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For a Neo-Legitimist International Law

by

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So far, the 2020s haven't been particularly good for the vindication of legal principles in the global arena, either from the perspective of national sovereignty or from that of international legal rules more broadly. On the one hand, many multilateral or transnational institutions in which countries come together for diplomatic engagement, cooperation, and various forms of collective endeavor are under increasing strain and face growing criticism. Some face discredit for simple ineffectiveness (*e.g.*, the United Nations as a whole), some for having become a clique of unworthy hypocrites who embody the antithesis of the values they are supposed to advance (*e.g.*, the U.N. Human Rights Council), some for having allowed a particular political ideology to hijack their original humanitarian purposes (*e.g.*, the U.N. Relief and Works Agency for Palestine), some for allegedly usurping and undermining national sovereignty while suffering the institutional illegitimacy of a "democracy deficit" on account of the institutional power they give to unelected bureaucrats (*e.g.*, the European Union), and some for a paralysis brought on by the conflicting agendas of nation-states within them (*e.g.*, the U.N. Security Council).

On the other hand, the very principle of national sovereignty itself – an idea that has been said to be part of "the basic constitutional doctrine of the law of nations," such that "the whole of the law could be expressed in terms of the coexistence of sovereignties,"[1] and in the name of which some of the aforementioned criticism of international institutions is made – seems also to be under stress. Some entities that meet the standard of Article 1 of the Montevideo Convention of having "(a) a permanent population; (b) a defined territory; (c) government;

and (d) the capacity to enter into relations with … other states" – a standard, after all, that is explicitly "independent of recognition by … other states" – are (as with Taiwan) refused the status of being a "real" country simply because other states don't like them, and face the explicit threat of erasure by military force. Others, despite widespread recognition, face the immediate danger of such extinction in a very active and brutal form, as with the ongoing war of territorial aggression by which Russia has declared Ukraine to be "not even a state" and sought to erase that country from the map.

Bizarrely, at the same time, other entities are given widespread official recognition as being "states" for entirely political reasons despite not actually possessing *any* of the Montevideo characteristics. "Palestine," for instance, is presently recognized by some 156 countries without clearly having either a defined territory or population, and certainly without Palestinians having anything remotely like an effective *de facto* sovereign government.

Meanwhile, the leaders of the U.S. superpower that once saw itself as the champion and protector of the "rules-based international order" now call that order merely a "cloud-castle abstraction" and dismiss questions of international legality with a sneer, scoffing at the relevance of such "international niceties" in a world "governed by force" and declaring that they "don't need international law" and should be restrained only by their "own morality." Today, they openly declare their intention to "run" other countries and seize their resources, or even to demand that Washington be given "complete and total control" of parts of their territory. (With respect to Cuba, in fact, the U.S. president has declared that he anticipated "having the honor of taking Cuba." "I think I can do whatever I want with it," he explained, because "[t]hey're a very weakened nation right now." As for Iran, he seems to have reserved himself the right to kill it *as a "whole civilization"* if it does not meet his unclear and shifting demands in the ostensibly preventative war he chose to wage against it.) At the same time, some organizations through which sovereign states come together for collective security precisely in order to *protect* their national sovereignties from threats of aggression – most of all the

multilateral alliance of the North Atlantic Treaty Organization (NATO) – face internal crises caused by just such coercive sovereignty-erosive self-aggrandizement.

In an extraordinary January 2026 speech at Davos, in fact, Canadian Prime Minister Mark Carney pronounced what on its own terms amounted to almost an obituary for international legality as traditionally understood:

> We knew the story of the international rules-based order was partially false that the strongest would exempt themselves when convenient, that trade rules were enforced asymmetrically. And we knew that international law applied with varying rigour depending on the identity of the accused or the victim. This fiction was useful, and … [w]e largely avoided calling out the gaps between rhetoric and reality. This bargain no longer works. … We are in the midst of a rupture, not a transition.

The broad attenuation and erosion of traditional international norms and principles of legal restraint and understandings of state sovereignty occurring today – including now in the views of the United States, which, as I have observed elsewhere, was traditionally so focused upon scrupulous legal compliance that its spies once insisted upon getting formal legal guidance from the U.S. Department of Justice before harshly interrogating *Al-Qaeda* terrorist operatives who had helped mastermind the September 2001 attacks – no doubt has a great many causes, most of which are beyond the scope of this essay. It may be, however, that one contributing cause is a growing perception of the intellectual frailty and hence "legitimacy deficit" suffered by some of the most basic foundational concepts of international law as interpreted and applied since the mid-20th Century. A legal system that cannot give a coherent and compelling account of its own origins and legitimacy, after all, is unlikely to prove very resilient in the face of power-political self-aggrandizement by various stakeholders. I fear that modern international law has in some respects indeed lost its way in being able to provide a foundational

narrative that is persuasive to present-day leaders and ordinary citizens.

And indeed, if international legality is to have real meaning and effectiveness as a legitimate constraint upon arbitrary power, some legal scholars have begun to suggest the need for a fundamental rethinking. According to John Yoo, a law professor at the University of California, Berkeley, for instance, international law has forfeited its legitimacy by serving – in practice – to impede the efforts of law-abiding democracies to take steps in the international arena that are necessary to promote international peace and security, while conspicuously *failing* to restrain disruptive and predatory authoritarians. In response, he contends, the United States should lead an effort to reform international law to make it fit for purpose in today's world of great power competition.

In particular, Yoo has in mind new legal norms that would be "more flexible, specifically by shifting it away from the criminalization of preventive action" in favor of "a cost-benefit approach to interventions" in order to facilitate preventing "human-rights catastrophes, severe political and economic oppression by authoritarian regimes, the spread of weapons of mass destruction, and the operations of international terrorist groups." One need not necessarily agree with his specific recipe for reforming international law, however, in order to see that the international legal order today faces a crisis of intellectual and moral legitimacy.

Nor is Yoo alone. In a an article published in March 2026, for instance, Hofstra law professor Julian Ku essentially accused modern international law of a degree of illegitimacy born of moral obtuseness. The law, he wrote,

> should be capable of articulating [moral] differences rather than pretending they do not matter. That requires international lawyers to move beyond a mechanical lawful-unlawful calculus and to develop a more openly normative framework – one that assesses the gravity (and

> not just the imminence) of the threat, the necessity and proportionality of the response in light of the speed and complexity of modern warfare, the risks to civilians, and the systemic consequences for international order. … International law's authority ultimately depends on its ability to align legal judgment with widely shared moral intuitions about war and peace. If it cannot do that – if it insists on treating profoundly different conflicts as doctrinally interchangeable – it will not meaningfully constrain powerful states. Nor will it command the moral clarity needed to condemn genuine aggression when it occurs.

Nor has such a point eluded David Wolfson, a notable commercial lawyer and Britain's former Parliamentary Under-Secretary of State for Justice. In a social media posting of March 1, 2026, Lord Wolfson similarly declared – also, as with Ku, in the context of the U.S. war with Iran[2] – that

> International law ought to provide a mechanism to restrain and, if necessary, end despotic and tyrannical regimes such as that in Iran. If the doctrines of international law prove unable to restrain Iranian terrorism and mass murder, and tie the hands of democracies while forcing them to stand and watch Iranian atrocities, international law will have failed. It will have become a fundamentally immoral system of law, and one which is worse than worthless in the modern world.

To my eye, there is much in such critiques, though my focus is less upon the legitimacy of what the law *permits or prohibits* – the primary focus of Yoo, Ku, and Wolfson – than it is upon the process by which such rules of law emerge in the first place. In the following pages, I will argue that the legitimacy crisis of modern international law is related to what I term the "*origins problem* of conventional internationalism,"[3] but that with changes in its grounding legal theory it may yet be able to offer a more coherent doctrinal response to this

challenge and hence recover some of the persuasive power without which – in a fundamentally anarchic environment – the law cannot intelligibly function *as law* in any effective sense. Specifically, I will suggest a possible alternative approach to placing international law, and indeed the principle of national sovereignty itself, upon which that law depends, on a more solid foundation.

Conceptual Challenges of Modern International Law

Most international legal scholarship, it seems to me, tends to focus either upon how the law *works* within the conceptual and procedural constraints set by the interplay of received doctrines and articulations of "black-letter" rules, or upon what the law *should be* if it were better to address and help international society cope with some specified set of real-world problems. Much less time is generally spent on really fundamental questions of where international law comes from in the first place, and what its fundamental basis is.[4] From the perspective of the overall persuasiveness of the international legal order as a legitimate system that deserves the support and adherence of real-world leaders and publics, however, conceptual elegance and internal consistency are not enough if one cannot tell a compelling story of *why and how* these particular rules came to be: one that is able to persuade stakeholders that this order has an adequate moral and intellectual foundation.

In domestic law, it usually suffices to show a rule legitimate by pointing to the "genealogy" of its derivation. To discern the legitimacy of a law, for instance, one might assess whether it was enacted and officially recorded according to the proper procedures by a legislature which possessed a quorum at the time and was acting within its appropriate sphere of competence, whether that law contains any provisions contravening constitutional rights, and whether or not any relevant interpretative issues have been settled by properly-seated judges in a legal cases brought pursuant to procedures that *themselves* have an appropriate derivative genealogy. By the same token, at least in democracies – and here I am somewhat foreshadowing a point upon which I will enlarge later – modern domestic legal systems also

provide a narrative of legitimacy for their *rule-makers* by pointing to things such as the periodic conduct of elections in conformity with applicable constitutional provisions and statutory requirements.

To be sure, in theoretical terms, such genealogies of internal consistency may not quite be enough, for all those constitutional rules and procedural proprieties *themselves* have to come from somewhere. Discerning a rule's "source," "pedigree," or "chain of normative validity"[5] has thus long been an important focus of legal thinking, and it is a key question related to the validity or legitimacy of any given piece of any given legal order. The Austrian legal philosopher Hans Kelsen (1881-1973), for instance, saw systems of legal norms as all ultimately being traceable back to a *Grundnorm* (basic norm) or an *Ursprungsnorm* (originary norm). This was his answer to the genealogical problem of legal legitimacy, for as the Stanford Encyclopedia of Philosophy summarized Kelsen's complex thought,

> an act or an event gains its legal-normative meaning by another legal norm that confers this normative meaning on it. An act can create or modify the law if it is created in accordance with another, "higher" legal norm that authorizes its creation in that way. And the "higher" legal norm, in turn, is legally valid if and only if it has been created in accord with yet another, "higher" norm that authorizes its enactment in that way.

For Kelsen, the *Grundnorm* was the apex of this chain of normative derivation: a "foundational norm that carries no further justification, other than its 'acceptance.'"[6] Yet from the perspective of trying to provide *perceived* legitimacy to a system – and in the manner of Aristotle's concept of a "Unmoved Mover," a notion about which a child might respond "OK, but where did *it* come from?" – the question this approach raised was also obvious. Since whatever grounded each level of normative legitimization must also *itself* come from somewhere, we thus risk facing a "turtles all the way down" problem of infinite regression. To anyone who cares about foundational doctrinal legitimacy, and who wishes to persuade others of such

legitimacy in ways that go beyond merely demanding a leap of faith, this represents something of a challenge.

By way of a loose analogy, it might here be recalled that in the realm of mathematics, Kurt Gödel's incompleteness theorems demonstrate that there are inherent limits to "provability" in formal logic, such that in any consistent formal language system, there are statements in that language that cannot be either proved or disproved. At the same time, no such formal system can be shown to be entirely consistent. To the degree that one wants a *legal* system to be both complete and consistent – that is, to be able to demonstrate that its provisions fit coherently together and all of its rules have a sound foundation in legitimate rule-making – a sort of quasi-Gödelian insight might thus suggest that this is impossible: no legal order can fully ground its legitimacy *wholly within that order itself*, as some reference to exogenous legitimacy is always eventually required.

International law is surely no different in this respect than any other kind of law, inasmuch as it has a hard time answering foundational questions about itself. Yet since international law is so comparatively underdeveloped in comparison to domestic systems – that is, because it lacks so much of the elaborate superstructure of centralized legislative enactment, authoritative interpretation, and bureaucratized enforcement that most people instinctively associate with "real" legality – the Gödelian legitimacy problem may confront us more boldly and embarrassingly in the international arena than it does at home.

To the degree that such questions have arisen over the years, the answers legal thinkers have tried to provide about the "origins doctrine" of international law have generally fallen into three basic categories: religious, naturalist, and positivist. Let us briefly unpack each in turn.

Religious and Naturalist Accounts

The most traditional approach – and the one that, in a sense, is the most bald-facedly honest about its reliance upon a system-exogenous legitimacy construct – is that of assuming the law to lie upon a religious foundation in which key aspects of what is deemed to be prohibited, permitted, required, or encouraged are simply *given* to us by some form of divine commandment or revelation. It is in some sense certainly the simplest and perhaps the *easiest* answer to the legitimacy problem of law, for it posits that some deity has merely *dictated* terms to us – perhaps written into stone tablets upon a prophet's return from Mt. Sinai,[7] or copied down from revelations given by an angel in a cave[8] – in some basic form that permits us as a society thereafter to append "secondary" human enactments and interpretations onto, and within parameters set by, the "primary" divinely-decreed substructure.

A second category of answer – natural law theory – also seeks its grounding legitimacy in some exogenous *diktat* of value, but it tries to do this in a more secularized form. The seminal 17th Century Dutch legal thinker Hugo Grotius (1583-1645), for example, ventured down this path, though he tried to some extent to split the difference between a secular naturalism that owed much to ancient Stoic philosophy and the predominant Christian faith of his era by conceptualizing Christian virtues along clearly Stoic lines.[9] The Grotian legal schema claimed to be based upon the "dictate of right reason," which was valid for all humans precisely because they *were* rational humans, and that any sensible person could discern for himself. According to Grotius, this natural law theory was still *consistent* with faith, for in fact it had been God Himself who created nature and endowed us with the reason whose light reveals to us the contours of the law:

> Natural right is the dictate of right reason, shewing the moral turpitude, or moral necessity, of any act from its agreement or disagreement with a rational nature, and consequently that such an act is either forbidden or commanded by God, the author of nature. The actions,

> upon which such a dictate is given, are either binding or unlawful in themselves, and therefore necessarily understood to be commanded or forbidden by God.[10]

Nevertheless, in the end he plumped for a secularized naturalism that did *not* hang everything upon Christian faith. In fact, in the prologue to his great work *The Law of War and Peace*, Grotius declared quite explicitly that this naturalistic framework did not actually require any support from religion at all:

> What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of man are of no Concern to Him.[11]

Indeed, he wrote,

> the Law of Nature is so unalterable, that it cannot be changed even by God himself. For although the power of God is infinite, yet there are some things, to which it does not extend. Because the things so expressed would have no true meaning, but imply a contradiction. Thus two and two must make four, nor is it possible to be otherwise; nor, again, can what is really evil not be evil.[12]

Grotius is only one example of naturalistic legal grounding, of course. Natural law thinking can in some sense be traced as far back as Aristotle, who distinguished between the sort of *justice* that lies in observance of laws as "defined by the legislative power" and the greater sort of *justice* that is coextensive with Virtue.[13] There have been many natural law thinkers over the years, and many variations on such thought, from St. Thomas Aquinas – who saw law as "a dictate of practical reason emanating from the ruler who governs a perfect community" in a universe which is "governed by Divine Reason"[14] – to the present day.

In its more extreme forms, natural law thinking might agree with the great 18th Century English legal commentator William Blackstone that "no human laws are of any validity, if [they are] contrary" to the laws of nature.[15] More moderate voices might simply *discount* the legitimacy of legal rules to some extent, according to the degree which they do not conform to what reason and morality would demand.[16] At the very least, however, naturalism might be said to see legal order as a system pendant upon and deriving its legitimacy from whatever the antecedent moral values of society happen to be, but the classic naturalist answer to our "turtles problem" is to posit that law has grounding propositions that are entailed simply by the nature of reality, and which are objectively discernable through the exercise of reason.

The International Legal Positivist Alternative

The third broad category of answer to questions about the grounding of law is positivism: a conception of *created* law that relies upon mechanisms of voluntaristic agreement by and among the constituent units of the system.[17] For international law, this is classically taken to mean agreement by *states*, which – as the phrase itself suggests – are the primary (or, for some, perhaps the *only*) subjects of international law.[18] For a traditional positivist, international law *is* a certain way simply because that is how states have made it, and *unless* states have voluntarily taken obligations upon themselves through some mechanism of international law creation, they are not bound by any restrictions at all.[19]

As for the mechanisms of law creation, international legal positivism primarily involves only two – customary law creation and treaty formation – and both are fundamentally voluntarist. The international community lacks a legislature analogous to those that commonly pass laws in domestic society, so "legislative" enactment plays little role in positivist thinking.[20] Positivism thus traditionally sees the entire corpus of modern international law as having arisen from the chosen interaction of sovereign states, hence deriving its legitimacy from their *choosing* to be bound by legal rules.

Customary law is said to arise – to crystallize, if you will – when the accumulation of state practice (*e.g.*, "both physical and verbal acts," and sometimes even "inaction") consistent with a behavioral rule, coupled with the element of *opinio juris sive necessitatis*, the conviction that one is acting in this respect as law requires, and not (for instance) simply out of convenience or as a mere policy choice. As summarized by the draft conclusions of the International Law Commission (ILC) in 2018, "[t]o determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris*)"[21]

When such practice, with its accompanying legal intentionality ("the 'subjective' or 'psychological' element"), becomes well-enough established, conformity to the rule in question will be deemed to be legally obligatory for all states as customary international law except vis-à-vis a state that has acquired the status of a "persistent objector" by rejecting – in a way that is "clearly expressed, made known to other states, and maintained persistently" – its specifically *legal* character throughout the entire period of that law's formation.[22]

One of the classic articulations of the concept of customary international law creation was given by the International Court of Justice in its *Asylum Case* of 1950. It ruled[23] in that case that

> … [t]he party which relies on a custom … must prove that this custom is established in such a manner that it has become binding on the other party … that the rule invoked … is in accordance with a constant and uniform usage practised by the States in question, and that this usage is the expression of a right …. and a duty.[24]

As for *how* "constant and uniform" that state practice needs to be, the Court elaborated in its *North Sea Continental Shelf Cases* of 1969 that

> … [s]tate practice, including that of States whose interests are specially affected, should have been both extensive and

> virtually uniform in the sense of the provision invoked; – and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.[25]

The mechanism whereby customary law crystallizes is a form of law formation that lies at the doctrinal core of the international legal system.

That this is the case can be seen with what is perhaps the most fundamental customary rule: that of *pacta sunt servanda* – the principle that agreements made must be carried out in good faith – upon which essentially all law creation in the positivist world depends.[26] The positivist schema, however, also depends fundamentally upon the idea that states have sovereignty in the first place, and that however much they may in fact differ in terms of size, power, and circumstances, all states are fundamentally equal in that they *do* enjoy such sovereignty. (With sovereignty, moreover, come the presumptions that unless a legal norm has emerged providing to the contrary, states have no right to interfere in each other's "internal affairs" and each enjoy the freedom to act as they see fit in their *external* relations.) All this, positivists tend to assume or to assert, relies in the last resort upon customary law formation.

The other mechanism of international law formation in the positivist scheme is treaty law. This mechanism, however, requires less explanation, for its contractarian nature is generally quite self-explanatory: under the general *aegis* of the principle of *pacta sunt servanda*, states can create legal obligations for themselves by express agreement through instruments loosely analogous to domestic legal contracts, which acquire binding legal force through their formal articulation and a sort of "meeting of minds" among the contracting parties. This is the means by which the entire international corpus of treaty law has come to exist, including the United Nations Charter itself.

Most of today's architecture of international law can be attributed to essentially positivist sources. To be sure, it would probably be wrong to describe the entire modern international legal order as being positivist. Legal scholars have spilt much ink, for instance, on what precisely are the "general principles of law recognized by civilized nations" referred to in Article 38 of the Statute of the International Court of Justice (ICJ) as one of the types of law to be consulted by the Court in its deliberations. (According to the Special Rapporteur of the International Law Commission, such general principles need to be "recognized by the community of nations" – meaning primarily states, but perhaps also including recognition by international organizations – and that are either "derived from national legal systems" or "formed within the international legal system" itself. A key question, apparently, is whether "a principle common to the various legal systems of the world" in a "wide and representative" way, can be shown to be coherently "transpos[ed] to the international legal system."[27]) To the degree that such "general principles of law" – whatever specifically they may be – derive from the *nature* of legal reasoning rather than states' explicit or tacit agreement, they would seem in their nature to be somewhat more naturalist than positivist.[28]

Similarly, the doctrine of *jus cogens* written into Article 53 of the Vienna Convention on the Law of Treaties – which posits the existence of "peremptory norms" of international law that are "accepted and recognized by the international community of States as a whole" as a rules from which "no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character" – seems somewhat of an awkward and ambiguous compromise between positivism and naturalism. In debates at the ILC in 2016, in fact, it was expressly observed that he theoretical basis of *jus cogens* was not necessarily to be found in any one particular school of thought (naturalist or positivist). Nor was it necessarily based on consent."[29] In theory, *jus cogens* rules can change over time as the *mores* of the international community evolve, but their primary purpose and effect is to prohibit certain things *even where freely-consenting state sovereigns* have agreed thereupon; they are said

to be binding on individual states notwithstanding the existence of widespread contrary practice or any kind of "persistent objector" status. (One might thus be forgiven for thinking that *jus cogens* theorists are quietly trying to smuggle natural law back into a fundamentally positivist schema through a side door.[30])

The Law's Legitimacy Challenges

In any event, from the perspective of our "turtles problem," all three of these approaches to grounding international legal order face legitimacy challenges. Let's look at some of them.

Religious and Naturalist Problems

The category of religiously-grounded legal order might be said to have the most compelling legitimacy framework of the three *provided that* one accepts the particular narrative foundation of divine ordination upon which it is built – for there are surely few grounds for legitimate disagreement about a rule if one truly believes that God has specifically decreed it – but this category certainly has the *least* legitimacy *unless* one does so. (In fact, this approach offers or invites, in effect, no actual legitimacy discourse at all. This answer only makes sense if one has already accepted its premises, and these premises are primarily a matter of faith rather than debate, evidence, or reason; they tend to represent pure *assertion*.) In practice, therefore, while in principle this approach might coherently support the legal system of a highly religiously homogenous society, this category of grounding would seem quite unsuitable as a legitimate foundation for *international* law in a global human community composed, as it is, of populations adhering to a great many varieties (and sub-varieties) of religious faith.[31]

For its part, naturalism also struggles with foundational legitimacy. If indeed the dictates of right reason – as Grotius contended, for instance – inarguably made clear to all thinking persons what the basic rules of international law should be, this would of course this would be a powerful legitimacy narrative; nor, by

definition, would any thinking person disagree. The problem, of course, is that this narrative is empirically very hard to sustain, as there is little evidence that all thinking persons in fact *do* thus agree; it would seem untrue either that they would spontaneously articulate our current rules of international law if asked what they should look like, or even that they would invariably concur if these rules were actually explained to them. The fact that apparently reasonable and thoughtful people – including legions of well-studied legal scholars! – *don't* actually agree about the law is surely a damning indictment of any strong version of the naturalist hypothesis.

The naturalist conception may have seemed plausible in Grotius' time, in and among the states of a Europe ruled by a small and homogeneous elite of aristocratic princes, all of whom – despite the confessional divisions that had already emerged between the Catholic Church and Protestantism – came out of a strongly Christian milieu, and whose intellects had been powerfully influenced by the classicized currents of Renaissance humanism. In that context, it may have felt reasonable to assume that "anyone" asking themselves the questions thinkers like Grotius asked would come to conclusions similar to his own.

Despite its claim to objective truth based in reason, however, traditional naturalism has always struggled with the empirical challenge presented by the actual diversity of thinking and feeling in the human world, and this problem became only more acute as the geographic and civilizational scope of international society has expanded. Modern international legal scholars, after all, have struggled mightily to come up with clear and generally agreed-upon accounts of the substantive content even of comparatively narrow categories of law such as the peremptory norms of *jus cogens* or the "general principles of law recognized by civilized nations." Yet they have remarkably little to show for their efforts[32] – so much less than traditional naturalism would lead one to expect, in fact, that this cannot but raise troubling questions about the soundness of natural law theory. How plausible is it that the entire *corpus* of international

law is self-evidently clear and compelling to every thinking person? If only it were.

Positivism's Modern Legitimacy Crisis

And yet the fundamentally positivist system of modern international law, too, struggles to provide a solid grounding narrative of legitimacy, in a variety of ways. For one thing, positivism has difficulty in defining and defending the coherence and legitimacy of its foundational units: the states themselves.

As indicated earlier, the classically positivist approach to deciding who or what gets the privilege of being deemed a foundationally constituent member of the international system – empowered to assert the privileges of sovereignty by demanding non-interference from others and being free lawfully to act however it wishes *unless* it has in some way consented to accept legal restraint, as well as to participate in the law-creation mechanisms of customary and treaty law – can be found in Article 1 of the Montevideo Convention, which defines statehood as consisting of having a permanent population, a defined territory, a government, and the capacity to enter into relations with other states.[33]

Whether and how this works in practice, however, is rather murkier. In theory, statehood is simply a question of objective fact rather than of whether or not other states *accept* one as a fellow state. This is made clear, for example, in Article 13 of the Charter of the Organization of American States (OAS), which states, *inter alia*, that

> The political existence of the State is independent of recognition by other States. Even before being recognized, the State has the right to defend its integrity and independence, to provide for its preservation and prosperity, and consequently to organize itself as it sees fit, to legislate concerning its interests, to administer its services, and to determine the jurisdiction and competence of its courts.

Nevertheless, in the fundamentally anarchic international system there is, of course, "no centralized organ" for determining "whether or not the conditions of statehood are fulfilled in a specific case," and hence "every state is to decide for itself whether a new state has come into existence."[34] As noted, this has left states free to make such decisions on quite baldly political grounds – such as in recognizing as "states" some entities that clearly *don't* meet the Montevideo standard (*e.g.*, Palestine) and as non-states some states that clearly *do* (*e.g.*, Taiwan).[35]

Moreover, legal scholars have not traditionally agreed even upon the theory of state recognition in the first place.[36] Some, for instance, hold that that an entity's recognition as a state by *other* states is merely *declaratory* of the existing fact of its statehood – which is what one would expect from the Montevideo Convention and the OAS Charter. Others, however, contend that such recognition is actually *constitutive* of statehood, and hence that a state not formally recognized as such by other states isn't *really* a state at all.[37]

All this does not precisely conduce to making positivist theory feel compelling and legitimate in the eyes of real-world stakeholders whose *acceptance* of such legal norms, in an anarchic system, is essential to their actual *observance*. Fundamentally, one might say, positivism simply treats states as *objets trouvés*. It assumes and structurally relies upon their existence, but cannot provide a coherent account of their arising, having no strong answer to questions either about why the *particular* states held to exist should be privileged as the global legal system's rights-holders and law-creators, or even about why this particular *type* of entity (a "state") deserves that status in the first place.

Simply presuming one's conclusions about states may perhaps have seemed a plausible legitimacy narrative in the 19th Century heyday of international legal positivism – which was itself a major conceptual step forward in comparison to previously prevailing ideas of *dynastic* legitimism.[38] The 19th Century was, after all, an era in which

the romanticized ideals of European ethno-nationalism posited the inherent existence of a kaleidoscope of national "peoples" – at least in Europe, at any rate, for Europeans were notoriously slow to extend such principles to the non-Western world – that had "always" existed, and that now merely *recognized themselves* sufficiently to make either *centrifugal* claims of *separate* sovereignty against imperial power aggregations such as the ethnic crazy-quilt of the Austrian empire, or *centripetal* claims of *common* sovereignty upon the fragmented political geographies that predated German and Italian unification.

Historically, of course, the idea of nations existing "since time immemorial" was a fiction – the creation and political tool of ethno-nationalist entrepreneurs of that period, a romantic gloss applied to the politics of that era and projected ahistorically backwards into the mists of time. In reality, as Benedict Anderson so memorably phrased it, nations are "imagined communities,"[39] and although the "imagining" involved can itself be quite real – that is, intense and earnestly felt, and of tremendous political and social salience – any given nation's existence is inescapably historically contingent, and impliedly also changeable and impermanent. (What can be imagined into existence, after all, can presumably also be imagined *out* of it, or at least altered, perhaps beyond recognition.)

Anthropologists and historians who study *ethnic* identity, for instance, today clearly understand that such groupings are not

> "an objective, static, 'primordial' *condition*," or … "immutable givens." Rather, an ethnic group … [is] "a group conscious of its own solidarity," a consensus resulting from dynamic *processes* over time, where the group constructs its identity through social and cultural transactions, relationships, and contingencies, thereby negotiating its own cultural identities.[40]

And so also, in their own way, are "nations." Nevertheless, positivist international legal theory has been structurally beholden to such historically contingent "imaginings" in ways that it can neither really

explain nor defend on theoretical grounds. This has presented the positivist schema with significant legitimacy challenges.

A further legitimacy challenge for the generally positivist schema of modern international law was its logical circularity. As we have seen, the law-creating mechanisms of customary law and treaty-law depend upon the pre-existence of customary legal rules such as *pacta sunt servanda* and the idea that sovereign states both exist and enjoy a fundamental juridical equality with each other. Without these foundations, it is hard to see how international law creation could work, or how it could have begun. Yet precisely because even grounding rules such as *pacta sunt* are said to be the creation of customary law, they could not have been created if states did not *already* exist and enjoy equality, and if the solemn making of agreements did not *already* create legal obligation.

Positivism, therefore, found itself stuck in a "chicken-and-egg" problem, depending for the creation of its rules upon the existence of entities and the operation of processes that themselves depended upon the *pre-existence* of those same entities and processes. This is indeed an example of the challenge of Gödelian logic we have already mentioned – our "turtles problem" – and positivism seems firmly stuck in this rut.

Part of the great conceptual strength of international legal positivism had been the fact that once one is already "inside" the system of legal order, law-creation proceeds in an eminently logical fashion through the accumulation of layers, all of which are ultimately traceable in some form or another back to state sovereign consent to be bound. And, in historical terms, this may indeed have been an advance over reliance upon all those conceptually arbitrary – or at least patently *exogenous* – assumptions that were needed to ground a system of religious or naturalist order.

When it comes to the perceived legitimacy of a legal order, after all, I would argue that a kind of "Occam's Razor" principle should apply: one has a stronger claim upon legitimacy the *less* recourse one is forced to make to systemically-ungrounded assumptions. An

elaborate architecture "makes more sense" intellectually when built up systematically from a smaller number of less elaborate elements, rather than assumed *ex nihilo* as a sprawling Rube Goldberg contraption of exogenous inputs. Simpler is thus generally better – that is, more intellectually legitimate, more easily operationalized without precedentially confusing *ad hoc* improvision over time, and more understandable and compelling to the civilizationally and culturally diverse range of stakeholders to whom one would need to explain why the rules of a *global* legal system actually make sense and have enough of a claim upon us to deserve to be followed.

But after inviting the observer to prize its commendably logical approach to genealogical legal legitimacy, classical international legal positivism falters by resting so clearly upon the arbitrary grounding unit of the state itself, and upon legal rules derived from state practice, neither of which it can explain. There may indeed be no way for a system to be *wholly* internally consistent and free of exogenous inputs, but it has remained problematic for positivist theory to valorize and to draw legitimacy vis-à-vis its religious and naturalist rivals from a "building-blocks" approach while simultaneously hanging everything so *obviously* upon an arbitrary foundational state-national "block."

By the early 20th Century, some thinkers had begun trying to provide a more solid backing for international legal theory by leaning into the notion of "self-determination" – a legitimacy theory for state sovereignty pursuant to which each individual national "people" deserved and had the right to statehood as the natural expression of their self-identity in self-government. As Ian Brownlie put it, the principle of self-determination refers to

> the right of cohesive national groups ("peoples") to choose for themselves a form of political organization and their relation to other groups.[41]

Self-determination theory assumed the existence of such peoples no less than classical positivism assumed that of states themselves. Nevertheless, self-determination provided at least a slightly more

recessed origin story for statehood by positing that it depended upon a sovereign people having *exercised* its sovereignty in order to bring a state into existence – an idea that tended to suggest the need for a (more or less) one-to-one correspondence between "peoples" and "nations."

Notions of this sort date back as least as far as the Mayflower Compact of November 1620, which is generally credited as having been drafted aboard the famous vessel *Mayflower* by William Brewster, who was the only person aboard to have attended university – in fact, he had also worked in diplomacy for the English ambassador to the Netherlands – and from whom the author of this essay happens to be descended. In that seminal document, separatist Puritan refugees from England bound for the Americas drew up an explicit social contract for the foundation of a new colony. Specifically, the Pilgrims solemnly undertook to

> covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and … by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Officers, from time to time, as shall be thought most meet and convenient for the general Good ….

These ideas also were perhaps most famously articulated in the U.S. Declaration of Independence, which famously declared that under certain circumstances, it was essential for a people

> to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them.

Some such thinking about self-determination, for instance, also lay behind some of the provisions of U.S. President Woodrow Wilson's "Fourteen Points" of 1918 – which among other things called for "the peoples of Austria-Hungary" to be given "the freest opportunity to

autonomous development," for adjusting Italy's borders "along clearly recognizable lines of nationality," and for "the Turkish portion of the Ottoman Empire" (but not other portions!) to be "assured a secure sovereignty." Wilson himself provided no clear explanation of what "self-determination" actually meant or entailed, but "the principle of equal rights and self-determination of peoples" put in an appearance in the Atlantic Charter in 1941, and is today expressly enshrined in Article 1(2) of the United Nations Charter.

The issue and details of self-determination were also topics of much diplomatic debate during the 1970s, with Third World majorities at the U.N. General Assembly adopting strongly-worded resolutions – including Resolution 2621 (1970) and Resolution 3070 (1973) – declaring that "all peoples have the right to self- determination and independence" and affirming "the legitimacy of the peoples' struggle for liberation from colonial and foreign domination and alien subjugation by all available means, including armed struggle." Some legal scholars have even claimed self-determination to be a principle of *jus cogens*: a peremptory norm of international law from which no derogation is possible.[42]

Given expression in various such pronouncements – including the U.N. General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960, which declared that "all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory" and "the right to self-determination" as they "freely determine their political status and freely pursue their economic, social and cultural development"– self-determination would be the theory lying behind the extraordinary explosion of statehood during the mid-20th Century, as European colonialism receded and a huge number of new states joined the United Nations. The number of States Party to the U.N. Charter, in fact, rose from 55 upon the United Nations' founding in 1946 to over a hundred by 1961, and to 159 by 1990 – and that was even *before* the collapse of the Soviet Union resulted in the creation of a number of additional states out of some of its former

constituent parts. (By 2011, with the addition of South Sudan, the United Nations membership had reached 193.)

The idea of self-determination was at least a *partial* answer to the legitimacy challenge created by the conceptually exogenous assumption of "the state" upon which international legal positivism was built. In the self-determinism construct, however, the fundamental grounding unit of international legality was not the state *per se*, but rather the inherently sovereign – and impliedly pre-existing – national people whose exercise of their sovereignty gave rise to and legitimized that state. Yet precisely because this people was *itself* conceptually exogenous, this merely relocated the question instead of answering it.

The International Court of Justice effectively conceded in litigation over Kosovo in 2010, for instance, that "outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation" – a context in which anti-imperialist politics apparently make answers at least *seem* obvious – international law basically has no coherent way to determine exactly *who* has the right to "self-determine" *when*:

> Whether … the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is … a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances. There was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of "remedial secession" were actually present in Kosovo.[43]

Legal theory thus remained in "turtles" territory, with no clear stopping point in sight.

Moreover, self-determination theory – in practice – tended to give rise to *additional* legitimacy challenges, in the form of the problem of what to think about states that weren't obviously the result of meaningful "self-determination" at all, or of some governments that claimed to speak for sovereign national peoples but which were in no defensible way ones actually chosen by those peoples. These problems, if anything, intensified during the middle years of the 20th Century.

While the era of European imperial decolonization was suffused with the moral logic of self-determination, it could still provide no coherent account of why *some* particular "selves" deserved the right to self-determination while others did not. Rather infamously, decolonization did not, in fact, give rise to a world of discrete homogenous national sovereign states corresponding to the "obvious" ethno-nationalist entities that made up each of them. Instead, it produced what was in many ways an unstable mess of *claimant*-nations, many of which spent years desperately (and with only partial success) trying to *build* some kind of popularly internalized "national" self-identity only *after* having already been declared a "sovereign people" through decolonization. That so many post-colonial states had to attempt this within haphazard and often entirely arbitrary territorial frontiers – ones in many cases derived much more from prior jockeying among rivalrous colonial conquerors and the caprice of European mapmakers than from any actual self-"imagining" by the populations involved or any correspondence between those boundaries and some "ground-truth" of ethno-cultural reality – only added to the theoretical difficulty.

Nor were these problems ones recognized only in hindsight, for they were all too painfully visible quite early in the decolonization era. The political struggles over and vast human cost of the partition of British India into the separate states of Hindu-majority India and Muslim-majority Pakistan in 1947, for instance, made quite clear that the question of what "self" deserved "self-determination" was by no means obvious and inarguable, and that disagreement and

contestation over such selfhood could be a source of appalling suffering and subsequent, continuing inter-state conflict. The brutality of the Biafran war in the late 1960s – in which the Igbo people of West Africa attempted to form their own separate sovereign state out of the ethnic *pot pourri* that had been declared a sovereign state as post-independence Nigeria – was another terrible illustration, but in fact greater or lesser variations on this problem emerged across the decolonizing world.

Enormous amounts of multilateral diplomatic energy, moreover, were expended at the United Nations and in other *fora* as members of the "Group of 77" in the late 1960s and 1970s, attempted to win acceptance for their preferences as to *which* "national liberation movements" deserved recognition as the "legitimate representatives" of their respective national peoples, and which should thus be supported in their insurgencies against various colonial or post-colonial regimes. All these various 20th Century dramas served to highlight the way in which self-determination theory did not really *answer* the foundational legitimacy problem of international legal positivism as much as it merely *relocated* it into politicized realms of ongoing contestation over which "self" should be given special privileges by the global legal order and allowed to lock itself in place as the thereafter-unquestionable locus of sovereignty.

Furthermore, even setting aside the issue of who the relevant "self" should be for purposes of self-determination, there was the further problem of whether or not any such "self" *has*, in fact, actually *self-determined* in a way that would permit any particular claimant regime to exercise national power in the name and on behalf of the national people upon whose sovereignty the legitimacy of such power depends.[44] Through its struggles with issues of recognition and effective statehood, as we have seen, traditional positivism has engaged to some extent – if not necessarily terribly well – with questions of whether or not a state exists. It still cares remarkably little and can say less, however, about the *nature* of the regime in power in any given state. This has led to a problem, inasmuch as within the context of a theory that roots the existence and sovereignty of states in

actual self-determination by actual national peoples, the law-creation mechanisms of traditional international law face legitimacy challenges because from a "self-determination" perspective there cannot but be a "qualitative gulf between things done by or agreed among genuinely democratic polities, and the decisions, for example, of a congress of tyrants."[45]

In particular, self-determination theory would seem to all but *invite* scrutiny into – and to be *obliged* to ascribe relevance to – whether or not those who purport to speak on behalf of "the people" in fact do so. Yet international legal positivism is traditionally perfectly content to allow customary and treaty-based law creation to proceed on the basis of decisions made on behalf of states represented only by

> functionaries many of whom lack any right to speak for such purposes on behalf of the sovereign populations whose will and consent necessarily represent the fundamental source of legitimacy for *anything* done in the international arena.[46]

An additional, if perhaps ironic, challenge for international legal positivism may be found in the eagerness of so many legal scholars to try to *solve* perceived challenges to positivist legal legitimacy by leaning over-eagerly into trying to fill in embarrassing gaps in the international legal fabric in doctrinally unsupportable and hence delegitimizing ways. As I have pointed out elsewhere, there is a pronounced tendency in international legal scholarship to try to "improve" international law by gradually adding to it whatever it is felt previously to have lacked. Such addition is not *intrinsically* problematic, of course, but it becomes so where scholars do this not by encouraging and thereafter memorializing state practice in ways that create new law in ways consistent with positivist theory, but rather do so simply by *declaring* or *deeming* the law to include what one wishes it did. And indeed such doctrinal entrepreneurship would appear to be distressingly common.

> International law has long had a flavor to it of both aspiration and improvisation. Many of its proponents, in fact, often seem to feel themselves part of a great teleological movement of law-creation and law-improvement – a world-historical progression that will in time end international law's inferiority complex vis-à-vis domestic jurisprudence by closing the gap between the "thickness" and detail of domestic legal rule-sets and the (so far) still much sparser landscape of international jurisprudence.
>
> The Finnish legal scholar Martti Koskenniemi … [has noted] the "persistence of teleology" in international legal thinking ever since the field of international law was first established as a distinct professional practice in European law schools in the early nineteenth century. In his characterization, international law was from the outset infused with "the idea of progressive history" and retains this flavor even in today's more cynical postmodern era, with international lawyers these days being about the only group of human beings who still use the vocabulary of progress."
>
> The spirit of the international bar, as it were, is thus suffused with deep assumptions of progress in an "intrinsic teleology expressed by and accomplished through international law," and in which legal practice "possesses an inbuilt moral direction to make human rights, justice and peace universal." To "do" international law, Koskenniemi contends, is often assumed to mean that one "operate[s] with a teleology that points from humankind's separation to unity."[47]

In Koskenniemi's words,

> international lawyers . . . tend to be united in our understanding that legal modernity is moving towards

> what an influential Latin American jurist labelled in 2005 a new *jus gentium* uniting individuals (and not states) across the globe, giving expression to "the needs and aspirations of humankind" … [and in which] territorial systems are being replaced by intrinsically global, functional ones.[48]

While it is no doubt an understandable and in some ways quite commendable impulse to wish that more bad things were prohibited by the international legal order and more good things required,[49] an assumption of inexorable teleological movement is not doctrinally supportable in a system based upon sovereign state consent unless such movement occurs as a result of *actual* state consent. In what still remains a fundamentally positivist international legal system – one which, at the very least, has still not been willing openly to embrace either religious or naturalist sources of systemically exogenous value – the views of legal scholars or even international judges themselves are emphatically not, in themselves, *sources* of law. Such teleological overreaching by ambitious legal scholars may thus also have contributed to the legitimacy crisis of positivist international law, for as I have contended,

> … [t]he *lex ferenda* of what it is felt the law should be in the future, in other words, is [often] pervasively mistaken for the *lex lata* of what the law actually is. … [I]t is [thus] … difficult not to be struck by the degree to which a remarkable amount of international legal thinking appears to be little more than bootstrapping of a sort that its proponents defend as creativity in service of the noblest of ends but that critics would also not be too far wrong to characterize as "making up the rules you want."[50]

This cannot but have detrimental effects upon the overall legitimacy of the international legal order as perceived by major stakeholders. As Devika Hovell has noted, we

> deceive ourselves if we fail to comprehend that we have a choice between ways of understanding what we have and what is yet to be in filling out law's incomplete canvas.[51]

Morally congenial expedients of progressive law creation undertaken in order to help international law be "better" law, but that are not themselves supported by state practice in ways cognizable to positivist theory, may make indeed the law *look* or *feel* more legitimate on its face – more fair and more just, perhaps, or at least less "thin" and with fewer *lacunae* – but they ultimately create challenges for the legitimacy of the international legal order. Legal reasoning encodes a powerful sort of process-based, almost *genealogical* legitimacy, and this legitimacy is damaged if one cannot offer cogent doctrinal explanations of how the law got to be the way one describes it as being – and there is something fundamentally not very *law-like* about a system whose practitioners can adjust the rules on the fly as they see fit. One of the crowning virtues of law, as such, is its degree of fixity – the systematic and regularized ways in which changes in the rules occur when they do – in comparison to the ephemeral contingencies of mere "policy" choice; a legal order that starts to feel improvisational, even in a good cause, will tend to undermine itself.[52]

All in all, one might therefore be forgiven for thinking that one contributing reason for international law's contemporary crisis is that all these challenges have made of international legal theory a conceptual mess that *doesn't* seem particularly compelling to many of the real-world stakeholders who it most needs to convince of its rectitude. (Nor can such a conceptual *potpourri* offer participants in the legal system any assurance that it will interpret their behavior in coherent and consistent ways.) Even broad-minded legal scholars, when pressed, sometimes seem painfully aware of the jerry-rigged conceptual *mélange* with which we have saddled ourselves:

> The positivist method that we deploy in our everyday practice as international lawyers is described by legal theorists as, at best, a "pseudo-positivist self-understanding" or mere "emanations" from the positivist

> creed that "are mostly unsupported by a theoretical superstructure."[53]

All this, in turn, must surely lead us to ask ourselves whether it might be possible to articulate a more coherent and persuasive theoretical grounding for international legal order. I would submit that the answer is "yes."

Toward A New Framework?

Were one to try to devise a sounder grounding for international legal order, what characteristics would it need in order to maximize its ability to weather some of the legitimacy challenges we have seen afflict religious, naturalist, and traditional positivist accounts? I would suggest six principles of international legal legitimacy:

1) First, though we must remain mindful of the likely impossibility of avoiding *all* reference to foundational inputs from "outside" (and hence not explainable by) the system, the "Occam's Razor" approach to legitimacy discussed earlier would suggest that a sound approach should rely upon *as few such exogenous factors as possible*. (One should, in other words, rely upon as few "turtles" as one can.)

2) Moreover, given the aspiration to articulate a basis for an *international* legal order – or perhaps one should say a *global* one, for under the circumstances it may be rash to follow traditional positivism's error in simply *assuming* the existence of nations – a sounder system should also seek to limit its reliance upon exogenous inputs to "turtles" that are as inarguable, persuasive, and compelling as possible to as many stakeholders as possible across a civilizationally and culturally diverse human community. (For a truly global order, in other words, cultural particularism can be delegitimizing.)

3) A sounder system should also at least permit – though presumably not *require* – the construction of an indefinitely expansive system of legal order starting from whatever its grounding premises are. A "thick" system of order analogous to domestic law may not emerge immediately from first principles like Athena from the head of Zeus – and probably *should not*, given how hard it would be to justify the legitimacy of many of the details of such a "thick" system to a highly diverse community of global stakeholders. Nevertheless, given the obvious desire of so many thinkers to see the legal order somehow come to cover as much territory as possible in order to minimize the brutality and anarchy of international life, an order perceived to be legitimate should not *preclude* the progressive elaboration of rules over time,[54] provided that such elaboration can be justified as being doctrinally valid within the system's rules, either systemically (among all states) or locally (in or through regional or functional sub-orders). Using a generally positivist "building blocks" approach can permit order to be built gradually outward from foundational premises. (By analogy, in a domestic legal system, if you can justify the existence and operation of a legislative body in some grounding constitutional framework, you have provided a source of legitimacy for follow-on secondary rules without having to presume them from the outset.)

4) Precisely *because* the world is a place of notable civilizational and cultural diversity, however, a sound approach to international legal order should also not presume *too much* when it comes to positing foundational rules that must apply to *everyone* in the global system. It would be necessary to provide enough foundational rules to permit a basic degree of

international legal order, but it would also be important to avoid *over-prescribing* constraints and obligations to people (and peoples) who may approach these issues from very different conceptual starting points. Within whatever the systemic parameters may be, human groups should retain as much leeway as possible to formulate the sub-rules and establish for themselves the lifeways *they* feel necessary to have within their own sub-communities. While ensuring that the international system provides enough of a basic framework of non-derogable rules that it can preserve the existence and legitimacy of legal order, it would be important to keep that order from feeling "imperialist" – in terms of values and morals – from the perspective of the diverse groups of the global human community it would govern.

5) A more clearly legitimate system of international law would surely also seek to minimize the degree to which it presumes to dictate to the world's diverse human sub-communities exactly *which* entities are the most salient constituent units of the global system – that is, which "selves" are the most relevant ones and should be the primary locus of agency for systemic law-creation. (One should, as a rule, get to do one's own "imagining" when it comes to state formation: any other rule would be, quite literally, imperialistic.)

6) Finally, a sounder international system of legal order would be able to answer the abovementioned "congress-of tyrants" problem by being able clearly to ground all decisions made at the *systemic* level in some kind of freely-chosen voluntarist agency by whatever *unit*-level constituent stakeholders the system has delineated through the actions of *people* in "self-determining" themselves into *peoples*, thereby taking

> upon themselves *and actually exercising* the rights and responsibilities of self-government.

So is it possible to imagine a system of legal order resting upon a foundation more conceptually and morally defensible – and hence more legitimate, especially from the perspective of the major stakeholders who will need to find that order persuasive and compelling if it is to succeed – than what we have seen the international legal community produce to date? I believe so.

Some of the potential outlines of such an approach have been suggested in three papers I have previously published, one as a chapter in an edited volume on human rights more than a decade ago[55] and two in this journal.[56] This approach begins by positing its starting point in the most fundamental of constituent units: individual human beings. Starting with *people*, in the personal sense, avoids having to posit "imagined" and historically contingent aggregations or abstractions such as "peoples" or "states," which themselves would require antecedent explanation and legitimate derivation. Being rooted in raw facts of biological existence, the individual human seems a sensible reductionist stopping point, and it is an entity that surely needs no explication to other such humans, making it all but inarguable as a foundational element – and one maximally likely to survive cross-cultural scrutiny.

Yet because humans are social animals rather than solitary ones and have (as far as one can tell) always existed in groupings such as families, clans, villages, and tribes, and because we are also *reasoning* creatures possessing a significant degree of behavioral agency – both assumptions that would have to be defended on a cross-cultural basis, of course, but which surely can be – a legitimate system of legal order should also give such humans the ability to determine for themselves *which* communal aggregations have the most salience to them. This human-level voluntarism, in turn, can provide a means by which to legitimize the creation of whatever collective units (*e.g.*, states) are to be accorded "sovereignty" in the global legal system, thereby becoming privileged to exercise law-creation functions with regard

both to *internal* self-government and to *inter-unit* law-creation at the systemic level.

In principle, I suppose, the system could turn to individual humans to make system-wide law directly, through some kind of vast global referendum. One suspects, however, that for practical purposes some intermediating level of organization is needed: a type of entity that would speak and act for groups of individuals vis-à-vis other groups in an essentially representative capacity. This is the role that *states* have long played in positivist theory, of course, but in my conception the unit of the "state" would have a more solid grounding than positivism usually accords it, because a sovereign state would be deemed to exist only where individual humans had, through fundamentally contractarian mechanisms, determined that *this* entity in fact was the primary one by and through which they wished collectively to exercise their agency vis-à-vis other human collectivities. This would draw upon the idea of self-determination, but leave both the identification of the *relevant* collective self, as well as the identification of *which* governing regime may speak for it, to voluntarist mechanisms of individual human choice within, and hence by, each such group. (In practice, this presumably means democratic elections, but positivist ideas of tacit consent could also be usefully adapted to this scheme, especially in legitimizing why later-born individuals can be bound, as a default state at least, by rules created by their forefathers.)

The system would, in this way, be able to accommodate historical contingency in the emergence of sovereign units better than does traditional international legal positivism. At the same time, it would remain alive to the possibility of change over time,[57] for a collective unit that came to be collectively *disimagined*, if you will, could forfeit its legitimacy and sovereignty without such dissolution calling into question the fundamental legitimacy of the legal system itself. (One need not imagine such dis-establishments to be simple or orderly – for they might well not be! – in order to admit that their occurrence would not be *doctrinally* destabilizing, and this would be an advance over traditional positivism.)

I recognize that even this minimalist conception of the constitution of governance would require some antecedent ideal of sanctity of contract – *pacta sunt servanda*, if you will – which would be needed to ground any strong conception of law-creation, not merely *between* the intermediating sovereign units, but also in the exercise of voluntaristically-grounded governance *within* each unit and in the fundamental constitution of these units by individual persons in the first place. Contrary to the tenets of traditional positivism, however, I would not ask that the derivation of *pacta sunt* be circularly justified by some antecedent state-based customary law creation. Rather, *pacta sunt* would in effect be a foundational principle derived – almost *naturalistically*, if you will[58] – simply from the need for humans to live together in *some* kind of society, and from the fact that doing so requires at least *some* form of binding reciprocal obligation. (This idea is naturalistic in the same sense that Mark Murphy has suggested that the natural law thesis can be supported by an argument based on *function*, whereunder one might consider "realizing social order" to be "a good [that is] distinctively served by law, and that law can serve … only if those under that law are practically required to comply with it."[59])

It is an important point, however, that this schema *would* posit the existence of certain fundamental legal rules that could not be transgressed by any component of the system. This is necessary in order to protect the integrity of the process by which individuals come together to exercise choice in self-determination and self-government as a sovereign people. At the same time, mindful of the importance of allowing such peoples the agency to determine most of their own lifeways for themselves, this package of core protections would be a *minimalist* one – which Nigel Biggar and I have termed a "Minimum Package of Rights" (MPR). These essentially *constitutional* rules for international legal order would be – and perforce *only* be – those needed for

> protecting the integrity of choice-making in both the individualist *and* the sovereigntist paradigms – and … [in

order to] require[] the ruler to pay attention to and be accountable to the ruled. The key here [is] … that protecting the right of any sovereign national people to act *as* a collective sovereign "self" requires that the process of identifying that "self" and articulating its interests be protected against usurpation or coercion.

If one takes sovereignty seriously, in other words, one needs a way of knowing that *this* particular collectivity is indeed a genuine national "self," and that whomever claims to speak on its behalf actually does so. (A mere aggregation of prisoners acting under duress and dancing to the command of their jailer, for instance, cannot count.) In order to know this, even the sovereigntist discourse thus requires some recourse to … free and fair individual involvement in collective political choice- making. And this, in turn, requires some concept of protected individual rights – and on a universal basis, no less, not subject to abridgement even *by* collective choice. Simply put, the imperative of protecting the rights of national sovereignty requires that individual humans have enough enforceable rights claims *against* the collective that they are capable of constituting that collective in the first place.

…

For sovereignty to be meaningful, the sovereign entity must be able to decide significant things for itself *as a self*, not merely perform ministerial functions on behalf of a crowd. This suggests the need to restrict the inalienable "core" of protections to what is minimally necessary in order for humans to constitute and participate as citizens in a sovereign polity – that is, a bundle of rights not reaching much (if at all) beyond universal adult suffrage with the secret ballot, coupled with freedom of speech, expression, and belief, and freedom from arbitrary arrest, detention, and coercion by the government.[60]

As Biggar and I point out, of course, this approach would not preclude giving citizens of the resulting state *further* rights under domestic law – just as it would not preclude the sovereign state entities that such choice-making *constitutes* from contracting among themselves to create a positivist international legal order. These additional rights, however,

> would not be "core" rights that should be protected even against collective sovereign choice-making itself, but rather – in effect – "statutory" rights, created by and protected within a framework of law authored by and subject to adjustment by the community acting *as* sovereign. These additional rights could be as extensive (or as narrow) as the community wishes, but the structural core of rules needed to protect the integrity of sovereign constitution would have a special, privileged status within the overall framework.[61]

This "MPR" approach, it seems to me, has its virtue in the degree to which it could offer a grounding for international legal order that goes a long way to meeting the six principles outlined above. Specifically, while it cannot entirely avoid relying upon some kind of systemically-exogenous "turtle," it requires few and limits them to those that are likely to be compelling to most if not all of the diverse civilizational and cultural stakeholders upon whom a genuinely global community depends (*e.g.*, starting with nothing more controversial than individual humans and the rootedness of human communities in such individuals' *choices*).

At the same time, the MPR approach gives ample scope for such "imagined" communities to interact *as such*, and through positivist contractarian means to build a legal order for themselves in any way they see fit consistent with their own particular social mores, provided merely that they do not traduce the minimalist core protections that gave them the right to self-constitute as a sovereign community in the first place. This helps the system accommodate the values-diversity of

a global community without sacrificing perceived systemic legitimacy in the ways that international law surely would were it to ground itself in the values of one particular society.

The MPR approach also helps bridge the gap between domestic law and international law, for it seeks to privilege and protect the sort of individual choice-making that provides a legitimating foundation for both. It also helps answer international law's "congress-of tyrants" legitimacy problem by grounding the rules of the system in genuine choice. (We'll come back to this shortly, however, for there is some quiet radicalism hidden here.) It also valorizes and provides a reason to care about and protect national sovereignty, by grounding that sovereignty not in ahistorical romantic projections but rather in real human agency, while nonetheless protecting the theoretical possibility of *change* over time in the contours of the human communities that actual people deem most salient.

To be sure, I would not wish to overstate the novelty of this vision of a more solidly grounded and more demonstrably legitimate international legal order rooted in individual human agency and voluntaristic self-identity, and protected by a commitment to the inviolability of a core package of individual rights. The basic idea is not really new, of course, but in fact quite classically *Liberal* in its scope – in the right-centrist European sense, with a capital "L," rather than in the American one in leftist lowercase – and many of its inspirations can be seen in Western political philosophy going back at least to John Locke's *Second Treatise of Government*.

If this approach has any novelty, or even radicalism, however, it is in the way that this vision of international legal order draws out the logical *implications* of its grounding vision of governance and international law-creation. Specifically, this schema says powerful *delegitimizing* things about much of the corpus of international law that we in the 21st Century have inherited from those who came before us, because it is far from clear – to put it charitably – that all the rules of the present international legal order in fact *were* agreed by and between states ruled by regimes that were themselves genuinely the

result of feely chosen self-government by the sovereign peoples for whom their leaders purported to speak when engaging in state practice of international law creation. Hence the quiet radicalism, for this means we may need to

> reconceptualize [generations of] norm-creation and institutional operations in international society, by giving some kind of privileged status to the choices made by democratic polities and devaluing (or at least sharply bounding) the legitimacy of those made by processes involving other types of states [than democracies].[62]

Not Without Precedent

Interestingly, an international legal doctrine that takes into consideration and depends upon the domestic political legitimacy of the constituent units of the system might not represent a radical departure from legal traditions as much as it might a *return* to their origins. There is a very old concept that goes back as far as Grotius – one of the founding fathers of international law – that cared very much about the legitimacy of the actors representing nations in their dealings with each other.

Grotius' scheme did not second-guess the internal constitutional order of sovereign states, and it did not particularly privilege *popular* sovereignty, nor generally accord a population the right to choose or rebel against a particular ruler.[63] Nevertheless, as we have seen, the naturalist Grotian conception was anti-voluntarist (or anti-positivist) to the extent that it drew upon the Neo-Stoic traditions of Renaissance "Mirror of Princes" writings to articulate for the modern international community "a Ciceronian natural law deriving from the dictates of right reason and discernable *a priori* by all thinking beings" and that provided a framework of moral conduct that should restrain the conduct of princes.[64]

Significantly, however, as he articulated his conception of sovereignty, Grotius also believed it important "to ascertain correctly

the person to whom sovereign power, in every state, of right belongs."[65] It was, for him, critical to establish the basic legitimacy of the system by establishing *to whom* – by "election," meaning not modern democratic elections, of course, but instead a more figurative and historically fictive concept of popular consent upon the establishment of a political order, and which could not really be rescinded thereafter – the prerogative of sovereign action had been conveyed.

> Now as there are different ways of, living, some of a worse, and some of a better kind, left to the choice of every individual; so a nation, "under certain circumstances, *when* for instance, the succession to the throne is extinct, or the throne has by any other means become vacant," may chuse what form of government she pleases. Nor is this right to be measured by the excellence of this or that form of government, on which there may be varieties of opinion, but by the will of the people.[66]

In this sense, at least, a key foundation of Grotian legal thinking was to ensure the constitutional legitimacy of those purporting to act on behalf of the state.

At least for a while, therefore, this concept of constitutional legitimacy retained some currency in international legal theory. As Nkambo Mugewa once pointed out,

> … [a]ccording to the so-called "doctrine of legitimacy" every government which comes to power in a country depends for its legality not upon mere *de facto* control, but upon compliance with the stablished legal order of that state. Early writers, including Grotius, adhered to this doctrine and it was not until [Emmerich de] Vattel [(1714-67)] that the contrary *de facto* doctrine was established. On the American continent this doctrine took the form of constitutionalism. In 1907, [Carlos R.] Tobar, a former Foreign Minister of Ecuador, advanced the doctrine that

> governments which had risen to power through extra-constitutional means should not be recognized.[67]

This so-called "Tobar Doctrine" was actually incorporated into several international agreements between Central American countries in the early 20th Century. At the Central American Peace Conference of 1907, for instance, Costa Rica, Guatemala, Honduras, Nicaragua, and Salvador signed a package of agreements between them that included a General Treaty of Peace and Amity. Article II of that instrument, in turn, expressly declared and sought to protect the internal constitutional legitimacy of the contracting parties:

> Desiring to secure in the Republics of Central America the benefits which are derived from the maintenance of their institutions, and to contribute at the same time in strengthening their stability and the prestige with which they ought to be surrounded, it is declared that every disposition or measure which may tend to alter the constitutional organization in any of them is to be deemed a menace to the peace of said Republics.[68]

In Article I of a separate Additional Convention signed as part of this package, those same five countries also agreed that

> … [t]he Governments of the High Contracting Parties shall not recognize any other Government which may come into power in any of the five Republics as a consequence of a *coup d'etat*, or of a revolution against the recognized Government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country.[69]

Similar provisions were also incorporated into Article II of the further General Treaty of Peace and Amity subsequently entered into by those Central American countries at a conference held in Washington in 1923, with the additional wrinkle that it was specified there that the purpose of these rules was to preserve the "free

institutions" of these states' governmental systems.[70] The 1907 and 1932 Central American treaties thus rested in important ways upon a deep conception of democratic and constitutional legitimacy that would – at least within the scope of the regional legal and political relationships that these instruments regulated – deny state-sovereign prerogatives to rulers who could not demonstrate their right to represent the national peoples of these countries in the international arena.

These conferences, moreover, had been hosted and encouraged by the United States, which was closely involved in their negotiation. U.S. officials clearly understood these legitimacy-focused recognition rules to be "unusual obligations"[71] that stood as "an exception to [the United States'] traditional practice of recognition of new Governments."[72] As Secretary of State Charles Evans Hughes recounted in a telegram to the American minister in Honduras at the time, however, the U.S. Government was nonetheless in "the most hearty accord" with these principles. As Hughes described these non-recognition rules with which the United States was thus in agreement, the contracting parties to the 1923 accord

> will not recognize any other Government which may come into power in any of the five Republics through a *coup d'état* or a revolution against a recognized Government, so long as the freely elected representatives of the people thereof have not constitutionally reorganized the country. And even in such a case they obligate themselves not to acknowledge the recognition if any of the persons elected as President, Vice-President or Chief of State designate should fall under any of the following heads: (1) If he should be the leader or one of the leaders of a *coup d'état* or revolution, or through blood relationship or marriage, be an ascendant or descendant or brother of such leader or leaders. (2) If he should have been a Secretary of State or should have held some high military command during the accomplishment of the *coup d'état*, the revolution, or while the election was being carried on, or if he should have held

> this office or command within the six months preceding the *coup d'état*, revolution, or the election.[73]

Nor is such thinking purely a matter for legal antiquarians for the idea of democratic legitimacy remains, in principle, a key element in some modern international institutionalism. Specifically, the Charter of the Organization of American States explicitly enshrines this concept as a threshold question for permitting States Party to participate as members of the organization. According to Article 9 of that charter,

> … [a] Member of the Organization whose democratically constituted government has been overthrown by force may be suspended from the exercise of the right to participate in the sessions of the General Assembly, the Meeting of Consultation, the Councils of the Organization and the Specialized Conferences as well as in the commissions, working groups and any other bodies established.

These provisions do not, of course, guarantee that such a de-legitimized government *will*, in fact, be thus suspended. Nevertheless, it cannot be said that insisting upon democratic legitimacy is an outlandish and importunate idea with no place or precedent in modern international law.[74]

To be sure, the Tobar Doctrine rested more upon the internal constitutional genealogy of each ruling regime – that is, the degree to which it had come to power pursuant to pre-existing procedures established by the legal systems of each country – than specifically upon whether or not that regime had in fact been freely chosen by that population constituting the sovereign national people. This was, in other words, more a *formal* notion of legitimacy than a *substantive* one, and it would seem to require non-recognition of a government deriving from a genuinely popular uprising against a "properly" elected ruler who had become tyrannical.[75]

Tobar's idea was also fiercely controversial. Mexican Foreign Minister H.E. Genaro Estrada, for instance, articulated a contrary position in 1930 that rejected the idea that other governments should be permitted

> to pass upon the legitimacy or illegitimacy of the regime existing in another country, with the result that situations arise in which the legal qualifications or national status of governments or authorities are apparently made subject to the opinion of foreigners.[76]

Under what came to be known as the "Estrada Doctrine," it was said to be "an insulting practice that offends the sovereignty of other nations" for governments to issue "declarations or grants of recognition" on the basis of such legitimacy criteria.[77]

Nevertheless, the Tobor Doctrine would seem clearly to point the conceptual way toward a *neo-legitimist* approach that looks beyond mere consonance with the formalities of the constitutional orders prevailing within states to more foundational questions about the democratic legitimacy of each order itself. Some such re-conception of international legality might do much to restore the moral and intellectual legitimacy of the framework of positivist rules that derive – through the operation of customary law formation and treaty instruments – from the interaction and choices of sovereign states.

Conclusion

Despite the conceptual appeal of this vision of grounding legitimacy – at least to this author, at any rate – none of this necessarily means that it would be easy to implement such an approach to international legal order, much less to move *to* such a system from the one we presently have. A particular challenge, for instance, would be to identify how much relative weight to give – and how to manage conflicts between – customary legal norms or treaties created by and among democratic states enjoying the kind of legal legitimacy we have been discussing and those resulting from the practices of states who

do not have such legitimacy, or by bodies partly constituted by illegitimate states. Nor would it surely be a simple matter even to identify which states qualify as legitimate in the first place, or to manage change in the roster of such states if over time some improve their status through congenial reforms or others regress toward tyranny.[78]

Yet while the difficulty of handling such challenges should not be minimized, these problems should be evaluated not against those of some idealized system of legal order but rather against the notably imperfect one we currently have, and in the context of the crisis it seems today to face. Rather than continue with a conceptual framework that grounds law-governed international pluralism in a society of states taken simply *as they come*, without any consideration of *how* it is that particular loci of territorial control came to assert for themselves the privileges of sovereignty – as indeed the Western international system has done ever since the Treaty of Westphalia, back in an era when questions of the legitimate existence of states revolved merely around claims of possession noble families had established at spearpoint and periodically contested on those same terms – why not aspire to one that can actually defend itself with a straight face?

Challenging though it would be, I submit that an MPR-grounded legal order might – in comparison to today's system, and shorn of its conceptual confusions, doctrinal contradictions, and disregard for the legitimating bases upon which governance and law must surely at some point be based – have the advantage at least of providing more stakeholders a more clear *reason* to support it. In a still-anarchic global system, after all, effectiveness and perceived legitimacy are intimately related. It would surely represent an important step forward were we better able to provide international law with a foundation and internal doctrinal coherence that could be explained to and gain support not merely from legal scholars, but from real-world leaders and publics.

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About the Author

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Notes

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1 Ian Brownlie, *Principles of Public International Law* (4th ed.) (Oxford University Press, 1990), 287-88.

2 By contrast, Yoo was writing in the context of the U.S. operation to capture and prosecute Nicolàs Maduro of Venezuela.

3 *See* Christopher A. Ford, "Democratic Legitimacy and International Society: Debating a 'League of Democracies,'" in *Human Rights, Human Security, and State Security, Volume 3* (Saul Takahashi, ed.) (Praeger, 2014), at 1, 27.

4 In his account of the sources of international law, for instance, Michel Virally essentially *refuses* to address such foundational questions. He ably discusses various doctrinal questions, including ongoing debates thereabout. When it comes to "the problem of the basis of international law," however – a matter which he says "poses largely theoretical questions affecting all legal systems" – he simply declares that the issue has been "much coloured by ideological considerations" and "[b]ecause of this we will not stop to consider it." Michel Virally, "The Sources of International Law," in *Manual of Public International Law* (Max Sørensen, ed.) (St. Martin's Press, 1968), 116, 118-19; *see also ibid*., 135 & 167 (referring to the problem of the basis of international law, the examination of which we have discarded" and "the question of the basis of international law, which we have avoided").

5 The last phrasing is that of Brian Bix. *See, e.g.*, Brian H. Bix, "Legal Positivism," in *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Martin P. Golding & William A. Edmundson, eds.) (Blackwell, 2005), 35.

6 Bix, "Legal Positivism," 35. Kelsen also had a somewhat idiosyncratic interpretation of the notion of a "state" in international law, *see, e.g.*, Grant, "Defining Statehood: The Montevideo Convention and its Discontents," but that need not much concern us here.

7 *Holy Bible* (King James translation) Exodus 24: 3-14 ("And Moses came and told the people all the words of the Lord, and all the judgments …. And Moses wrote all the words of the Lord."), Deuteronomy 6:1 ("Now these are the commandments, the statutes, and the judgments, which the Lord your God commanded to teach you …."), & Exodus 31:18 "And he gave unto Moses, when he had made an end of communing with him upon Mount Sinai, two tables of testimony, tables of stone, written with the finger of God.").

8 *Holy Quran*, Surah An-Najm 53: 4-10 ("It is … a revelation sent down to him. He has been taught by one angel of mighty power and great perfection, who … approached the Prophet … [t]hen Allah revealed to His servant what He revealed through [the Angel] Gabriel ….").

9 *See, e.g.,* Christopher A. Ford, "Preaching Propriety to Princes: Grotius, Lipsius, and Neo-Stoic International Law," *Case Western Reserve Journal of International Law*, vol. 28 (1996), 313, 346.

[10] Hugo Grotius, *On the Law of War and Peace (De Jure Belli ac Pacis)* (1625), Book I, Chapter 1, § X, 3, https://www.files.ethz.ch/isn/125492/5004_Law of War and Peace.pdf.

[11] Hugo Grotius, *Prologue to the three books On the Law of War and Peace* (1625), https://assets.cambridge.org/97805211/97786/excerpt/9780521197786_excerpt.pdf.

[12] Grotius, *On the Law of War and Peace*, Book I, Chapter 1, § X, 4.

[13] *See, e.g.*, Aristotle, *Nicomachean Ethics*, Book V, Chapters II & IV, https://www.gutenberg.org/files/8438/8438-h/8438-h.htm#chap05.

[14] Thomas Aquinas, *Summa Theologiae*, Part IIa, Question 91, Art. 1 ("… [A] law is nothing else but a dictate of practical reason emanating from the ruler who governs a perfect community. Now it is evident, granted that the world is ruled by Divine Providence … that the whole community of the universe is governed by Divine Reason. Wherefore the very Idea of the government of things in God the Ruler of the universe, has the nature of a law. And since the Divine Reason's conception of things is not subject to time but is eternal according to Proverbs 8:23 therefore it is that this kind of law must be called eternal.") https://sacred-texts.com/chr/aquinas/summa/sum229.htm; *see also* ibid., Question 94, Art. 2 ("whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided" and "the precepts of the natural law are to the practical reason, what the first principles of demonstrations are to the speculative reason; because both are self-evident principles."). As Mark Murphy has observed, "Aquinas accepts as a matter of Christian moral orthodoxy, and later argues in philosophical/theological terms, that there are some moral absolutes, norms that it is unreasonable for one ever to violate." Mark C. Murphy, "Natural Law Theory," in *The Blackwell Guide to the Philosophy of Law and Legal Theory*, 18.

[15] William Blackstone, *Commentaries on the Laws of England* (University of Chicago Press, 1979), vol. 1, 41.

[16] Brian Bix, for instance, argues that most naturalist thinkers today believe that "immoral laws are not 'laws in their fullest sense' (in that they do not create *prima facie* moral obligations), but that is quite different from saying that they are 'not "law" at all." They see law as "a purposive activity, and an account of the nature of law that can take into account the views of participants is thereby a better theory than one that doe not do so." Bix, "Legal Positivism," 39. For his part, Mark Murphy distinguishes between a "Strong Reading" of natural law and a "Weak Reading." Under the former, "a rule that is not a rational standard for conduct is no law at all." The latter, however, "affirms that *necessarily, law is a rational standard* while holding that it is not of the same form as *necessarily, squares have four and only four sides*; rather, it is of the same form as *necessarily, cheetahs are fast runners*." Murphy, "Natural Law Theory," 19 & 21.

[17] Legal positivism is a broad current in legal theory, which can be traced back at least to John Austin (1790-1859), who was chair of law at University College London, and which over the years has tended to be concerned more with the institutional legitimacy of legal rules than their conformity with reason of morality. (According to Austin, for instance, "[t]he existence of law is one thing; its merit or demerit is another. Whether it be or not be is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation." John Austin, *The Province of Jurisprudence Determined* (W.E. Rumble, ed.) (Cambridge University Press, 1994), 157. My concern in this essay, however, is not the realm of legal positivism broadly, but rather the pronounced positivist elements in international law, which have tended – through that focus upon institutional legitimacy – to privilege legal genealogies legitimized in state-sovereign consent rather than the merits of their substantive content.

[18] As Nkambo Mugerwa has recounted, "according to the classical definition of international law as the body of rule which govern the conduct of states in their relations with one another, states are the only subjects of international law," but more modern interpretations also treat international institutions and individuals as being of concern as well. Nevertheless, *states* are still of *primary* concern "because international law owes its origin to the existence of the state and because the state is the only unit capable of possessing all the characteristics which derive from being a subject of international law." (Mugerwa also notes that jurists in the

former Soviet Union persisted in the view that states were the *only* subjects of international law.) Nkambo Mugerwa, "Subjects of International Law," in *Manual of Public International Law*, at 247, 249.

19 *See, e.g.*, *Case of the S.S. "Lotus,"* Permanent Court of International Justice (ser. A) No. 10, at 18–19 (September 7, 127).

20 Formally speaking, the U.N. Security Council *acts* like a global legislature in the sense that pursuant to its powers under Chapter VII of the United Nations Charter it can vote into place legal obligations binding upon all Member States. (By contrast, the United Nations General Assembly does not have a formal, legislative, law-creating function at all. *See, e.g.*, Brownlie, *Principles of Public International Law*, 14 ("In general these resolutions [of the U.N. General Assembly] are not binding on member states, but, when they are concerned with general norms of international law, then acceptance by a majority vote constitutes *evidence* of the opinions of governments in the widest forum for the expression of such opinions.") The Security Council cannot, however, enact *general* laws binding upon those who have not signed the Charter, and its authority and procedures depend for their own validity upon having been set forth in that document – which itself was negotiated and agreed upon (or has been acceded to) by the sovereign states that are its States Party. The Council's "legislative" functions, therefore, are derivative of states' treaty-making powers rather than an independent source of law.

21 The relevant state practice and intentionality, moreover, is "not only … those taking part in the practice but also … those in a position to react to it." International Law Commission, "Draft conclusions on identification of customary international law, with commentaries," report of ILC session A/73/10 (2018), Conclusion 3, commentary, ¶ 7, 129, https://legal.un.org/ilc/texts/instruments/english/commentaries/1_13_2018.pdf.

22 It is felt necessary for a state to *clearly* and *persistently* object; failing that, in the face of widespread practice-plus-*opinio-juris* by many other states, it may be deemed to have *tacitly* agreed with the new rule. As Virally has noted, the idea of customary law formation as a kind of "tacit convention" is admittedly something of a "fiction," but he views it as nonetheless a useful one, and one which generally tracks how states have actually approached customary international law issues. *See* Virally, "The Sources of International Law," 136. As for *new* states – *i.e.*, those that came into being during the mid-20th Century's period of European decolonization, or upon the collapse of the Soviet Union – it is generally felt that once "a new state embarks without any reservation upon normal relations with others, it must be taken to accept the rules of international law which are in force and which constitute the basis of such relations." *Ibid.*, 138. Scholars may have debated, furthermore, whether international institutions – rather than just states themselves – can participate in customary law formation, *see, e.g.*, *ibid.*, 139-40, but since such organizations are themselves created by, populated by representatives of, and are ultimately responsible to, their sovereign States Party membership, this may be a distinction without a difference.

23 It is an important point, by the way, that such international judicial rulings are not felt to *create* law, for that can be done only voluntaristically by sovereign states themselves; nor do judicial decisions function in ways analogous to the way Common Law jurisdictions permit the rulings of higher courts to constitute binding precedent for lower courts. In principle, at most, an international court *discerns* what rules states have created by their various forms of practice, and its decisions bind states only to the extent that they have chosen to submit themselves to its jurisdiction.

24 International Court of Justice, *Asylum Case* (Colombia/Peru), Judgment of November 20, 1950, 276-77, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/7/007-19501120-JUD-01-00-EN.pdf.

25 International Court of Justice, *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands*, Judgment of 20 February 1969, 43, ¶ 74, https://www.icj-cij.org/sites/default/files/case-related/52/052-19690220-JUD-01-00-EN.pdf.

26 *See, e.g.*, Brownlie, *Principles of Public International Law* 287 ("The sovereignty and equality of states represent the basic constitutional doctrine of the law of nations, which governs a community consisting primarily of states having a uniform legal personality. If international law exists, then the dynamics of state sovereignty can be expressed in terms of law, and, as states are equal and have legal personality, sovereignty is in a major

aspect a relation to other states (and to organizations of states) defined by law. The principal corollaries of the sovereignty and equality of state are: (1) a jurisdiction, *prima facie* exclusive, over a territory and the permanent population living there; (2) a duty of non-intervention in the area of exclusive jurisdiction of other states; and (3) the dependence of obligations arising from customary law and treaties on the consent of the obligor.").

27 Special Rapporteur Marcelo Vázquez-Bermúdez, "Fourth report on general principles of law," International Law Commission, A/CN.4/785 (February 18, 2025), 15, 21, & 45, https://documents.un.org/doc/undoc/gen/g25/025/00/pdf/g2502500.pdf.

28 As Brownlie recounts, this provision in the ICJ Statute was not just *figuratively* but *literally* the result of a negotiated compromise between naturalist and more positivist thinkers: "In the committee of jurists which prepared the Statue there was no definite consensus on the precise significance of the phrase. The Belgian jurist, Baron Descamps, had natural law concepts in mind, and his draft referred to 'the rules of international law recognized by the legal conscience of civilized peoples.' [Elihu] Root considered that governments would mistrust a court which relied on the subjective concept of principles of justice. However, the committee realized that the Court must be given a certain power to develop and refine the principles of international jurisprudence. In the result a joint proposal by Root and Phillimore was accepted and this is the text we now have." Ibid., 15-16 (citing *Procés-verbaux* (1920), 316, 335, & 344).

29 International Law Commission, "Report of the International Law Commission," 68th Session (2 May-10 June and 4 July-12 August 2016), United Nations General Assembly Official Records, 71st Session, Supplement No. 10, A/71/10, ¶ 114, 300, https://legal.un.org/ilc/reports/2016/english/a_71_10.pdf.

30 For more discussion of this awkwardness, *see* Christopher A. Ford, "Adjudicating Jus Cogens," *Wisconsin International Law Journal*, vol.13, no.1 (Fall 1994), 146-49; Christopher A. Ford, "Law and its Limits 'Left of Launch,'" *Military Law Review*, vol. 229, no. 4 (2021), 467-68, https://irp.cdn-website.com/ce29b4c3/files/uploaded/Law_and_its_Limits_Left_of_Launch.pdf.

31 I recognize, of course, that this may not *seem* to be a valid objection for those firmly committed to the value systems of any given faith, who may not particularly *care* that the "false gods" of other traditions have decreed rules different from their own. Nonetheless, in civilizationally plural world, religious groundings for legal order seem likely to lead to a kind of baldly imperialist ethos in which faith-specific value structures are imposed on those of other views simply through coercion. This, it seems to me, does not represent a particularly compelling answer to the "turtles problem" of moral and intellectual legitimacy we are considering.

32 A recent report of the ILC, for instance, was unable to reach agreement on even *trying* to enumerate a list of principles that constituted *jus cogens* norms. *See* International Law Commission, "Report of the International Law Commission," ¶¶ 103 & 116, 297-98 & 301; *see also, e.g.*, Brownlie, *Principles of Public International Law*, 514-15 ("more authority exists for the category of *jus cogens* than exists for its particular content"); Ford, "Adjudicating Jus Cogens," 164 ("Many … candidates for peremptory norm status have been propounded by jurists and publicists alike, with varying degrees of acceptance."); Virally, "The Sources of International Law," 143 ("There is no agreement upon 'the general principles of law recognised by civilised nations'" referred to in Article 38 of Statute of the International Court of Justice).

33 *See, e.g.*, Brownlie, *Principles of Public International Law* 72-74 (discussing Montevideo standards).

34 Mugerwa, "Subjects of International Law," 268. As my colleague Thomas Grant has observed, in the absence of an authoritative finder of fact, the *declaratory* theory of state recognition implies the existence of a decentralized process through which states eventually reach a more or less shared appreciation of the fact that a state has (or has not) emerged. *See* Thomas D. Grant, *Sovereignty disputes and the United Nations Convention on the Law of the Sea. A public order perspective* (Manchester University Press, 2026), 249-51.

35 As Brownlie has noted, for instance, "it may be observed that protest and recognition may be pure acts of policy not purporting to be legal characterizations of acts of other states, and, whether having this purport or

not, the protest or recognition, if unfounded in law and backed by state activity, may be simply a declaration of intent to commit a delict or, otherwise, to act *ultra vires*. … "An absence of recognition may not rest on any legal basis at all, there being no attempt to pass on the legal question of statehood as such. Non-recognition may simply be part of a general policy of disapproval and boycott. Again, recognition may be part of a policy of aggression and the creation of puppet states: the legal consequences will here stem from the breaches of international law involved." Brownlie, *Principles of Public International Law*, 88 & 91**.** No follower of contemporary events, after all, will be unfamiliar with how policies of state recognition have been weaponized – *e.g.*, by Russia vis-à-vis its neighbors (seeking to carve first "Abkhazia" and "South Ossetia" out of the country of Georgia, and then "Donetsk" and "Luhansk" out of Ukraine), China vis-à-vis Taiwan (seeking to ensure *denial* of any foreign diplomatic representation to that island), and even many countries of the European Union (recognizing "Palestine" as a way of expressing disapproval of Israel's campaign against Hamas terrorists after October 2023). The Russians, in particular, were enthusiastic orchestrators of a pantomime of "self-determination" in their seizure of Crimea. *See, e.g.*, Thomas D. Grant, *Aggression Against Ukraine. Territory, Responsibility, and International Law* (Palgrave Macmillan, 2015), 17-18 & 79-80.

[36] *See, e.g.*, Thomas D. Grant, *The Recognition of States: Law and Practice in Debate and Evolution* (Praeger, 1999) 1-18.

[37] *See generally* Brownlie, *Principles of Public International Law*, 275-76. He, for one, fell firmly on the side of the declaratory theory, arguing that the constitutive view presents "a matter of principle impossible to accept: it is clearly established that states cannot by their independent judgment establish any competence of other states which is established by international law and does not depend on agreement or concession." Ibid., 90.

[38] For more on that previous paradigm, *see* Thomas D. Grant, "Defining Statehood: The Montevideo Convention and its Discontents," *Columbia Journal of Transnational Law*, vol. 37, 403, 418-20 (1999).

[39] *See generally* Benedict Anderson, *Imagined Communities* (Verso, 1991).

[40] R. Keith Schoppa, *Revolution and Its Past: Identities and Change in Modern Chinese History* (4th ed.) (Routledge, 2020), 25 (quoting and citing Mark C. Elliott, "Ethnicity in the Qing Eight Banners," in *Empire at the Margins: Culture, Ethnicity, and Frontier in Early Modern China* (Pamela Kyle Crossley, Helen F. Siu, & Donald Sutton, eds.) (University of California Press, 2006), 34-35).

[41] Brownlie, *Principles of Public International Law*, 595. According to Brownlie, "[u]ntil recently, the majority of Western jurists assumed or asserted that the principle had no legal content, being an ill-defined concept of policy and morality. Since 1945 developments in the United Nations have changed the position, and Western jurists now generally admit that self-determination is a legal principle." Ibid., 595-96.

[42] *See, e.g.*, Ibid., 79-80.

[43] International Court of Justice, "Advisory opinion of the International Court of Justice on the accordance with international law of the unilateral declaration of independence in respect of Kosovo" (July 22, 2010), ¶ 83, 34, https://digitallibrary.un.org/record/688916?ln=en&v=pdf.

[44] Among other things, this problem bedeviled the decolonization movement of the 20th Century, which too often merely produced regimes hardly less authoritarian and unrepresentative than the European colonial empires they had succeeded – and whose tyrannical rulers had the dubious virtue, if any, of merely being *of the same hue* as their oppressed subjects. It was far from obvious how "self-determination" made a nonwhite brute at the head of an unrepresentative and repressive regime preferable to a white one.

[45] Ford, "Democratic Legitimacy and International Society," 25. This is an international version of the problem noted by H.L.A. Hart in criticizing John Austin's theory of law as the authoritative command of a sovereign, a critique which pointed out – in Brian Bix's words – that Austin's schema was "unable to distinguish between a legal system and a gunman's threats, writ large." Bix, "Legal Positivism," 39 (citing H.L.A. Hart, The Concept of Law (2nd ed.) (Oxford: Clarendon Press, 1994), 20-25).

[46] Ford, "Democratic Legitimacy and International Society," 27.

[47] Ford, "Law and its Limits 'Left of Launch,'" 464-65 (citing and quoting Martti Koskenniemi, "Law, Teleology and International Relations: An Essay in Counterdisciplinarity," *International Relations*, vol. 26, no.1 (2011), 3-4).

[48] Koskenniemi, "Law, Teleology and International Relations," 4-5 (internal citations omitted).

[49] The eagerness of legal scholars to focus more upon *lex ferenda* than *lex lata* has been recognized for some time. *See, e.g.*, Brownlie, *Principles of Public International Law*, 25 (noting that "some publicists see themselves as propagating new and better views rather than providing a passive appraisal of the law").

[50] Ford, "Law and its Limits 'Left of Launch,'" 471. The International Law Commission phrases this thought more delicately: "[t]here is a need for caution in drawing upon writings [of legal scholars], since their value for determining the existence of a rule of customary law[, for example,] varies …. First, writers sometimes seek not merely to record the state of the law as it is (*lex lata*) but to advocate its development (*lex ferenda*). In doing so, they do not always distinguish (or distinguish clearly) between the law as it is and the law as they would like it to be. Second, writings may reflect the national or other individual viewpoints of their authors. Third, they differ greatly in quality." International Law Commission, "Draft conclusions on identification of customary international law, with commentaries," Conclusion 14, Commentary, ¶ 3, 151.

[51] Devika Hovell, "The Elements of International Legal Positivism," *Current Legal Problems*, Volume 75, Issue 1, 2022, 71–109, https://academic.oup.com/clp/article/75/1/71/6775923.

[52] As the comments recounted above from John Yoo, Julian Ku, and David Wolfson suggest, however, it can also present legitimacy challenges when the law is *too* rigid – that is, when it refuses to recognize distinctions that ordinary people find meaningful and compelling.

[53] Hovell, "The Elements of International Legal Positivism" (quoting F. Hoffmann, 'Teaching General Public International Law," *International Legal Positivism in a Post-Modern World* (J. Kammerhofer & J. d'Aspremont, eds) (Cambridge University Press, 2014) 349, 361 (n. 42); J. Kammerhofer, "International Legal Positivism," in *Oxford Handbook of the Theory of International Law* (A. Orford & F. Hoffmann, eds) (Oxford University Press, 2016), 407-408, n6).

[54] Such progressive development is hardly a new thought, for the Statue of the ILC expressly envisioned that one of the core functions of the Commission would be to consider proposals from the United Nations General Assembly "for the progressive development of international law," and upon being tasked with such work thereupon prepare "draft conventions on subjects which have not yet been regulated by international law or in regard to which the law has not yet been sufficiently developed in the practice of States." Statute of the International Law Commission (1947), Arts. 15-16, https://legal.un.org/ilc/texts/instruments/english/statute/statute.pdf. Whereas the ILC is made up of members elected by the General Assembly from slates of candidates put forward by regional groups of states which have the right to make such nominations simply by virtue of *being* U.N. member states, however, I suggest herein the need for further vetting on the basis of the *legitimacy* of the ruling regime in each nominating state.

[55] Ford, "Democratic Legitimacy and International Society."

[56] Christopher Ford & Nigel Biggar, "Rebutting Sino-Russian Political Discourse and Getting Rights Right" (with Lord Nigel Biggar), *Defense & Strategic Studies Online*, vol. 1, no. 2 (Winter 2025), 2-27, https://dss.missouristate.edu/_Files/MSU-DASSO-2025-Vol_1-No_2-FordBiggar.pdf; Christopher Ford, "Marxing America Great Again: Marxist Discourse in Right-Wing Populism and the Future of Geopolitics," *Defense & Strategic Studies Online*, vol. 2, no. 2 (Winter 2026), 1-78, https://dss.missouristate.edu/_Files/MSU-DASSO-2026-Vol_2-No_2-Ford.pdf.

[57] As Joseph Raz has noted, "because legal theory attempts to capture the essential features of law, as encapsulated in the self-understanding of a culture, it has a built-in obsolescence, since the self-

understanding of cultures is forever changing." Joseph Raz, "On the nature of law," *Archiv für Rechtsund Sozialphilosophie*, no. 82, 6. I would submit that a legal order is – and will be perceived to be – more legitimate the less its central tenets tend to "age out" as social mores evolve.

58 Perhaps it will not be too philosophically offensive to incorporate both naturalist and positivist elements into one's system of law. As Brian Bix has noted, invoking the work of Roger Shiner, it may be that "the weak points in legal positivism could lead one towards a natural law approach, but that the weak points in natural law theories would lead one back to legal positivism." According to Bix, "[i]t may be that law's double nature – as a social institution and as a reason-giving practice – makes it impossible to capture the nature of law fully through any one approach, with a more 'neutral' approach (like legal positivism) [being] required to understand its institutional side, and a more evaluative approach (like natural law theory) required to understand its reason-giving side." Bix, "Legal Positivism," 41 & 45 (citing Roger Shiner, *Norm and nature: The Movements of Legal Thought* (Clarendon Press, 1992).

59 Murphy, "Natural Law Theory," 25-26.

60 Ford & Biggar, "Rebutting Sino-Russian Political Discourse and Getting Rights Right, " 17-18.

61 Ibid., 19.

62 Ford, "Democratic Legitimacy and International Society," 27; *see also ibid.*, 25 (suggesting that "decisions made by a league [of democracies] – or indeed the customary practices of democratic states within the global community – have more legal legitimacy, and should thus be given more legal weight, than those made by mixed bodies such as those of the traditional United Nations system").

63 Ford, "Preaching Propriety to Princes," 350-55.

64 Ibid., 364-65.

65 Grotius, *On the Law of War and Peace*, Book I, Chapter 3, § X, 31.

66 Ibid., § VIII, 28.

67 Mugerwa, "Subjects of International Law," 271.

68 General Treaty of Peace and Amity (September 17, 1907), *reproduced in* Report of Mr. William I. Buchanan, Representing the United States of America, on the Central American Peace Conference held at Washington, D. C., November 13 to December 20, 1907, https://history.state.gov/historicaldocuments/frus1907p2/d148.

69 Report of Mr. William I. Buchanan, Representing the United States of America, on the Central American Peace Conference held at Washington, D. C., November 13 to December 20, 1907, https://history.state.gov/historicaldocuments/frus1907p2/d148. Apparently fearing the tyranny of elected rulers who thereafter might refuse to relinquish power, they even wrote into Article II of the Additional Convention the stipulation that all States Party must implement a domestic political "constitutional reform" that would provide constitutional term limits for their presidents: "The Governments of Central America, in the first place, are recommended to endeavor to bring about, by the means at their command, a constitutional reform in the sense of prohibiting the reelection of the President of a Republic, where such prohibition does not exist, secondly to adopt all measures necessary to effect a complete guarantee of the principle of alternation in power."

70 *See* Note, *American Journal of International Law*, vol. 19, no. 1 (January 2025), 164-66, https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/central-american-policy-of-nonrecognition/46A8D7F36C66985A1933F099C22B88E1.

71 Buchanan, Report on the Central American Peace Conference.

72 Telegram from the Secretary of State to the Minister in Guatemala (Whitehouse), Washington, November 22, 1932—7 p.m., https://history.state.gov/historicaldocuments/frus1932v05/d355.

[73] Telegram from the Secretary of State to the Minister in Honduras (Morales), Washington, June 30, 1923—3 p.m., https://history.state.gov/historicaldocuments/frus1923v02/d345.

[74] it seems unlikely, however, that the recent U.S. move to seize and prosecute Venezuelan president Nicolás Maduro represents a continuation of such legitimist thinking in the Americas – that is, a blow struck in favor of democratic legitimacy by removing a dictator in favor of those who were actually elected by the Venezuelan people – rather than simply a crassly self-aggrandizing move to go into business with the remnants of Maduro's regime after intimidating them into compliance. Though U.S. officials had previously made clear that Marina Corina Machado had in fact won Venezuela's last presidential elections – and though over the years there has developed "a remarkable coalescence of opinion from the leading democracies, the United States' leading allies, and the countries directly affected by the Maduro regime, those of Latin America" that the members of Maduro's regime were *not* the legitimate rulers of Venezuela, *see, e.g.*, Thomas D. Grant, "The U.S. and Nicolàs Maduro's Removal: Some reflections on international law," *Politeia* (2026), 2-3, https://www.politeia.co.uk/wp-content/uploads/2026/02/Nicolas-Maduros-Removal.pdf – U.S. President Trump has chosen to bypass Machado and "run" Venezuela (potentially for years) through deals cut with the former vice president of Maduro's repressive regime, Delcy Rodríguez.

[75] This, indeed, is a criticism that Mkambo Mugerwa levies against legitimist conceptions of sovereignty such as the Tobar Doctrine. According to him, the ideas behind the Tobar approach to genealogical constitutional legitimacy are not consistent with those aspects of international law that "recognize[] the right of a people to alter by any means, including force, the form of government under which they live." Mugerwa, "Subjects of International Law," 271. A deeper Tobar-like doctrine that looked instead to the foundation of *any* claim to sovereign prerogatives in genuine democratic consent, however, would seem to meet Mugerwa's objection in this respect. Nor would it be confounded by his complaint that "[t]o examine the constitutional legality of the government of another state constitutes and intervention in the domestic affairs of that state," ibid., because under the *deeper* sort of legitimism I suggest, claims by the government of a state to have the right to "non-interference" are insupportable unless that regime in fact represents the choice of its sovereign people. A government that was genuinely representative would have valid claims against outside intervention in its internal affairs, but an unrepresentative one would not; for this distinction to matter, it is perforce legitimate to inquire into its basis.

[76] Boletin Oficial de la Secretaria de Relaciones Exteriores, Estados Unidos Mexicanos (September 1930), vol. LV, no. 9, 9 (as translated in *American Journal of International Law* Supplement 203 (1931)).

[77] C.L. Cochran, "The Estrada Doctrine and United States Policy," *University of Miami Inter-Americal Law Review*, vol. 5, no. 27, (1973), 28, https://repository.law.miami.edu/cgi/viewcontent.cgi?article=2239&context=umialr.

[78] These challenges are described in at least somewhat more detail in Ford, "Democratic Legitimacy and International Society," 19-21.

Syria and Israel:

Navigating a Year of Transformation

By

Nir Boms
&
Khaled Homsi

Introduction

The collapse of the Assad regime in December 2024 and the subsequent rise of Ahmad al-Sharaa's Hayat Tahrir Al-Sham - HTS-led government marked the most dramatic transformation in Syria's modern history. One year into the new order, Syria remains caught between hopeful promises of reconstruction and the persistent realities of sectarian fragmentation, militia autonomy, and external intervention. This article offers a joint assessment by experts from both Syria and Israel on Syria's dramatic and turbulent transition, examining the challenges of rebuilding a state following a decade and a half of war, amidst competing ideological agendas, weak central governance and with 40 percent minority populace who face acute political and security challenges amid recurrent cycles of violence.

We analyze the emergence of the nascent "Syrian National Project," its institutional architecture, and its struggle to establish legitimacy while navigating Turkish influence, Russian interests, and the evolving strategic alignment with the United States.

We also take a deep dive on Syria's southern neighbor, Israel, that was quick to react to the changes in Syria shifting from tactical

military intervention to minority-protection operations and later to cautious exploration of long-term coexistence with a post-Assad Syria. We argue that despite deep mistrust and escalating flashpoints, a narrow but significant opportunity still exists to activate previously inaccessible channels in Syrian-Israeli relations, provided both states move beyond the reactive threat management measures and toward an interest-based cooperation. To that end, we propose an integrated framework for Syrian stabilization built on four pillars: constitutional guarantees, decentralized power-sharing, inclusive educational reform, and the institutionalization of an inclusive national identity combined with incremental bilateral confidence-building measures.

Ultimately, we contend that the success or failure of al-Sharaa's national project will determine whether Syria becomes a renewed adversary, a fragmented failed state, or a pragmatic neighbor capable of a different regional trajectory. The current moment presents a rare and fragile opening: if leveraged wisely, it could redefine not only the future of Syria and Israel but, also, the further development of the axis of stability in the Middle East.

A New Syria is Born

Back in 2011, when the Syrian uprising first erupted through social media,[1] long-standing sectarian and political divisions resurfaced in a country that never enjoyed a stable representative system capable of integrating its diverse population into a shared social contract. The Assad regime responded with a brutal crackdown that relied heavily on the Alawite minority for security and military support. In reaction, Qatar and several other GCC (Gulf Cooperation Council) states funneled targeted logistical assistance to extremist Sunni factions, which further deepened the conflict. Sensing an opportunity in Syria's instability, Iran invested heavily in radical Shia militias. This intervention intensified sectarian polarization and indirectly legitimized the emergence of Sunni extremist groups.

The rise of ISIS soon drew foreign intervention, which in turn empowered Kurdish actors in the northeast. Turkey countered by

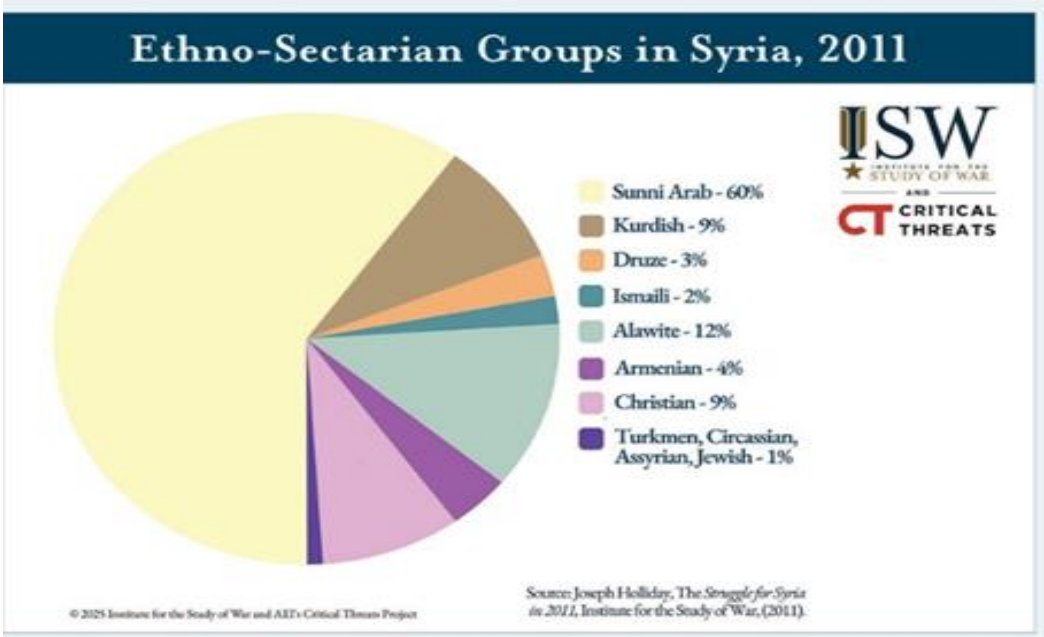
supporting local Sunni factions to limit Kurdish autonomy and by carving out buffer zones along its southern border. Russia, wary of repeating its Afghanistan experience, entered the conflict cautiously. Its involvement focused on bolstering the Assad regime through airpower while helping maintain the influence of allied Shia militias. For years, these competing interventions produced a tense but relatively durable balance of power among Syria's warring factions. That equilibrium began to unravel after Hamas's October 7th attacks and Israel's subsequent campaign against the Iranian-backed militias that served as the backbone of the Assad regime. The regional shockwaves triggered a cascade of strategic realignments. In Syria, HTS capitalized on the resulting vacuum, ultimately toppling the Assad regime and forming a transitional government in Damascus. Yet the underlying sectarian and political fractures quickly re-emerged, reinforcing the exclusionary nature of HTS's leadership and exposing the fragility of the new transitional order.

For the past decade, the Assad regime had been synonymous with systematic brutality and widespread human rights abuses against the Syrian population. A year in the making, Ahmad Al-Sharaa's new Syria still struggles with the vision of peace and tolerance outlined by its new ruler and its minorities still seek the promised integration following a series of ethnic and sectarian clashes which resulted in numerous violent crimes, targeting the Alawites in the coastal region and others aimed at the Druze community in the southern region. The lack of a unified national military and the prevalence of armed factions and militias challenging the central transitional government signify the collapse of the Weberian state's monopoly on force, placing Syria at high risk of becoming a failed state.[2] While Al-Sharaa was able to successfully position himself on the international arena, transitioning to diplomacy and bringing Syria back to the world's stage and the oval office, challenges at home persist, as the country only begins to recover from 15 years of brutal civil war. Power voids are still filled with local militias, some of which have agendas different from those of the central government in Damascus.

The presence of a 40 percent minority population coupled with significant religious and ideological cleavage lines, makes remaking a stable Syria a formidable challenge. Achieving stability will require deep constitutional and political reforms and a workable model of power sharing that will provide minority groups a permanent stake in the state and mitigate their fear of majoritarian rule. However, historical precedents in deeply divided societies, such as Lebanon or Bosnia-Herzegovina, demonstrate that even well-designed constitutional arrangements frequently risk entrenching sectarian divisions, fostering political gridlock, and ultimately fail to overcome the fundamental doubt many minorities harbor toward the leadership of a former Islamist insurgent.

Ahmad Al-Sharaa, formerly Abo-Mohammad Al-Joulani, has taken a pragmatic approach and gained significant endorsements by pointing to the new Syrian project he seeks to create: "The Syrian population has lived together for thousands of years."[3] Moreover, "we will have dialogue and ensure everyone is represented." "The old regime always played with sectarian divisions," he added, "but we will not …. I think the revolution can contain everybody." These ideas are pivotal to the success of the potential Syrian National Project that Al-Sharaa seeks to create. However, they also underscore the challenge that lies ahead in bringing together a divided country still struggling to recover from a brutal and prolonged sectarian war.

Six months following the fall of Assad, Israel found itself bombing the presidential palace in Damascus for the first time, a move that meant to send a symbolic signal to the new Syrian government when it failed to prevent a massacre in the Druze areas. As Israel determines whether the new Syrian administration is a potential good neighbor or, rather, a new foe, there might still be time to engage with those in Syria who seek to build a country whose future trajectory will differ from that of the past.

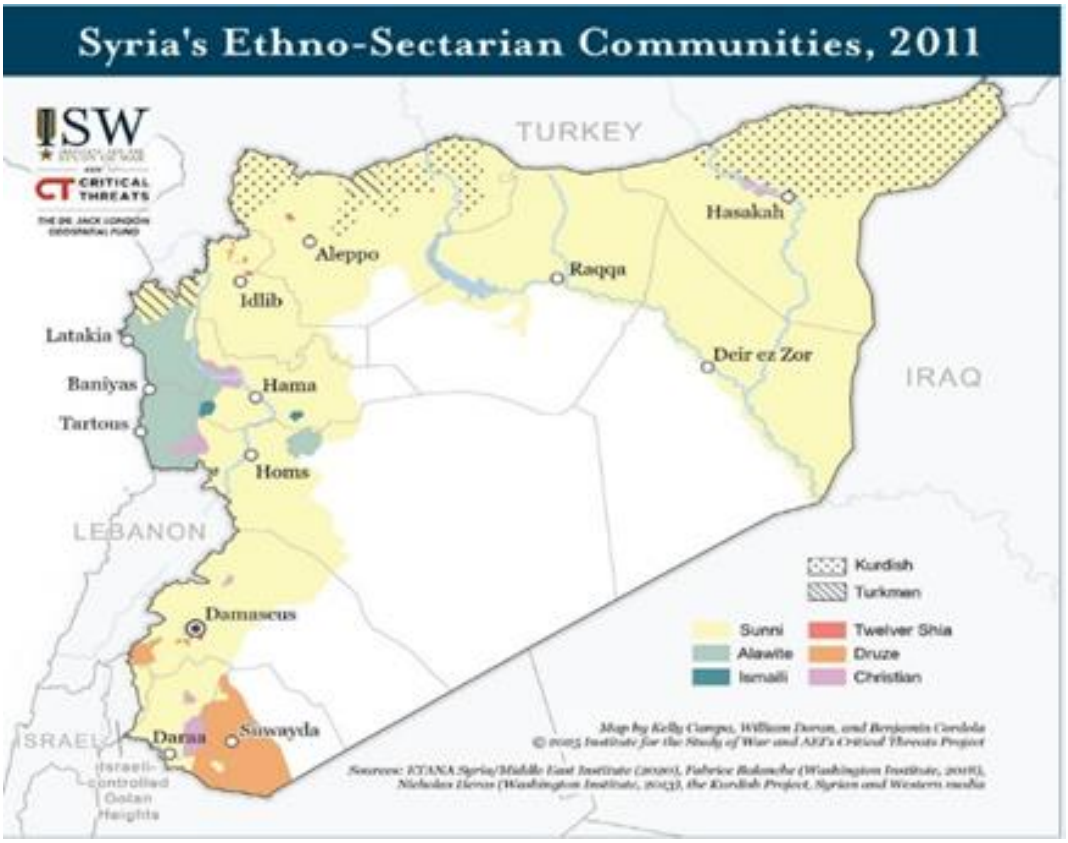


Between Old Syrian Divisions and a New Syrian Project

Old Divisions

Syria is home to a mosaic of ethnic and sectarian groups, with most of the population being Arab and Sunnis, which comprised over 70 percent of its pre-war population. In addition to Arabs, Syria has Kurdish, Armenian, and Assyrian populations. The Kurds, primarily in the northeastern regions, have distinct language and culture. The Armenian community, many of whom are descendants of survivors of the Armenian Genocide, is concentrated in several urban centers. Assyrians, an ancient ethnic group, also have a presence, particularly in the northeast. Other minorities, such as Alawites, Druze, Circassian and Turkmen, further add to the country's ethnic and complexity. Under the rule of the Assads, the Alawites – estimated to have been12 percent of the pre-war population – claimed to have adopted the minorities, realizing that allies are needed as a small group seeks to rule over the Arab Sunni majority.

The years of war have begun to change the demographic composition of Syria. The majority of those killed in the rebellion - over 600,000 according to most estimates and close to a million according to some estimates[4] – were Sunni Arabs. The same applies to the number of refugees who fled Syria, which is estimated to be between 6 to 7 million out of a pre-war population of 23 million.[5] These dynamics place Syria's minorities at an estimated 40 percent of the population today.



Unfortunately, Syria's divisions do not end with ethnic, religious, or sectarian tensions. The protracted civil and proxy war that has ravaged Syria since 2011 formed additional cleavages that quickly translated into armed groups with local, regional, or ideological agendas. While some ethnic groups – specifically the Kurds and the Druze – maintain significant fighting forces, other powerful, autonomous armed forces exist on the ground. Hayat Tahrir Al-Sham

(HTS), the Turkish-allied Islamic group that took-over Damascus and formed the new government, is not a unitary military force. It was formed in 2017 as a merger of various armed factions, most notably Jabhat Fateh Al-Sham (JFS). Its commander, now President Ahmad Al-Sharaa, must navigate between his core supporters, who brought him to power on the back of an exclusionary Islamist agenda, and the broader constituencies of Syria who view this agenda as a threat. Furthermore, multiple reports suggest that Iran and its proxy networks are plotting an assassination attempt against Sharaa and that he has been the target of at least three attempts since assuming power in December 2024.[6]

These tensions already manifested in a series of sectarian and ethnic clashes involving the minority communities fostered by exclusionary political structure and enabled by lack of measure to counter violence incitement and inability to rein in the tribal elements, as illustrated by the following key points:

1) *Old Regime Remnants and the Alawites minority at the coastal region:* Between the 6th and 17th of March – when HTS government's GSF (General Security Forces) were ambushed by armed men - described as former regime fighters or loyalists - during a targeted arrest operation of General Mohammed Kanjo Hassan aka "Butcher of Sednaya" (an Assad loyalist who was responsible for the notorious Sednaya prison). This initial act of resistance resulted in deaths of 14 GSF personnel and quickly escalated into a wider government mobilization and clashes in the coastal region led to a massacre of over 1,400 people predominantly civilian adult men, but victims included around 100 women, the elderly, and children as per the UN Commission of Inquiry on Syria/OHCHR (August 2025 Report). According to Rami Abdulrahman, the head of the observatory group Syrian Observatory for Human Rights/SOHR, the death toll was among the highest recorded since

the 2013 chemical attacks by Assad's forces, which then killed around 1,400 people in a Damascus suburb. While the Syrian government succeeded eventually to defuse the tension with President Al-Sharra forming a committee of inquiry, this sequence of events highlighted the volatility and intensity of the sectarian tensions and put into question the HTS government's ability to assert control over and establish legitimacy to govern Syria.

2) *The Druze Community in the Suburbs of Damascus:* Another violent event took place in April and May 2025, when Islamist forces, some associated with the government, mobilized and initiated a series of attacks against the Druze community on April 29, following an alleged recorded audio insulting prophet Mohammed attributed to a Druze Sheikh circulated widely on social media. The violence, concentrated in the Druze-majority Damascus suburbs of Jaramana and Sahnaya, resulted in over 100 Druze fatalities, a grim toll that provoked widespread protests from the Israeli Druze community and triggered a military response from Israel. The Israeli military actions were measured but loud and clear, specifically the warning strike near the presidential palace in Damascus, which aimed to deliver a message to the HTS government that Israel "will not allow forces to be sent south of Damascus or pose any threat to the Druze community."[7] The Israeli government justified the strikes as necessary for the direct protection of the Druze as well as applying pressure on the Syrian government to ensure the Druze's security.

3) *The Druze Community in Suwaida Province:* The most severe sectarian escalations so far targeted the Druze community in Suwaida in July 2025, when clashes erupted following the abduction of a Druze merchant

on the Damascus–Suwaida highway, sparking retaliatory violence between Druze armed groups and Bedouin tribal fighters. The violence rapidly spread to Suwaida city and surrounding villages, leaving over 1,300 people dead, including an estimated 833 Druze (533 fighters and 300 civilians) according to later monitoring reports.[8] Government troops entering the region were accused of committing "shocking violations" during their operations, deepening local resentment toward Damascus.[9] Amid escalating hostilities, Israel launched airstrikes on Syrian military and government positions near Suwaida and in Damascus, citing the need to protect the Druze minority. Despite a cease-fire announced days later, sporadic fighting persisted, communication lines collapsed, and hospitals were rendered inoperative. The Israeli strikes were notable for targeting the Ministry of Defense headquarters and the vicinity of the Presidential Palace in Damascus, sending another direct and emphatic warning to the new Syrian government.

4) *Bedouin and Tribal Element:* The Bedouin tribes represent a pervasive and uncontrolled destabilizing factor across the Syrian geography, historically posing a significant challenge central authorities have struggled to manage. Acting as the primary mobilized force in the violent incidents cited above, tribal elements often shift allegiances based on patronage rather than ideology. Currently, they are embedded within the ranks of opposing factions, including both the Kurdish-led (SDF) Syrian Democratic Forces and the HTS government forces, effectively serving as the foot soldiers for conflicting agendas. This volatility is compounded by the community's unique transnational nature, maintaining deep kinship ties and presence across artificial borders in Iraq, Jordan,

and Israel. Consequently, successful stabilization in Syria necessitates a decisive policy to transition these groups from independent militias into a professionalized cadre integrated within the Syrian Armed Forces, replacing the current vacuum of authority with state-centered accountability.[10]

5) *Structural Permission for Incitement:* The current transitional period suffers from a "structural permission" for the incitement of violence, in which the information vacuum is filled by weaponized disinformation and sectarian rhetoric. This is further entrenched by the conspicuous lack of representation and participation of minorities in official and popular media outlets, which prevents cross-sectarian dialogue and leaves minority narratives susceptible to malicious distortion. The direct correlation between unchecked hate speech and physical violence was demonstrated during the April 2025 events in the Jaramana and Sahnaya crisis when the weaponization of an unverified audio clip triggered mass mobilization and over 100 fatalities, mainly from the Druze community. Similarly, the ability of groups like *Saraya Ansar al Sunnah* to publicly broadcast calls for the extrajudicial killing of Alawites and "regime remnants" without digital platform or legal repercussions creates a permissive environment that normalized the violent incidents. Without intervention, social media platforms and local rumor networks will continue to act as catalysts that transform isolated crimes – such as the Suwaida abduction – into existential communal wars.

6) *Persistent Extremist Threat:* Salafi-jihadi groups (ideologically close to ISIS) continue to be active, and some are conducting extrajudicial killings against Syrians perceived to be tied to the former al Assad

> regime. One group - Saraya Ansar al Sunnah – called for the killing of an Assad informant in Aleppo in April 2025 and has already claimed several killings. The group has conducted dozens of attacks targeting former Assad officials and the Alawite minority in western Syria as well. The group has also announced that it will attack the Druze community in southwestern Suwaida Province.[11] Jamaat Ansar al-Islam (JAI) – a group originated as an al-Qaeda-linked group in Iraq in 2007, but has been operating in Syria since 2011 – was responsible for a significant clash with Israeli forces in November which resulted in the death of 14 in the village of Bit Jan.

Although the new Syrian government's (DDR) Disarmament, Demobilization, and Reintegration mission aims to collect weapons and merge various armed groups into a unified Syrian Security and Armed Force, the enduring autonomy of independent armed factions and the uncontrolled armed tribal elements present significant challenges, constantly triggering clashes and undermining the state's sovereign control over its citizens.

The New Syrian National Project

In a party speech made days after the Al-Sharaa's conquering of Damascus, Turkish President Erdoğan talked openly about his ambitions to "revise the outcome of World War I and annex Syrian territories (formerly Ottoman provinces) into Turkey." Contrary to Western Europe, where a post-modern and post-nationalist mindset is still dominating the elites, the rest of the world is moving on to a neo-imperialist mindset.[12] Turkey supports and trains the Syrian National Army (Al-Jaish Al-Watani),[13] which is an offshoot of the Free Syrian Army that began its activities in Syria with Turkish, Gulf and Western backing. This faction consists of over 30 armed groups that do not necessarily operate under a unified command. Other factions of the Free Syrian Army, mainly secular groups that rejected Turkish

patronage, are spread throughout Syria and beyond, receiving support from various parties, including the U.S. and Gulf states.

The statement released on December 24, 2024, regarding an agreement with the leaders of former rebel factions to dissolve and consolidate all groups under a new Syrian Defense Ministry is undoubtedly promising but also revealing. Many armed groups – including the minority groups have resisted surrendering their weapons[14] due to ideological differences or fear for their safety. Some of these groups are aligned with political factions that do not recognize the Al-Sharaa-led Syrian National Project. The recent armed clashes in Syria reflect both the challenges and dangers that lie ahead. If the Syrian National Project fails – or if a formula cannot be developed to unite the diverse minorities, tribal, ideological, and ethnic groups into an effective power-sharing arrangement – Syria may face fragmentation. This could lead to the continuation of violence and ultimately threaten to plunge the country back into turmoil.

If and when Syria is able to overcome its divisions, herculean efforts will be needed to achieve statehood. State monopoly on the use of force is widely regarded as a defining characteristic of the modern state[15]. It has been reported that the new Syrian government aspires to form a 300,000-strong army with the help of Turkey, with Turkish military advisors playing a central role. Turkish Armed Forces personnel would oversee the process at five strategic locations.[16] While Syria's new government has called for the disbanding of all armed groups, few have adhered to the challenge. The fighters from the Druze religious minority say they prefer to rely on their own men, rather than the promises made by Syria's transitional authorities.[17] The Kurds will be the last to trust a Turkish-backed effort, as indeed will be all secular groups, whom the West formally backed.

On 29 March 2025, President Ahmad Al-Sharaa announced the formation of a 23-member transitional cabinet. Under the new interim constitutional declaration, the position of prime minister was eliminated, consolidating executive authority within the presidency. Key cabinet appointments include Foreign Minister Asaad Al-Shibani,

Defense Minister Murhaf Abu Qusra, Interior Minister Anas Khattab, and Finance Minister Mohammed Yisr Barnieh. Hind Kabawat, the sole female minister and a Christian, was appointed to oversee Social Affairs and Labor, signaling an effort toward greater inclusivity.

While al-Sharaa said at the ceremony to mark the new cabinet's appointment that "we witness the birth of a new phase of our national journey", the new cabinet has drawn significant criticism. Indeed, the concentration of power in the hands of the president and the absence of a prime minister have raised fears of potential authoritarianism and the marginalization of diverse political voices. While the government has taken steps to promote inclusivity by appointing ministers from various ethnic and religious backgrounds, persistent sectarian tensions and the limited representation of minorities continue to fuel concerns about the depth and sincerity of these reforms.[18]

The transitional legislature of the People's Assembly of Syria (210 seats) reflects a significant structural shift:[19] approximately two-thirds of its members are selected through indirect electoral colleges, while one-third are directly appointed by the interim president. Notably, regular political parties remain banned, and no mechanism exists yet for free party competition (meaning all candidates stand as independents). The elections, held on 5 October 2025, were further marred by the exclusion of entire regions – most prominently the Kurdish-controlled northeast and the Druze-majority province of Suwaida – from participation, leaving seats vacant and raising questions of legitimacy.[20] Together, these features have prompted critics to argue that the process lacks the fundamentals of representative democracy and failed to secure a truly inclusive parliament.[21]

Pillars for Stability and National Cohesion

For Syria's National Project to transcend the failures of its past regime and lay the foundations of a sustainable post-conflict order, the reconstruction of its political and social institutions must rest on four interlocking pillars: constitutional and legislative guarantees, power-

sharing through decentralization, educational reform and the institutionalization of an inclusive national identity. These measures are essential to transform Syria from a state fragmented by decades of authoritarian manipulation and sectarian warfare into a cohesive and inclusive polity.

(1) Constitutional and Legislative Guarantees

The first pillar involves embedding minority rights within Syria's constitutional framework. This requires explicit provisions prohibiting discrimination and guaranteeing proportional representation in governance. Furthermore, legal recognition of linguistic and cultural autonomy must be enshrined to ensure that all communities see themselves as stakeholders in the state's future. The failure of previous Syrian constitutions to recognize such diversity contributed significantly to the alienation of minority groups and the erosion of national unity.[22] Constitutional pluralism, combined with robust judicial oversight, would create a legal architecture capable of protecting minorities from both state coercion and majoritarian dominance. Despite several high-profile initiatives, including the National Dialogue Conference and the establishment of a Reconciliation Committee, many minority leaders and activists remain publicly skeptical of the process's inclusivity and legitimacy taking into consideration that the current Syrian Parliament reflected inadequate representation of minorities and women.[23]

(2) Power-Sharing and Decentralization

The second pillar lies in a reformed state structure that should institutionalize a power-sharing formula that, on the one hand grants local communities' meaningful administrative autonomy while, on the other, ensures allegiance to the Syrian nation-state and its security structure. While the two might initially appear contradictory, a formula which will empower local administrative structures at the township, county and city level might offer an innovative solution to ease ethnic and communal tensions. This approach should draw lessons from post-conflict arrangements such as Iraq's 2005

constitution or Lebanon's Taif Accord, where devolved powers initially helped diffuse post-war sectarian tensions but eventually lead to perpetual political gridlocks, entrench sectarian divisions, and ultimately weakened the effective authority of the central state[24] which eventually created a critical gap for malign and destabilizing regional foreign influence. A balanced system of decentralization would not only empower local governance but also strengthen the legitimacy of the central state by building trust between citizens and national institutions.

(3) Educational Reform

The third pillar focuses on reimagining education as a national integrative tool rather than an instrument of ideological control. Historically, Syrian curricula under the Ba'ath regime propagated Arab nationalism at the expense of ethnic and linguistic diversity. Integrating the histories, languages, and cultural contributions of all communities – Arab, Kurdish, Armenian, Assyrian, Druze, and others – into the national curriculum is therefore vital for cultivating a shared civic identity. Education should no longer function as a mechanism of exclusion or homogenization, but rather as a vehicle for reconciliation, pluralism, and inclusivity. Comparative studies in post-conflict societies, such as Lebanon and Bosnia-Herzegovina, underscore that inclusive educational systems can play a pivotal role in reshaping collective memory and preventing the reemergence of sectarian divides.[25]

(4) Institutionalization of an Inclusive National Identity

To dismantle the "structural permission" for incitement currently destabilizing Syria, the transitional authority must immediately enforce strict hate speech regulations while simultaneously breaking the monopoly of sectarian echo chambers. This is not achievable via mere censorship; the state must actively utilize official platforms to elevate the authentic political representation of all polities. By ensuring that legitimate leaders from diverse communities have the visibility to voice grievances and engage

in national dialogue, the information vacuum is filled with credible alternatives to radical rhetoric. Historical precedent supports this approach; the Allied stabilization of post-WWII Germany successfully neutralized radicalization through the rigorous control of mass media and the deliberate promotion of pluralistic discourse.[26] Applying these lessons to Syria is essential to ensure that digital platforms and rumor networks do not continue to act as accelerants for existential communal wars.

Collectively, these four pillars offer a blueprint for the emergence of a new Syrian political order, one rooted not in coercion or sectarian privilege, but in civic inclusion and shared sovereignty. By embedding these principles into the foundational architecture of the state, the new Syrian leadership could gradually transform its fragile legitimacy into a durable form of governance capable of sustaining peace and cohesion.

The adoption of UN Security Council Resolution 2799 on November 6, 2025,[27] serves as the critical geopolitical turning point that operationalizes the "Syrian National Project," elevating it from a fragile domestic experiment to an internationally sanctioned mandate. By formally delisting President Ahmed al-Sharaa from the U.N. sanctions regime, the Council has effectively dismantled the "legitimacy gap" that previously threatened to strangle the transitional government in its cradle.

Crucially, the resolution's explicit endorsement of "lifting obstacles to economic recovery" allows for the economic viability necessary for stabilization rather than mere security enforcement, unlocking the global financial architecture required to sustain the nascent state. This development fundamentally alters the strategic calculus for all regional actors: the Syrian National Project is no longer just a theoretical aspiration for internal reform, but the internationally backed blueprint for the region's future, compelling skeptics – including Israel – to pivot from a posture of containment to one of engagement with a recognized sovereign partner.

Regional and Global Power Struggle: Challenges and Opportunities

The soul of the new Syrian state hangs in the balance, torn between its new leader's pragmatic, pluralistic promises and the entrenched Islamist ideology of his core supporters, which fuels persistent sectarian violence. This internal struggle directly dictates Syria's nature as a regional power; its profound weakness and dependence on Turkish military and economic support risk reducing its hard-won sovereignty to that of a client state, a mere façade for Ankara's neo-Ottoman ambitions. For Israel, this precarious reality presents a fundamental strategic choice: to continue viewing Syria through a narrow lens as a permanent enemy, or to recognize a rare, if fraught, opportunity to forge a new modus vivendi with a fragile neighbor whose internal preoccupation and potential for moderation could serve Israel's long-term interest in a stable northern border.

President Erdoğan of Turkey has signaled that he looks upon Syria with an expansive vision, asserting that Turkey cannot be "confined" to its current borders and that its regional potential must not be limited. Addressing the nation's future, he famously remarked that "Turkey is not just a place confined in an area of 782,000 square kilometers," underscoring a destiny that extends far beyond its sovereign map. For Israel, this precarious reality presents a fundamental strategic choice: to continue viewing Syria through a narrow lens as a permanent enemy, or to recognize a rare, if fraught, opportunity to forge a new *modus vivendi* with a fragile neighbor whose internal preoccupation and potential for moderation could serve Israel's long-term interest in a stable northern border.

Turkey has advanced negotiations with Syria for a defense pact that would include a train-advise-assist (TAA) component, thereby significantly expanding Ankara's influence over the Syrian Armed Forces beyond its current presence in Aleppo, Idlib, and Hama.[28] In parallel, Syria's foreign policy has sought to balance these regional overtures through renewed engagement with Moscow. In mid-October 2025, interim President Ahmad Al-Sharaa conducted his first official visit to Russia, where he met with President Vladimir Putin to

reaffirm Syria's commitment to existing bilateral defense and energy agreements and to explore the potential for renewed arms cooperation.[29] The visit underscored Damascus's intent to maintain its strategic partnership with Russia as a means of compensating for weakened state capacity and ensuring continuity of security assistance.

Meanwhile, the United States has continued to promote the integration of the Kurdish led Syrian Democratic Forces (SDF) into the Syrian Arab Army as part of a broader disarmament, demobilization, and reintegration (DDR) strategy. The integration process reached a breaking point in early 2026, however, following the expiration of the March 2025 agreement's implementation deadline. After negotiations over decentralization stalled, Syrian government forces – supported by Turkish-backed elements – launched a decisive offensive into the Northeast. By mid-January, Damascus had reclaimed strategic hubs including Raqqa and Tabqa, effectively forcing the SDF to accept the "January 30 Comprehensive Agreement" under military duress. To mitigate the risk of prolonged insurgency, the United States pressured the new Syrian leadership to enshrine Kurdish cultural and political rights within a formal Constitutional Declaration. This legal framework guarantees a degree of wide decentralization, allowing Kurds to appoint the governors of their respective areas and recognizing Kurdish as an official regional language.

U.S. attempts to integrate Kurdish forces, designed to ultimately link Syria to the U.S.-led coalition's counterterrorism architecture, would position Washington as an offshore balancer capable of mediating regional rivalries and supporting Syria's gradual incorporation into a cooperative and stable regional security framework. For Israel, this precarious reality presents a fundamental strategic choice: to continue viewing Syria through a narrow lens as a permanent enemy, or to recognize a rare, if fraught, opportunity to forge a new *modus vivendi* with a fragile neighbor whose internal preoccupation and potential for moderation could serve Israel's long-term interest in a stable northern border.

To counterbalance Ankara's expanding footprint in post-war Syria, Saudi Arabia is aggressively pursuing a "first-mover" economic strategy aimed at securing early dominance in high-stakes sovereign sectors. By fast-tracking over $6.4 billion in investments,[30] Riyadh has prioritized critical infrastructure where long-term dependency is created: specifically, telecommunications, digital platforms and financial services. This capital injection, spearheaded by state-backed giants like STC, is designed to institutionalize Saudi influence within the nervous system of the Syrian state, seeking to counter Turkey from monopolizing the reconstruction market and ensuring Damascus remains economically tethered to the Arab fold rather than solely to the Turkish-Qatari axis.

On the international arena, and during his Washington visit on November 10, 2025, Syrian President Ahmed al-Sharaa announced that Syria will join the international anti-terrorism coalition, signaling a decisive and rapid geopolitical realignment toward the Western sphere. Syria's current realignment carries echoes of Egypt's dramatic pivot toward the Western sphere under President Anwar al-Sadat in the 1970s.[31] Sadat's outreach to Washington and his peace treaty with Israel transformed Egypt's regional role but also fractured its internal political and ideological balance, alienating segments of the military, the Arab nationalist bloc, and Islamist movements, tensions that ultimately culminated in his assassination. The pattern reappeared decades later after Egypt's 2011 revolution, when the Muslim Brotherhood's brief rule collapsed under the weight of its failure to reconcile internal divisions with competing regional alignments, leading to a military coup.

These precedents highlight the dangers of rapid strategic realignment that outpaces domestic consensus or misreads the regional balance of power. As Syria moves to engage the United States and integrate into the international coalition against terrorism, its leadership must navigate similar cross-pressures between regime preservation, societal cohesion, and external expectations. The lesson from past is clear: bold foreign policy shifts can open new

opportunities but also generate internal and external fractures if not anchored in a coherent, inclusive national strategy.[32]

Israel and Syria – an Opportunity and a Deadlock

Israel's initial approach has been tactically opportunistic. The collapse of the Assad regime and the subsequent expulsion of the Iranian Shi'a axis represented a significant strategic gain with significant ramification to the Lebanese arena as well. However, Israel's response, framed by the trauma of October 7th has been overwhelmingly militaristic. PM Netanyahu declared that "we have no intention of interfering in Syria's internal affairs, but we intend to do what is necessary to ensure our security," and added that he authorized the Air Force to "bomb strategic military capabilities left behind by the Syrian army so that they would not fall into the hands of the jihadist."[33] Subsequently, Israel seized control of the 1974 demilitarized buffer zone,[34] established permanent positions within Syrian territory. Additionally, it publicly embraced a "minority engagement" policy,[35] forging alliances with Kurdish and Druze communities.[36]

This policy was invoked during the Suwaida massacre. In response to the sectarian violence in Suwaida and the perceived failure of the new Syrian authorities to protect the Druze minority, Israel intervened to push the Syrian and Militias forces away from the main Druze city. In an attempt to send a stronger message to Damascus, it launched air-strike with profound symbolic weight in Damascus on 16 July 2025, targeting the headquarters of the Defense Ministry and outskirts of the Presidential Palace.[37] The strikes came after Israeli warnings to Damascus not to deploy forces south of the capital and was described by Netanyahu as the enforcement of two "red lines": the demilitarization of the region from the Golan Heights to the Druze Mountains and "protecting the brothers of our brothers, the Druze in the Druze Mountains."[38] He affirmed that "a cease-fire achieved through strength" reflected Israel's doctrine and reiterated that "we will not allow the Druze to be harmed." The air strikes and the 340 documented land excursions,[39] thus represent a marked shift in Israel's

posture toward Syria, from a defensive buffer-driven approach to an active interventionist policy under the banner of Israel's actions reinforced the entrenched suspicions of Damascus hardliners, who view it as a destabilizing force, undermining trust required for a potential security agreement.[40]

The handling of the longstanding Syrian-Israeli animosity must avoid the mistakes of the Israeli-Palestinian conflict, where reducing the dispute to a territorial issue, while neglecting its deep-seated historical and psycho-social dimensions, resulted in an utter failure of peace efforts. Policymakers must distinguish between the two arenas: unlike the visceral, inter-communal friction of the Palestinian file, the Syrian-Israeli dynamic has, in recent history, been defined by a "cold" hostility, waged primarily through proxies rather than direct, state-on-state conflagration. Yet, this distance is deceptive. As a direct border nation, Syria represents an immediate strategic flank where instability is not theoretical but physical.

Neglecting these nuances has previously left the parties in further entrenched animosity and a gridlock that fosters vicious cycles of violence. Instead of rushing into judgements that may lead to courses of action that may repeat the mistakes of the past and miss the current opportunities, the expectations need to be clear on what is the process and what is the outcome and who are the actors that can bring it home. If peace is the ultimate goal, more creative and courageous solutions need to be discussed. The events of October 7th, 2023, in Israel are a brutal and stark example of an escalated cycle of violence as a result of failure to achieve peaceful solutions to chronic conflicts. If the Syrian National project were to succeed in the tremendous task of creating a formula to stabilize the fragile Syrian state, its leader Ahmad Al-Sharaa may emerge as a rare alternative ruler with ample national consensus to change the state of everlasting animosity between the two neighbors.

The Israeli position should indeed be seen as a temporary move as it does not address the pivotal policy questions Israel must consider when it comes to Syria. While a military force might address

immediate security concerns, longer-term prospects for relations should consider other strategic interests and in turn other policy options. The current Israeli presence in Syria – which is already regarded as an "occupation" – has been met with demonstrations and hostile activities against Israel, which, in turn, triggered an Israeli response that resulted in multiple deaths of unarmed Syrian civilians.[41] Although Israel has so far remained largely peripheral to the evolving dynamics within Syria, its continued military activities had begun to change public perception and, more so, the tone of Al-Sharaa's statements. Before the Suwaida tragic incidents, Al-Sharaa spoke in a reconciliatory tone and was positive even regarding the potential of joining the Abraham Accords "[u]nder the right conditions."[42] Nevertheless, after the Israeli air strikes on Damascus, his statements reflected a different position, one as of solidarity "with the people of Gaza, its children and women" and pointing that "Israeli strikes and attacks against my country threaten new crises and struggles in our region."

Crucially, avoiding a state of entrenched animosity and conflict in Syria is a prerequisite for realizing the broader strategic prize: a comprehensive peace accord with Saudi Arabia, stabilization in Lebanon, and normalization with the wider Sunni Arab world. This approach recognizes the long-term positive impact of having a modus vivendi with the majority demographic population, the Sunnis. For Riyadh and the rest of the Sunni majority states in the region, the treatment of a post-Assad Syria serves as a geopolitical litmus test; an aggressive Israeli posture perceived as undermining a nascent Sunni-led government or one that cynically exploits sectarian divides that would be viewed as an assault on the Sunni majority, making public rapprochement with Israel politically toxic for Arab leaders.

Conversely, if Israel can demonstrate that its security doctrine allows for the success of a stable, sovereign Arab neighbor, it dismantles the narrative of inevitable existential conflict. This shift is essential for Lebanon, where a calm Syrian border de-escalates internal tensions, and for the Gulf, where it signals that Israel is the key partner in regional stability rather than a source of chaos. By facilitating rather

than obstructing Syria's reintegration, Israel clears the most significant psychological and political hurdles remaining on the path to a deal with Saudi Arabia and the rest of the Sunni Islamic world.

The emerging reality with Syria demands new tools and strategies to navigate effectively. Jonathan Adiri reminded us that Israel continues to embrace the "villa in the jungle" mindset – a phrase coined by former Prime Minister Ehud Barak to describe Israel's national security posture that continued to be embraced by his successors – that frames the region primarily through the lens of military threat suppression, rather than through a proactive vision of a desired future. This approach misses the opportunity for sophisticated engagement with dynamically evolving regional actors such as Syria. Israel should reassess the enduring "villa in the jungle" paradigm that continues to frame its regional security thinking and adopt a broad, regional strategy built on a strategic security infrastructure underpinned by the global coalition against terrorism and the CENTCOM coalition nations.[43] The current isolated and reactive cycles underscore the limitations of Israel's prevailing security mindset, which prioritizes unilateral and immediate threat suppression over an integrated and proactive vision for regional stability. Ultimately, Israel's posture oscillates between tactical opportunism and strategic ambiguity, an approach that risks alienating potential partners and entrenching hostility.

Ultimately, the durability of any comprehensive security agreement rests on the implementation of robust Third-Party Security Guarantees. In a landscape scarred by broken ceasefires and deep strategic mistrust, neither Israel nor Syria's internal minority factions will accept a roadmap based solely on the verbal assurances of a transitional government. A credible enforcement mechanism is therefore required to bridge this "credibility gap." More specifically, a neutral international monitoring body is needed that is empowered to verify demilitarization zones and oversee the protection of vulnerable communities, especially in the south. Unlike the current Turkish military presence, which is viewed with deep suspicion by key actors, a non-aligned guarantor – modeled on the Ceasefire

Monitoring Mechanism in Lebanon – would serve as the operational linchpin of the agreement. By providing objective verification, such a body offers Israel the strategic assurance necessary to relinquish its risky, highly intrusive and unsustainable military-based security measures, while simultaneously granting Damascus the sovereign cover to accept security limitations without appearing capitulatory.

A more strategic path requires moving beyond this binary framework. In Syria, the Assadist doctrine of reflexive enmity towards Israel has been discredited, creating a potential, if fragile, opening to reevaluate this long-standing animosity. The choice is not between an old pro-Iranian Assad and a new Jihadi regime. It is about influencing whether Syria becomes a renewed adversary or a preoccupied, pragmatic neighbor. Ahmad al-Sharaa himself embodies this crossroads. A former jihadist with roots in the Golan, he could be driven back toward militancy or encouraged toward moderation.

Israel's insistence on normalization with Syria is predicated on the theory of strategic interdependence,[44] specifically, the transition from hard military leverage to soft-power influence. This approach is modeled on the Israeli-Jordanian relationship that is safeguarded by tight security cooperation and by Israeli critical supply of water to the kingdom.[45] Interdependence can provide necessary security guarantees and preclude kinetic conflict. The Israeli-Jordanian stability has endured despite hostile public sentiment in Jordan, resulting in a state of cold peace. Whether Israeli-Syrian relations will be framed in a similar way remains to be seen.

We believe that Syrian and Israeli long-term interests offer an opportunity for a convergence. The two countries seek stability and they both have realized that uncontrolled militias, non-state actors and proxies must be eradicated to achieve this.[46] Both countries are now attached to the American orbit, although the presence and influence of Russia and Turkey in Syria remains of concern when looking through the Israeli lens. And there are gaps in the level of trust in the ability of the new Syrian government to fulfill its commitments and implement policy agenda.

There are also starting points and arguments to be made regarding the Israeli interest in the success of Al-Sharaa's new Syrian project. A successful Syria, divorced of militias, governed by a functional and sustainable power-sharing structure that ensures an internal balance of minority rights, will be a better place for Syrians, and may also turn into a better neighbor for Israel. Such stability would help bring an end to the region's chronic state of attrition, effectively shifting the arena of competition from the battlefield to the marketplace, a shift which allows Israel to leverage its absolute competitive advantage as a global technological and economic powerhouse to create a regional platform of soft-power interdependence that can provide starting point for durable stability.

The cross-border communities, particularly the Druze and Bedouin, must be reconceptualized as a strategic bridge rather than a potential security threat. With members serving in the armed forces of both Israel and Syria, these groups possess a unique dual agency and represent a tangible human link between the two nations. They are the ultimate stakeholders in this geopolitical dynamic, positioned to be either the natural beneficiaries of normalization or the primary casualties of continued hostility. Leveraging their shared heritage and presence on both sides of the divide offers a pragmatic foundation for stability, transforming the border region from a line of confrontation into a zone of connectivity.

Incremental, interest-based confidence-building measures based on shared interests, such as joint border security mechanisms, discreet diplomatic channels, humanitarian coordination and trade relations could begin to transform the border regions such as the Golan Heights from potential flashpoints into a corridor for cautious coexistence. Additionally, successful people-to-people exchanges between Israeli and Syrian Druze, Bedouin and other communities may offer a viable model for coexistence. While the obstacles are monumental and recent developments have been negative, this rare window of opportunity must not be ignored, but instead used to forge a new framework for

relations before the gate closes, and the volatile new status quo hardens into another permanent conflict.

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India's Emerging Role and Economic Investment in Eastern Europe

by

Kirk Shoemaker

Introduction

India is an emerging global titan, seeking to shed its constraining ideology of non-alignment in favor of adaptive strategic autonomy.[1] Historically, Indian non-alignment focused on whom *not* to side with, while Indian strategic autonomy policies sought a more calculated approach about *with whom* to side for specific advantages.[2] As this transformation unfolds, India is emerging as a "center of gravity" and a driver of economic change, both regionally in the Indo-Pacific and globally.[3] As India rises, U.S. and European Union (EU) leaders must explore creative ways to incentivize Indian investment in Central and Eastern European countries (CEECs). Investment in the CEECs not only benefits India by reducing its deep economic reliance on China but also supports U.S. and EU efforts to counterbalance Chinese economic influence in Eastern Europe. Incentivizing Indian investment in the CEECs underpins U.S. diplomatic and foreign policy goals focused on self-reliant allies and partners in a multipolar world.

The premise that India is an emerging great power seeking to pivot from non-alignment to strategic autonomy is best explored by viewing our complex, multipolar world through the lens of Power Transition Theory.[4] The Power Transition theoretical framework serves as a bridge between historical perspectives on India and illustrates how India is shifting towards global leadership and engagement. India's pivot in strategic approaches seems to align with

ongoing, adjacent shifts in U.S. policies and international engagement. India is watching the United States and other leading powers, and although it cautiously engaged with the Cold War's bipolar world and the subsequent post-Cold War unipolar world, India's strategy is shifting. Unlike in the past, today's India is more willing to participate in a multipolar world and will employ creative engagement with an eye on counterbalancing Chinese ambitions and influence.

After establishing a theoretical framework and examining current multipolar realities, this study shifts its focus to practical application. In doing so, it explores how Indian economic investment can enhance resilience and counter Chinese influence across the CEECs. It recommends increasing India's economic presence in the CEECs, aligning with the current U.S. administration's Cornerstone Strategy, which posits that the U.S. should play an external, coalition-anchoring role and serve as a "cornerstone balancer" or a "very powerful state to anchor the coalition." This cornerstone approach sees India as a leading regional player, alongside Australia, Japan, the Philippines, South Korea, Taiwan, and Vietnam, to serve as a counterweight to China in the Indo-Pacific.[5] Building upon the Cornerstone Strategy, this paper argues that Eastern Europe and the CEECs remain critical to strategic competition between great powers, as articulated by Sir Halford John Mackinder's Heartland Theory.[6] Applying this theory, I argue that U.S. and EU leaders must explore approaches that incentivize connectivity between India and Eastern Europe via an economic corridor, which would serve as a critical link between India's economic powerhouse and the European heartland.

To illuminate why India should look to the CEECs as a viable economic partner, this research argues that the CEECs enable India to reduce its economic reliance on China and enhance its strategic autonomy. The CEECs also offer India access to an existing talent pool of highly skilled, low-cost labor with manufacturing experience and infrastructure. Not only would increasing economic investment support Indian manufacturing, but it would also provide pathways and opportunities for India's rapidly growing working-age population to travel and work abroad in significant numbers across the CEECs. If

more Indians can travel abroad to find work in the CEECs, it will build India's global reputation, enhance its influence, and foster crucial cultural connectivity, laying the foundation for further cooperation.

From the perspective of the CEECs, my research shows that India's growing economy presents significant economic opportunities for Eastern Europe and the EU. Increasing Indian investment across the CEECs offers nations an Indian alternative to China's aggressive and often exploitative aid model. If the CEECs can strengthen their economic ties with India and reduce their reliance on Russia and China, this will not only support the CEECs' resilience but also align with U.S. and EU policy goals for the region.

Focusing on practical ways to strengthen India's economic investment and relationships with the CEECs, this paper offers three policy approaches. These approaches build on existing or emerging collaborative frameworks and call for increased U.S. and EU support for the planned India-Middle East-Europe Economic Corridor (IMEC), which, as envisioned, will link India's economy to the CEECs through the Middle East. A second approach is to increase the importance and relevance of the India Trilateral Forum, established in 2010.[7] This forum comprises U.S., European, and Indian members and could be expanded and elevated to serve as a focal point for Indian economic development in the CEECs. A third policy approach is to broaden the U.S.-India TRUST (Transforming the Relationship Utilizing Strategic Technology) Initiative, which continues to gain traction and establish its footing. Taken together, these three existing collaborative frameworks offer a starting point for parties to explore ways to incentivize additional Indian investment in the CEECs.

While this paper advocates that the United States accept and support India's economic rise as a counterbalance to China, it is also crucial to remain clear-eyed and to consider associated risks. Looking back at history, China's rise and rapid economic growth, which led to its emergence as a Great Power competitor to the United States, were made possible in part by considerable U.S. support.[8] If Washington incentivizes India's economic investment in the CEECs, as this paper

promotes, could it be self-defeating in the long term by someday building India into a power antagonistic to the United States? While encouraging India's rise is certainly not without risks, I argue that India differs from China in this respect and is more inherently aligned with U.S. and EU values, goals, and objectives. Additionally, even if there are risks inherent in incentivizing India's rise, the current challenges posed by a rising China are greater. The U.S. and EU need India as a critical counterbalance to China, and since India is primarily aligned with U.S. and EU interests, the risk is worth taking.

Shifting Power Dynamics in a Multipolar World

It is often noted that more than thirty years after the fall of the Berlin Wall, the world is no longer unipolar, with the United States as its sole superpower.[9] Instead, other powers, especially China, now directly challenge U.S. dominance and the hitherto U.S.-led world order.[10] In a 1998 lecture, American political scientist Samuel P. Huntington defined a unipolar world as a world where a single state, "acting unilaterally with little or no cooperation from other states, can effectively resolve major international issues." He also defined a multipolar world as a world

> … [i]n which a coalition of major powers is necessary to resolve important international issues, and if the coalition is a substantial one, no other single state can prevent the coalition from doing that.

Huntington's assessment of what constitutes a multipolar world certainly aligns – or very nearly aligns – with today's global realities. In this changed environment, the United States and other leading and emerging powers must seek new approaches to their global engagement across the spectrum of national power.

This paper accepts the uncomfortable premise that the United States is no longer the sole superpower and that a multipolar world exists. However, building on the concept of multipolarity, it is helpful to explore Power Transition Theory, a framework for understanding

periods of global power fluctuation and the transition from unipolarity to multipolarity. The Power Transition Theory holds that international stability is threatened when a rising great power, such as China today, approaches power parity with a previously dominant power, such as the United States. Risks are compounded when the rising great power, as China today, is dissatisfied with long-established international arrangements and seeks to shape global systems to its advantage.[11]

While this theory is often applied at the macro level to analyze fluctuations in global power, it is also useful for examining the dynamics of regional powers. In truth, there is no clear line between China and India as global and regional powers, as two rising great powers may indeed continually overlap in both regional and international spheres. As discussed below, India should be viewed less as a challenger to the dominant U.S. power and more as a valuable global partner and a balancer to China's aspirations for regional hegemony.[12]

India's leaders believe deeply in the value of a multipolar world. As Ashley Tellis of the Carnegie Endowment for International Peace has argued, "India believes that multipolarity is the key to both global peace and its own rise. It obsessively guards its strategic autonomy."[13] It is this desire for strategic autonomy that makes India a critical partner for the United States as it navigates the complexities of a shifting, multipolar world and faces persistent challenges to its position as a dominant power.

India's Pivot Towards Leadership and Engagement

India is rapidly growing, both economically and militarily, and as those changes unfold, the long-held Indian resistance to international engagement is fading. Following the Cold War, India began its gradual transition from a long-held policy of non-alignment to its current policy of "strategic autonomy." In the Indian context, strategic autonomy broadly means that, in foreign policy, it prioritizes pragmatic engagement with multiple powers while retaining the ability to make decisions that prioritize self-interest, free from external

pressure, influence, or constraints.[14] This carefully calibrated approach, on its path to becoming a rising great power, is what Tellis argues is a calibrated strategy of "partnerships with all states but privileged relationships with none."[15]

Applying the abovementioned Power Transition Theory, both China and India are emerging great powers with growing global capabilities that can challenge a dominant United States. China, however, is further along on its path to becoming a great power, while India is currently behind.[16] For now, while India is still a rising great power, its influence and capabilities remain regionally centric. For this reason, the United States and its partners should seek to empower India as a regional balancer against China in the Indo-Pacific and encourage India to look beyond the region, including to the CEECs.

Geopolitically, India is well-positioned to keep China off-balance, as it sits astride global trade routes, is the world's largest democracy, and has the fourth-largest economy.[17] As India explores its emerging great-power role, Indian External Affairs Minister Subrahmanyam Jaishankar argues that India should advance its "national interests by identifying and exploiting opportunities created by global contradictions" to reap the greatest benefits from as many links and relationships as possible.[18] While this approach is certainly of interest to U.S. India-watchers and likely concerning to China, pursuing such linkages may complicate India's assertions of strategic autonomy, at least if such connectivity comes with some degree of dependency. However, it underscores the argument that India, as an emerging great power, can derive significant long-term benefits from expanding trade and investment with the CEECs. Similarly, India's growing geopolitical role and interest in global engagement are well-timed with changes in U.S. policy and global engagement in the emerging multipolar world.

Shifting U.S. Policies and Perspectives

In many ways, the current U.S. administration, under President Donald Trump, appears to be accepting the emergence of a multipolar

world and taking steps to adjust to what it perceives as new realities of global power. In stark contrast to the previous Biden administration, current U.S. leaders are shifting away from the long-held U.S.-led post-World War II international order.[19] Instead, the U.S. is now prioritizing what U.S. Secretary of State Marco Rubio calls "trade over aid, opportunity over dependency, and investment over assistance." Indeed, current U.S. leaders often openly argue that the U.S.-created international order is a bad deal.[20] The goal for the current administration, in Rubio's words, is thus to shift U.S. policies so that "the [United Nations], other allies, and private funds pay [for] a greater share of projects around the world … to ensure programs align with American interests and the needs of partner nations." All these dramatic policy changes are aimed at countering a rising China's "exploitative aid model and further[ing] our strategic interests in key regions around the world."

As suggested by the Power Transition Theory, the current period of global power flux poses significant risks to the United States as the heretofore dominant power; therefore, U.S. leaders must avoid actions that would give China, the challenger, a strategic advantage. China is interested in promoting an alternative, Chinese-led world order to fill the global leadership vacuum left by the United States' retreating power.[21] To carefully recalibrate our international presence, U.S. leaders should empower and incentivize India to act not only as a regional counterbalance to Chinese ambitions and influence, but also as a bulwark against Chinese investment and influence in the CEECs.

Countering and balancing China's rise is immensely important, and to this end, the United States must remain thoughtful and pragmatic in its approach to maintaining and cultivating international relations, partnerships, and alliances. However, not all aspects of value can be measured in dollars and cents. For example, partnerships and relationships built on years of trust, shared experience, and common goals possess immense value that is often difficult to quantify – or to rebuild if squandered. Supporting this delicate balance are two important concepts and policy approaches for U.S. leaders. These concepts are strategic depth and a "cornerstone" strategy.

Increasing U.S. Strategic Depth and Resilience

According to scholars and recent articles citing U.S. leaders, the United States is pursuing policy approaches to develop a strong, resilient Europe less dependent on the United States.[22] While strategies across administrations differ, current U.S. policies, as championed by Secretary Rubio, focus on trade, economics, and investment to ensure that European partners are capable of and willing to shoulder a greater share of their own defense burdens. Similarly, Kaush Arha and Carlos Roa argue that part of a new defensive equation is

> … [a] robust eastern front – both in defense capabilities and economic dynamism – is essential for achieving America's broader goal of fostering a Europe that can carry its weight as a key partner against shared adversaries.

Collectively, such policy shifts aim to reduce Europe's reliance on U.S. defense capabilities, enable resource reallocation, and maintain partnerships and alliances.

Secretary Rubio's prioritization of economic investment to build self-reliant partners echoes the argument for strategic depth advanced by Hudson Institute scholar Nadia Schadlow.[23] Historically, as she argues, strategic depth is rooted in geographically focused advantages that allow armies and nations to maneuver effectively across physical terrain while simultaneously stretching their adversaries' forces and supply lines.[24] However, in her recent articles, Schadlow argues that the concept of strategic depth must be understood today to include not only traditional aspects of geography but also, more importantly, "cyberspace, outer space, and our defense industrial base." Most critically for this paper, Schadlow emphasizes that the United States must defend forward through key allies and partners.[25] Not only is this helpful from a resource allocation and burden-sharing perspective, but it also helps decision-makers triage competing

requirements and limit what historian Paul Kennedy described as imperial overstretch.[26]

Despite policy shifts in Washington against such relationships, U.S. allies and partners continue to provide a critical competitive advantage for the United States. As Schadlow argues, supporting allies and empowering them to defend themselves provides the United States with time and space to determine its response, develop capabilities, and exercise operational flexibility. Reflecting on World War I and World War II, U.S. leaders used a similar strategic approach to depth as they weighed when and where to provide military and logistical assistance to allies, and in what theaters to deploy and engage enemy forces.[27] Similarly, during the Cold War, U.S. leaders relied on allies and partners to surround the Soviet Union through a strategy of containment.[28]

Taken together, allies and partners provide strategic depth to U.S. decision-makers. As argued here, the United States needs economically strong partners in Central and Eastern Europe, not only to counter Russian regional aggression there but also to counterbalance China's growing economic influence. India's role in developing U.S. strategic depth across CEECs aligns well with arguments for India as a component of a U.S. Cornerstone Strategy, which aims to prevent China from achieving regional hegemony in the Indo-Pacific.

India's Role as a Counterbalance to China

In his 2021 book, *The Strategy of Denial*, Elbridge Colby, now the U.S. Under Secretary of Defense for Policy argues that India should be viewed as a key member of an anti-hegemonic coalition that would serve as a counterbalance to China's power in the Indo-Pacific.[29] During his March 2025 nomination hearing before the Senate Armed Services Committee, Colby's prepared remarks revealed that he views a deepening partnership between the United States and India as crucial for U.S. Indo-Pacific interests, but also sees India as a partner that could take a more leading role in regional and global security.[30]

Colby has stated that he considers India an "ally in the old sense," apparently meaning that the U.S.-India relationship is one in which both sides maintain their independence and autonomy while collaborating to address common challenges. This approach was visible during a recent September 2025 meeting between Colby and India's Ambassador to the United States, Vinay Kwatra, which focused on persistent and growing India-U.S. defense ties and the importance of the India-U.S. Comprehensive Global Strategic Partnership.[31] The partnership not only underscores the deepening convergence of U.S. and Indian strategic interests but also highlights U.S. support for the planned India-Middle East-Europe Economic Corridor (IMEC), an initiative aimed at boosting connectivity, trade, and sustainability across three critical regions.[32]

As a regional counterbalance to China in the Indo-Pacific, India exemplifies Colby's "Cornerstone Strategy," in which he argues that the United States should serve as a powerful external actor within an anti-hegemonic coalition focused on constraining and denying Chinese power and ambition.[33] Critical to the cornerstone role is America's ability to serve as a strategic partner to other partners and allies, while refraining from engagement in small-scale disputes. Colby argues that, as the cornerstone, the United States must see its partners and allies take a more assertive and leading role in their own defense, while America plays a non-direct, supporting, economic, and enabling role.[34] Specifically regarding India, Colby notes in The Strategy of Denial that a formal defensive alliance with India is unnecessary and overly binding, as India is already naturally opposed to China's emerging regional economic and military dominance.[35] Rather than entering a formal binding alliance – which India would likely seek to avoid in any event, as it always has pursuant to its longstanding philosophy of non-alignment – Colby believes that a U.S.-Indian policy should be grounded in "careful and serious, … hard-nosed and realistic" policies that "empower India as much as possible, not holding up progress based on differences of view."[36] In this way, India can effectively support and augment a U.S.

Cornerstone Strategy in ways that also benefit India as a rising power, not only in the Indo-Pacific but also in areas such as the CEECs.

Colby's perspective on India is essential to understand, as he was reportedly the lead author of the recently released 2026 U.S. National Defense Strategy (NDS). The NDS clearly underscores many of the themes of Colby's cornerstone and anti-hegemonic coalition arguments, and one related example states that the new U.S. approach seeks to enable "allies and partners to take primary responsibility for defending against those other threats, with critical but more limited U.S. support." On this and other accounts, greater Indian regional capability and increased investment in CEECs align with the 2026 NDS themes. Colby's preference for what might be called a defensive realist approach, emphasizing the strategic prioritization of U.S. engagement and pragmatism in U.S. alliances, is core to the new NDS.[37]

An India to Europe Economic Corridor

India's desire to pivot from China-dominated regional trade in the Indo-Pacific offers U.S. and European leaders an opportunity to incentivize, expand, and deepen India's economic investment and bilateral trade with the CEECs. While India is already economically engaged with the CEECs to some extent, this engagement and investment should be further incentivized and expanded.

As previously discussed, India continues to fear its overreliance on Chinese imports, which rose significantly in 2025 to $91 billion, up from $80 billion in 2024, further widening the trade gap in China's favor.[38] Under mounting pressure to diversify trade relations, Indian leaders are likely to reflect on historic perspectives, such as Halford Mackinder's 1904 Heartland Theory, which said, "whoever rules East Europe commands the Heartland; whoever rules the Heartland commands the World-Island; whoever rules the World-Island commands the World."[39] China's Belt and Road Initiative (BRI) in the region underscores its economic interests, and India is also looking to the region for economic opportunities.

The CEECs sit at a critical crossroads between Asia and Europe, offering immense investment opportunities that have yet to be fully realized.[40] Not only are Central and Eastern Europe important as NATO's eastern flank, but they also serve as an economic corridor linking Europe to the Caucasus, West Asia, and Central Asia.[41] As the region continues to gain importance, the CEECs have acquired "renewed emphasis in India's foreign policy imagination and geostrategy."

Benefit from Increased Investment Across CEECs

India has long maintained ties with Central and Eastern Europe, particularly with the Soviet Union, during the Cold War era.[42] The relationship between India and the Soviet Union carried over into the modern day, with India and Russia maintaining strong bilateral economic ties and support, despite (at least so far) the Putin regime's increasing closeness to and dependence on China. This persistent relationship is "firmly rooted in historical connections and a strategic convergence over the vision of a multipolar global order." India, for its part, has remained thoughtful and prudent in its management of relations with Russia, the United States, and the broader West,[43] often seeming to triangulate between or balance them against each other.

Many of the independent CEEC nations were previously part of the Soviet sphere of influence, including Warsaw Pact client states, and as those states now seek to live their own independence and autonomy free of the Russian orbit, there may be positive historical relationships for India to build on as it seeks to expand its economic presence in the region today. Building on its past economic relationships, India may leverage its historic regional ties as it pursues broader regional partnerships to diversify its economy and reduce its reliance on Chinese imports and trade.

As India seeks to position itself as a leading global power, it must look beyond the Indo-Pacific, where China already dominates trade, accounting for nearly half of the region's GDP.[44] In line with the previously discussed Heartland Theory, a rising India will need to

reconnect with nations beyond the Indo-Pacific to reduce regional economic competition and conflict with China, and to build up its influence independently of Beijing.

India's economic reliance on China is a multifaceted challenge, rooted in a widening trade deficit. India's trade imbalance and economic interdependence with China are still important to its continued rise, are crucial for population stability, and underpin its national security interests. However, this economic reliance is a double-edged sword. For 2024-2025, India's trade with China was approximately $127.7 billion, resulting in a substantial trade deficit of $ 99.2 billion, the highest on record. This strategic imbalance and overreliance on Chinese goods, particularly in the technology and pharmaceutical sectors, leaves Indian leaders and policymakers uncomfortable and focused on developing alternative markets and trading partners.[45]

As India explores alternative trading partners, the CEECs stand out. Currently, India and the EU have a strong trading relationship, and "the EU is India's third-largest trading partner, accounting for just over 11 percent of total Indian trade." India is, in turn, the EU's ninth-largest trading partner.[46] As recently as March 2025, the two partners agreed to sign a free trade agreement to "stimulate cooperation in trade, technology, connectivity, and defense."

While India has its own skilled and growing labor force and a need to create additional employment opportunities, the CEECs also possess both an experienced, lower-cost labor force and relatively sophisticated manufacturing economies that are already closely integrated with the rest of Europe. CEEC economies could be complementary to India's needs, as the CEECs' low-cost, high-skilled labor could help jump-start India's investment in the region and train future Indian employees who migrate to the CEECs for work. Compared with Western European nations such as Belgium, Germany, and France, Eastern Europe offers significantly lower-cost skilled labor for India to employ, learn from, and use to accelerate development and investment projects.[47] Countries such as Bulgaria,

Romania, Hungary, and the Czech Republic, among others, provide cost-effective opportunities for Indian corporations seeking to expand their operations and explore growth beyond the Indo-Pacific region.[48] Additionally, the CEECs continue to market themselves as emerging, capable destinations for manufacturing, information technology, and business services.[49] According to the United Nations Industrial Development Organization, the Czech Republic, Hungary, Poland, Slovakia, and Slovenia are all among the top 30 most competitive manufacturing exporters in the world. Meanwhile, the Observatory of Economic Complexity ranks Slovakia, Hungary, Slovenia, and the Czech Republic as leading exporters.[50]

One of the challenges and contradictions of Eastern Europe's low-cost, skilled workforce is that, while the region is poised to support future Indian growth, it also faces a declining overall population, which naturally affects the working-age population.[51] Eastern Europe faces challenges due to outmigration, aging, or both, with Bulgaria, Lithuania, and Latvia projected to experience population reductions of more than 20 percent by 2050.[52] To help mitigate these challenges, most of the CEECs are investing in automation, robotics, advanced machinery, and artificial intelligence. Slovenia and the Czech Republic, for instance, are leading the way in high-tech manufacturing, and according to the International Federation of Robotics, have among the highest densities of industrial robots worldwide.[53] India could play a growing role in bolstering the region's declining working-age population.

Paradoxically, although India and Indian companies are eager to draw on external sources of low-cost, skilled labor, India also needs to expand employment opportunities for its own population.[54] India's economy has grown at a remarkable average annual rate of seven percent since 1991. It continues to face challenges as it seeks to employ its young, rapidly growing population of over 1.46 billion people.[55] Currently, over a million young Indians enter the workforce each month, and to support this growing workforce, India is seeking opportunities to alleviate domestic pressures and ensure its population is productive and employed, both domestically and

abroad. Because India has more workers than it can employ domestically, it continues to seek partnerships with other nations that need a source of talented, skilled workers.[56] As it has been reported, India's leadership clearly understands that

> … [w]ithout urgent intervention, factors like rapid skill obsolescence, uneven access to reskilling, and accelerating automation could undercut the country's demographic advantage.

For this reason, analysts continue to caution that unless India can overcome current labor-market shortcomings, its unemployment rate, currently hovering around 5.2 percent, will continue to hold the country back.[57] India's unemployment is a challenge that must be addressed for the economy to continue growing, and its leaders are taking note.

In 2014, the current Prime Minister, Narendra Modi, campaigned on a "Make in India" program aimed at boosting domestic manufacturing and positioning India as a global manufacturing hub. However, much of the promised manufacturing buildout remains unrealized, with India's growth still primarily driven by a software, financial, and services-based economy.[58] More effort is needed, and additional creative solutions must be explored not only to reduce unemployment in India but also to encourage Indians to work abroad.

To address the internal unemployment challenge, India has sought to expand its Migration and Mobility Partnership Agreements (MMPAs) and has already concluded agreements with countries in Western Europe. Recently, due to changes in U.S. immigration and migration policies, Indian leaders are pivoting to new regions and considering using Germany, with which it has a good relationship and an existing MMPA, as a conduit to the rest of Europe.[59] The idea of a conduit to greater Europe aligns with the opportunity for increased Indian presence in the CEECs, both economically and potentially through additional Indian migrant workers. Increasing bilateral

collaboration provides opportunities for Indian students and skilled workers to travel abroad and establish business and partnerships with CEEC businesses, particularly in high-demand sectors such as manufacturing, cybersecurity, and energy.[60] Additionally, this collaboration will highlight India as a capable and reliable partner for CEEC businesses and investors, in contrast to aggressive Russia and exploitative China.[61]

Increasing India's Prestige and Cultural Sharing

Indians desire to travel abroad and share their culture with others. Not only are they proud of their history and culture, but many Indians also seek opportunities to live and work abroad to make their mark and enhance their personal and national status and prestige. Thanks to the Internet, movies, and other social media, Indians are increasingly viewing the CEECs as tourist destinations, with particular emphasis on cities such as Prague, Budapest, and Bulgaria, which have been featured in Bollywood movies.[62]

A key event for both India and the CEECs was Indian Prime Minister Narendra Modi's visit to Poland in 2024. During his visit, he emphasized the deep and diverse ties between the two nations and the rich cultural exchanges.[63] More than 25,000 Indians reside in Poland, comprising a diverse group of working professionals, students, and restaurant owners.[64] As cultural connectivity continues to grow, so will familiarity and the importance of India as a rising power and key economic partner for the region.

Economic Opportunities for CEEC Growth

While India and the CEECs maintain economic ties, trade, and investment, their economic collaboration remains well below its potential.[65] India, however, offers the CEECs a vast market in which to sell goods, provide services, and create employment opportunities for its population. Trade relations between India and the EU, of which the CEECs are a part, accounted for roughly $140 billion as of March 2025. The EU is India's second-largest trading partner, accounting for

11.5 percent of India's total trade. In comparison, the US and China account for 10.8 percent and 10.5 percent of total Indian trade, respectively. India, meanwhile, is the EU's ninth-largest trading partner, accounting for approximately 2.4 percent of the EU's trade in 2024.[66] India's investments in the CEECs are growing, albeit slowly. An example of an Indian project in Hungary is the $557 million investment in the Apollo Tyres plant.[67] Poland, the largest economy among the CEECs, has a GDP of $1.04 trillion and ranks among the world's top 20 largest economies, with a long history of relations with India.[68] Poland, in fact, is India's leading economic partner in the region, with bilateral trade between the two countries reaching around $4.53 billion in 2024.[69]

Increasing India's economic presence and investment in the CEECs not only directly benefits the economies of India and the CEECs but also mitigates regional risks rooted in historical trade ties with Russia. As demonstrated by the most recent Russian invasion of Ukraine beginning in 2022, Russia remains willing to exert direct military force as well as leverage threats of force to coerce other nations in the region.[70] Since 2022, many CEECs have made efforts to reduce their reliance on Russia and diversify their trading partners. This was especially true in the energy sector, as many CEECs and Europe were overly reliant on Russian natural gas and oil. For example, in 2021, most of the CEECs imported over half of their gas from Russia.[71] However, by 2024, Russian supplies of gas to the CEECs had dropped from an "average of 80 percent of each Eastern European country's gas to 37.6 percent."

Since Russia's invasion in 2022, India has stepped up to supply refined Russian-origin petroleum products to Europe, specifically to the CEECs. This loophole allowed CEEC nations to avoid purchasing gas and oil directly from Russia, which would violate sanctions, and instead relied on India as a critical petroleum middleman.[72] (Indeed, scholars focusing on the impact of sanctions on Russia after 2022 find that "Russia has liberalized its trade with several non-sanctioning countries, including Turkey, India, and China.") In this way, while allowing Russia to partly evade international oil sanctions, India has

nonetheless given the EU and CEECs time to develop alternative energy suppliers. Not only has this elevated India as an energy broker on a global scale, but Russia's invasion has also led to a complex sanctions-avoidance regime that "may have contributed to furthering geopolitical fragmentation in the world."

India's reliance on Russian oil remains a point of friction and a source of tariff disputes between India and the U.S.[73] However, two recent developments may be helping to moderate tension over India's Russian oil purchases. In February 2026, India agreed to halt its purchase of Russian oil in exchange for reduced U.S. tariffs on Indian goods from 50 percent to 18 percent. Shortly after this agreement was announced, moreover, due to the conflicts in the Middle East, the U.S. government temporarily eased sanctions on India's purchase of Russian oil that had previously been stranded at sea as a result of American financial sanctions threats. Despite recent reprieves, however, the U.S. may continue to pressure India to limit its purchases of Russian oil. Nevertheless, while this pressure may, over the long term, constrain India's ability to buy Russian oil, it is unlikely to stifle India's role as a global refining hub.

Outside the energy sector, the CEECs continue to diversify their trade away from Russia, with a renewed emphasis on trading with EU partners, particularly Germany, Italy, and France. The top CEEC exports are cars ($104 billion), motor vehicle parts and accessories ($65.2 billion), and packaged medications ($34.3 billion). Similarly, the CEECs primarily import from Germany, China, and Italy, with Poland accounting for 28 percent of the region's total imports, amounting to $364 billion.[74]

Bolstering their economic relations and engagement with India also provides CEECs with an alternative to Chinese-led economic engagement, which is often exploitative. China has increased its engagement and is making inroads with CEECs primarily through its national programs, such as the 16+1 Framework, the BRI, and the Digital Silk Road.[75] In the first half of 2025, Chinese officials noted record trade with CEECs at "522.88 billion yuan (about $72.85 billion),

which was a 6.8 percent increase, year on year." This follows a previous record high in 2024, underscoring persistent Chinese interest.

Several of the CEECs continue to welcome Chinese investment and often act as a "very effective backdoor for Chinese businesses to expand across Europe and the European Union." Current U.S. policymakers have criticized the Chinese aid model, often associated with the BRI, as being exploitative.[76] However, that may be changing, with regional states beginning a more cautious phase of engagement with Beijing.

In fact, Lithuania, a CEEC, has taken an explicit stand against what it views as Chinese malign influence and has "become the first to withdraw from the 16/17+1 initiative and to open a Taiwanese representative office in Vilnius."[77] Lithuania is deliberately distancing itself from China, citing Chinese economic coercion and what has since been called "weaponized interdependence." Additionally, other European Union members are becoming increasingly aware of the risks associated with Chinese investment and partnership.[78] The Center for European Policy Analysis notes that the "Chinese Communist Party (CCP) takes an opportunistic approach to Central and Eastern Europe (CEE)" and often seeks to target "central governments where possible and other sources of political, cultural, and economic influence where necessary."

As part of China's BRI and signature foreign policy framework, China seems to be prioritizing "rail projects in Eastern Europe, including the Budapest to Belgrade line, which is funded by Chinese loans." This is problematic, as Hungary is now recognized as Europe's most pro-China country.[79] EU leaders are increasingly concerned about a growing affinity between Hungary's Prime Minister Viktor Orban and Chinese interests in Europe, with Hungary as a "gateway into Europe, offering Chinese investment tax incentives and infrastructural support to build and operate factories in the country."[80]

India, however, is well-positioned to help offset the risks posed by China's BRI in the CEECs. Indian investment offers both a viable

economic alternative and an increasingly crucial counterbalancing presence, serving as an offset to growing Chinese investment.[81] India understands CEEC concerns about China first-hand. As former U.S. National Security Advisor H.R. McMaster writes, "India's leaders saw China's One Belt, One Road initiative as a one-way street that would disadvantage them" and expressed "concern over China's increasingly aggressive efforts to extend its influence at India's expense."

Incentivizing Increased Indian CEEC Investment

As shown here, India is already engaged economically with the CEECs, specifically with key nations such as Poland, Hungary, the Czech Republic, and Slovakia.[82] However, for India to act as a regional counterbalance to China and become a priority partner, U.S. and EU leaders should pursue creative approaches to encourage greater Indian investment across EU economies.

While there are several promising opportunities to deepen economic engagement among the U.S., EU, and India, three existing or emerging collaborative frameworks may offer both efficiency and familiarity. These three approaches are the previously discussed India-Middle East-Europe Economic Corridor, the India Trilateral Forum, and the U.S.-India TRUST Initiative. The following sections provide a brief overview of each of these fora and frameworks, highlighting opportunities for all three parties to collaborate and increase India's economic investment in CEECs.

The India-Middle East-Europe Economic Corridor (IMEC)

As the U.S. and its EU partners seek innovative policy approaches and mechanisms to boost Indian investment across the CEECs, the IMEC presents a unique opportunity. The IMEC should be understood as an indicator of India's renewed emphasis on the region, and the IMEC initiative aims to establish a transformational collaboration that boosts connectivity, trade, and sustainability across three geographic areas. As envisioned, the IMEC serves as a physical,

relational, and influential economic conduit for India's engagement with the Middle East.

The IMEC was first launched at the 2023 Group of Twenty (G20) summit in New Delhi, India, and proposes three core pillars to drive collaboration and integration. Signed by India, the United States, Saudi Arabia, the United Arab Emirates, the European Union, Germany, France, and Italy, it is intended to reinforce supply chain security and reshape Eurasia's economic and political landscape.[83] Within the planned corridor, the transportation pillar serves as the backbone, aiming to build a common, interconnected rail and maritime network. The energy pillar will prioritize integrating electricity infrastructure throughout the corridor. The digital pillar focuses on establishing fiber-optic and cross-border digital connectivity. All three pillars aim to provide an Indian and partner-led alternative to China's Belt and Road Initiative.[84]

The IMEC can be seen as a reimagining of India's Golden Road, a sea route that Indian sailors used in the first century CE to trade across the Indian Ocean from Southeast Asia and the East Indies to the Red Sea, where they exchanged goods with faraway Roman merchants. In this way, India was able to spread its culture, religion, and advanced knowledge in mathematics, navigation, architecture, and other fields, thereby establishing itself as a significant power.[85] As a result, William Dalrymple asserts that historically, India "was the most consequential power of the ancient world, with Indian learning, Indian religious insights, and Indian ideas … among the crucial foundations of our world."

For India, the IMEC provides a vital pathway to markets as trade moves along the corridor through the Middle East and into Europe. To focus specifically on Europe, the IMEC can serve as a platform and initiative to broaden and deepen the European Union's economic investment in the CEECs, helping European Union nations reduce their reliance on trade via the geopolitically challenging Suez Canal.[86] A key area of interest for both India and the Europeans is connecting IMEC with the Italian Port of Trieste, which already serves as a critical

node for European and Indo-Pacific trade. As a potential IMEC connectivity hub, Trieste is well-positioned to serve as a vital economic link between India and the CEECs. At certain points, Trieste's port depth exceeds 50 feet, allowing medium and some large-sized ships and services to dock there.[87] Trieste also offers connections to more than 400 trains a month that transport goods across the European interior.[88] As noted by Italy's IMEC Special Envoy, Ambassador Francesco Talò, "this port has traditionally been the [harbor] of Central and Eastern European countries," as it is the "closest Mediterranean access to their production [centers]."

As India continues to collaborate in the development and planning for the IMEC, the U.S. and European IMEC partners should support the selection and development of the Port of Trieste as a critical economic hub. Not only would this enable increased trade and economic investment between India and CEEC nations, but it would also support the American desire to see an increasingly resilient, economically stable, and self-reliant Europe that can provide for its own regional defense.[89] As a critical aspect of Europe's economic growth, U.S. and EU support for enabling the IMEC to link India to the CEECs via Trieste is an essential step for India and for a U.S. "broader goal of fostering a Europe that can carry its weight as a key partner against shared adversaries."

The India Trilateral Forum

A second existing framework that the U.S. and the EU could use to incentivize increased CEEC investment in India is the India Trilateral Forum. Since its establishment in 2010, this trilateral forum has advanced shared interests among the United States, Europe, and India, serving as a leading platform for policymakers, strategic thinkers, and business leaders.[90] Meeting twice a year, the three nations have used this trilateral engagement to identify shared interests and develop policies and agreements to address security and economic challenges.

In a June 2022 statement at the India Trilateral Forum, German Foreign Minister Annalena Baerbock reiterated the importance of collaboration, saying that

> … [f]or us, India is the natural partner to sail this rough sea together ... when it comes to your most important values, most important beliefs, it's important that you share the same way of thinking.

She also highlighted that India faces many of the same regional challenges as the U.S. and Europe. These challenges include the fundamental need to "deliver for our citizens, that we serve our people – men, women, and children – without discrimination … [so] [t]hat they are free to live prosperously and safely in terms of human safety and human security." More can be done to elevate the forum as a mechanism for promoting India's economic investment in CEECs.

To increase the impact of the India Trilateral Forum, U.S. leaders should go beyond simply declaiming shared policy interests and network building among members.[91] The U.S. should send a senior diplomat with a clear agenda and plan to not only identify areas of collaboration but also use the forum to craft a trilateral draft agreement for implementation. In the past, some have argued that India's role has not been perceived as equal in the partnership, and that too should change.[92] U.S. leaders should quickly emphasize and expand this existing forum to incentivize Indian investment in CEECs.

U.S.-India TRUST Initiative

As noted earlier, a third ongoing U.S.-India framework is the U.S.-India Transforming the Relationship Utilizing Strategic Technology (TRUST) Initiative. This policy initiative, announced in February 2025, builds on the foundations laid by the Biden Administration in January 2023. The goals of this reimagined Trump Administration initiative focus on "transforming the relationship utilizing strategic technologies" and specifically emphasize growing "government-to-government, academia, and private sector

collaboration." Core areas of collaborative investment and information sharing focus on defense, AI, semiconductors, biotechnology, energy, and space.

As envisioned here, linking the TRUST initiative directly to CEECs would not be difficult. A key area of overlap across all three regions, for instance, is the vulnerability and risk in currently China-centered supply chains, as well as the manufacturing costs associated with sensitive electronics and advanced technologies more broadly. As identified by the framework, a central aspect of the TRUST initiative is the promise to work through U.S. and Indian private industry to establish a "U.S.-India Roadmap on Accelerating AI Infrastructure" by 2026. As outlined in a joint leaders' statement, the roadmap will identify "constraints to financing, building, powering, and connecting large-scale U.S.-origin AI infrastructure in India with milestones and future actions." Supporting the U.S.-India AI and technology roadmap, senior leaders pledged to encourage public and private industry in new ways that expand Indian manufacturing to "build trusted and resilient supply chains, including for semiconductors, critical minerals, advanced materials, and pharmaceuticals."

It is precisely in the manufacturing and supply chain aspects of the U.S.-India TRUST initiative where the CEECs would play a pivotal role for both the U.S. and India. U.S. and EU policymakers could incentivize Indian investment in countries such as Poland, Hungary, the Czech Republic, and Slovakia to open new, Indian-owned manufacturing facilities that strengthen supply chains and reduce the current fragility of key components.[93] India would benefit from establishing manufacturing sites in the CEECs, gaining access to a large, qualified workforce offering skilled employees at competitive rates. Additionally, many of the CEECs possess developed infrastructure, technological expertise, and competitive economies that would underpin new Indian investment. Another positive argument is that India – if able to sidestep recent anti-immigration political trends in Eastern Europe – could offer its own large population of skilled and semi-skilled migrant workers to help offset

the CEEC's "demographic challenges in the form of aging populations and low fertility rates resulting in labor shortages."

In a mutually beneficial scenario, expanding the scope of the U.S.-India TRUST initiative could enable the United States to gain access to a more secure and stable supply chain for advanced technologies. At the same time, the Indian industry would benefit from lower-cost CEEC skilled labor and developed infrastructure. For their part, the CEECs would benefit from Indian investment as an alternative to China's, and from India as a source of additional skilled workers.[94]

While there are likely other opportunities to incentivize Indian CEEC Investment, the advantage of the three recommendations above is that they are already planned or established. Additional analysis is needed to develop a wholly new U.S.-India-EU trilateral framework for the CEECs, but for now, these three options can serve as areas for deeper study.

Possible Risks of Incentivizing India's Rise?

It is the central thesis of this paper that U.S. decision-makers are well advised to economically empower and incentivize India as a counterbalance to China's rise as a great power. While my specific recommendations focus on incentivizing India's economic investment within the CEECs, it might be objected that the U.S. is developing India as a future global competitor. Such concerns are grounded in historical experiences of the U.S. role in enabling China's own meteoric rise in the 1990s and 2000s.[95] The focus of this section is thus to briefly examine the historical record and compare India with China to assess the risks; I conclude that support for India's economic expansion, if conducted thoughtfully, is likely to create a more potent U.S. partner rather than a competitor.

China's rapid growth in the 1990s was built upon previous reforms of state-owned enterprises, as well as investments in new technologies and forward-looking research and development. During

this period, U.S. trade policies supported and enabled China's growth by incentivizing the transfer of technology and of U.S. middle-class manufacturing jobs to China, thereby lowering U.S. domestic consumer costs and increasing the supply of desired goods.[96] Additionally, China aggressively pursued admission to the World Trade Organization (WTO), which it knew would lead to Permanent Normal Trade Relations (PNTR) with the United States, making it eligible for favorable tariff rates. China promoted the value of its WTO membership to world leaders, and many on the U.S. side were in favor of Chinese accession, arguing that China's membership "will result in a dramatic opening of the Chinese market to U.S. goods and services once China joins the WTO."

U.S. support for bringing China into the WTO and the global economic fold may have been strategically short-sighted, but it was unmistakable. A U.S. Department of State fact sheet from the year 2000, for instance, said that

> … [t]he accession agreement negotiated with China will benefit American business, workers, and farmers by slashing industrial and agricultural tariffs and opening up sectors across the board to foreign competition.

Many U.S. leaders may also have remembered Richard Nixon's 1967 warning:

> Taking the long view, we simply cannot afford to leave China forever outside the family of nations.… There is no place on this small planet for a billion of its potentially most able people to live in angry isolation.[97]

With Nixon's warning likely in mind, U.S. leaders in Congress passed the PNTR with China bill in 2000 by votes of 237 to 197 in the U.S. House of Representatives and 83 to 15 in the U.S. Senate. The passage of the PNTR bill remains a significant moment in U.S.-China trade relations and was pivotal in China's economic rise.

China, for its part, sought to implement market reforms, attract foreign direct investment (FDI), and foster export-oriented growth.[98] World Economic Forum scholar Kaiser Kuo says China focused on "tax breaks and creating a favorable regulatory environment" to attract FDI. Using this approach, "China became a magnet for foreign capital, initially coming predominantly from Hong Kong [Special Administrative Region] and diasporic communities in Asia and North America." With this massive influx, China "systematically absorbed and adapted foreign technologies, rapidly closing the technological gap with more developed economies." As Ashley Tellis and Sean Mirski have noted, these various developments helped make China's economic rise

> … [s]imply meteoric. During the last thirty or so years, China has demonstrated average real growth in excess of 9 percent annually, with growth rates touching 13–14 percent in peak years.

China's economic growth, however, has been a double-edged sword for the U.S. as an economy and nation. Inviting China onto the world stage opened its markets and made lower-cost labor available, which not only lowered the cost of goods but also accelerated global innovation and technology development. However, as the United States outsourced high-skilled manufacturing to China to lower component costs, this ultimately hurt American workers and industries and increased U.S. interdependence with – and dependence upon – China, while also helping build that country into an increasingly powerful and self-confident competitor to the United States. Ultimately, as David Autor, David Dorn, and Gordon Hanson have observed, China's economic rise is linked to the "one-quarter of the decline in manufacturing jobs between 2000 and 2007." Over the past several decades, this has not only drastically reshaped U.S. labor markets but also had an impact on "political behavior, as declining job prospects, demographic shifts, and foregone mobility fueled a concentrated and understandably bitter electoral response."

Similarly, other nations have also experienced both positive and negative long-term impacts of intertwining their economies with China. This may be especially true for smaller nations. In their data-driven research, scholars Christopher Ford and Alex Memory suggested in the pages of this journal that "China's admission to the World Trade Organization (WTO) in 2001 may have provided Beijing with a critical opportunity to implement such a strategy of relational weaponization." They argue that relational weaponization occurs when China rapidly increases its leverage over partner nations, making them increasingly dependent on China. Their research indicates that in this regard, "Chinese consistency is not accidental, but rather the result of a deliberate grand strategy."[99] Since much of the world followed the U.S.-led efforts to open China's market, China experienced rapid economic growth and military expansion. However, instead of open markets sparking political liberalization in China, Brahma Chellaney writes, "the Chinese Communist Party used economic growth to tighten political control and expand its military capabilities, turning economic strength into strategic leverage."

Why India is Different and More Aligned with U.S. and EU Interests

There are certainly important lessons to be learned from past actions that contributed to China's rapid economic rise. Still, U.S. and EU policymakers cannot allow the past to paralyze decision-making and restrict actions that are critically needed. Indeed, India is economically rising like China, but it is fundamentally different from China. India remains the world's largest democracy and pursues a multipolar approach to support its own strategic autonomy, not global or even regional dominance, and New Delhi lacks any clear focus upon revanchist territorial self-aggrandizement analogous to Beijing's commitment to "reunification" with (*i.e.*, conquest of) Taiwan or to its seizure and militarization of the South China Sea. By contrast, China is an authoritarian nation that appears to be seeking paths that disrupt global norms and ensure "regime security (*e.g.*, domestic stability, as well as sovereignty and territorial integrity) and social-economic development."[100]

While India remains distinct in its generally pro-democratic approach compared to Chinese authoritarianism, India's rise is not without concerns. For example, some India-watchers have identified democratic backsliding, and several official U.S. reports raise concerns about human rights issues as well as changes to the status of India's Jammu and Kashmir regions, where minority Muslim populations reside. Similarly, largely under Prime Minister Modi and his Hindu nationalist Bharatiya Janata Party (BJP), India has taken steps to modify its citizenship laws in ways that may be disadvantageous to Muslims and, in some cases, increased religious persecution.[101] These trends remain concerning to proponents of a closer U.S.-India alignment, and raise important questions about the stability of India's democratic moorings.

The United States has said that "India is a key pillar in U.S. strategy in the Indo-Pacific region," and seeks to have India act as a counterbalance to China. Both countries have similar approaches and commitments to essential topics such as "combating terrorism, radicalization, drug trafficking, illegal immigration, and cybercrime." The United States and India are also long-standing, trusted trading partners, with over $200 billion in total trade in 2024, much of it in the technology and energy sectors.[102] U.S., EU, and Indian leaders must continue to explore creative and economically beneficial areas of collaboration, including common interests such as defense co-production, space exploration, and counter-piracy operations in the Gulf of Aden and the Western Arabian Sea.[103]

Clearly, like the United States and the EU, India is seeking to decouple and de-risk its economic and technological ties with China and to align its future with other nations.[104] India aims to develop its domestic manufacturing capabilities while partnering with friendly nations to address its economic and workforce challenges. Fortunately, India's approach to partnership is starkly different from China's and more aligned with U.S. and EU values and goals. In contrast to China's often assertive, state-led economic model – as exemplified by its flagship Belt and Road initiative – India prefers cooperative partnerships with economic and cultural dimensions. The

United States, the EU, and India all share the goal of developing their own internal manufacturing capabilities while also partnering with friendly nations to address their respective economic and workforce challenges.[105]

India, therefore, appears to be a logical partner for the United States, one that is aligned with U.S. values and exceptionally well-positioned as a counterbalance to China. Indeed, this seems so obvious that one might wonder why the U.S.-Indian relationship has not already been more firmly established. More than two decades after the George W. Bush Administration first made its opening to New Delhi in 2005, reversing years of efforts to isolate India after its nuclear weapons tests of 1998 – again driven by dreams of partnering with India vis-à-vis the PRC – what continues to hold the U.S back from enabling New Delhi as the counterbalance to Beijing? While this historic, complex, and sometimes troubled relationship deserves a separate paper, if not a book, three top-level challenges merit mention.

First, as noted earlier, India places a high price on autonomy. India historically eschews binding alliances and maintains "strategic autonomy, a defining characteristic of India's foreign policy since its independence in 1947." Unwilling to lash itself to other nations' agendas, India possesses a deep sense of exceptionalism that moderates its willingness to adhere to broad formal alliances. Instead, India emphasizes autonomy in "decision-making and maintaining the liberty to engage with diverse international entities and stakeholders." This complexity has, and is likely to continue to, stand in the way of deeper collaboration and frustrate U.S. policymakers who seek concrete commitments to shared goals and objectives. Increasingly, there is even an emerging view in the United States that India's reliance on strategic autonomy is a fault – a frequent sense of frustration with New Delhi which risks alienating India diplomatically, militarily, and economically.[106]

A second area that constrains deeper U.S.-Indian ties centers on geography. Though New Delhi is itself deeply wary of China and Indian officials have in recent years described China as "the biggest

security threat facing India," India remains cautious about alliances or collaborations that would formally pit it against China. This is largely because India is economically reliant on China and has much to lose. Additionally, unlike the U.S., India and China share a contested border, which matters.[107] China's military is currently larger and stronger than India's, and India lacks an air force and navy capable of competing with China. Between 2000 and 2023, "China's military expenditures increased from 1.5 times to 3.5 times that of India's." Additionally, during the same timeframe, "the Indian navy more than doubled its tonnage, but China's naval tonnage more than quadrupled." Similarly, China's air force has a "3-to-1 advantage over India in fighters and bombers," and "China has also modernized its nuclear arsenal far faster." China's immense military advantage over India, coupled with geographic proximity and a shared, contested border, underscores India's caution about binding formal alliances that could put it at greater odds with its Chinese neighbor.

Finally, India likely remains hesitant to go all in with Washington, as it often sees U.S leadership as unpredictable with erratic policy decisions and frequently diverging approaches. From the Indian perspective, U.S. shifts in approach are a persistent historical challenge, and Indian scholars frequently cite past examples in which the U.S. has failed to honor commitments. Two such negative examples of past U.S. actions are "U.S. support for Pakistan during the Cold War and its leadership role in the international nuclear ostracism of India after its first nuclear test in 1974." More recently, adding to Indian concern, is the perceived U.S. economic hostility towards India and an aggressive tariff regime that risks unraveling decades of a critical partnership.[108] Collectively, despite a recent thaw in economic relations, the United States' unpredictable approach has done little to ease Indian concerns or build long-term trust.[109] For India, the broader theme of strategic reliability, especially during a crisis, remains a critical aspect of future U.S.-Indian relations.[110]

While all the above may be true, significant economic and geopolitical shifts are underway that are nonetheless likely to bring the U.S. and India closer together and strengthen calls for increased Indian

investment in the CEECs. As Mark Mungray writes, Indian foreign policy has largely focused on "balancing bilateral relationships to safeguard its national interests." Still, current realities and "the evolving dynamics of global politics now require more active and visible participation in multilateral frameworks." The regional and global rise of both India and China, coupled with a weaker Russia, is likely to continue to reshape India's view of its historic relationship with the United States. Both India and the United States are increasingly likely to see each other not as rivals but as best-placed partners, focused on the greater threat: China.

Overall, while there are likely to be future challenges to the U.S.-Indian relationship, India's approach to global economic engagement appears restrained, collaborative, and pragmatic. In contrast, China's approach seems aggressive and aimed at reshaping global norms to its own benefit.[111] Could a future India eventually lose its democratic moorings and collaborative approach to economic investment? Yes, possibly. Are there risks associated with the approaches recommended in this paper that seek to incentivize Indian economic investment in the CEECs to counter Chinese influence? Yes. Is it possible that, despite all the currently aligned interests, the United States could be promoting India today only to compete with and be concerned about a future Indian rival? Yes. However, these risks are only modest, and economically incentivizing India is still worth the cost. India offers the United States, the EU, and their allies and partners a much-needed, democratically aligned, and collaborative partner that shares a desire to balance China's rise as a great power, not only regionally in the Indo-Pacific but also in places farther afield, such as the CEECs.[112] Forging this critical collaboration between the CEECs on democracy and the economy is a crucial first step that strengthens all three partners.[113]

Conclusion

This paper began with the premise that India is a rising great power seeking to transition from its historic non-alignment to a more adaptive (though still not formally aligned) approach to strategic

autonomy. As argued throughout this paper, the United States and the EU should build upon this landmark shift in Indian strategy and incentivize India's economic rise to counter a rising China. One essential aspect of enabling India to serve as a counterbalance to China, in turn, is to develop and employ creative policy approaches that incentivize Indian investment across the CEECs. Not only would this approach align with the realities of a multipolar world, but it is also closely linked to shifts in U.S. strategy that favor an increasingly resilient, economically stable, and self-reliant Europe capable of providing for its own regional defense.[114]

Similarly, increased Indian investment benefits the EU and CEECs, as well as India. The EU and CEECs are seeking opportunities to avoid the economic and exploitative pitfalls inherent in China's BRI and other initiatives. India, for its part, needs to diversify its economy, which is overly reliant on China for much of its trade, while avoiding increased competition and conflict with China in the Indo-Pacific. As I have outlined, the CEECs offer India an immense opportunity to leverage its working-age population by capitalizing on the CEECs' existing manufacturing infrastructure and ability gainfully to employ low-cost, high-skill labor in a sophisticated, globally integrated economy. Taken together, the U.S., the EU, and especially India can benefit from creative policies that incentivize Indian investment in the CEECs.

While it remains unlikely that the United States can directly restrain or contain a rising China, it must build partnerships to balance China. As I have argued here and elsewhere, India should be viewed as a priority partner with critical economic and social capital and democratic values aligned with those of the United States and Central and Eastern Europe. Investing now with an eye on the future, U.S. leaders should prioritize India, incentivize India, and not squander what may be the most critical relationship of the century.[115]

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The views in this article are those of the author and do not represent the policies or positions of any part of the U.S. government, the U.S. Army, or the Defense Threat Reduction Agency.

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Deterrence Elasticity: Building Scalable Strategic Capacity in the Simultaneity Era

by

Joseph H. Lyons

Introduction

The defining strategic challenge of the emerging multipolar nuclear era is not "one more threat," but simultaneity—two peers pressuring the United States at once. The 2026 National Defense Strategy makes this explicit, warning that it is "only prudent" to prepare for adversaries acting together, or opportunistically across multiple theaters. In that world, deterrence credibility depends on more than having a modern nuclear "Triad" on paper. It depends on whether the United States can generate and sustain usable capability quickly enough to deny adversaries – including adversaries who *collaborate* in aggression, or who engage in it opportunistically once the U.S. forces are occupied elsewhere – a window in which temporary force advantages can be converted into coercive leverage.

This essay proposes a simple organizing concept for that problem: deterrence elasticity. Elasticity is the ability to expand usable, survivable strategic capacity on *decision-relevant timelines* – measured in single-digit years rather than decades. Elasticity is not a substitute for modernization. Modernization replaces ageing systems, whereas elasticity adds margin in terms of the systems one already has.

Here, "fast enough" does not mean responding to a crisis next month. It means adding usable capacity inside the period when the strategic environment can deteriorate meaningfully but before long-cycle modernization programs mature. For the purposes of this essay, that means roughly five to eight years: long enough for production-rate changes, sustainment expansion, and industrial ramp decisions to affect force availability, but short enough that new submarine hulls, new warhead infrastructure, or wholly new strategic systems are unlikely to change the balance.

The 2025 National Security Strategy frames strategy as the hard work of connecting objectives to available means, rather than assembling a laundry list of aspirations. Deterrence elasticity forces that connection by asking a blunt question: *What strategic deterrent capacity can the United States actually scale fast enough for this to matter as the threat environment evolves in this era of simultaneity?*

The Simultaneity Problem and the Case for Deterrence Elasticity

The traditional posture debate often proceeds as if time is available: that crises can be treated as sequential rather than overlapping, forces can be shifted after the initial shock, and industrial or nuclear-enterprise constraints can be worked through later if the threat worsens. The simultaneity problem erodes those assumptions because overlapping pressures compress the time available to reposition forces, recover lost readiness, or expand production before coercive leverage hardens. In practice, the problem is not that the United States can never "catch up." It is that catch-up may occur too late to matter if two peers create overlapping demands before new capacity can be fielded.

Elasticity is the posture attribute that determines whether that margin can be created. Here, margin means more than a larger inventory on paper: it includes excess deployable capacity, production headroom, readiness headroom, and reserve or upload flexibility that can be converted into usable force before a crisis hardens into a new status quo. A force can be survivable and still be inelastic; it can be

modern and still be slow – not slow to respond once employed, but slow to field additional usable capacity once the strategic environment deteriorates. In the simultaneity era, those shortcomings matter because routine bottlenecks in factories, shipyards, depots, and the nuclear enterprise can become strategic vulnerabilities when there is no longer enough time to recover lost margin.

A practical way to think about elasticity is a timeline test. Some posture adjustments can plausibly affect usable capacity in *five to eight years* – for example, increasing production rates on an existing aircraft program, expanding depot and sustainment capacity, or growing the training pipeline that turns inventory into operational availability. Other adjustments remain measured in decades even when the policy choice is clear: building additional ballistic-missile submarine hulls, creating new nuclear production infrastructure at scale, or fielding major new strategic systems that require long testing and certification cycles. As the Strategic Posture Commission put it in 2023, decisions "need to be made now" to address threats "arising during the 2027–2035 timeframe," and the United States and its allies must be prepared to "deter and defeat both adversaries simultaneously." That makes elasticity a near-term requirement rather than a distant aspiration.

Inventory Illusions: Total Inventory Does Not Equal Capacity

Deterrence elasticity is measured in usable capacity – what can be generated, sustained, and employed when leaders need options under time pressure. Nominal inventories can be useful for budgeting and long-range planning, but they can obscure the practical question simultaneity forces: what portion of a force is actually available for operational use, and what portion is mission-capable when it matters.

The bomber force provides a clean example. A recent Mitchell Institute policy paper by Mark A. Gunzinger and Heather Penney breaks the bomber fleet from total aircraft inventory down to primary mission aircraft, defined as the aircraft available for operational assignment after subtracting training/test aircraft and backup/attrition reserves, and finally mission-capable aircraft after

applying readiness rates. In that accounting, the Air Force's 2025 bomber inventory falls from 141 aircraft on the books to 96 primary mission aircraft, and then to roughly 47 mission-capable bombers available at any one time, as shown in **Figure 1** below. The implication is not that bombers are uniquely "unreliable." It is that thin inventories leave little margin to absorb routine maintenance cycles, training demands, and reserves without collapsing usable capacity. That current availability picture is not itself the elasticity window; it is the baseline condition from which any meaningful increase in usable capacity must begin.

This inventory illusion is what simultaneity punishes. When effective inventory is already thin, "surge capacity" has to be built deliberately – by scaling inventory and readiness together and by being honest about what share of the force is actually relevant to the mission set a given crisis demands.

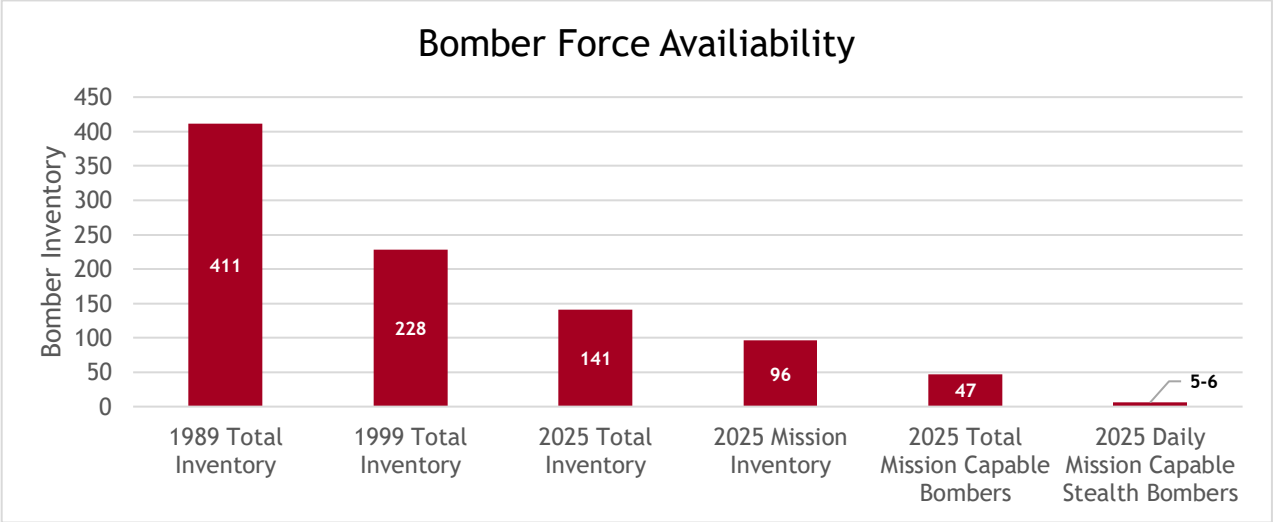

Figure 1. Bomber Force Availability.[1]

Applying the Elasticity Test Across the Triad

If simultaneity makes time the binding constraint, elasticity should be judged by a simple test: *what can be scaled in five to eight years, and what cannot?* This is not a comment on the intrinsic value of each

leg of the Triad. It is a recognition that different legs translate funding and policy decisions into usable capability on very different timelines.

Not all elasticity is the same. For the purposes of this essay, additive elasticity means the ability to field more usable strategic capacity on relevant timelines. Protective elasticity means preserving existing capacity by preventing schedule slips, transition turbulence, or enterprise bottlenecks from reducing it. That distinction matters because the Triad's legs do not contribute in the same way: some can add capacity in the near term, while others contribute mainly by protecting the force from losing margin during modernization.

Two cross-cutting constraints dominate before any platform-specific debate begins. The first is industrial capacity: the specialized workforce, facilities, and supplier networks needed to build and sustain strategic systems do not surge on demand. The second is the nuclear weapons enterprise itself. Even if leaders wanted to expand deployed capacity rapidly, the ability to produce and certify key components – particularly plutonium pits – sets a hard ceiling on how quickly the stockpile can grow or be refreshed. The Government Accountability Office (GAO) has repeatedly highlighted that the U.S. National Nuclear Security Administration still lacks a comprehensive schedule and cost estimate for the production of plutonium "pits" – the physical core of an implosion-type nuclear weapon – which is a strategic constraint in an era that prizes speed and margin.[2] In practice, even the planned 80-pit-per-year enterprise is already largely committed to the modernization program on the books – 30 war reserve pits per year at the Los Alamos National Laboratory and at least 50 at the Savannah River Plant – leaving little room to create excess margin quickly.[3]

Elasticity, however, is not limited to delivery platforms. Upload capacity and reserve stockpile management can also provide a form of strategic margin by increasing the number of warheads available for deployment on existing systems. That is a different kind of elasticity from the one emphasized here. Upload flexibility can change the payload of an already fielded force, but it does not solve the problem

of how many usable platforms the United States can generate, sustain, and signal in the simultaneity window. This essay therefore focuses primarily on delivery-system and force-generation elasticity – the part of the problem most directly shaped by industrial timelines, readiness, and operationally available capacity.

Against that backdrop, the land-based leg offers an instructive case. Sentinel is indispensable for replacing a rapidly aging system, but its near-term contribution is primarily one of protective elasticity rather than additive elasticity. In the 2027–2035 window, that means preserving continuity and transition stability: keeping the force credible during a complex modernization period and preventing schedule turbulence from becoming an operational vulnerability. GAO's work on the U.S. Air Force's "Sentinel" Intercontinental Ballistic Missile (ICBM) program emphasizes transition and schedule risk, including gaps in the Air Force's plans to manage the Minuteman-to-Sentinel transition and the risks that follow from delayed infrastructure and testing milestones.[4] In practical terms, the elasticity question for the intercontinental ballistic missile force is less about adding missiles quickly and more about ensuring the modernization transition does not create a period of reduced confidence, reduced readiness, or prolonged dependence on an increasingly strained legacy system.

The sea-based leg is even less "surgeable" in the near term. The planned *Columbia*-class nuclear-powered ballistic missile submarine (SSBN) is the most survivable element of the U.S. nuclear Triad, but submarine hull production operates on decades-long timelines, and schedule disruptions have strategic consequences because they directly affect at-sea presence. Here again, the relevant contribution is protective elasticity rather than numerical expansion. GAO has highlighted that the Columbia program lacks essential schedule insight because the shipbuilder has not conducted schedule risk analysis, and it notes persistent construction challenges.[5] The implication is not simply cost and delay; it is that the margin for error is thin. In a simultaneity era, protecting the schedule – and the industrial base that supports it – is therefore an elasticity move in the

protective sense, because it preserves the one part of the force that cannot be recreated quickly.

Taken together, Sentinel and *Columbia* illustrate that some elements of deterrence elasticity are protective rather than additive. Their near-term contribution is not the rapid creation of new deployed capacity; it is the prevention of avoidable losses in credibility, readiness, and schedule integrity while modernization is underway. That is still strategically important, because it preserves margin the United States would otherwise lose. But it also clarifies where additive near-term elasticity must come from. If the demand signal is additional usable capacity on single-digit timelines, the clearest lever is the strategic force element that can scale through production rate and readiness investments rather than new hull construction or new warhead infrastructure.

Bomber Elasticity as the Near-Term Pressure Valve

If the question is additive elasticity – what can increase usable capacity on decision-relevant timelines – the bomber leg is the clearest near-term lever. Here 'near-term' means changes that can plausibly affect usable capacity before 2035, not changes that could fully transform the force before a sudden crisis next month. Unlike new submarine hulls or major warhead infrastructure, bombers can add usable capacity by changing two variables that respond on single-digit timelines – production rate and readiness/sustainment capacity – and by shifting the mission emphasis of a dual-capable force. The Mitchell Institute's "effective inventory" breakdown shows why this matters: when training/test aircraft and mission-capable rates are accounted for, usable bomber capacity is far smaller than the top-line inventory suggests.[6]

Why Bombers are Elastic

The production-rate lever is the central difference. The Air Force's stated inventory objective for the B-21 "Raider" dual-capable (*i.e.*, conventional or nuclear payload) strategic bomber is a minimum

of 100 aircraft.[7] Production capacity can be expanded by investing in facilities, suppliers, and workforce—an industrial scaling problem that is difficult but generally faster than adding new strategic submarine hulls or new ICBM silos. Recent public reporting suggests the Air Force and Northrop Grumman are actively negotiating a production expansion agreement for the B-21 enabled by congressional funding, with company leadership indicating a deal could arrive on the order of months rather than years.[8]

The second lever is readiness. In a small force, readiness is not merely a maintenance problem; it is a margin problem. When inventories are thin, routine depot cycles and training demands consume a larger share of the available fleet, making it harder to preserve both forward options and nuclear mission assurance. The solution is not "buy more aircraft and hope readiness improves." It is to pair force growth with sustainment capacity: parts, facilities, workforce, and modernization paths that keep mission-capable rates from becoming the hidden ceiling on usable capacity.

Bomber elasticity also derives from dual-capability. Unlike strategic systems tied more narrowly to a single mission, bombers can shift the emphasis of the force between conventional strike and nuclear signaling as conditions change. That flexibility is especially valuable in a simultaneity environment because it gives leaders more ways to allocate scarce capacity across theaters without immediately forcing an all-or-nothing choice. But it also creates arbitration pressure: the same aircraft, crews, and support infrastructure may be pulled toward competing conventional and nuclear demands at the same time. Bomber elasticity, then, is not just about adding airframes. It is also about how a dual-capable force is apportioned, sustained, and signaled under stress.

B-21 Acquisition Bands and Elastic Deterrence Alternatives

The most useful way to discuss potential B-21 fleet sizes is to treat them as *decision bands* tied to assumptions, not as a single procurement target. In the simultaneity era, the question is not

whether 100, 145, 200, or 288 is the "right number" in the abstract. It is what each band buys in terms of usable options, what assumptions it relies on, and whether it creates a hedge that can absorb surprise.

1) *Band 1: 100 as a baseline floor.* The Air Force's B-21 fact sheet describes an inventory objective of a minimum of 100 aircraft.[9] That floor matters because it anchors program cost and basing plans, but it is not the same as an elastic deterrence posture. Congressionally mandated force design work by the Center for Strategic and Budgetary Assessments (CSBA) warned that a planned force of 100 B-21s could fall short of penetrating strike capacity needed for even a single major high-end conflict, and it tied meaningful capacity to ramping production toward 10–20 aircraft per year by the late 2020s.[10] In other words, 100 is a starting point—not a hedge.

2) *Band 2: 145 as a hedge step under simultaneity.* The figure of 145 B-21s has entered mainstream policy discourse through STRATCOM testimony and subsequent analysis.[11] It is best understood as a hedge step: a force large enough to improve operational flexibility and resilience compared to the minimum program objective, but still bounded by the reality that "usable capacity" depends on readiness, enablers, and how many aircraft must be withheld for nuclear mission assurance.

3) *Band 3: 200 as a minimum for sustained penetrating capacity.* The Mitchell Institute goes beyond "bomber relevance" arguments and quantifies the implication of a thin effective inventory: if the force must deny sanctuary, sustain long-range strike demand, and contribute to homeland defense and nuclear deterrence simultaneously, the bomber inventory must be able to

generate roughly two to three times today's long-range strike sortie capacity. Their recommendation is a bomber inventory of 300 or more aircraft, including at least 200 penetrating B-21s, and they argue that 145 is "not enough" and "not fast enough."[12] Whether one agrees with their campaign assumptions, the key analytic contribution is the link between effective inventory and sustained sortie generation under concurrency.

4) *Band 4: 288 as a high-band elasticity hedge.* The upper band should be treated carefully, but it is not an ad hoc number. CSBA's congress-required future force inventory recommended 383 total bombers, including 288 B-21s (total aircraft inventory) and 206 B-21 primary mission aircraft.[13] This is best read as an elasticity hedge case: a force sized to sustain strategic deterrence, defend the homeland, and be prepared to defeat major aggression by China and Russia, rather than planning to handle those demands in sequence. It does not mean the Air Force should announce "288" as a procurement target tomorrow. This band is best interpreted as an upper-bound hedge case for simultaneity planning, not a near-term program objective. It means that credible simultaneity planning pulls the analysis toward a larger, more resilient penetrating bomber force than the minimum program objective.

Elasticity Enablers and the "Readiness Critique"

Bomber elasticity is not simply a function of airframes. The limiting factor can become tankers, basing, munitions stockpiles, maintenance capacity, and the ability to generate sorties at scale. That is where the readiness critique arises: if mission-capable rates are low, why buy more aircraft? The correct answer is that low readiness in a thin force is often an indicator of insufficient margin and sustainment

capacity, not proof that the platform category is a poor investment. A small fleet cannot absorb depot and modernization downtime without translating routine friction into strategic scarcity. The Mitchell inventory breakdown makes that point implicitly: the effective force collapses because the total inventory is too small to sustain both routine demands and crisis requirements at the same time.[14]

The implication for policy is straightforward. If bombers are the near-term pressure valve, elasticity has to be funded as a package—and that package carries tradeoffs. Increasing B-21 production without expanding tanker capacity, basing and infrastructure resilience, munitions stocks, maintenance throughput, and training capacity simply shifts the bottleneck from the factory to the flightline. Likewise, bridging choices (like extending legacy aircraft) can preserve margin, but they impose opportunity costs in sustainment funding and workforce bandwidth that compete with modernization. Owning those tradeoffs up front is the point of the elasticity lens: it forces planners to connect added capacity to the enabling ecosystem required to make that capacity usable.

That package can be debated on cost and priorities, but it is at least measurable on a timeline relevant to the simultaneity problem.

Bridging Capacity: Don't Retire What You Cannot Replace

Elasticity also requires bridging choices that preserve penetrating capacity while the new force grows. Other legacy capabilities—including retained sea-based capacity or selected legacy warhead options—can also provide forms of hedge or bridging elasticity, but the focus here is scalable strategic capacity across the Triad, with the bomber force as the principal case study. Both CSBA and the Mitchell Institute make versions of the same argument: do not accelerate B-2 retirement if it creates a temporary "bathtub" in penetrating capacity before the B-21 force is sizable and fully operational. CSBA recommended sustaining and modernizing the B-2 until approximately 2040.[15] Mitchell recommended refraining from retiring B-2s until B-21 inventories surpass 100 aircraft and are fully

operational in the 2030s.[16] Bridging is not a substitute for growth, but it is an elasticity move because it preserves options during the exact window when simultaneity risk is rising and modernization concurrency is most stressed.

A Decision Rule for Bomber Elasticity

The bomber leg becomes the near-term pressure valve when policy choices treat elasticity as the objective rather than treating the program of record as the ceiling. The decision rule is simple: *prioritize the options that add usable, survivable capacity on single-digit timelines while protecting the schedule integrity of the systems that cannot surge.* In practical terms, that means treating the B-21 not only as a replacement program but as an elasticity lever that can expand the effective inventory – if production, readiness, and enablers are scaled together.

Conclusion

Deterrence in the simultaneity era is less about declaring new inventory targets than about restoring and expanding margin – usable capacity that can be generated, sustained, and signaled under time pressure. Deterrence elasticity offers a practical way to judge posture options against that reality. The key question is not simply what the United States intends to modernize over decades, but what it can scale within the window in which strategic conditions can change.

Through that lens, the Triad's legs contribute in different ways. Sentinel and Columbia remain essential to long-term survivability and strategic stability, but their near-term contribution is primarily protective elasticity – risk reduction through schedule protection, transition stability, and preservation of enterprise capacity. The bomber force is distinct because it offers the clearest form of additive near-term elasticity, while also allowing leaders to shift the emphasis of a dual-capable force as conditions change, provided that enablers and readiness are funded as part of the package.

The decision rule is straightforward: prioritize investments that measurably increase usable, survivable capacity on decision-relevant timelines while protecting the schedule integrity of systems that cannot be expanded quickly. If the United States adopts that standard, debates about force structure become less about advocating for a platform and more about matching strategy to means in the environment the 2026 National Defense Strategy describes: one where simultaneity is the default condition, not the exception.

* * *

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The views expressed in this article are the author's and do not necessarily reflect the official policy or position of the Department of the Air Force, the Defense Threat Reduction Agency, the Department of Defense, or the U.S. Government.

Notes

1 *Visualization adapted by the author from* Col Mark A. Gunzinger & Heather R. Penney, "Strategic Attack: Maintaining the Air Force's Capacity to Deny Enemy Sanctuaries," Mitchell Institute Policy Paper, Vol. 64 (February 2026), Figure 3 & accompanying discussion, https://www.mitchellaerospacepower.org/app/uploads/2026/02/Strategic_Attack_Denying_Sanctuary_Policy_Paper_64.pdf.

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6 Gunzinger & Penney, "Strategic Attack," Figure 3.

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[12] Gunzinger & Penney, "Strategic Attack," 17 & 21.

[13] Gunzinger et al., *An Air Force for an Era of Great Power Competition*, ix (Table 2).

[14] Gunzinger & Penney, "Strategic Attack," Figure 3.

[15] Gunzinger et al., *An Air Force for an Era of Great Power Competition*, xi.

[16] Gunzinger & Penney, "Strategic Attack," 21.

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