrats have chosen a highly electable candidate in Joe Biden, and have seen extremely high voter turnout in primaries since South Carolina. Recent polls have shown Biden opening up double-digit leads over Trump nationally, and doing well in those swing states that will ultimately decide the election. A number of Republican Senators

who stuck by Trump during the impeachment hearings like Susan Collins, Joni Ernst, and Martha McSally look increasingly vulnerable.

What will the global order look like if Biden is elected in November, and the Democrats retake the Senate? In foreign policy, many things will change rapidly since the new president will have clear authority to act in this realm. Biden will doubtless reconfirm American commitment to the North Atlantic Treaty Organization and to its Asian alliances; the United States will likely resume membership and dues-paying to the World Health Organization, and will recommit to the Paris Climate Accords. The United States will return to its rhetorical support for global democracy and end its flirtation with dictators like Vladimir Putin, Kim Jong-Un, and Abdel Fattah al-Sisi. The United States will also likely reverse recent decisions to withdraw from the Intermediate-Range Nuclear Forces and Open Skies Arms Control Agreements.

The one area where things may not change too rapidly under a Biden presidency would be in U.S.-China relations. Growing hostility towards China has been shared by many Democrats like Nancy Pelosi and Chuck Schumer. The Democrats' remaining base in the trade union movement has always been hostile to outsourcing and close ties with China, and the Covid pandemic provides a perfect excuse to disengage. As John Bolton's memoir has revealed, Trump himself begged Xi Jinping behind the scenes to aid his re-election campaign, undercutting any tough public messaging. This kind of hypocrisy would presumably not afflict a Biden administration.

While many traditional American allies and partners will doubtless welcome an American return to the international stage, it will not be that easy for a new Biden administration to restore the earlier bonds of trust that existed between the United States and other democracies. For one thing, polarization will not simply end if he is elected. The situation will be the worst if the Republicans retain control of the Senate: as in other periods of divided government, there will be continuing gridlock and the inability of Congress to pass major legislation, beginning with yearly budgets. There will be bitter partisan fights over Supreme Court nominees, with the Republicans continuing their obstruction of Democrat-

ic candidates for the bench. In foreign policy, the Senate may block nominees to important offices, and treaties or agreements requiring Senate approval would be impossible to pass.

The situation will be even worse if the election is close in the swing states where the contest will ultimately be decided. The United States has a highly complex and decentralized electoral system, with election administration carried out not by professional administrators, but by a hodge-podge of local authorities. There has been long-standing politicization of the voting process, with Republicans seeking to restrict voting as much as they can under the guise of preventing voter fraud. This year's election will be carried out under a pandemic when in-person voting becomes highly problematic, both for voters and election officials; the obvious solution, mail-in balloting, has already been attacked by President Trump as inviting massive voter fraud. This is a president, of course, who has already argued that he actually won the popular vote in 2016 due to massive voter fraud on the part of the Democrats, despite the fact that he lost by almost three million votes.

It is entirely possible, then, that the legitimacy of the results of the November election will be challenged, both by Republicans charging voter fraud, and by Democrats charging voter suppression. Up to the present, the United States has been lucky that its polarization has not led to widespread violence, but given the stakes involved in a presidential election, that may not hold.

Thus anything but a landslide victory by the Democrats may simply prolong the partisan polarization the United States has experienced up to now. This is why many U.S. allies may not jump at the chance to restore ties with the United States under a Biden presidency: they will see that they are still dealing with a sharply divided country, in which the Republicans could make a quick comeback in 2022 (as has happened under both Clinton and Obama). There would have to be a much deeper shift in U.S. public opinion, and a sharper repudiation of Trump's nationalist-isolationist legacy, for trust to be restored.

A further question about the Covid pandemic's global impacts concerns the lon-

ger-term effects it will have on political mobilization. Politics in many countries shifted sharply to the right after the 1980s. This was true in Britain and the United States, with the election of Reagan and Thatcher; in continental Europe with the slow decline of socialist and social democratic parties, and in Japan with the disappearance of the Communist and Socialist parties as significant actors. Where the left has regained power, it has usually been in the form of a center-left (e.g., Tony Blair, Gerhard Schroeder, or Clinton and Obama) who have accepted much of the market-friendly consensus on economic policy, and an agenda of limiting expansion of state sectors.

Intellectually, this shift was underpinned by the rise of what is called “neoliberalism”: not classical liberalism, but a more extreme version associated with the Chicago School of figures like Milton Friedman, Gary Becker, or George Stigler, that saw state sectors everywhere as enemies of economic growth. This intellectual shift led directly to some of the policy outcomes that seem so problematic today. One of the less-recognized consequences of Chicago School thinking was the decline of antitrust in the United States. Under the intellectual leadership of people like Robert Bork and Richard Posner, corporations were allowed to merge and bulk up with very little opposition from antitrust authorities. When combined with the economies of scale and scope that accompany digital technologies, this laissez-faire attitude has permitted the emergence of enormous technology platforms like Google, Facebook, Amazon, and Apple to dominate the world economy. But concentration is evident across many sectors, from hospitals to pharmaceuticals to airlines, with deleterious impacts on prices, income distribution, privacy, and democracy. The Covid pandemic has benefitted these large platforms enormously by demonstrating their role as critical infrastructure for a shut-in world, and weakening smaller competitors without the cash cushions to survive economic downturns.

The post-pandemic world is not likely to accept this kind of economic framework for thinking about public policy. The crisis has reinforced the importance of the state and of state capacity, and laid bare the vulnerabilities that emerge when agencies like the Centers for Disease Control are weakened. Coupled with a broad social mobilization brought on by the Floyd killing and a revival of progressive

politics around the world, the Overton window of acceptable public policies has shifted considerably to the left. How far the pendulum will swing in this direction over the coming years is anyone's guess.

The rise of the internet and digital technologies more generally have contributed to the anti-democratic trend. When the internet came into widespread use in the 1990s, many observers believed that it would be of broad benefit to democratic movements around the world. This often appeared to be the case, with popular mobilizations against dictatorship, facilitated by social media, appearing in many parts of the world. Authoritarian regimes took note of these developments, however, and began using the same technologies to increase their control over their own populations, and to create offensive weapons to weaken their rivals. China focused on the first route, building a social credit system that allows the government to minutely track the behavior of its citizens. Russia exploited the latter, using social media to intervene in democratic elections around the world. The latter interventions would not be possible were it not for existing distrust and polarization within democratic societies. Digital technologies have permitted the bypassing of hierarchies of all sorts, including those that played important functions like checking facts, verifying sources, and filtering out outlandish conspiracy theories. Many democracies now face a muddled cognitive landscape in which their citizens cannot agree on basic facts, much less agree on common solutions.

There are thus reasons for both pessimism and optimism in imagining the geopolitics of a post-Covid world. The pandemic will encourage authoritarian and nationalist impulses already plainly evident in many countries around the world, and will produce a prolonged economic downturn that will push millions of people in the developing world back into poverty. On the other hand, by helping to lay bare the inequalities that already exist around the world, the crisis may help to catalyze a broad grassroots movement that will push governments to reform. Our experience of global crises in the past should make us very wary of excessive certainty as to which of these outcomes will ultimately prevail.

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Adaptability vs. Predictability:

An Overlooked Tradeoff in National Security Strategy

By Joshua E. Kenway

Existing literature on compellence and deterrence of offensive cyber operations fails to address an implicit tradeoff between the predictability and adaptability of hypothetical countermeasures undertaken in response to an attack. While this tension is referenced in the recent report of the U.S. Cyberspace Solarium Commission, fulsome contemplation of the tradeoff is essential if a stable global system of ‘by-punishment’ cyber deterrence is to be established.¹ This concern is also relevant in the context of the “defend forward” (active defense) component of existing U.S. strategy, which is supported by the Commission. The purpose of this article is to lay the groundwork for further academic research into the titular tradeoff ahead of possible consideration in future doctrinal development in the United States and beyond.

In a pre-cyber context, the inherent characteristics of traditional military attacks (even nuclear weapons) constrained the importance of this strategic tradeoff. This is in part because the effects of dropping, for example, a hydrogen bomb are visible, non-reversible, geographically specific, and chronologically limited. Individual offensive cyber operations can have some or none of those qualities. The first offensive use of nuclear weapons technology was so unprecedentedly devastating as to precipitate the near-immediate establishment of a norm against further offensive use.² In contrast, the evolution of the use of cyber capabilities for offensive operations has been much more gradual, with novel forms of engagement emerging over time.

The predictability of a putative response of a country ('Country A') to attack (by 'Country B') has been consistently identified by prominent scholars both historic and contemporary as a central factor in the effectiveness of a by-punishment system of deterrence. Thomas Schelling, for instance, referred to this as the need to demonstrate "commitment" to a particular response.³ Joseph Nye, meanwhile, posited that stable structures of deterrence are dependent upon the intentions "of both the actors and the targets, and the ability to communicate those views clearly."⁴ This predictability can be seen as a combination of Country A's expressed intentions regarding a hypothetical attack and Country A's credibility, as perceived by Country B, in following through on those intentions. The influence of subjective perception means that a strictly rational framing of this dynamic is an imperfect reflection of geopolitical reality. Nevertheless, if Country B perceives a greater degree of certainty to a proportional response from Country A, the deterrence effect will increase and the likelihood of the initial attack taking place will be reduced.

However, Country A can similarly gain strategic value from preserving a degree of adaptability in responding to an attack by Country B with the goal of compelling a behavior change. Given that norms of use around offensive cyber capabilities are virtually non-existent, the ability to respond flexibly to cyberattacks should hold even greater strategic importance. Intuitively, this means being able to scale and adjust a response—diplomatic, military, economic, or cyber—in the context of evolving consequences arising from the initial attack. Relatedly, it is important to consider that cyber means can be employed across the entire spectrum of engagement, from complementing diplomacy to enabling espionage to causing physical damage. Notably, due to the multi-functional nature of these tools, it can be hard to distinguish for which of these purposes a discovered instance of an exploit was or will be used.⁵ In addition, the non-first-order effects or cumulative consequences of cyberattacks may evolve based on a broad array of cross-cutting and context-specific geopolitical, technical, and domestic factors.

To return to the aforementioned hypothetical, if Country A were to sacrifice too much response adaptability (i.e., to make its anticipated responses to a variety of attacks too predictable) then we would expect that to enable and encourage

adversaries' development of innovative tactics to circumvent the specific threats underpinning Country A's deterrence strategy. Simultaneously, if Country A were to be insufficiently clear and credible in stating its intended responses to attacks of different types and origins (i.e., be too unpredictable), then that uncertainty would make any by-punishment deterrence effect impossible to achieve. A situation in which Country A leaves no doubt as to its response is plainly incompatible with one in which absolute adaptability is maintained.

Furthermore, even if an individual cyber operation falls below the threshold of armed conflict, it cannot be considered independent of any broader—even loosely defined—cyber campaign of which it is a part. This is because a multiplicative interaction of attack effects can lead a cyber campaign to have a greater overall impact on its target than would be assumed from the sum of the campaign's component operations.⁶ This complicates the assessment of what constitutes a “proportional” response to any given attack, as an understanding of broader context is necessary to gauge the attack's true impact.

Given the characteristics of these cyber campaigns, maintaining response adaptability is essential lest countries be caught flat-footed in responding to attacks. This inference has major implications for the feasibility of a by-punishment (or “defend forward”) approach to deterrence. Governments cannot afford to constrain too narrowly what they are willing to retaliate in response to, nor predetermine the means or scope of such retaliation. As the Commission report states, governments “clearly communicating an ultimatum to a target ... may tie their hands and create politically infeasible ‘red lines.’”⁷ However, neglecting entirely to impose such red lines for fear of adversaries working around those constraints or calling the relevant government's bluff not only suggests a lack of strategic imagination, but also means admitting defeat in any attempt to use offense-oriented deterrence to drive the establishment of norms for the use of cyber capabilities.

One route towards bridging the divide between predictability and adaptability within such a non-traditional conflict framework would be to consider what we want to protect in an equally non-traditional way. Historic conceptions of de-

terrence have centered around the protection of physical places, infrastructure, and human life from overt destructive capability. Yet, what cyber tools are most uniquely capable of threatening is control over information and the associated preservation of societal values, including democracy, liberty, and privacy.⁸ The consequences that are meted out in response to attacks on such essential but intangible assets will shape the cyber norms of tomorrow, but to justify robust deterrence of attacks against them we cannot afford to operate using only the strategic frameworks of the past.

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Expand International Observation of U.S. Elections

By Tom Westphal

Americans are losing faith in the democratic process. Well over one hundred million Americans will vote in the November 2020 U.S. presidential election, but U.S. citizens are increasingly worried their votes will not be counted correctly. When combined with rising partisan animosity and political leaders—including the president—who have primed the American electorate to suspect foul play by political opponents, this lack of confidence forms a toxic brew that erodes U.S. stability.¹ Left unchecked, intense political conflict—and even violence—could result.

America's crisis of democratic confidence is a sweeping, multifaceted problem that requires numerous policy solutions. This short piece offers one such solution that is often overlooked: to strengthen voter confidence, policymakers must expand access for accredited observers from international organizations to monitor American elections.

International observers are an election-season fixture in many countries and represent intergovernmental organizations such as the United Nations (UN), the Organization for Security and Co-operation in Europe (OSCE), and the Organization of American States (OAS). The core mission of such observers is to monitor election processes to detect fraud and other deficiencies.² International observers have demonstrated their effectiveness in diverse environments. During the 1990 elections in Nicaragua and Haiti, for example, UN and OAS observers conducted comprehensive election monitoring that contributed to peaceful transitions of

power.³ Some experts suggest that the mere presence of such observers may also have a prophylactic effect, reducing the likelihood of fraud at monitored polling stations. Studies of elections in Armenia and Ghana, for example, found that fraud and other legal violations were less likely to occur at monitored sites.⁴ Additionally, after elections conclude, international organizations often publish reports identifying shortfalls in the democratic process and ways in which the monitored country might rectify them.

The United States has been a prominent supporter of election monitoring efforts abroad, actively participating in international observation efforts in countries around the world.⁵ I have played a small role in a handful of these efforts, helping to observe elections in Tajikistan, Jordan, and Ukraine as member to both bilateral and multilateral observer missions. Despite this, international observation is limited in the United States. This is partially because international organizations face substantial barriers to access and effectively monitor American elections in some parts of the country. Eleven U.S. states explicitly prohibit or restrict international observers from scrutinizing their electoral processes.⁶ During the 2012 U.S. presidential election, ten states prevented international observers from entering polling stations, and in one state—Texas—authorities even threatened to arrest them.⁷

Some of these barriers are the unintended consequences of election laws that limit observation to designated domestic political groups. The all-important ‘swing’ state of Florida, for example, restricts Election Day observation to political parties and organizations formed “for the specific purpose of expressly advocating the passage or defeat of an issue on the ballot.”⁸ Other barriers may reflect a cultural hostility toward the idea of foreign observers stemming from a variety of sources, including xenophobia, distrust of the motives of international institutions, and American exceptionalism. Tennessee law, for example, explicitly bars “representatives of the United Nations” from monitoring state elections—motivated out of an apparent mistrust for the motives of UN personnel.⁹

Excluding international groups from observing American elections, intentionally or not, is misguided. International observers do not disrupt or intervene in elec-

tions as their name suggests, they merely observe. Accreditation processes ensure only vetted organizations are given access. Many other democracies around the world have managed to welcome international organizations to scrutinize their elections without significant disruptions. Furthermore, legal barriers imposed by individual states often contradict the United States' broader international commitments. By joining the OSCE, for example, the United States pledged to give other member countries the right to observe U.S. elections. These commitments should be kept.

While voter fraud remains rare in the United States, expanding international observation of American elections may bring substantial benefits.¹⁰ For one, international observers could supplement limited nonpartisan domestic monitoring efforts. Most election observation in the United States is conducted by political parties, which have a vested interest in the election outcome. Expanding access for international election observers could help ensure more objective monitoring of election processes. Additionally, the United States could benefit from receiving objective post-election assessments prepared by such observers. Though American democracy is unique in many respects, Americans should be eager to learn from international observers, who could help local jurisdictions implement more effective election procedures by identifying problems and exchanging lessons learned from other countries. Finally, some legal scholars have suggested that the impartial reports of international observers could help to inform voting rights litigation, protecting Americans' fundamental rights.¹¹

The United States should therefore welcome international observation of its elections. At a minimum, U.S. states should pass legislation explicitly permitting international observation of election processes that are already open to domestic groups. California law, which allows international observers to have “uniform and nondiscriminatory access to all stages of the election process that are open to the public,” provides an example other states should follow.¹²

As the 2020 U.S. presidential election approaches, the importance of strengthening American elections will only become more critical. International observers—often overlooked when discussing American elections—can play a vital role

in this effort. Our crisis of confidence in U.S. democratic institutions requires help from all corners, and policymakers cannot afford to ignore other countries' hard-won lessons and experience. Legal barriers to international observation should be repealed, and U.S. states should welcome international observers to inspect their election processes and share their insights. Where improvements can be made, American policymakers should move swiftly to implement international best practices for transparent, efficient, and fair elections. To do otherwise needlessly risks the American public's continued confidence in our elections.

Tom Westphal studies law and international policy at Stanford University. He has served as an election observer in Tajikistan, Ukraine, and around the United States.

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Playing Bridge, Playing Poker:

How the 2014 Crimea Crisis Reshaped Power Competition between the United States and Russia

By Zoe Huczok

In the Spring of 2014, the invasion of Simferopol by Spetsnaz in unmarked uniforms the worst face-off between Russia and the West since the end of the Cold War. Despite 's repeated requests, the Obama administration decided not to lend lethal aid to Ukraine. Instead, it applied sanctions and trade restrictions on Russia in a coordinated effort with allies—an unprecedented display of economic statecraft. The United States' response has been hotly contested. Was Obama too soft on Russia? What does Obama's reluctance towards military intervention in Ukraine reveal about his world view? Could U.S. interests have been better served by a different, more offensive policy? How did the Crimea Crisis impact the global balance of power? This paper attempts to answer those questions by placing the decision in the broader context of Obama's grand strategy, analyzing the deterrence calculus under asymmetric stakes, and discussing the impact of U.S. economic statecraft as a form of coercive diplomacy.

The response to the 2014 Ukrainian crisis was based on Obama's grand strategy, particularly his view of U.S. national interests, his approach to the use of force, and his commitment to multilateralism.

Under the Obama presidency, the center of gravity of U.S. foreign policy pivoted towards the Asia-Pacific. Under this strategy, engaging with Asian countries was a primary way to address existential threats against the United States: pandemics, cyber threats, poverty, and most importantly climate change.¹ The

relationship with Russia, though important, came only second to those goals.² The “Russia reset”³ undertaken under Medvedev’s presidency had aimed to foster greater cooperation with Russia, mostly on nuclear arms control, through the New START Treaty in 2011. The effort also brought talks on non-proliferation in Iran and North Korea, Russian acquiescence to a humanitarian intervention in Libya, and support to peace operations in Afghanistan. It allowed for Russian cooperation over the destruction of Assad’s chemical arsenal.⁴ Yet the relationship remained mostly transactional, falling short of the ambitious partnership George H. Bush had envisioned immediately after the Cold War.⁵ In 2008, George W. Bush decided not to stop the Russian offensive in Georgia, setting a precedent. It must be noted that Ukraine (like Georgia, but unlike the Baltic States) is not a NATO ally, despite having signed a partnership agreement in 1997 and launched talks for full membership in 2005. Thus, the impetus to intervene in the post-Soviet periphery, a space less relevant to U.S. interests, for a country that is not a treaty ally, was lacking for the Obama administration.

Obama’s approach to Ukraine exhibited restraint in the use of force, as part of an attempt to reduce U.S. military “over-extension.” The Obama administration did provide significant security assistance to Ukraine, in addition to economic aid (\$112 million in humanitarian assistance and \$2 billion in loan guarantees). From 2014 to 2016, the U.S. government extended to Ukraine a bilateral security assistance package of over \$600 million, including training of military forces, equipment, and advisers for key defense reforms.⁶ In the Spring of 2015 alone, \$120 million were committed in military assistance, as well as 230 Humvees and \$75 million worth of equipment including UAVs, counter-mortar radars, night vision devices, and medical supplies.⁷ Yet, despite Ukrainian President Poroshenko’s pleas in his 18th of September, 2014 address to Congress, the U.S. government did not provide lethal aid. The decision was consistent with the Obama administration’s motto of using force selectively, and only when it unambiguously promoted U.S. interests.⁸ Crimea did not pass that test. Obama had personally expressed his concern at “forever wars,” in a 2002 Chicago anti-Iraq War rally. Afghanistan and Iraq, legacies of the Bush administration, were treated as cases in point of U.S. military “overextension,” conflicts in which the U.S. failed to fulfil its objectives, lost many men and much credibility, and ended up sapping

its own power.⁹ Instead, the Obama administration favored a “light footprint” approach.

Another feature of the Obama administration’s strategy, which the Ukraine decision exemplified, is its emphasis on cooperation and international norms. A major concern was that any military engagement with Russia would fail to garner the support of European allies, thus jeopardizing joint U.S.-EU economic sanctions or other courses of action. Germany, the key decision-maker in the EU, was staunchly opposed to the use of military force. This attitude had further sedimented after the 2003 War in Iraq, with politicians across the spectrum wishing for Germany to be a *Friedensmacht*, a “force for peace”—in contrast to the unwavering support to the U.S. which had prevailed in the 1990s.¹⁰ Even economic sanctions were a feat of multilateral cooperation, given that EU-Russia trade volumes, including gas imports and engineering exports, are fifteen times greater than U.S.-Russia trade.¹¹ The deal was built in large part on the notion that territorial integrity, the first of international norms, must be upheld. In her visit to Washington D.C. on the 10th of February, 2015, Angela Merkel claimed: “if we give up the principle of territorial integrity, we will not be able to maintain peaceful order in Europe.”¹² The Obama administration would have been particularly amenable to the defense of international law, as Obama’s 2015 speech to the U.N. assembly shows: “unless we work with other nations under the mantle of international norms, we will not succeed.”¹³

The 2014 Ukraine decision also speaks to the Obama administration’s deterrence calculus, based on a spiral model in a context of asymmetric stakes.

The Obama administration refrained from using force in Ukraine out of a concern for escalation, in a reasoning borrowed from the “spiral model.”

The assumption was that lending lethal aid to Ukraine would lead to an escalation of reprisals and counteractions between the U.S. and Russia, culminating in a destructive outcome neither party wanted. The crux of the model is the uncertainty of war: unpredictable circumstances may lead events to spiral out of the control of rational actors.¹⁴ Here, the major risk is that the adversary, i.e. Russia, might behave in erratic and unpredictable ways. On March 26th, 2014, in Brus-

sels, Obama declared: “The United States and NATO do not seek any conflict with Russia (...) Now is not the time for bluster.”¹⁵ (The Guardian, 2014) This interpretation of the deterrence balance was heavily criticized. House Intelligence Committee Chairman Mike Rogers claimed: “Putin is playing chess and I think we are playing marbles.”¹⁶ Other Republican figures in Congress, from Newt Gingrich to Jim Inhofe to John Boehner, expressed similar views. The Chairman of the Joint Chiefs of Staff General Dempsey claimed in March 2015 that Washington should consider arming Ukraine, reflecting the U.S. military support for a deterrence model, throughout the Crimean crisis.¹⁷ It is rumored that Secretary of State Kerry himself was in favor of lethal aid.¹⁸ Yet Obama ultimately remained unmoved, as he subscribed to Walt’s view that declining power like Russia was more likely to be on the defensive, and its reaction to an aggressive military response was likely to be driven by paranoia.¹⁹ In this context, the most rational choice was to mitigate fear and reassure adversaries of benign intents, hence the choice to limit aid to Ukraine to non-lethal matériel.

Some have argued that deterrence was made inefficient because of Obama’s overtly rational and prudent leadership. Perception of the adversary’s intentions is paramount in foreign policy game theory and it is largely borne by heads of state.²⁰ In the Crimea crisis, Obama’s cautious decision-making was deemed detrimental to the advancement of U.S. interests, because it removed the uncertainty from the bilateral relationship, making it costless for Russia to provoke the U.S.. Obama underscored it in an interview with Goldberg in 2016: “He [Obama] doesn’t maybe react in ways that might cause people to think, Wow, this guy might be a little crazy.”²¹ According to the detractors of the Obama doctrine, the Kremlin could rest assured that the United States would react with a sense of measure proportional to its interests no matter the circumstances—and would therefore never inflict significant damage. This unambiguous and rational leadership style made U.S. deterrence ineffective, according to Obama’s detractors.

Others have mistakenly blamed the lack of credibility of U.S. threats on the Syrian “red line” episode. On August 20, 2012, Obama claimed that “seeing a whole bunch of chemical weapons moving around or being utilized [...] would

change my calculus.”²² A year later, in August 2013, the Syrian government was accused of using toxic gases in attacks in Eastern Ghouta and the Moudamiy at al-Cham suburb of Damascus. Yet instead of striking the Assad regime (which his constitutional powers allowed him to do), Obama delegated the decision to Congress. In so doing, his some claim he set the motion up for failure, betraying his pledge and damaging U.S. credibility. Hillary Clinton, among others, is reputed to have claimed, “If you say you’re going to strike you have to strike.”²³ A strict reading of deterrence mechanics that the lack of “red line” enforcement in Syria implicitly “allowed” Russia to aggress Ukraine. However, this is disputable for three reasons. First, one could argue that the threat that the U.S. might launch airstrikes was, in fact, credible after the 2013 attacks, and that it concurred to the disarmament of Syria’s chemical arsenal.²⁴ Second, there is no evidence that “America’s resolve in one context will give it greater credibility everywhere.”²⁵ North Korea and Vietnam are examples of unsuccessful attempts at bolstering U.S. credibility versus the U.S.S.R. Because reputation for resolve is in the eye of the adversary,²⁶ there is every reason to think that American credibility was perceived very differently by Assad and by Putin. Finally, one might argue, with Drezner (2013), credibility may not matter as much as the national interests at stake for adversaries, and those stakes were profoundly asymmetric.²⁷

In fact, deterrence is ineffective whenever stakes are clearly asymmetric, as they were in Ukraine for the United States and Russia. As Obama put it: “People respond based on what their imperatives are, and if it’s really important to somebody, and it’s not that important to us, they know that, and we know that.”²⁸ As Schelling argues, asymmetric stakes strengthen the bargaining position, not of the “more potent” actor, but of the “more desperate.”²⁹ Yet the U.S. has much small stakes in making Ukraine a fully independent, Western-facing country than Russia has in controlling Ukraine. The unique interest Russia has in Ukraine is centuries old, multi-faceted, and beyond the scope of this paper. Let us only mention that Ukraine has been strongly tied to Russia, at least since the times of Kyivian Rus, which encompassed a large part of today’s Western Russia from the ninth to the thirteenth century. It was home to 8.3 million self-declared “ethnic Russians,” or 22 percent of the country’s population, as per the latest census in 2001.³⁰ Ukraine is a keystone interconnector between Russia and Eu-

rope, particularly from a geostrategic standpoint— as demonstrated by the fact that the Druzhba pipeline network, which supplied Western Europe in Russia and Kazakh gas, runs through Ukraine. The Crimean peninsula, in particular, provides much-desired access to the warm waters of the Black Sea. As a result, “losing” Ukraine was one of the most traumatic consequences of the fall of the USSR for Russian patriots. After the 2004 Orange Revolution, the Kremlin defended these interests by exerting all types of pressure: manipulation of political candidates,³¹ blackmailing using gas supplies,³² cyberattacks.³³ Thus, independently of the U.S. governments’ leadership, reputation or credibility, the disproportion in the interests at stake would have favored Russia in a game of deterrence.

Given that military involvement in Ukraine would have detracted from strategic priorities, and was deemed unproductive, economic sanctions stood out as a more adequate response. On March 6, 2014, the U.S. imposed travel bans and the freezing of assets for individuals believed to have undermined Ukraine’s stability, misappropriated Ukrainian assets, or conducted business in occupied Crimea. Canada and the EU followed suit on the 17th of March, the day the annexation of Crimea was signed by Putin. On the 24th of March, the Group of Eight summit scheduled in Sochi was canceled, and Russia’s membership in the group was suspended. On the 10th of April, a second round of measures prohibited seven high-profile Russian businessmen, including the chairman of oil-producer Rosneft, and seventeen Russian companies, from doing business with the U.S. In July, in response to the escalation in Donbass, a third round of U.S. measures extended a transaction ban to Rosneft, Novatek, Gazprombank and Vnesheconombank, while the EU introduced an embargo on imports and exports of arms and dual-use goods, restrictions on exports to the oil industry and on financial transactions.³⁴

The set of economic measures against Russia were one of the Obama administration’s most notable displays of U.S. economic statecraft, and it succeeded in weakening the Russian economy. The measures included sanctions that restricted access to Western financial markets and services for designated Russian companies (mostly financial, energy and defense). They also featured two more innovative restrictions on U.S. trade to Russia: on exports of high-tech-

nology oil exploration and production equipment, and on exports of designated military and dual-use goods. The targeting of Rosneft and Gazprom demonstrated a trend in U.S. economic statecraft, i.e. “direct engagement with (...) non-U.S. non-financial companies, such as energy and high-tech companies.”³⁵ Combined with a drop in oil prices, the measures inflicted significant and lasting damage to the Russian economy. Inflation jumped from 6.5 percent in 2013 to 11.4 percent in 2014, the highest figure since the 2008 financial crisis.³⁶ The value of Russian foreign trade fell by 30 percent in the first two months of 2015 alone. The tumbling of the ruble from \$0.03 to \$0.015 by December 2014 precipitated a financial crisis. Russia entered a recession with a -2.2 percent GDP slump in the first quarter of 2015,³⁷ and remained in a recession until the end of 2016.

As a display of coercive diplomacy however, the measures failed to achieve the stated policy objectives of U.S. negotiators. The U.S. response to the annexation of Crimea was clearly a diplomatic endeavor. The process fulfilled functions of representation and communication.³⁸ Kerry, then Secretary of State, represented the U.S. and its European allies, while his homologue Lavrov represented Russia. A dialogue took place via a series of addresses, communications, mediatized phone calls and meetings. Meetings often occurred in multilateral venues, such as the International Support Group for Lebanon on March 5th in Paris, or the consultation of the Trilateral Contact Group on the 5th of September, in Minsk (the latter with OSCE participation). As shown by Nye, diplomacy does not preclude coercion, and the strategy was an exercise of economic “hard power” by the U.S. and its allies.³⁹ In this case, coercive diplomacy did not succeed in securing the two main U.S. demands, i.e. that Russian troops pull back from Crimea, and that a ceasefire be imposed in Donbass (with border monitoring by the OSCE). The U.S. strategy failed to exhibit any of the patterns for successful coercive diplomacy outlined by Art.⁴⁰ First, the economic sanctions did not include any positive inducements: there was nothing to gain for Russia in pulling back from Crimea or Donbass. The Western diplomatic effort focused solely on the “cost” side of the cost-benefit calculus. Yet, echoing Art’s second case for success, these costs were outweighed by disproportionate benefits for Russia in keeping Ukraine within its orbit, making the West’s demands unreasonable. The third case for success, according to Art, consists in building denial capability. Yet,

as discussed above, the U.S. abstained from such demonstration by refusing to lend lethal aid to Ukraine. One could further argue that, as the leader of a hybrid, semi-autocratic regime, Putin is not directly answerable to the economic woes of its population, which limits domestic backlash. Thus, the coercive diplomatic approach, limited to economic statecraft, did not achieve its stated objectives.

Ultimately, the efficacy of U.S. response should be assessed in the light of a new type of U.S.-Russia competition. In a 2016 interview with Goldberg, Obama argued: “Real power means you can get what you want without having to exert violence. Russia was much more powerful when Ukraine looked like an independent country but was a kleptocracy that he could pull the strings on.”⁴¹

The Obama administration’s response to the Crimea crisis construed Russia as a regional power desperately clinging to its shrinking sphere of influence. To this extent, the annexation of Crimea was a necessary but temporary victory for the Kremlin. Indeed, Ukraine has moved away from Russia at a speed few would have predicted before the 2004 Orange Revolution, culminating in the annexation of Crimea. In 2019, 53 percent of Ukrainians wished for EU inclusion (versus just 46 percent in December 2011).⁴² Also 53 percent, a first-time majority, supported Ukraine’s accession to NATO in June 2019, versus 34 percent in March 2014.⁴³ This would suggest that the Western part of the former Soviet empire is irretrievably slipping out of Putin’s hands. If this analysis holds true, the annexation of Crimea did not greatly hurt U.S. interests, to the extent that it did not threaten stability in Western Europe, and even accelerated Ukrainian opinion’s shift in favor of NATO. On the other hand, however, Russia has demonstrated unprecedented influence in international politics since 2014, with its rapid deployment in Syria in 2015, numerous cyberattacks against Western states, and intervention in the 2016 American presidential election. Yet Kathryn Stoner characterizes this renewal of Russian influence as that of a disruptor of international relations, rather than that of a great power.⁴⁴ If so, one could argue that Russia and the United States were plainly not playing the same game over the Ukraine crisis. In the words of David Baldwin: “Obama played bridge, Putin played poker.”⁴⁵ The 2014 Ukrainian episode may not have a clear winner, but it does testify to the transformation of great power competition between Russia and the United States.

Obama's decision not to lend lethal aid to Ukraine in 2014 was based on the analysis that (i) Ukraine was not a primary theater of U.S. national interests, that (ii) whatever interests the U.S. may have in containing Russia could not be effectively defended in Ukraine, and that (iii) sanctions would achieve more by weakening Russia's economy. Five years later, some, such as Ambassador Taylor, argue that economic statecraft have achieved their goals, and that the Kremlin would be willing to negotiate pulling out of Donbass in exchange for a relief of economic pressure, if given a chance.⁴⁶ Though that point remains unclear, the broader conclusions from 2014 are compelling: the Crimean crisis has opened a new chapter in international politics, one in which the United States and Russia compete fiercely, each in a game of their own.

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China's Role In Regional Integration of Africa: The Case of East African Community

By Samu Ngwenya and Abdou Rahim Lema

Introduction

Since the independence of African states, regional integration has been widely regarded as vital for facilitating economic development in Africa. However, evidence on the ground suggests this process has been constrained by internal weaknesses and fragmentations, stemming from Africa's diverse political, economic, social, and cultural attributes. Yet, the emergence of new actors in the continent's economic landscape -namely, its 'special' partnership with China - seems to be offering African leaders and development practitioners a new opportunity to consider how regional integration can be achieved.

Importantly, regional economic communities (RECs) have become the building blocks in advancing sustainable development in Africa under the aegis of the African Union (AU). One of the pillars enshrined in the mandate of the AU is to assist nations to realize their potential through sub-regional integrations. As such, it is important to consider the extent to which RECs are able to incorporate their regional integration agendas into common positions and build response mechanisms in their interactions with the surging number of external players, including China, the European Union (EU), the United States, and India, among others.

Striving to meet these challenges, the East African Community (EAC) has intensi-

fied its efforts to accelerate its political and economic integration in the region. Since its revival in 2000, the EAC has made considerable progress in its integration efforts.¹ The ultimate objective of such integration efforts is the establishment of a single market characterized by internal free trade, a monetary union, and eventually a political federation.² The bloc has consistently identified enhancing trade, as well as improving and expanding regional infrastructure, as priority areas to achieve optimal integration.

As Africa's leading trade partner and a key contributor to its infrastructure development, China has been active in East Africa through trade, infrastructure financing, and construction. Despite this involvement and a growing canon of literature dealing with various aspects of China-Africa relations, not much attention has been paid to the role China plays in Africa's region-building. To close this gap in the extant literature, this paper specifically looks at China's approach to infrastructure (both hard and soft) development in the EAC and analyzes China's trade policies towards the Community. We focus on these two sectors because infrastructure development and trade promotion have consistently been featured in the EAC's development strategies to date, showing their centrality in advancing integration for sustainable regional development. They are also the areas in which Beijing is most active in the bloc, given it boasts the strongest infrastructure construction capabilities in the world. More importantly, China's investment in infrastructure and stimulation with the EAC through enhanced trade is consistent with the trend of their increasing use of economic development for diplomacy and building broader regional influence. It follows a similar pattern in places such as Latin America, Southeast Asia through the Association of Southeast Asian Nations (ASEAN), and East Asia. Although these broader trends fall outside of the scope of this paper, it is important context for considering China's motivations and how the EAC should approach the relationship.

This paper argues that though China's active role in infrastructure development has the potential to help the EAC overcome some of its regional integration challenges, Beijing's trade practices could be a stumbling block. China's trade practices in the region, coupled with the bloc's inability to adopt a unified trade policy toward the Asian giant could effectively derail the EAC's integration mo-

mentum. Using the EAC as a case study, the analysis helps close the gap in the extant literature on China's role in Africa's region-building efforts. The research also furthers our understanding of China's role in the EAC's integration efforts, an understanding that could better inform policy decisions.

The remainder of the paper is divided into three main sections. The first section briefly provides a background on the EAC, its evolution as a regional body, and its economic and trade strategies. The second section looks at China's infrastructure investments in and trade policies toward the EAC. It also examines the implications of China's actions in these sectors on the EAC's integration efforts. The last section wraps up the analyses and provides some recommendations on how the EAC could capitalize on China's presence to accelerate its integration process. These analyses allow us to gain a deeper understanding of China's role in EAC's integration efforts and, by extension, they may also help us better understand China's potential role in region-building in the African continent.

The East African Community: An Overview

After many failed attempts at establishing a regional bloc, the East African Community (EAC) was reborn on July 7, 2000, following the ratification of East African Community Treaty.³ The founding partner states included Tanzania, Kenya, and Uganda.⁴ Burundi and Rwanda joined the bloc in 2017 as the EAC was consolidating its governance mechanisms and structures as well as policy implementations. Five years after its independence, South Sudan joined the regional body in 2016, completing the EAC's membership list.

With more than 195 million people, the population of the EAC exceeds the entire population of the nine countries of Western Europe that includes Germany, France, the Netherlands, Belgium, Austria, Switzerland, Luxemburg, Monaco, and Liechtenstein.⁵ Moreover, the EAC is not just the fastest integrating regional bloc in Africa but also the fastest growing regional economy of the continent with a GDP growth at about 6 percent in 2019 from an estimated 5.7 percent in 2018.⁶ Regarding integration, a 2014 report by the African Development Bank (AfDB) states that the EAC has made the most linear progress toward economic union

and shown the highest ambition of any other REC in Africa.⁷ Likewise, the AfDB's 2019 African Economic Outlook concludes that "The East African Community (EAC) Common Market Protocol is one of the most ambitious globally."⁸ The ultimate aim of the EAC's integration efforts is to create a common currency, which will eventually be followed by a political federation (see Figure 2, which shows a comparison of the EAC's integration goals to those of other RECs in Africa). These efforts to date have culminated in the establishment of a customs union in 2004, the launch of a common market for goods, labor, and capital in 2010, and the adoption of a protocol in 2013 to launch a monetary union by 2023.⁹

In its latest *Doing Business* report, the World Bank described how countries within the EAC made a total of 314 regulatory reforms towards improving the overall regional business climate.¹⁰ Many of these reforms were targeted towards improving accessibility of electricity, getting credit, protecting small investments, and trading across borders. These reforms are evidence of the EAC's desire to establish itself as Africa's leading regional economic hub. Moreover, looking at the indicators on trade across borders, the report found that the EAC has the second lowest time for cost to export in relation to border compliance at the regional level, after the Middle East and North Africa (MENA). More specifically, in comparison to MENA (\$442.40), Sub-Saharan African (\$605.80), and the Southern African Development Community (\$654), the EAC has one of the lowest average cost to export in relation to border compliance with \$427.80.¹¹

In their dealings with external players such as China, RECs in Africa are striving to harmonize national infrastructure investment and trade plans within a regional framework, which leads to economies of scale and translates into more affordable prices for businesses and consumers. This brings down production costs and makes Africa more competitive internationally. Regional power pools can create continental energy markets with coordinated supply systems and intra-trade could accelerate integration and development efforts across the continent. This is exactly what the EAC is trying to achieve in its efforts to involve Beijing.

China and the EAC's Integration Efforts

China has a long history of interaction with the East African region, but that interaction largely took place through individual government relations. And though Beijing has publicly stated its support for Africa's region-building efforts, it was only in November 2017 that the Asian giant accredited its envoy to the EAC in order to accelerate a cooperative relationship between the two parties.¹²

This section examines China's role in the EAC's integration efforts. More specifically, it first analyzes China's contribution to infrastructure development in the region, including Chinese financing and construction in transport, information and communications technology (ICT), and energy sectors. By so doing, the study gauges the influence of these infrastructure projects on the EAC's regional integration agenda. Moreover, the analysis covers Beijing's trade policies toward the bloc and how they influence its integration efforts.

China in the EAC's Infrastructure Development: A Promising Marriage

China has been playing a prominent role in infrastructure developments in the EAC, with its enablement of Chinese construction companies to put their expertise to test and gain access to new markets, while at the same time helping the region reduce its staggering infrastructure deficit.¹³ China's activeness in the region's infrastructure development, however, gained even greater momentum with the launch of what has become the Belt and Road Initiative (BRI)—a flagship of China's global ambition. The BRI has played a facilitating role in the cooperative efforts between EAC partner states over regional infrastructure developments and the Chinese financing and construction of mega-projects.¹⁴ Furthermore, just like in other sectors, it has provided a significant boost to the EAC's efforts to construct new railways and improve the efficiency of the already existing transport corridors in the region.

In that regard, to assert that the EAC is under construction is to state the obvious, as the regional bloc has come to realize the important role infrastructure plays in allowing countries to achieve their national development objectives and regional integration. In their report on infrastructure development in Africa, Edinger

and Labuschagne (2018) pinpoint that the EAC is a rising regional star, with partner states in the bloc intensifying their efforts to upgrade and expand their infrastructure. Interestingly, the majority of the identified projects (84.2 percent) are government-owned, indicating the important role played by East African governments as facilitators of infrastructure development through national and regional development policy plans.¹⁵ These efforts are well in line with the regional policy plans anchored in the EAC's Vision 2050 that calls for the bloc to promote inclusive and sustainable development through improved regional integration.¹⁶

For its part, China has become a leading player across Africa in infrastructure development, including in the EAC, both as a prominent financier and a leading contractor. Beijing signed a Framework Agreement with the EAC in November 2011 to focus on promoting, among other things, co-operation in investment and infrastructure development in the region.¹⁷ During the signing ceremony, the then EAC Secretary General Richard Sezibera observed that the “EAC requires approximately US 80 billion dollars in infrastructural investments for the period up to 2018. This investment for sure will not be raised within this region and we are, therefore, extending a hand of friendship to Chinese investors to work with us and take advantage of the huge potential for investment.”¹⁸ The emphasis on investment in infrastructure projects should not be surprising because it is a sector in which both the EAC and China have great interest.

Not only has productive infrastructure proven crucial in developing countries' attempts at industrialization and, more essentially, diversification, it is also the motor for inclusive economic development, poverty alleviation, and regional integration. Investment in infrastructure—especially connective infrastructure projects—plays a significant role in boosting business confidence and fostering innovation and productivity.¹⁹ Similarly, investment in infrastructure also helps lower transaction costs, making it easier for companies to move labor and products, as well as provide quality services.²⁰

According to Edinger and Labuschagne (2018), foreign direct investment (FDI) also tends to increase with the development of infrastructure, which provides a breeding ground for facilities the transfer of skills, technical know-how, and

best practices between foreign and domestic companies. However, while only 12.9 percent of projects in the region in 2018 were funded by East African governments, China's infrastructure finances in the region stood at 25.9 percent, illustrating the significant role China has been playing in infrastructure development in the regional bloc.²¹ But China's mounting position as a key infrastructure financier and a leading contractor is not limited to just the EAC region: the story is similar all across the African continent. In 2018 alone, for instance, it financed nearly one in five infrastructure projects across the continent while also undertaking the construction of over half of all the projects.²² But if China has effectively established itself as a leader in Africa's infrastructure development efforts, its focus has been dominated by the transport sector. Remarkably, 38.6 percent of the Chinese-financed infrastructure projects in Africa aim at improving transportation networks.

A similar development has been unfolding in the EAC. In their report, Edinger and Labuschagne (2018) show that investment in connective infrastructure continues to dominate the overall infrastructure development efforts in the wider East African region.²³ The transport sector accounts for 45.3 percent of all projects in the region and takes 26.6 percent of the finances, in terms of U.S. dollar value. By comparison, the closest second is energy and power projects, accounting for a significantly lower share at only 18.0 percent and 21.1 percent in value terms.²⁴

Despite the gap, however, there is a compelling rationale for transport, energy and power sectors to dominate in infrastructure development projects in the region. Plainly put:

“The focus on these sectors reflects the fact that a well-developed transport network as well as reliable energy supply and access are integral to the East African Community's (EAC) Development Strategy. Completion of Kenya's US\$3.2bn Nairobi-Mombasa rail line – built and funded by Chinese construction companies and financiers respectively – marks the completion of the first phase of the intra-regional railway line that will eventually extend to Uganda, Rwanda, South Sudan... Regional projects such as these demonstrate a shift towards trade enabling infrastructure that aims to spur intra-Africa trade and integration. Furthermore, alignment through regional projects allows African economies – particularly small-

er economies – to participate in collective bargaining, making it easier for them to secure funding for infrastructure projects.”²⁵

Thus, it is safe to make the case that China’s investments in infrastructure play a significant role in helping the EAC’s partner states reduce their infrastructure deficit individually and collectively. The investments also boost the EAC’s regional connectivity as well as integration efforts. For this reason, China’s mounting role in the EAC’s regional infrastructure development (see Table 1 for some of these major infrastructure projects) should be seen as positive, potentially enhancing cross-border mobility of labor, capital, and products in the region and foster intra-regional trade. Therefore, where infrastructure development in the EAC is concerned, Beijing contributes positively to the integration process through connective finances and enabling trade across the region and far beyond.

Table 1. Summary Table of Select Major Chinese Infrastructure Projects in the EAC

Location	Project Description	Estimated Costs (USD) & Status
TRANSPORT		
Kenya	Nairobi-Mombasa 472 kilometer Standard Gauge Railway	3.2 billion, Complete
	Nairobi-Naivasha Rail Line	1.5 billion, Ongoing
Tanzania	Bagamoyo Port Construction and Special Economic Zone	10 billion, Delayed
South Sudan	Juba International Airport Renovations	160 million, Complete
ENERGY		
Uganda	Karuma Hydropower Dam	1.7 billion, Complete
Kenya	Lake Turkana Wind Power Station	858 million, Complete
	Loiyangalani-Suswa 400 Kilovolt Transmission Line Project	271 million, Complete
Burundi	Chinese-aid-to-Burundi International Hydroelectric Dam	70 million, Ongoing
INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)		
Tanzania	10,674 kilometer national fiber optic backbone	170 million, Ongoing
Uganda	E-Government Network System	106 million, Ongoing
Rwanda	Electronic World Trade Platform	Unknown Cost, Ongoing

Transportation Sector

Thanks in large part to the Chinese investments and expertise, the EAC partner states have been able to undertake the construction of some major mega-infrastructure projects in the transport sector. As Mathieson (2016)'s report correctly pinpoints, transport infrastructure has become a leading priority for the regional bloc. These efforts are geared towards more cooperation over reducing non-tariff barriers, the construction of railways, and improving port efficiency in the EAC. The ultimate objective of closing the infrastructure deficit in the region is to boost trade and connectivity in the region and far beyond.

Under the latest EAC Development Strategy, for instance, the modes of transportation identified as focal development areas include the expansion of road and railway networks, sea and lake ports, and air transportation. The EAC adopted what is known as the Railway Master Plan designed to rejuvenate the railway industry across the region, instituting standardization with the Standard Gauge Railway (SGR), and expanding the railway network in order to help achieve timely and efficient transportation of long-distance freight.²⁶ Given that only two EAC partner states (Tanzania and Kenya) have direct access to the sea, strengthening railway networks is more than just strategic; it is also an effort to enhance trade connectivity with landlocked partner states. The Railway Master Plan identifies the Northern and the Central corridors as central to maximizing regional connectivity for the EAC.

In this regional effort to bolster railway connectivity, China has emerged as the primary investor for the Northern corridor. Furthermore, it is important to note that China is no stranger to supporting railway projects in this specific region, having pioneered the Tanzania-Zambia railway in 1976. In May 2017, the Chinese-financed 472-kilometer-long SGR connecting Mombasa, where Kenya's largest port is located, to Nairobi opened ahead of schedule.²⁷ Chinese investment, made through its Exim Bank, financed more than 80 percent of the total cost of the railway development. To demonstrate the impact this railway has, Pfeiffer (2017) described how the Mombasa-Nairobi railway line decreased traveling time by exactly a half from initially nine hours to four and half hours. Furthermore, it

is projected that shipping via freight would increase from only four percent to 40 percent by the year 2025.²⁶ President Kenyatta also secured additional funding from China to extend the railway line westward to Naivasha. The construction of the project is undertaken by China Road and Bridge Corporation (CRBC) and financed by Exim Bank of China.²⁹ The expansion plans are a backdrop to a larger and more ambitious plan in the wider East Africa aimed at extending the railway line to connect land-locked South Sudan, eastern Democratic Republic of Congo, Rwanda, Burundi, and eventually Ethiopia, which will then directly connect with Djibouti giving it direct access to the Indian Ocean.³⁰ Indeed, this ambitious regional expansion is not only a means of advancing the goal of the EAC integration but; it also serves as a realization of a key objective of China's BRI, as seen in other global regions in Central East Asia with the Angren-Pap Railway line in Uzbekistan and East Asia with Gwadar Port in Pakistan, just to name a few. However, Kenya is currently facing hurdles in the sense that countries like Uganda and Rwanda are now dithering on their commitment towards the railway expansion directly through their territories. One could argue that there has been an overreliance on Chinese financing, which has also raised a sense of doubt over the regions' capability to finance this mega infrastructure project. Moreover, the extent to which China has been readily willing to invest in the railway sector within the EAC should be analyzed more in-depth. For example, it was reported that in 2018 China denied Uganda's \$2.3 billion loan request that was meant to fund its own phase of the SGR regional efforts. In 2019, Uganda resubmitted the loan request with additional information and additional links to other ports not mentioned in the first request.³¹ But The East African reported in early March 2020 that this latest request was also rejected, though negotiations are believed to be ongoing.³² Therefore, one should be critical of the actual role China is playing in assisting the EAC achieve its goals set in the Railway Master Plan.

Another area to consider is port development. Once again, China has been actively involved in developing ports in both Kenya and Tanzania, both of which are seen as the central players for regional connectivity in the EAC. For instance, with the construction of the Lamu Special Economic Zone through the China Merchants Port Group Company Limited (CMPort), Kenya aims to position itself as a regional hub of global standard ports.³³ Tanzania, on the other hand, has

faced immense setbacks with the proposed Bagamoyo Port and Special Economic Zone, estimated at \$10 billion, stalled for the past seven years over issues on reaching mutually beneficial terms also known as “win-win cooperation.”³⁴ This demonstrates that collaborative efforts towards achieving the EAC’s regional integration by strengthening transportation and infrastructural development have not always been without challenges.

Information and Communications Technology

In order to further the mandate of creating EAC into the regional innovative hub of Africa, the bloc has been guided by the EAC Protocol for Information and Communications Technology (ICT) for all ICT infrastructure and policy-related developments. Thus far, the EAC has managed to establish the EAC Framework that has seen a cross-border broadband internet-connections network setup.³⁵ Furthermore, the regional body has adopted the EAC Road Map for broadcast migration.³⁶ The EAC partner states have leveraged China’s pivotal role in this new digital era, especially with Beijing being a pioneer of the 5G revolution.

China’s role in the regional development of communications infrastructure illustrates how this form of infrastructure development can be used as a means to further regional integration. In Tanzania, the government signed a reported \$170 million contract in 2009 with a Chinese vendor to lay the country’s 10,674 kilometer national fiber optic backbone. The second phase has been financed by a \$100 million concessional loan of the Exim Bank of China.³⁷ It has been reported that the completion of the first phase closed a significant gap in the East African fiber ring, connecting to the SEACOM, TEAMS and EASSy submarine cables and running from Kenya through Uganda, Rwanda and Burundi to Dar-es-Salaam, Tanzania.³⁸ A similar investment was also made in Uganda, whereby implemented telecommunications projects, connecting all Ugandan ministries to an e-government network, establishing a government data center, and connecting 28 Ugandan districts to the national ICT backbone.^[39] Developing the ICT infrastructure among the EAC countries helps set up network systems that can be accessed and used across the borders to facilitate more efficient communication and exchanges, which would in turn attract more investors and promote innovation and competitiveness.

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Energy Sector

The EAC has recognized the need to bolster its energy sector and has set up policy mechanisms to address this need. From a regional perspective, the EAC has been reported as having the lowest per capita power generation and electricity generation across the African continent.⁴⁰ Other than low energy generation, the region also struggles with low coverage and higher tariff costs. Through the EAC Power Master Plan, it has articulated the need to establish a Regional Power Market that will guarantee the advancement of a regional energy framework, including the EAC Cross-Border Electrification Policy. Working with stakeholders such as the Eastern Africa Power Pool (EAPP) and the United Nations Community for Africa, the EAC is making collaborative efforts in improving the energy generation in the region.⁴¹ China has also emerged as a collaborator in furthering the EAC's energy generation goals.

According to a study, a total of 28 Chinese-backed power generation projects would have been either planned, under construction, or completed in East Africa between 2010 and 2020.⁴² This represents over a quarter (29 percent) of the total Chinese-backed power projects in sub-Saharan Africa. Furthermore, a total of 21 Chinese-backed transmission and distribution line projects are either planned, under construction, or completed in East Africa. This represents 43 percent of all Chinese-backed transmission and distribution line projects in Sub-Saharan Africa.⁴³ Among the highest countries receiving Chinese added capacity power projects between 2014 and 2024, EAC has representation with Uganda being the 4th largest receiver after Zambia, Nigeria, and Angola.⁴⁴ This demonstrates China's active role in East Africa's energy sector. Furthermore, the OECD (2016) re-

port elaborated on how these Chinese projects correspond to greater economic growth in East Africa and Southern Africa. There is also a wider mix of technologies from Chinese projects, including in non-hydro power renewables, in the Eastern and Southern regions. China's infrastructure investments in the EAC, therefore, can be seen as directly helping address the staggering infrastructure gaps that are preventing the region from unlocking its latent growth potential. In Uganda, Chinese investment through the Sinohydro Corporation and a loan from Exim Bank of China has allowed the construction of the Karuma hydropower dam, which was set to increase Uganda's total electricity generation capacity to 55.5 percent by the end of 2019.⁴⁵ Kenya has also made strides in its energy development through PowerChina's construction in Lake Turkana Wind Power Station and the Loiyangalani–Suswa 400 kilovolt Transmission Line Project.⁴⁶

From these analyses, it is evident how China's prominent role in infrastructure development has "...enabled EAC member states to start to realize their shared interest in pursuing an ambitious infrastructure development agenda to address the infrastructure deficit throughout the region."⁴⁷ However, it is worth noting that China's involvement in these projects largely takes place through bilateral agreements with partner states as opposed to engaging the EAC directly. Moving forward, China could make more effort to directly communicate with the EAC, especially since it is already playing an indirect role in the region's integration efforts with infrastructure financing and construction.

China-EAC Trade Relations: Things Falling Apart

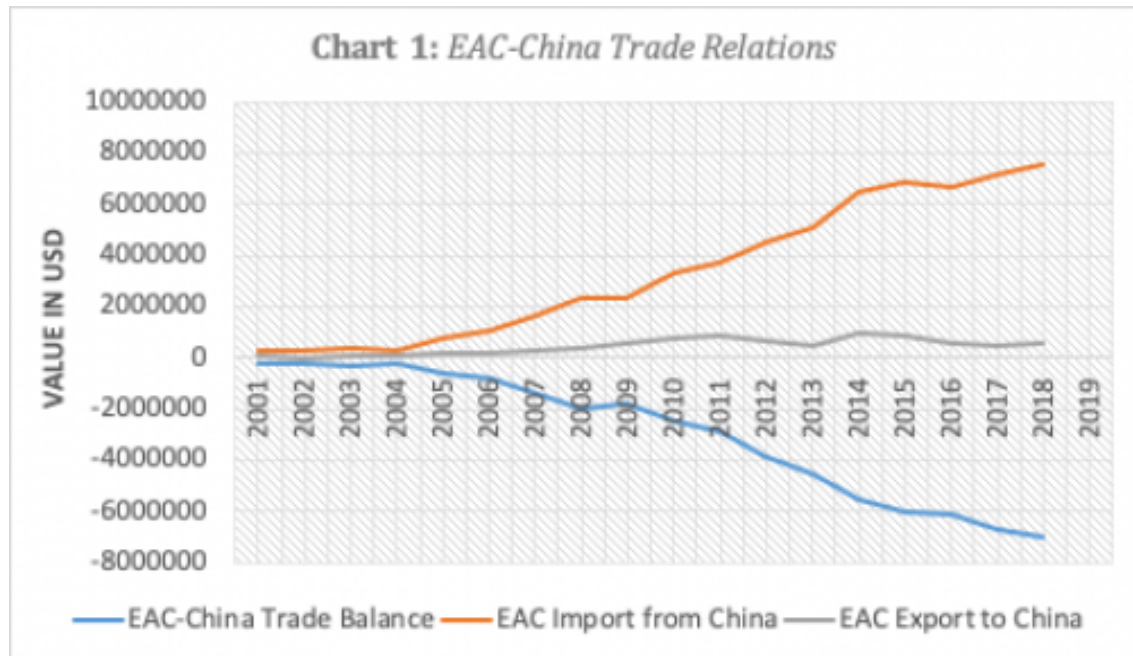
It is obvious that China's investment in infrastructure projects in the EAC plays a crucial role in enabling cross-border mobility of labor, capital, and goods. It also helps improve inland-hinterland connectivity in the region as well as the region's logistical efficiency, all of which point to China's positive contribution to the EAC's regional integration efforts. However, promoting and improving regional infrastructure development is just an element, a factor of, integration. As such, this section analyzes China's trade policies toward the regional bloc. The aim is to fathom Beijing's role, through its trade practices and relations, in the EAC's integration efforts. Since regional integration, as the EAC envisions it, is an

integrated wholeness—including infrastructure development, trade promotion, etc.—this analysis will help us better understand the overall role China plays vis-à-vis the EAC and its integration endeavors. The importance of infrastructure development cannot be overemphasized. But the need to couple that development with the right trade policies, so as to encourage positive spillovers and unlock the regional economic potential, cannot be overstated either. Hence, what role does China's trade policies toward the EAC play in the latter's integration process?

A good place to start would be to recall that Beijing does not have a clearly established and unified regional trade policy toward the EAC. Unlike China's trade involvement with the ASEAN through the ASEAN-China Free Trade Area (ACFTA) framework, its trade policies with the EAC bloc is built on bilateral relations, notwithstanding the Framework Agreement signed in 2011 that seeks to open up additional opportunities for Sino-EAC investment and trade relations. This should not be surprising because while China may openly work within the African continent through multilateral forums such as the Forum on China-Africa Cooperation (FOCAC), trade deals and investment agreements are predominantly formed on a bilateral basis.

Bilaterally, China's trade with the EAC's partner states has been on the rise since the founding of the regional bloc, partly due to the expanding market in the region, a result of its population growth and rising purchasing power. Indeed, similar to its infrastructure finances, China has become one of the largest trading partners for the EAC's partner states, both individually as well as collectively. Despite the booming economic ties between Beijing and the EAC bloc, China's role in facilitating the regional integration through trade is questionable at best and detrimental at worst.⁴⁸ China's exports to the region, just like to the whole continent, is characterized by cheap consumer and producer goods. And while these products may provide more options for consumers at affordable prices, local producers may end up losing due to competitive pressure from China.⁴⁹ The result will be recurring failed attempts at industrialization and development of home-grown industries that stifle export capacity. Indeed, as Chart 1 and 2 illustrate, the EAC's exports to China have remained somewhat stable while its imports from the country have been constantly rising. The result has been a surging

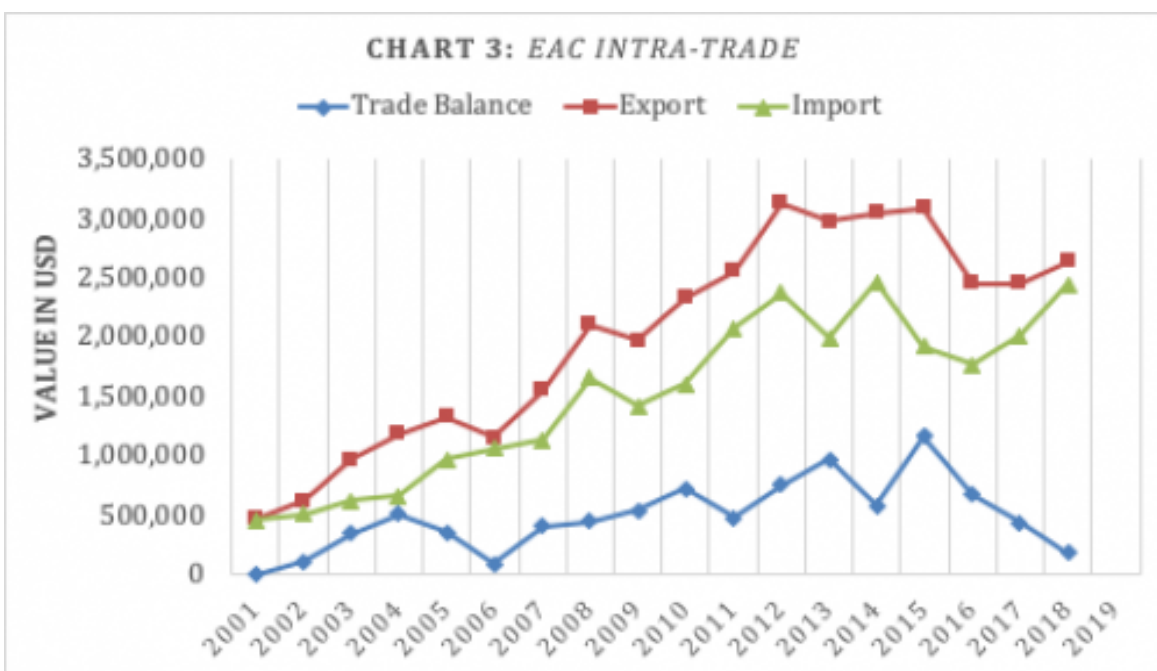
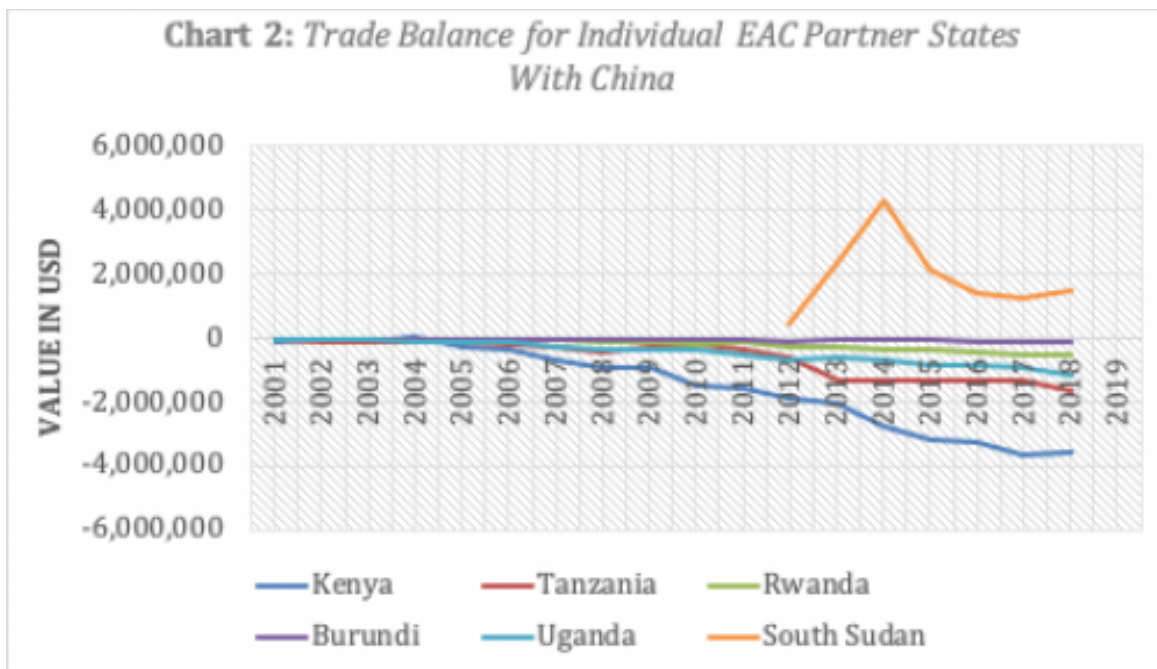
trade deficit (see Chart 1).



Even Jiang Yaoping, former Chinese Vice Minister for Commerce, recognized that China's imports from the EAC are still low, and mostly characterized by natural resources, with little to no value-added. During the signing ceremony of the Framework Agreement between the EAC and China in 2011, Jiang Yaoping acknowledged that the partnership is disproportionately skewed in favor of Beijing: "We want to turn the EAC's resource strength to industrial strength to increase the currently low trade volumes from EAC to China..."⁵⁰ But it is not just the volume of the EAC's exports to China that is an issue, it is also the nature—the type of products that are exported that is the foundation of the imbalance.

Yet, nearly a decade later, not much has changed. Thus, where regional integration through trade with Beijing is concerned, a major threat to the EAC's efforts is the limited capacity of its partner states to trade among themselves due to the aforementioned competitive pressures from Chinese products (see Chart 3, which shows how intra-trade in the EAC is still low). This has a significant risk of diverting trade efforts and, in the process, repeating the failed colonial and traditional dependency development endeavors. Indeed, as Chart 2 shows, all EAC partner states, except for South Sudan (mainly thanks to its oil reserves that China buys), are increasingly running a considerable trade deficit due to the imbalanced trade relations with Beijing. Moreover, a breakdown of the EAC's ex-

port products reveals that partner states share a number of similarities in what they produce and export to Beijing.⁵¹ Unfortunately, since there is no policy coordination for their exports, these states have to compete among themselves for market share in China. As a result, the EAC's current trade relations with China may undermine not just the former's intraregional trade, especially in the manufacturing sector—due to China's well-established competitive advantage and the economies of scale in the sector—but also its capacity to improve and diversify exports to China.



It is for this reason that Onjala (2013) argues that:

“The expanding trade between China and the regional market [EAC] provides a direct threat to the future viability of the economic integration since the process is likely to undermine many of the trading benefits envisaged in the formation of EAC integration. Besides, the competitive pressures put [the regional bloc’s] industrialization [efforts] in jeopardy.”⁵²

Yet one of the primary reasons the EAC has been pushing for further integration is to strengthen economic and trade relations among its partner states so as to promote accelerated, harmonious, and balanced development within the EAC.⁵³

Nevertheless, to better deal with these challenges, there have been discussions on establishing a free trade agreement between China and the EAC bloc. Although it is an encouraging development that Beijing wants to trade with the EAC partner states as a bloc, it is unclear how that move could help the bloc close the deficit. With the growing trade imbalance (see Chart 1 and 2), it is no wonder that those talks have not yet come to fruition. Especially Kenya, the country running the largest trade deficit with Beijing in the region (see Chart 2), has been particularly vocal in its opposition to the idea.⁵⁴ For instance, Kenya imported goods worth \$3.61 billion from China in 2018 while exporting \$104.85 million in goods to China. Given this unsustainable trade balance, Nairobi has been advocating for a preferential, non-reciprocal arrangement with Beijing to prevent a further surge in imports from China that would dampen the region’s industrialization prospects. In response to Kenya’s concerns, however, Chinese Ambassador to Kenya Wu Peng said in June 2019 that Beijing was ready to open trade talks with Kenya and the other EAC partner states. It was also reported that talks would be guided by World Trade Organization rules. These are certainly encouraging developments, and the EAC should capitalize on China’s flexibility to push for terms of trade that ensure its development and further integration, rather than its demise.

In short, China’s current trade policies toward the EAC seems to greatly threaten the region’s integration prospects by jeopardizing intraregional trade and growing their trade imbalance vis-à-vis Beijing. But emerging talks on a trade deal

between the two parties should allow the East African countries to push for more favorable trade relations including boosting their industrialization efforts as well as guaranteeing transfers of technology and technical know-how to the regional bloc.

Conclusion

The paper analyzes the role China plays in the EAC's integration process. Specifically, it examines Beijing's contribution to the infrastructure development in the bloc through Chinese financing and construction. It also analyzes China's trade policies toward the East African bloc and their influence on the region's integration endeavors. From these analyses, it is shown that while China is indirectly promoting or facilitating the EAC's integration by financing and building infrastructure projects (i.e., ports, hydro-electric power plants, telecommunications, roads and railway), its current trade policies vis-à-vis the bloc significantly threaten to derail the integration efforts.

To successfully mitigate such a blowback, the EAC and its partner states will need to adopt unified policies in dealing with Beijing, both for infrastructure development projects and trade relations. In this regard, the EAC could learn from China's relationship with ASEAN. But to succeed, the EAC should be given a more prominent role to play in coordinating relations with the Asian giant. Not only will that help streamline interactions between the two parties and foster transparency, it will also ensure cooperation and coordination within the East African bloc. Moreover, the East African regional body could also work better with Chinese financial institutions dealing with regional infrastructure development in the region to ensure more transparency and accountability in order to avoid financial burdens arising from unsustainable projects and corrupt deals.

On their part, partner states will need to think more strategically when engaging China and overcome their existing differences and rivalries, including border tensions and trade disputes, among others that have hindered their ability to effectively form relationships with external actors like China. This requires working closely together in promoting integration in the EAC and in dealing with Beijing.

It also requires formulating coherent regional policies on how best to stimulate China as a bloc, rather than individually as is the case today. If handled properly, both the regional bloc and China stand to greatly benefit from the stimulation in the region. While Beijing's participation in developing infrastructure networks has the potential to boost the EAC's integration efforts, it should not be lost that developing infrastructure across the region is only one aspect of the integration efforts. The efforts require having the right economic and social development policies in place. Where engaging Beijing through trade is concerned, the EAC will need to push for better trade relations with China. Such efforts would foster regional integration by both increasing trade capacity and diversifying export destinations. They could also allow the EAC's partner states to harmonize their trade policies toward China, focus more on their respective comparative advantage, and possibly set common prices for their identical exports products to the country.

Finally, in promoting its regional infrastructure networks, the EAC should be mindful of other equally daunting challenges such as the security and environmental implications of these projects and whether they will bring about sustainable and inclusive development for the region and all its people.

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The Backbone of India's Internet Infrastructure and Implications for Development

By Ben Polsky and Rahul Krishna

Introduction

Fiber optic cables, the coils of wire that run along the ocean floor and across land, are the most efficient tool to transmit data over long distances. Largely underground and unseen, fiber optic cables are the internet's backbone. In India, this crucial spinal column is feeble and lacks vertebrae. Despite being one of the world's fastest growing economies and a leading hub for information technology, India has comparatively underinvested in its internet infrastructure.

India presents massive potential growth for internet adoption. According to recent data, nearly 700 million users in India do not have an internet connection,¹ a figure which comprises nearly half of India's population and 20 percent of the world's unconnected citizens.² A number of global retailers, content providers, and other businesses have expanded to serve Indian markets or bought stakes in tech-enabled Indian companies. Digital mainstays such as Amazon, Facebook, and Uber have created India-specific products, signaling the importance of this market to these companies and, in turn, to the global digital economy.³

Fiber-to-home connections account for a mere 0.5 percent of broadband connections in the country.⁴ Unsurprisingly, according to the Akamai Q1 2017 State of the Internet Report, the average internet connection speed in India is 6.5 Mbit/s and the average peak connection speed is 41.4 Mbit/s. Globally, India is ranked 89th out of 149 countries/regions by average internet connection speed and 97th

by average peak connection speed. In the context of this relative under-investment, the question is whether India's economic growth can be sustained in such conditions. If not, the more crucial question is whether India's public and private sector are positioned fiscally and strategically to make the necessary investments to sustain the growth upon which India and the global economy rely.

Background

India's internet debut was the 1986 launch of the Educational Research Network (ERNET), a collaborative project between the Department of Electronics of India and the United National Development Program.⁵ This project, akin to several early projects on the internet in the United States, attempted to connect various universities and research institutions in India to share resources. Only nine years later, the internet was first made available to the public through the then state-owned entity Videsh Sanchar Nigam Limited (VSNL), one of two major state-run telecom entities at the time.⁶ The internet in India owes its early growth to VSNL as well as a number of technology evangelists who were early adopters and drivers of internet growth in the 90s.⁷

The early days of India's public internet service were rocky. The state-run VSNL had not planned for the number of users eager to access the internet, and traffic volume quickly outpaced capacity. The paltry initial investment of approximately \$400,000 jeopardized the launch.⁸ This investment was later increased to approximately \$2 million to account for the high demand.⁹ Priding itself on developing indigenous capabilities with limited foreign collaboration, India implemented an infrastructure development scheme with little input from private industry in the provision of public facilities. During this period, the country's overall teledensity¹⁰ grew by only 1.92 percent between 1948 and 1998.¹¹

The 1990s brought significant changes to telecom policy in India. The government decided to retain a monopoly for certain services such as international calling, while opening the domestic telephony services to the private sector. This move galvanized investment in infrastructure, which the government was unable or unwilling to do on its own. These trends culminated in the New Telecom

Policy of 1999 which opened the market for private companies through a licensing mechanism, creating competition for state-run telecom providers.

The private sector today has a much larger market share of internet subscribers than does the public sector, especially cellular internet.¹² Even in terms of technology, the private sector was much quicker to roll-out new protocols such as 4G compared to state-run telecom service provider BSNL, which provides cellular as well as fixed-line telephony and internet. India maintains BSNL for providing telecom services to far-flung areas and areas with low population densities which private companies could not find economically viable to service.

The new millennium saw significant progress in the adoption of the internet in India. Private internet service providers could build their own digital infrastructure including laying optical fiber and setting up mobile towers. Concurrently, the government established a license which private players could obtain to allow them to provide internet across the nation. The arrival of public internet in India contributed significantly to the growth of the service industry, a major factor in India's economic growth between 2001 and 2010. Outsourcing of IT services from North American- and European-based firms was made possible only through stable telecommunication and internet infrastructure.

While more than a third of India's population had access to fixed line communication in the early 2000s, cellular communication had not achieved similar levels of penetration. However, the base of cell phone users was growing quickly. By the end of 2002, the cellular subscriber base reached 10.53 million.¹³ This figure rose to nearly 22 million by the end of 2003, an increase of 100 percent in a single year. At the time, internet was provided mostly through fixed-line connections to a limited subscriber base. Subscribers mostly resided in cities as rural populations relied on public telephones. Even within metropolitan cities, high speed internet connections were largely owned by corporations rather than households.

By 2010, cellular communication had replaced wired communication in most areas. Cellular teledensity¹⁴ was estimated at 44 connections per 100 individuals, while urban teledensity crossed the 100 mark, denoting the fact that the number of mobile connections in urban areas are greater than urban population. Wire-

less subscribers comprised over 93 percent of all communication subscribers.¹⁵ However, because the internet was still slow and prohibitively expensive via cellular networks, internet adoption remained low, with total internet subscribers amounting to a mere 15 million.¹⁶ In the ensuing decade, India experienced a sizable increase in internet users thanks to the ubiquity of cellphones, and precipitous drop in the price of cellular connectivity. As telecom protocols and infrastructure increased, internet speeds and capacities improved on mobile phones.

More recently, the introduction of Reliance Jio in 2016 marked a revolutionary moment in India's internet history. This service offered free internet to initial users for a period of six months, with unlimited free voice calls and text messages.¹⁷ After the initial trial, the company charged a fifth of the then industry average for data to customers and made voice calls and text messages almost entirely free, switching India from a voice-call based telecom economy to a data-driven one. The Reliance model was quickly adopted by the rest of India's telecom industry in order to compete. The result of this overhaul on Indian internet usage was staggering. Morgan Stanley reported that monthly data traffic per user jumped 570 percent in the two years since the launch of Reliance Jio, with India having more app downloads on the Google Play Store than did the United States in 2017.¹⁸ This widespread adoption also led to a larger user base for technology firms such as Amazon and Uber, who now had millions of new customers to serve.

The nature of India's internet usage provides insights into its telecommunications infrastructure. While most developed countries rely on broadband connections both at home and in public spaces for most of the data traffic, the same cannot be said for India. Broadband connections are restricted mostly to urban settings—with few public WiFi networks. Recently, there has been a push to bring public broadband networks to railway stations and other such locations, but this process has been slow, and the quality and reliability of these networks remain uncertain. Owing to the low cost and high accessibility of the internet over cellular networks, many have no choice but to use cellular to access the internet. This decision puts a potentially unsustainable infrastructural burden on the cellular network to provide high speed, reliable, and scalable data. As a result, telecom backhaul infrastructure¹⁹ in India must be upgraded to support the demand for

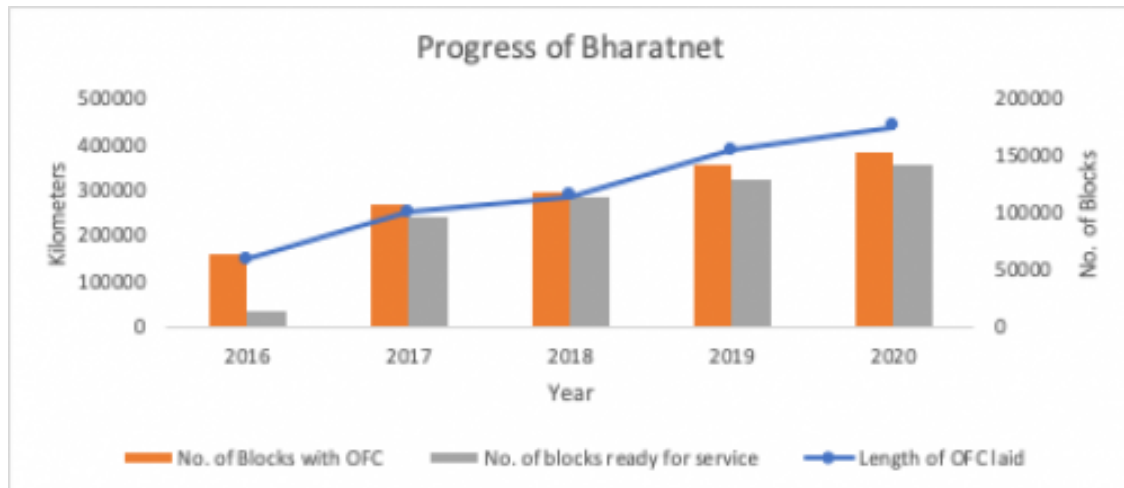
data on cellular networks. Historically, telecom backhaul has been done through copper cabling, an infrastructure unable to support growing demand and 5G bandwidth.

Government Policy on Optical Fiber Connectivity

The current Indian administration has repeatedly declared digitization as a key national objective for the central government. The Digital India initiative, launched in 2015, promises to ensure high-speed internet and digital infrastructure as a “core utility” available across geographical, social and economic strata.²⁰ The initiative aims to create capacity among the public as well as the private sector through research and development in the manufacturing of digital infrastructure, of which optical fiber cables are an integral part.²¹

New Delhi has since built on the vision set out by the Digital India policy in the National Digital Communications Policy of 2018. The government acknowledged that a 10 percent increase in broadband penetration could translate to a GDP growth of 1 percent, emphasizing the need to increase penetration in rural or far-flung regions of India.²² The policy also acknowledged the existing Right of Way (RoW)²³ paradigm in India to connect more mobile towers through Optical Fiber Cable (OFC), enabling faster deployment of 5G throughout the nation. The document declares ambitious broadband speed objectives for villages, suggesting that the government consider OFCs as the primary mode of delivery. In giving OFC cables the status of a public utility under the policy, the government has committed itself to provide service at reasonable prices and quality.²⁴

Implicit in the National Digital Communications Policy is a recognition of the barrier caused by reliance on cellular networks. Namely, less than a fourth of India’s cell towers are connected via OFC, whereas high-speed internet access on mobile networks requires 60 percent of towers to be connected by OFC.²⁵ It also guarantees universal access to broadband at download speeds of 50 Mbps by 2022. To achieve this goal, all villages in India will need to adopt OFC with large investments in related infrastructure, such as internet exchange points.²⁶



In 2011, the Indian Government announced the National Optical Fiber Network, an initiative aimed at providing broadband internet to over 200,000 rural localities in India. The project goal has since expanded to cover 250,000 localities in the country²⁷ using existing fiber laid by state-run companies.²⁸ Thus far, the project has not met 60 percent of the targeted 250,000 localities.²⁹ Though basic infrastructure has been laid down for over 100,000 localities, only in an estimated 5,000 localities have functioning networks.³⁰ Even for the fiber connections that are commercially available, the average monthly consumption of data stands at a mere 660 MB.³¹ Policy goals have been hampered by bureaucratic red tape and compensation arrangements between municipal, state, and federal entities.

Right of Way (RoW) rules remain a major source of dispute between state governments and the Department of Telecommunication (DoT). The Telegraph Act empowers the local authority, in this case the State Government, to act as the permitting body for the laying of telegraphic cables on areas under their control. These rules allow each state government to create its own set of regulations over licenses to lay cables and compensation amounts. As a result, some state compensation practices have deterred private companies from building much needed infrastructure even after being granted an authorizing license from the DoT.

To solve these issues, DoT released a new set of regulations in 2016 simplifying the RoW regime.³² The new rules are designed to ensure that the process of RoW compliance is transparent, uniform, and efficient for all states. The rules place a sixty-day limit on state authorities to either approve requests or deny them,

provided they have given the applicant a chance to present their case first. The rules also place a uniform administrative fee for OFCs at Rs. 1000 per kilometer—payable to local authorities.

Industry analysts claim that a number of states and local authorities have yet to implement the uniform RoW rules, causing issues for the expansion of the OFC network.³³ These authorities seem to be unwilling to give up what were once healthy revenue sources and dispute the rule-making power of DoT on setting a ceiling on compensation. The High Court of Patna held that the state government could charge a “rent” from infrastructure providers for the laying of OFC cables on state-controlled land.³⁴ The same judgement also declared that the Court could not deem that the policy for charging rent is beyond the scope of powers of State Governments as State Governments have the ability to charge rent from other services using state-controlled land. Taking these factors into consideration, the status of RoW rules is unclear and remains a cause for concern for the OFC industry. While the DoT has attempted to curb states’ stifling interventions through top-down policy, with the current division of responsibilities, the final say still lies with local stakeholders.

Conclusion

Investments in OFC enable the government’s ambitious plans of strengthening Indian’s position as a knowledge- and service-oriented economy. An increase in broadband penetration to 60 percent in India is expected to translate into a 5-6 percent increase in the overall GDP.³⁵ These economic benefits are not viable without a fiber backbone that can sustain such growth. Before such investment can be made, individual states must engage municipal authorities to quell RoW concerns with the full support of the DoT. Rekindling the legacy of the 1990s, it is incumbent upon the national government to orchestrate a competitive bidding process and clear bureaucratic red tape that stymies expansion.

The anxiety and promise over 5G technology loom large in the debate over India’s internet infrastructure. India will be the third largest consumer of 5G services by 2025 but it will account for only five percent of global market share because of its

“not so brilliant infrastructure.”³⁶ One estimate puts the investment cost for 5G in India at \$70 billion, with a significant portion allocated to the development of fiber networks throughout the country, including both rural and urban locations. As a first principle, it would be prudent for New Delhi to rethink its aim of establishing universal wireline broadband. With changing trends of internet use, India should switch to the more realistic objective of gearing up cell phone towers for a 5G rollout enabling universal access through the cellular network.

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Weighing the Validity and Legality of Recent EU Religious Slaughter Bans

By Arya J. Taghdiri

I. Introduction

Throughout Europe, a wave of new laws has banned Jewish and Islamic methods of animal slaughter under the guise of preventing animal cruelty.¹ These laws have mainly been backed by conservative, right-wing politicians and animal rights activists. But, those proposing to ban religious slaughter in various European countries and municipalities proffer questionable, scant, and biasedly-framed evidence to support the notion that pre-death stunning, the alternative method of slaughter, is more humane for the animal. According to Jewish and Islamic laws governing the slaughter and consumption of animals, meat is only fit for human consumption if the animal's neck is cut with a surgically sharp knife, thereby severing its major arteries almost instantaneously and causing the animal to die as its blood drains out. Stunning, on the other hand, is the process of rendering an animal unconscious before its death, oftentimes with a captive bolt gun.²

Under the Jewish and Islamic guidelines for animal slaughter (referred to herein as kosher and halal laws, respectively), an animal must be free of suffering and completely healthy prior to its death.³ A vocal cluster of religious and scientific authorities maintain that stunning the animal before its execution has not been proven to numb the animal to feelings of stress or pain, nor has it been proven to be a foolproof system—as animals oftentimes regain consciousness after the

stunning, or never lose consciousness at all owing to mis-stunning.⁴ Since the animals may not necessarily be free of suffering or pain prior to death, stunning is universally viewed as unacceptable under Jewish laws, and recognized as *harar*, or impermissible, by a large sect of Muslims.⁵ Animals are supposedly rendered unconscious as the surgical cut is made during halal and kosher slaughters.⁶ According to religious texts, the purpose of these laws is to spare the animal any unnecessary pain or suffering, specifically, executing the animal as quickly and efficiently as possible.⁷

Proponents of religious slaughter bans in Europe, on the other hand, claim that religious slaughters are generally not executed according to plan, leading to excess pain and suffering for the animal.⁸ They argue that animals experience significant distress during these slaughters owing primarily to a lack of procedural safeguards in place to consistently provide for adequate facilities, as well as quick and efficient executions.⁹ To support their contentions, these proponents of stunning note that various reports on animal slaughtering methods in the European Union (EU) have argued that religious slaughters are excessively harmful to animals, mainly because: (1) the period of “induction to a period of unconsciousness without distress,” and (2) the lack of sufficient “facilities to minimize stress” prior to and during the animal slaughter.¹⁰ But, as this paper will discuss further below, many of these proponents’ contentions are based on faulty reports, which various studies suggest are “agenda-driven and methodologically flawed.”¹¹ Moreover, Jewish and Islamic authorities dispute these contentions as being outdated and based on mostly anecdotal evidence, as opposed to scientific findings.¹²

Those Muslim and Jewish European minorities most affected by anti-religious slaughter laws feel that these laws are racially motivated and specifically target their communities in the wake of increasing xenophobia and anti-Semitism throughout Europe.¹³ In the same vein, many believe that the reports used to support religious slaughter bans are conducted and funded under dubious and prejudicial circumstances, casting doubts on their validity.¹⁴ Studies show that as the Muslim population in Europe has surged—growing from 29.6 million in 1990 to 44.1 million in 2010 (and projected to exceed 58 million by 2030)—Islamopho-

bic sentiment also rose.¹⁵ The intensification of Islamophobia coincides with the sudden re-emergence of anti-Semitic sentiment throughout Europe.¹⁶ Jewish and Muslim communities in Europe fear that these new bans will serve to further ostracize their people; not very long ago, Adolf Hitler and Nazi Germany utilized religious slaughter bans as a vehicle to ostracize the Jewish community and their way of life, leaving Europe's current Jewish population especially weary of the potential, long-lasting ramifications that a religious slaughter ban might have on their communities today.¹⁷

These claims are not without some merit. The Belgian regions of Flanders and Wallonia, where studies have shown that anti-Semitism and Islamophobia are on the rise, have recently passed legislation banning religious slaughter.¹⁸ Approximately 38,000 Jews live in Belgium, mainly in Antwerp (a major city in Flanders), which is "home of one of the largest Jewish ultra-Orthodox populations in Europe."¹⁹ To that effect, religious authorities argue that the new laws adopted by the Belgian regions of Flanders and Wallonia may infringe upon their rights to freedom of religion, as guaranteed to them by the Charter of Fundamental Rights of the European Union.²⁰ The issue was taken to Belgium's Constitutional Court in 2019, which then referred the matter to the European Court of Justice (ECJ). The ECJ is expected to issue a judgment on the matter within the next two years.²¹ In light of the ECJ's recent opinions and rulings regarding the topic of religious slaughter as a form of religious freedom, the Court can be expected to strike down these religious slaughter bans.²²

This paper will argue that, regardless of the ECJ's decision, lawmakers should altogether refrain from implementing any laws that could conceivably violate religious freedoms if insufficient evidence exists to support their assertions. Instead, anti-religious slaughter lawmakers and activists should redirect their efforts towards promoting animal welfare by increasing and improving the regulation of religious slaughter. Austria and a handful of other EU member states have already done so, to ensure that procedural safeguards are put into place to minimize animal suffering.²³

With that in mind, this paper will begin by exploring the current legal landscape of

the EU and its member states, specifically the laws pertaining to religious slaughter and freedom of religion (Section II). Next, in Section III, the paper will describe and examine the contentions, and rationale behind such contentions, held by both sides of the aisle: (1) Jewish and Muslim Europeans affected by European religious slaughter bans, and (2) European politicians and animal rights activists pushing for religious slaughter bans throughout Europe. As such, Section III will explore the political, social, and scientific motives influencing the push for said legislation. Conversely, it will also discuss the religious, economic, and scientific rationale underlying Jewish and Muslim support for religious slaughter methods. Next, Section IV will examine the human health implications (or lack thereof) of both slaughter methods. Lastly, in Section V, this paper will propose a prophylactic, far-reaching regulatory solution to the ongoing dispute that should result in the safe and efficient administration of religious slaughter practices throughout Europe—allowing halal and kosher practices to continue, barring any significant scientific research or studies that shows avoidable animal suffering. Because no conclusive evidence proving that stunning is more humane for the animal than religious slaughter exists at this time, this article will argue that both practices should be allowed to continue, albeit under a stronger and more stringent regulatory regime, as to ensure that procedural safeguards are in place to ensure quick, efficient, and humane slaughters.

II. European Legal Landscape

The Council of Europe's Convention for the Protection of Animals for Slaughter (CECPAS) and the European Union's Council Regulate (EUC) maintain that slaughterhouses should use stunning methods on animals before they are killed.²⁴ Both these Councils also state that EU member states may allow for religious exemptions to stunning, which would apply to religious slaughters.²⁵

Most EU members, acting in step with the guidelines put forth by CECPAS and EUC, generally permit for the religious exemptions from stunning requirements.²⁶ Some of these nations have added further requirements to the exemption-seeking process, bolstering procedural and equipment-based regulations on religious slaughter, as to ensure the safety and well-being of the animal and its meat.²⁷

Cyprus, Spain, Germany, Luxembourg, and France are among these EU members who have added more stringent regulatory requirements for those seeking religious slaughter exemptions.²⁸

Switzerland, Norway, Iceland, Denmark, and Slovenia, on the other hand, do not allow for any religious exemptions from stunning laws.²⁹ Belgium proves the most recent and intriguing case study to date, set to test the limitation of religious slaughter bans in the European courts in the near future, and likely to set an enormous precedent on the matter regardless of the outcome.³⁰ In Belgium, exemptions for religious slaughter are permitted at the federal level, but two out of three Belgian regions, Flanders and Wallonia, have recently enacted laws mandating the pre-slaughter stunning of animals, with no religious exemptions to be granted.³¹ Violation of these decrees is punishable by fines between 52 and 2,000 euros.³² Both decrees became law in 2019, and have been met with significant controversy and opposition in the Jewish and Islamic communities.³³

The ban implemented by Flemish and Walloon parliaments was challenged before the Belgium Constitutional Court. The court recently referred the decision to the European Court of Justice (ECJ).³⁴ According to reports, the court date was set for April of 2020, but has been delayed in light of the COVID-19 pandemic.³⁵ The author believes the court will likely find the Belgian bans on religious slaughter unconstitutional, in accordance with prevailing EU law, as the court has recently stated that religious slaughter falls within the scope of freedom of religion, as guaranteed to all EU citizens by the Charter of Fundamental Rights of the European Union.³⁶

Regardless, there is still a chance the court pivots from its prior statements and deems the laws constitutional. The Court will find that the respective laws are valid if each of the following points are met: (1) there is any need to limit religious freedom (i.e., ban religious slaughter) in order to protect animal welfare; (2) the proportionality of such a limitation is sufficient; and, (3) whether the limitation at issue could be justified on legitimate public interest grounds that relate to human health and food safety.³⁷

III. Stances on Religious Slaughter Further Clarified and Examined

a. At the Heart of the Contention

The stunning process, if executed properly, is supposed to ensure that an animal is unconscious and insensible before it is bled out at slaughter.³⁸ Proponents of stunning believe that once an animal is rendered unconscious, it cannot feel pain.³⁹ However, there is no definite evidence demonstrating whether or not animals actually feel any physical or mental anguish up until their slaughter (after being stunned).⁴⁰ In fact, recent studies suggest that humans and animals can and do feel pain while unconscious—which if true would invalidate the crux of the argument in favor of stunning and banning religious slaughter.⁴¹ Many studies support the notion that “there is ample scientific evidence that religious slaughter is at least as humane as conventional mechanical [or, in this context, stunning] slaughter.”⁴² Thus, new bans on religious slaughter exemptions may in fact be based on outdated reports and invalidated science.⁴³ With that in mind, these new exclusionary laws are potentially misguided and unnecessary.

Kosher and halal requirements necessitate that an animal be in perfect health up until the point of its slaughter, which would mean pre-death stunning would render said animal unfit for consumption.⁴⁴ One of the driving forces for this rule in Jewish and Islamic law is that the harm (psychological and/or physical) done to the animal before its slaughter caused by stunning can cause stress in the animal, thus leading to spoiled meat, which in turn could have adverse human health implications.⁴⁵

By the same token, proponents of stunning argue that religious slaughter can cause the animal avoidable stress and pain before its death. They argue that the animal often endures a long, drawn out, and painful death, causing the meat to spoil, which in turn can have adverse human health implications.⁴⁶ Positioning the animal for slaughter can be a tedious task.⁴⁷ Oftentimes, the animal is positioned upside down for slaughter, which they argue undoubtedly causes significant stress to the animal.⁴⁸

And therein lies the crux of this ongoing contention: which method causes the animal the least pain and stress? Consequently, which method produces the safest meat for human consumption? The following sections will further explore the rationale used by both sides of the aisle to bolster their arguments. In doing so, the risks posed to animals, humans, and religious minority communities resulting from bans on religious slaughter will be explored in further detail.

b. Jewish and Muslim Slaughter

i. Muslim Slaughter

The Arabic word “halal” literally translates to “that which is permissible,” and in this context, halal slaughter, and consequently halal meat, can only be procured under limited and particular circumstances.⁴⁹ For a halal slaughter, the following conditions must be met: “(1) the animal must be healthy and free from any suffering prior to its death; (2) the animal must be slaughtered by means of a sharp (and quick) incision to its neck; (3) the name of Allah (God) must be invoked at the time of the animal’s death, and lastly; (4) the animal’s death must result from blood loss.”⁵⁰ While some Muslims maintain that non-penetrative stunning is allowed under halal slaughter, many followers maintain that any sort of stunning to the animal before its death is out of the question.⁵¹ They argue that any penetration could cause the animal suffering leading up to its death, thereby potentially spoiling the meat and posing a risk to humans.⁵²

Under ideal conditions, halal slaughter is supposed to render the animal unconscious almost immediately after the incision is made.⁵³ Muslim religious authorities familiar with the process maintain that a quick, forceful incision that delivers near instantaneous death (as they argue is the case with halal slaughter) is clearly more humane to the animal than pre-death stunning. In their view, pre-death stunning likely causes severe psychological stress to the animal as it often renders the animal unconscious for a considerable length of time before its death. The stress experienced by the animal in turn renders the animal’s meat unhealthy, and in many instances, unfit for human consumption under set reli-

gious standards.⁵⁴

ii. Jewish Slaughter

Schechita, the Jewish form of religious slaughter, must consist of an instantaneous incision to the back of the animal's neck, much like the halal slaughter method.⁵⁵ This is the only method of slaughter permissible for meat (intended for human consumption) in Judaism, as dictated by Genesis IX:3.⁵⁶ Jewish people have “zero tolerance for stunning of any kind.”⁵⁷ The Torah (i.e., the first five books of the Hebrew Bible) is the first systematic legislation in human history to in fact prohibit animal cruelty and instead mandate their humane treatment and execution. As such, animal welfare is an important part of Jewish tradition and observation.⁵⁸ The motives behind Jewish slaughter methods, therefore, arise from an interest in the well-being of the animal, much like that of Islamic law.⁵⁹ In a Jewish schechita, the animal is supposed to lose consciousness within two seconds of the incision. Proponents of schechita slaughter believe that this method provides the animal with the quickest and least painful death.⁶⁰ Thus, like their Muslim counterparts, a dispute exists between Jewish proponents of schechita and those in favor of banning religious slaughter over which method causes the animal the least suffering.

In that light, the Jewish community fears that a fundamental religious and cultural right and rite of theirs is at risk of being stripped away by the new bans on religious slaughter. The Jewish community's fears and worries concerning these new anti-kosher and halal laws are exacerbated by the resurgence of anti-Semitism in Europe, as well as the political views and affiliations of those pushing for anti-kosher laws.⁶¹ In 2019, the European Union's Agency for Fundamental Rights polled more than sixteen thousand Jewish people in twelve European countries and concluded:

“ (...) anti-Semitic hate speech, harassment and fear of being recognized as Jews were becoming the new normal. Eighty-five percent of the respondents thought anti-Semitism was the biggest social and political problem in their countries; almost a third said they avoided Jewish events or sites because of safety concerns.

More than a third said they had considered emigrating in the five years preceding the survey.”⁶²

The European Jewish community, much like the European Muslim community, feels as though their neighbors have become increasingly hostile towards them, and more intolerant of their habits that depart from traditional national customs.⁶³ These new anti-kosher and anti-halal laws reinforce this belief. According to Pinchas Goldschmidt, President of the Conference of European Rabbis, “the anti-religious slaughter bills are much more to do with two-legged animals, than four-legged animals.”⁶⁴

iii. Stunning Methods

The stunning process, although administered in many forms, is supposed to render an animal unconscious before it is killed.⁶⁵ There are various different methods of stunning depending on the animal:

“In cows, the act is typically performed using captive bolt stunning that either penetrates the brain or strikes the forehead with force, preventing the animal from being aware when it’s slaughtered; in chickens, electric water bath stunning is typical.”⁶⁶

In contrast to the Jewish and Muslim authorities’ claims, proponents of pre-death stunning believe that incisions made during halal and kosher slaughters are in fact not so quick and instant. They believe that, as a result, these methods cause animals a great deal of pain, and are therefore both inhumane and more likely to render meat unfit for human consumption.⁶⁷ These advocates for stunning argue that the animals often struggle to remain still and the slaughters go awry in the absence of stunning.⁶⁸ But couldn’t Jewish and Islamic authorities pose the same “what if” question to those proponents of stunning? What if pre-death stunning weren’t executed properly and caused the animal to feel even more pain? Proponents of religious slaughter maintain that studies used to support the ban of religious slaughter are “agenda-driven” and “methodologically flawed.”⁶⁹ Moreover, they state that many of these studies fail to take into account the failure rate of stunning methods, as is discussed in greater detail in

the following section.⁷⁰

IV. Scientific Studies and Conclusions

a. Which Method Causes the Animal the Least Pain and Distress?

The primary document that proponents of the halal and kosher bans point to in support of religious slaughter bans is the June 2003 Report on the Welfare of Farmed Animals at Slaughter or Killing (specifically, Part 1 which deals with Red Meat Animals).⁷¹ The report ultimately recommends, “slaughter without pre-stunning is unacceptable” and should thus be banned because “(...) pre-slaughter handling facilities that minimize stress and induction to a period of unconsciousness without distress (...) [were] not satisfactorily observed.”⁷² In response to the report’s first point, that the facilities meant to minimize stress were not in place when the report was written in 2003, an alternative way of correcting this issue that does not infringe upon religious liberties would be to mandate certain equipment and facilities requirements for religious slaughter (and other slaughter methods), thereby ensuring animals would not be subject to abnormal levels of stress.⁷³

The council’s second reason for recommending a ban on religious slaughter was that “the induction to a period of unconsciousness without distress” was not “satisfactorily observed.”⁷⁴ Such an assertion seems to imply that the authors of the report—who observed the slaughter in person, and had no medical or scientific equipment to measure the animals’ pain or stress levels—were equipped to make such a judgment.⁷⁵ It is the author’s opinion that the report, while thorough and detailed in some regards, fails to support many of its assertions or recommendations with scientific evidence. Instead, it relies heavily on singular anecdotes that are a complete anomaly. Consider the following anecdote found in the report:

“(...) on one visit, we observed the slaughterman place his hand into the neck wound of cattle immediately after the cut had been made, presumably to try to

ensure the free flow of blood from the severed carotid arteries. (...) This procedure in itself is, in our view, likely to cause further unnecessary pain and distress and is also unlikely to achieve its objective.”⁷⁶

Such an observation cannot seriously be weighed as primary evidence in the deliberation of a matter that has affected hundreds of thousands of Muslim and Jewish EU citizens. A decision that carries such heavy weight should be predicated upon a thorough analysis of a large sample size, with well-documented observations, and a reliable means of controlling the sample population. The same report also fails to include details of the scientific reports cited as evidence and thus cannot be further examined to check for accuracy.⁷⁷ Additionally, suggestions and recommendations from the report that explicitly point to the stunning process as more humane than religious slaughter primarily or in large part due to the observation(s) of religious slaughters gone wrong are misleading, as mis-stunning is also a relatively frequent occurrence. According to the European Food Safety authority in 2004, mis-stunning often leaves the animal conscious and in a considerable amount of pain; the authors of the June 2003 did not consider or discuss the considerable failure rate and costs of mis-stunnings in their report.⁷⁸ The European Food and Safety authority noted that the failure rate for captive bolt stunning is 6.6% in Europe.⁷⁹ For non-penetrative captive bolt and electrical stunning, the failure rate is as high as 31%.⁸⁰ In practice, this means that millions of animals a year in Europe experience significant pain and distress as a result of mis-stunning.⁸¹

Many Jewish authorities state that investigations into the issue of religious slaughter versus stunning in Europe failed to take into account a firsthand study of kosher slaughter by a trained shochet, a Jewish butcher authorized to make kosher slaughters using a chalef, a specialized knife authorized for use during religious slaughters.⁸² These specialized knives differ significantly from an ordinary slaughter knife with respect to sharpness.⁸³ Many European Jews and Muslims feel as though the scientific studies supporting stunning over religious slaughter methods are inconclusive and “[stretch] data in a distinctly unscientific fashion to unsupported conclusions.”⁸⁴

b. Human Health Implications of Stunning and Religious Slaughter

Carol O’Neil, Professor of Nutrition and Food Sciences at Louisiana State University notes that there are few studies showing that one method of slaughter—halal/kosher or pre-stunning—is healthier than the other for the purposes of human consumption.⁸⁵ “It [is] difficult to know if there are any kind of nutritional differences . . . [t]here are certainly no studies looking at people who consume Halal meat to see if their cholesterol levels are different, or anything like that. We just don’t know.”⁸⁶ Like many other nutrition and health experts, O’Neil claims that halal (and therefore kosher practices) may in fact be more humane for the animal.⁸⁷ Some health experts, in fact, assert that animals raised under conditions meeting halal standards are healthier for human consumption because halal standards require that animals be fed vegetarian diets and that they never be treated with antibiotics or growth hormones.⁸⁸

As it stands, both sides of the issue claim that their preferred method of slaughter is relatively seamless and pain-free for the animal; thus, no adverse effects of human health from spoiled meat should follow. However, scientific evidence supports neither claim.

If, in fact, stunning before death causes animals to feel some pain, suffering, or emotional stress, then that can spoil its meat and lead to adverse human health implications.⁸⁹ That meat would not be fit for human consumption. In the same vein, if halal and kosher slaughters go awry, and the animal either does not instantly die, and struggles during the incision phase, or rather is situated in stressful or painful pre-slaughter conditions, that too would render the animals meat likely spoiled and unfit for human consumption. As stated, scientific evidence to support either conclusion simply does not exist. It is unclear to what extent the animal feels pain or experiences any stress after the stunning phase, and/or to what extent the religious slaughters are executed quickly and efficiently.

V. EU Member States Should Continue to Grant Religious Exemptions to Stunning Laws

European lawmakers should avoid outright banning a particular method of slaughter, mainly owing to the dearth of evidence in support of the assertion that stunning is a more humane method of slaughter for the animal, and thus one that produces healthier meat. Insufficient evidence exists to support such a position. Additionally, a ban on religious slaughter in European nations would infringe upon the right to religious freedom guaranteed by the EU Charter of Fundamental Rights. Instead, a better remedy to promote quick, efficient, and humane animal slaughters would be a highly-regulated, prophylactic system of animal slaughter that allows for religious slaughter exemptions in line with EU principles of freedom of religion. This method would avoid infringing on religious liberties, and support more careful operation of slaughterhouses to ensure that religious slaughters, and particularly the incisions, are executed quickly and efficiently.

The EU Charter of Fundamental Rights guarantees all people's freedom of religion, including the right to manifest religion or belief in practice and observance.⁹⁰ Outright bans on religious slaughter in various EU nations and municipalities not only violate these fundamental religious rights, but also do so with little if any scientific evidence to support the notion that stunning is more humane for the animal, and safer for human consumption. In fact, evidence—and maybe more important, a dearth of evidence favoring one argument over the other—suggests that stunning may be more inhumane for the animal and more dangerous for human health when considering the unknown causal relationship between stunning, animal stress, and spoiled meat.

The author's solution would, instead of infringing on religious rights, implement a regulated system in the EU by which applications for religious slaughter would be granted by the appropriate government agency based on the satisfaction of various requirements in place to ensure that the animal is slaughtered and prepared for slaughter as humanely as possible. Some European nations, such as Austria, have already enacted similar legislation.⁹¹

Austria generally mandates pre-slaughter stunning, but still offers exemption permits to those whose religious practices do not allow the practice of stunning.⁹² Accompanying these permits, however, are reasonable standards that must be met to carry out the slaughter of an animal.⁹³ Specifically, the permit will only be granted to religious slaughterhouses if a number of requirements are met, including: “(1) the ritual slaughter is performed by persons possessing the necessary knowledge and skills; (2) the ritual slaughter is performed exclusively in the presence of a veterinarian in charge of slaughtering and meat inspection; (3) equipment is available to ensure that the animals intended for ritual slaughter can be brought into the position required for slaughtering as quickly as possible; (4) the slaughter is performed in a way that the large blood vessels in the throat area are opened with one single cut; (5) the animals are effectively stunned immediately after opening of the blood vessels (post-cut stunning); and (6) the animals intended for ritual slaughter are not brought into the required position before the anesthetist is ready to perform the stunning—among various other requirements.”⁹⁴ Austria’s laws are an excellent example for how those concerned about the potentially adverse effects of religious slaughter should regulate religious exemptions moving forward.

Even though Austria has worked towards implementing a highly regulated sphere of religious slaughterhouses that ensures health and safety practices are carefully heeded, it remains unclear whether the slaughterhouses themselves are required to bear the costs of complying with these regulations and safeguards. If so, the financial burdens imposed on religious slaughterhouses could be substantial, and potentially financially unsustainable. Only time will tell what will come of Austria’s more highly regulated model; however, on its face, this approach seems to more fairly accommodate the needs of religious minorities.

If enacted and enforced evenly, these extended requirements for those seeking religious slaughter permits would serve to quell fears about presumed adverse effects of halal and kosher slaughter methods by: (1) protecting the welfare of animals at and before slaughter; and (2) ensuring their meat is fit for human consumption, by putting the requisite pre-slaughter handling facilities in place to minimize stress and induce unconsciousness with minimal pain. In doing so, a

country or municipality would both satisfy the underlying goals of animal rights activists and politicians seeking to limit religious slaughter practices throughout Europe, as well as Jewish and Muslim minorities observation of religious slaughter practices.

VI. Conclusion

Bans on religious slaughter in Europe are founded upon faulty and misleading assumptions. Those assumptions could be used to argue that the common alternative, stunning, is just as inhumane for the animal and can lead to adverse human health consequences. Banning a long-held, widely-practiced religious and cultural tradition based on uncertain evidence, in favor of a method that poses similar conceivable risks, makes little sense.

Many Muslims and European Jews affected by these laws believe that their religious freedoms, as guaranteed to them by the Charter of Fundamental Rights of the European Union, have been violated. The European Court of Justice is to rule on the matter at some point over the next two years. The ruling can be expected to favor religious rights, based on recent case law and opinions of the court, as well as the text of the Charter of Fundamental Rights of the European Union. If the Court of Justice were to rule otherwise, however, such laws would impose substantial hardships on, and potentially further ostracize, two already embattled religious communities. Instead of enacting bans that undermine religious freedom and liberty, the author proposes that EU members states and municipalities should instead introduce a widely enforced, regulatory regime that works to prevent the perceived risks associated with religious slaughter from materializing.

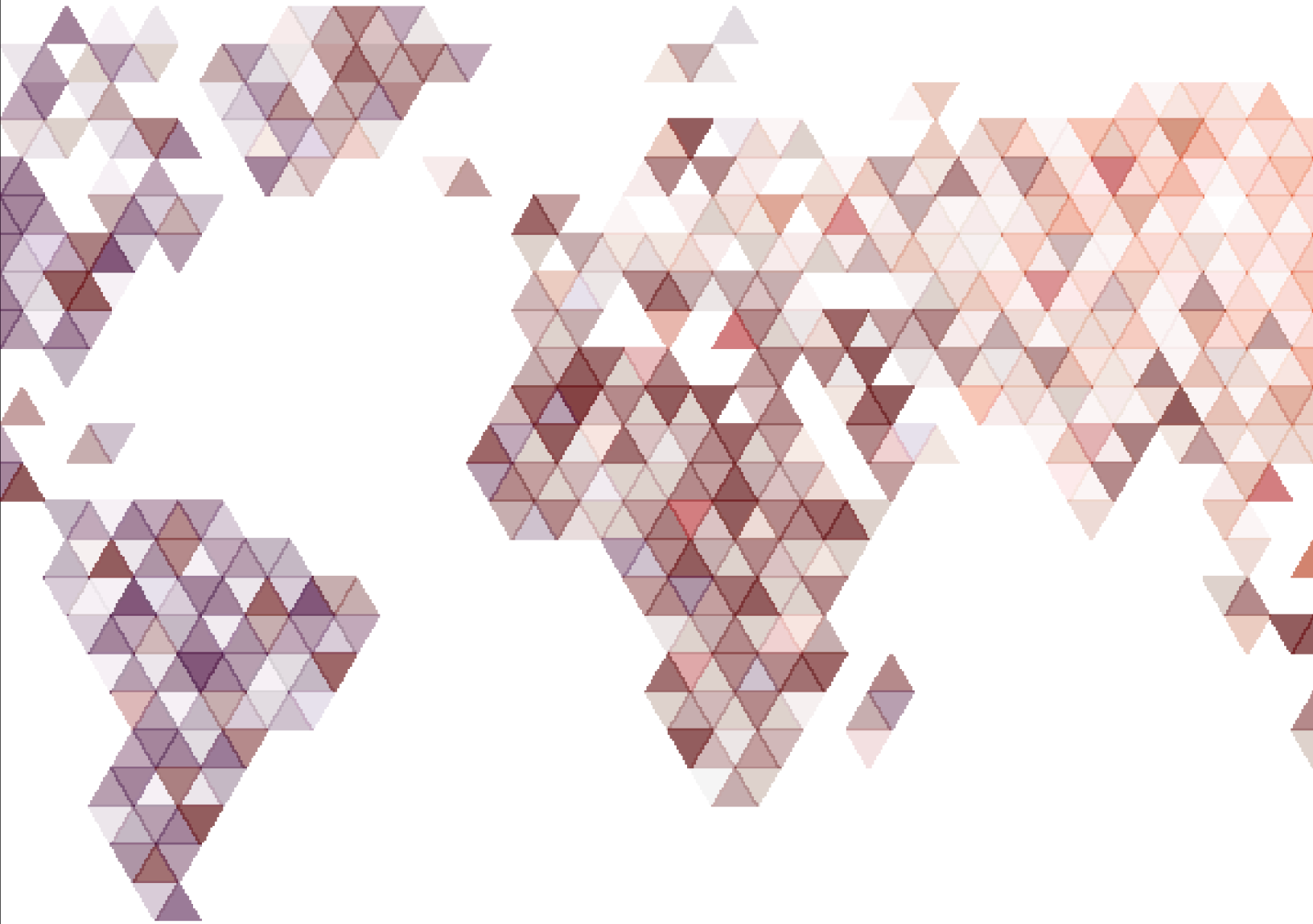
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