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1. International Relations – Periodicals. 2. World Politics – Periodicals. 3. Policy Sciences – Periodicals.

# Contents

## Contents

<b>Editorial Board.....</b>	<b>2</b>
<b>Expert Reviewers .....</b>	<b>2</b>
<b>Letter from the Editors .....</b>	<b>3</b>
<b>Common Concern and Unilateralism: Alternative Methods for the Incorporation of Common Concern into International Law .....</b>	<b>5</b>
<i>Andrej Litvinjenko</i> <i>Norman Paterson School of International Affairs, Carleton University;</i> <i>Faculty of Law, University of Ottawa</i>	
<b>Transforming our World? Gender and Empowerment of Women in the 2030 Agenda for Sustainable Development .....</b>	<b>15</b>
<i>Adalgisa Bozi Soares</i> <i>Graduate Institute of International and Development Studies</i>	
<b>Determinants of Microfinance Use and Impacts on Firm Performance .....</b>	<b>29</b>
<i>Christian Zeballos</i> <i>Georgetown University</i>	
<b>Cuba: Post-Normalization US National Security Policy .....</b>	<b>49</b>
<i>William Cahill</i> <i>Woodrow Wilson School, Princeton University</i>	
<b>Post 9/11 Intelligence Failures .....</b>	<b>66</b>
<i>Zeinab Ali, Alienor De Steur, Will Hartley, Michelle Peres, Ben Rabinovitch</i> <i>Norman Paterson School of International Affairs, Carleton University</i>	

## **Editorial Board**

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## Letter from the Editors

This 16<sup>th</sup> Volume of the *Paterson Review of International Affairs* stands as yet another testament to the value of graduate research, and the importance of providing a platform for emerging scholars at this level. This year our team worked through several dozen submissions, selecting five superior articles through a double-blind peer-review process,<sup>1</sup> and finalizing these in consultation with subject matter experts. What results is a sampling of articles from outstanding graduate students from leading institutions across North America. We are delighted to showcase their work in this edition.

This year's volume includes five articles addressing a broad range of subject matter, each constituting an important addition to existing literature. Andrej Litvinjenko explores the emerging international legal principle of common concern and alternative methods by which states or jurists could rely on it to address collective action problems such as pollution or space debris. Adalgisa Bozi Soares challenges the construction of gender and women categories in the 2030 Agenda for Sustainable Development. Using Kenya, Ghana, and the Democratic Republic of Congo as case studies, Christian Zeballos provides a quantitative analysis regarding the use of micro finance and offers key insight into how this financial tool can be leveraged to support economic growth and success. Building off a historical background and accounting for contemporary challenges, William Cahill argues for rescinding the U.S. embargo of Cuba based on U.S. national security interests. Zeinab Ali et al. discover common factors that explain three notable intelligence failures of the post-9/11 era, and propose a variety of policy measures to avoid such failures in the future.

The Editors-in-Chief would like to extend our sincere thanks to the contributors, associate editors, blind reviewers, and expert reviewers whose efforts made this journal possible. We would also like to thank administrators of APSIA member institutions and other Universities who assisted in disseminating our call-for-papers, as well as Princeton University's *Journal of Public and International Affairs* for its continued collaboration. We also wish to thank the staff at the Norman Paterson School for the administrative support offered throughout the development of this volume, and the sustained funding that has ensured the continuity of this journal.

Erika Cook, Andrej Litvinjenko, Jacqui Ruesga  
*Editors-in-Chief*

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<sup>1</sup> This year a submission by an Editor-in-Chief was selected by the blind-review panel for inclusion into the journal. In the interest of transparency, the double-blind review process employed by the *Paterson Review* functions as such: eligible submissions are stripped of any references to the author or their school; the blind reviewers, which do not include any Editors-in-Chief, read several if not all submitted papers, rank them, and prepare comments for later discussion; the blind review panel discusses each reviewed submission one-at-a-time, creating a short-list; the discussion is moderated by the Editors-in-Chief; when any member of the editing staff is or knows the author of a paper being debated for inclusion, it is expected they respectfully remain silent and not contribute to the discussion so as to not unfairly influence others; in selecting a final slate of papers from the short-list, Editors-in-Chief guide the selection by commenting on considerations such as topic diversity, length, salience, etc; blind reviewers make the final decision of which papers to publish and are not informed of the successful authors' names and schools until the selection is finalized.

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# **Common Concern and Unilateralism: Alternative Methods for the Incorporation of Common Concern into International Law**

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## **Abstract:**

There is a clear shift from a politics of coexistence to one of cooperation. However, climate change remains the greatest collective action problem in human history. International law, predicated on sovereignty and territoriality, is ill-equipped to address complex interdependence. The emerging principle of common concern offers a politically feasible remedy to incentivize cooperation by justifying unilateralism, if necessary. This paper examines three alternative methods by which common concern could be incorporated into international law. In the short-term, we may see common concern applied as a persuasive principle for the purpose of introducing equity into the legal assessment of challenged unilateral acts. Policymakers will find the principle of common concern an interesting method through which to expand policy space previously restricted by international obligations.

## INTRODUCTION

Climate change is recognized as one of the greatest collective action problems in human history.<sup>1</sup> In spite of this, substantive cooperation and positive action remains constrained. As Cottier posits, challenges in responsibly addressing climate change lie in the fundamental tension between the transnational or global nature of the problem and the contemporary state-centric, Westphalian system.<sup>2</sup> As a result, international law, which is manifested by state consent, is ill-prepared for the challenges of climate change mitigation and adaption.<sup>3</sup> This is evidenced by the slow progress of international environmental law in establishing robust, binding frameworks for establishing universal or widespread standards and liability measures.<sup>4</sup>

There are, of course, strong economic and political interests retarding the normative and policy shifts necessary for achieving sustainable development such as fierce market competition, free-riding, beggar-thy-neighbour policies, etc.<sup>5</sup> Free markets and environmental initiatives can clash, as evidenced in *US - Shrimp*<sup>6</sup> and *EC - Seals*.<sup>7</sup> However, it does not follow that economics and environmentalism are mutually exclusive interests. That is, occasional tension between environmental and economic *objectives* does not imply tension or incompatibility between environmental and economic *law*. Quite the contrary, economic law can be used to complement and further environmental objectives and law. Writing on the matter, Regan challenges us to broaden our understanding of economic efficiency and comparative advantage.<sup>8</sup> He argues that operating trade flows on the basis of *normative* comparative advantage (relative real cost of production), externalities such as environmental degradation can be internalized, paying a global and domestic dividend.<sup>9</sup> The effects of human activity on the environment are well catalogued and I will not expound on them here. It is sufficient to conclude that the international community has unreservedly identified climate change as a real threat to humankind's existence, a common concern. The *Paris Agreement* serving as the most recent testament.

This paper will focus on the emerging concept of “common concern of humankind” (“common concern”) and how it can be employed unilaterally to remedy the friction between economic interests (territory based) and environmental interests (interdependence based). To that end, I submit there are three legal policy options.

- **Policy Option 1:** Common concern on climate change elevated to the status of *jus cogens*
- **Policy Option 2:** Common concern supplants *jus cogens* as a general principle of law
- **Policy Option 3:** Enhance the recognition of common concern as a *persuasive* principle to be included in the legal assessment of challenged unilateral measures

Either of the first two options could establish a framework conducive to prioritizing environmental priorities over economic ones. The third option would import greater equity into jurisprudence through consideration of shared and differentiated responsibility. More importantly, it would further legitimize environmental concerns and more accurately balance them against other interests or components of legal tests.



The paper will proceed as follows. Part I will review the principles of common concern and common heritage of humankind (“common heritage”). Part II will examine the first and second options and Part III will examine the third option. A summary table comparing the three policy options is provided at the end of Part III. The paper will conclude with brief remarks on the relative applicability of these options.

Common concern is an exciting development in international law that could enable quicker and more substantive cooperation on emerging global problems, such as space debris, human rights, or internet neutrality. Moreover, and most importantly, it would provide the flexibility states need to action vital policy objectives but are constrained by conflicting legal obligations. Therefore, this paper is concurrently an examination into how the principle of common concern can create policy space previously restricted by international obligations.

## **PART I**

### **Common Concern and Heritage of Humankind**

#### **A. Comparison and Contrast**

Common concern and common heritage are, in some ways, complementary principles. Both are predicated on what Weiss termed “intergenerational equity,” a preservation of options, in both quality and access, spatially and temporally.<sup>10</sup> Moreover, both principles obligate states to a certain degree of cooperation, recognizing increasing interdependence. However, whereas common heritage is proprietary, rejects sovereignty, and focuses on the sharing of benefits; common concern works within the framework of state sovereignty and focuses on the sharing of burdens.

Common heritage developed first<sup>11</sup> and in the context of decolonization and the ideological Cold War. It was championed by developing countries as part of the emerging new international economic order’s rebalancing of political and economic relations between North and South. Kiss describes advocacy of common heritage as, “solidarity across space and time.”<sup>12</sup> Although inconsistent across manifestations,<sup>13</sup> common heritage typically advocates shared-management of a common interest. Indeed, it prioritizes redistributive justice and advocates the ejection of sovereignty from common interests beyond national jurisdiction, replaced instead by universal stewardship with humankind itself as the *titulaire*.<sup>14</sup> Its proprietary nature made it a lightning rod for friction between the North and South. Through international environmental law, common concern began to emerge as an alternative for obligating coordination on common interests.

Common concern manifested in the 1988 *United Nations Framework Convention on Climate Change* (UNFCCC)’s preamble.<sup>15</sup> Mostly recently, it has been incorporated into the preamble of the *Paris Agreement*.<sup>16</sup> The exact legal content of common concern within treaties is unclear. Scholars such as Cottier, however, advocate that by giving it a more precise operational framework common concern could contribute to overcoming collective action problems, particularly climate change.<sup>17</sup> In principle, common concern has three dimensions. Firstly, it obligates states to cooperate in regard to addressing shared problems. Secondly, it justifies, subject to limitations of reasonableness, unilateral actions, even if they produce extraterritorial

effects.<sup>18</sup> Finally, it obligates states to undertake domestic actions separate from or in adherence to international efforts.

## **B. Limitations on Unilateralism**

In principle, states are entitled to exercise their jurisdiction within their territory in regard to events which occur outside of their territory but cause or may cause them injury (the *Lotus doctrine*).<sup>19</sup> However, as evidenced in *US – Shrimp*, there is tension in international law as to the applicability of this doctrine in certain circumstances. Remarking on the US' employment of Section 609,<sup>20</sup> the Appellate Body noted that the US was party to multiple treaties *recommending* the avoidance of unilateral measures in favour of multilateral solutions, when and to the extent possible.<sup>21</sup> The AB concluded that application of Section 609 was not the least trade restrictive measure possible and furthermore that it was discriminatory and against US trade obligations.<sup>22</sup> This quasi-obligation to address shared challenges collaboratively cannot only limit policy space but also create possible cooperation problems by incentivizing holdouts.

The utility of common concern, so far as unilateralism is concerned, I submit, is its capacity to draw in the normative intent of various treaties and declarations and use that momentum to circumvent existing obligations or institutional frameworks. This is not to say that common concern operates *carte blanche*. On the contrary, it both justifies and limits unilateral action. However, in the case of *US – Shrimp*, it could have been employed as a defence in advocating the necessity of unilateral action, provided that the action itself was reasonable in design and effect. Whereas common heritage frameworks usually derive from a single source, like the Moon Treaty or UNCLOS; common concern is informed by a variety of domestic and international sources. These sources, I submit, act as signals between states, informing them of each other's intent and expectations. Thereby, a "range" of "settled" or "reasonable" expectations begins to coalesce.<sup>23</sup> It is against this range that the reasonableness of a unilateral action can be balanced. Moreover and most importantly, this balancing is executed on an equitable, not objective or standardized, basis, as informed by the doctrine of shared and differentiated responsibility.

Ultimately, common concern is a positivist instrument that operates within the framework of sovereignty over natural resources and territoriality.<sup>24</sup> However, as reflected in the 1992 *Rio Declaration*, states will need to take one another's interests into account when developing or applying policies on matters previously thought to be exclusively under domestic jurisdiction.<sup>25</sup> It is undeniable, as Hohmann points out, that states are expanding what constitutes transboundary/global harm.<sup>26</sup> By reference to the "no harm principle," this implies the emergence of obligations *erga omnes* against substantial harm to the environment. There is no comprehensive environmental treaty establishing clear obligations, liability standards, and a binding dispute resolution framework. Until such an instrument, we are left with the emerging principle of common concern which, being predicated on sovereignty, is a politically feasible alternative. Our challenge is to determine how we can better establish it as a general principle of international law, thereby laying the foundation of obligatory cooperation and justifying unilateral acts. There are three policy options to explore: elevating common concern on climate change to *jus cogens*; supplanting *jus cogens* with common concern in general; and, enhancing common concern as a *persuasive* principle to be considered in the legal assessment of challenged unilateral acts.

## PART II

Below we examine the three policy options by which common concern can be incorporated into international law. The options are distinct in the effect incorporation has on the operation of international law. The first option merely enumerates a specific common concern as a *jus cogens* (among others such as the prohibitions on piracy or slavery), the second option changes international law by ejecting the current *jus cogens* framework in favour of the common concern framework, and the third option simply provides common concern as an analytical instrument for use in adjudication of international disputes. The three policies are summarized below and are followed by more detailed discussions on each.

<b>Policy 1</b> Common concern on climate change elevated to the status of <i>jus cogens</i>	<b>Policy 2</b> Supplanting <i>Jus Cogens</i> with Common Concern	<b>Policy 3</b> Common Concern as a Persuasive Principle
<ul style="list-style-type: none"> <li>Provides peremptory norm status to a common concern (ex. climate change)               <ul style="list-style-type: none"> <li>No derogation</li> </ul> </li> <li>Hierarchy of laws</li> <li>Unilateral action justified but not obligated</li> <li>Test for establishing <i>jus cogens</i> unclear</li> <li>Enforcement uncertain</li> </ul>	<ul style="list-style-type: none"> <li>Hierarchy of laws               <ul style="list-style-type: none"> <li>Subject to test (necessity &amp; reasonableness)</li> </ul> </li> <li>Unilateral action obligated</li> <li>Incentivizes cooperation</li> <li>Provides policy flexibility</li> <li>Can extend to novel issues (ex. human trafficking, space debris...)</li> </ul>	<ul style="list-style-type: none"> <li>Not hard law               <ul style="list-style-type: none"> <li>If principle of equity: <u>discretionary</u> instrument for adjudicators</li> <li>If principle of law: mandatory consideration</li> </ul> </li> <li>Unilateral action justified, only post-facto</li> <li>Introduces flexibility</li> <li>Application improves predictability of law</li> <li>Can apply to novel issues</li> </ul>

### *Policy Option 1: Jus Cogens and the Common Concern*

#### A. The Concept of Jus Cogens: Operation and Limits

*Jus cogens* is a powerful but vague source of international law. It imports fundamental values that transcend all other obligations, permitting no derogation. These are known as “peremptory norms.”<sup>27</sup> This provides international law with a much needed hierarchy as other sources weave around one another making it sometimes difficult to determine the prime obligation, absent explicit provisions such as the UN Charter’s Article 103.<sup>28</sup> As per the *Vienna Convention on the Law of Treaties*, any and all obligations, domestic or international, are null and void *ab initio* if they conflict with *jus cogens*.<sup>29</sup> Furthermore, all *jus cogens* norms establish obligations *erga omnes* (although the inverse does not follow). Obligations *erga omnes* are owed to all states and are meant to uphold *personal* compliance with the *jus cogens* norms. That is, states are obligated to not violate *jus cogens* themselves but are not necessarily obligated to intervene in the violation of another state, apart from general obligations to cooperate and refrain from recognizing the violation as lawful.<sup>30</sup> This leaves a critical *lacuna* in international law, insofar as establishing a constitutional system.<sup>31</sup>

Unfortunately, *jus cogens* is void of any legal test and its contents, or list of norms, are contested.<sup>32</sup> *Jus cogens* is similar to common concern in that it must be established by a positive act, it must be asserted. However, unlike the test for customary international law, it is unclear to what extent that assertion must be accepted by other states. It is further unclear whether its

application is absolute and without qualification. That is, is the application of *jus cogens* subject to any sort of balancing? Finally, it is unclear how *jus cogens* could be enforced. The jurisdiction of the International Court of Justice (ICJ) applies only to parties of the Rome Statute and even then only to the extent they have bound themselves.<sup>33</sup> There is no international jurisprudence on *jus cogens* at this time.<sup>34</sup>

### **B. Elevation of a Common Concern to Jus Cogens**

To be clear, this first option would only elevate a common concern to *jus cogens*, not the emerging principle of common concern *itself*. Therefore, it is the framework or *jus cogens* which applies, not of common concern. This elevation would require a particular articulation by the common concern akin to “prohibition of slavery,” such as “prohibition against substantial harm to the environment.”

Such a prohibition finds its normative and legal foundation in the *Trail Smelter*<sup>35</sup> and *Corfu Channel*<sup>36</sup> cases. These cases established and entrenched the “no harm principle” which obligates states to not knowingly permit their territory or interests over which they have jurisdiction to be used in a manner harmful to other states. This principle is recognized as customary international law.<sup>37</sup> Paired with the aforementioned *Lotus doctrine*, we can begin to see a coalescence around both an obligation to not harm as well as a right to act against harm. This connection is not yet fully developed and unilateral action is not always justified nor is harm always internationally wrongful. The no harm principle is still very much tied to causality and due diligence. That is, provided a state exercised diligence to the extent reasonably expected, the effect of the act(s) are neither unlawful nor may another state respond to them by exercising their jurisdiction without risking *ultra vires* and possible international unlawfulness. The execution of due diligence satisfying international liability was expounded on in an *Advisory Opinion* by ITLOS on mining the deep seabed.<sup>38</sup> Ostensibly, environmental damage could pass without remedy, particularly if the civil liability regime is weak or insufficient.

A broadly phrased peremptory norm, such as I have submitted, can justify action on the basis of effect alone. The corresponding obligation *erga omnes* would justify a unilateral response, subject only to, perhaps, comity. However, this alternative is not fully satisfactory as we still run afoul of only *justifying* action and not *obligating* it. As stated, we have only elevated a common concern to peremptory norm status. It is the *jus cogens* framework which applies, not that of common concern. Consequently, common concern’s obligation of action is *not* imported. Moreover, it remains unclear as to how *jus cogens* can be lawfully formulated, invoked, and qualified, if at all. Our second option is to supplant *jus cogens* with common concern as a general principle itself, thereby maintaining hierarchy in international law but also introducing greater clarity and functionalism.

### **Policy Option 2: Supplanting Jus Cogens with Common Concern**

As expounded by Cottier in a yet unpublished work, if we reverse *jus cogens* and common concern, making the former an expression under the latter, we can achieve a more functional international system that can effectively address shared challenges through cooperation and unilateralism (carrots and sticks).<sup>39</sup> Cottier circumvents the difficulty of identifying *jus cogens* norms by recognizing that all law is “binding and peremptory”<sup>40</sup> and that only element which distinguishes *jus cogens* from *jus dispositivum* is its encapsulation of the most “fundamental values shared by the international community.”<sup>41</sup>

By this reversal, the operational content of common concern is elevated as well, unlike in the first option. This means that, unlike under *jus cogens*, states become *obligated* to act as opposed to just being *entitled*. However, there is an implicit hierarchy in the obligations of common concern. Namely, that unilateralism must be in response to failures to cooperate (which implies a legal test of necessity and reasonableness). This, on one hand, incentivizes cooperation so as to avoid unilateralism and, on the other, also limits unilateralism. Moreover, the aforementioned principles of settled/reasonable expectations and shared and differentiated responsibility are also imported. This nuances the analysis of whether a unilateral act is justified both procedurally and substantively by importing equity. Let us reconsider *US – Shrimp* and let us assume that US shrimp operations were overwhelmingly the major source of harm to migratory turtle populations. Applying common concern would have two effects. Firstly, notwithstanding the obligation to cooperate, the US' principle role may modulate the expected degree, form, or timing of cooperation (i.e. *ex ante* or *ex post* to the measure). Secondly, the normative weight of the shared concern may influence the justification of the determined discrimination and the need to pursue objectively less trade restrictive alternatives. That is, previously overly discriminatory effects could be legal when balanced against a common concern.

*Jus cogens*, in this option, adopts the current role of “common concern” in various treaties and political acts. That is, it serves to aggregate signalling by states in the identification and crystallization of a fundamental concern. Common concern, in this option, establishes a quasi-constitutional framework of international law whereby certain rights cannot be violated and certain obligations must be adhered to. However, as Cottier rightly observes, such a transformation of common concern “will take time” given that states do not “readily change traditional patterns.”<sup>42</sup>

### PART III

#### *Policy Option 3: Common Concern as a Persuasive Principle*

The third option is distinct from the second only in that common concern as a principle would be persuasive and not binding. It would be an equitable framework domestic or international courts could consider in their assessment of challenged unilateral acts. Advocacy for its inclusion would rest on two principle points. Firstly, the normative weight of the concern would have to be demonstrated: was the unilateral act done on the basis of advancing an internationally recognized objective of fundamental concern (necessity)? Secondly, was the unilateral act, given the international signalling surrounding the fundamental concern, in line with the settled or reasonable expectations of states (reasonableness)? Satisfaction of these two tests would serve to develop a connection between the respondent's unilateral act and good faith concerning the applicable treaty and customary rights and obligations. Extra-territorial effects are *expected* because the problem itself is extra-territorial. The extent to and form in which effects are expected is informed by the principle of shared and differential responsibility which states have made clear underpins the successive frameworks on climate change. In this sense, common concern operates as soft law. Although non-binding, it creates legitimate expectations that may manifest legal protection under good faith.<sup>43</sup> If it is recognized as an equitable principle in and of itself, it would be imported into judicial assessment as a general principle of law.<sup>44</sup>

Practically speaking, common concern could be invoked under the GATT Article XX exemption test. As the Appellate Body stated in *EC - Seals*, Art. XX can be read into other WTO treaties with similar objectives and language.<sup>45</sup> The necessity and reasonable tests mentioned above would be applied in the corresponding provisional justification and chapeau tests. Given the landmark ruling of *EC - Seals*, this proposed use of common concern should not be that controversial. Its real effect would be to simply rebalance how judiciaries evaluate the effects of unilateral actions relative to their intent. If anything, it would sharpen the distinction between legitimate transboundary harms that fall under common concern and general harms that a state has a personal preference against.<sup>46</sup> Likewise, this would inform domestic judiciaries in their appraisal of whether a transboundary harm justifies the application of jurisdiction extra-territorially.<sup>47</sup>

Alternatively, common concern could be incorporated into jurisprudence as a general principle of law similarly to how the equidistance principle was incorporated into maritime jurisprudence by the ICJ. That is, the lack of general rules on how to reconcile legal obligations with normative expressions on common concern may justify inductive processes of trial and error.<sup>48</sup> This could establish a doctrine and methodology on the application of common concern as a legal principle.

## CONCLUSION

There is a clear shift in international affairs from a politics of coexistence to one of cooperation. Redistributive justice is a laudable objective but its manifestation through common heritage demanded too much too quickly from states. The transition to a cooperative, human-centric politics must be gradual and work within the territorial system. To that end, common concern provides a politically feasible alternative for coordinating and incentivizing collective action. As this paper has shown, it can be applied in various ways to address climate change. Cottier's reinvention of *jus cogens* as a component of common concern, instead of the inverse, provides both scholars and policy makers with a tangible goal for the gradual reorganization of international politics and law in harmony with our increasingly interdependent reality. Ultimately, execution of any one of the three options would provide policy makers with the much needed policy space to address vital concerns. In that regard, common concern serves as a very nimble instrument in the policy maker's toolkit. Although it opens policy space, it does so within a rules-based system, limiting the possibility of misuse or abuse.

Equity, as Schachter explains, serves to temper strict law, similar to Aristotle's concept of "corrective justice."<sup>49</sup> The application of equity, within the contours of sovereignty, can legitimize globalization and provide the necessary safety valves states need to balance sometimes competing objectives.<sup>50</sup> I therefore submit, for the interim, that common concern be incorporated as a persuasive instrument in the judiciary's toolkit until such a time it can be graduated to Cottier's general and hierarchical principle of law.

<sup>1</sup> Thomas Cottier et al, "The Principle of Common Concern and Climate Change" (2014) 52 A des Volk 3 at 294.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Oscar Schachter, "International Law in Theory and Practice" (Dordrecht: Martinus Nijhoff Publishers, 1991) 362 at 363-365.

<sup>5</sup> *Supra* note 1 at 301.

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<sup>6</sup> *United States – Import Prohibition of Certain Shrimp and Shrimp Products* (1998), WTO Doc WT/DS58/AB/R (Appellate Body Report).

<sup>7</sup> *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* (2014), WTO Doc WT/DS400/AB/R (Appellate Body Report).

<sup>8</sup> Donald H Regan, “How to think about PPMs (and climate change)” in Thomas Cottier & Olga Nartova & Sadeq Z Bigdeli, eds, *International Trade Regulation and the Mitigation of Climate Change* (World Trade Forum: Cambridge University Press, 2009) 97 at 98-99 and 105-107.

<sup>9</sup> *Ibid* at 99.

<sup>10</sup> António Trindade, *International Law of Humankind: Towards a New Jus Gentium*, (Leiden: Martinus Nijhoff Publishers, 2010) at 328.

<sup>11</sup> Maltese Ambassador Arvid Pardo is credited with most prominently manifesting the concept. Speaking to the UNGA in 1967, he expounded on the resources of the deep seabed and called on the international community to recognize them as the common heritage of humankind, which they did in 1969; see in: Christopher Garrison, “Beneath the Surface: The Common Heritage of mankind” (2007) 1 KESStudies 1 at 3.

<sup>12</sup> *Supra* note 10.

<sup>13</sup> Common heritage of humankind has been recognized in various treaties, including the following. However, its legal content varies across treaties spawning confusion as to what legal rights and obligations it entails; see in: *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies*, 27 January 1967, RES UNTS 2222, (entered into force 10 October 1967); *Agreement Governing the Activities of States on the Moon and Other Celestial Bodies*, 18 December 1979, RES UNTS 34/68, (entered into force 11 July 1984); *Convention on the Law of the Sea*, 10 December 1982, UNTS 1833, (entered into force 16 November 1994); *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, 1037 UNTS 151, 27 UST 37 (entered into force 17 December 1975); and, *Universal Declaration on the Human Genome and Human Rights*, GA Res 152, UNESCO, 29<sup>th</sup> Sess, UN Doc A/RES/53/152 (1999).

<sup>14</sup> *Supra* note 10 at 348.

<sup>15</sup> *United Nations Framework Convention on Climate Change*, 9 May 1992, 31 ILM 849, 851; Common concern has also been incorporated into the 1992 *Biodiversity Convention*, 2001 *International Treaty on Plant and Genetic Resources for Food and Agriculture States*, and the 2003 *UNESCO Convention for the Safeguarding of the Intangible Heritage*.

<sup>16</sup> “Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity...”, see in: Framework Convention on Climate Change, *Adoption of the Paris Agreement*, FCCC, 2015, UN Doc CP/2015/L9.

<sup>17</sup> *Supra* note 1 at 296.

<sup>18</sup> Thomas Cottier, “Improving Compliance: Just Cogens and International Economic Law” (unpublished) at 18.

<sup>19</sup> S.S. “*Lotus*”, *France v Turkey*, (1927), Judgement, PCIJ (Ser A) no 10.

<sup>20</sup> This was a regulatory measure to prohibit the importation of shrimp harvested using technologies harmful to migratory turtle populations.

<sup>21</sup> *Supra* note 6 at pars 168-171.

<sup>22</sup> *Ibid* at pars 171-176 and 187.

<sup>23</sup> Thomas Cottier and Sofya Matteotti-Berkutova, “International Environmental Law and the evolving concept of ‘common concern of mankind’” in Thomas Cottier & Olga Nartova & Sadeq Z Bigdeli, eds, *International Trade Regulation and the Mitigation of Climate Change* (World Trade Forum: Cambridge University Press, 2009) 21 at 37.

<sup>24</sup> *Supra* note 1 at 302.

<sup>25</sup> *Ibid* at 303.

<sup>26</sup> *Ibid* at 304.

<sup>27</sup> John H Currie et al, *International Law Doctrine, Practice, and Theory*, 2ed (Toronto: Irwin Law, 2014) [Currie] at at 153: “Despite its obvious potency, the *jus cogens* concept is poorly developed in international law...there is no readily accepted test for ascertaining whether a rule has achieved *jus cogens* status.”

<sup>28</sup> *Supra* note 18 at 1.

<sup>29</sup> *Ibid*.

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<sup>30</sup> *Ibid* at 4.

<sup>31</sup> Thomas Kleinlein, “Constitutionalization in International Law” (2012) 231 Band 703 at 703 at 703-704.

<sup>32</sup> Some norms include the prohibition of slavery and forced labour, prohibition on the use of force, and genocide; see in: *Currie supra* note 27.

<sup>33</sup> *Statute of the International Court of Justice*, 26 June 1945, Can TS 1945 No 7, (entered into force 24 October 1945).

<sup>34</sup> *Supra* note 18 at 4.

<sup>35</sup> *United States v Canada (Trail Smelter Case)*, (1941), 3 UN Rep Int'l Arb Awards (Arbital Tribunal).

<sup>36</sup> *The Corfu Channel Case – Assessment of the Amount of Compensation Due from the People's Republic of Albania to the United Kingdom of Great Britain and Northern Ireland (Albania v United Kingdom)* Judgement of 8 December 1949, [1949] ICJ Rep 244.

<sup>37</sup> *Supra* note 1 at 303; the no harm principle has been recognized in other instances, notably Principle 21 of the 1972 *Stockholm Declaration* and Principle 2 of the 1992 *Rio Declaration*; *Stockholm Declaration on the UN Conference on the Human Environment*, UNGA, UN Doc A/Conf-48/14; 1992 *Rio Declaration on Environment and Development*, UNEP, 1992, UN Doc A/CONF 151/26, (1992).

<sup>38</sup> *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, [2011] Seabed Disputes Chamber of the International Tribunal for the Law of the Sea 9 at para 168 and 181; the Tribunal stated that for a state to be responsible for the conduct of its commercial entities there needs to be some positive obligation the state failed to discharge and that the resulting damage is causally linked to that failure.

<sup>39</sup> *Supra* note 18 at 17.

<sup>40</sup> *Ibid*.

<sup>41</sup> *Ibid*.

<sup>42</sup> *Supra* note 18 at 20.

<sup>43</sup> Thomas Cottier, “Equitable Principles of Maritime Boundary Delimitation in International Law: The Quest for Distributive Justice in International Law” (Cambridge University Press: 2015) 2 at 23.

<sup>44</sup> *Supra* note 4 at 58: the ICJ established in the *North Sea Continental Shelf Cases* that rules and principles of equity form part of international law as general principles; *Northern Sea Continental Shelf case*, see *North Sea Continental Shelf Cases*, Judgment [1969], online: < <http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=cc&case=52&code=cs2&p3=4>>.

<sup>45</sup> *Supra* note 7 at par 5.140; although I question whether the operation of international law allows the import of a specific legal test, such as that of Art. XX, into another treaty with similar but not identical language on the mere basis that the latter treaty “looks to advance the objectives” of the former treaty. If such was the intent of the drafting parties, it strikes me that they would either make specific reference to Art. XX or import it in its entirety.

<sup>46</sup> Schachter comments that one of the challenges of international economic law is that “harm” and “risk” are not clear concepts and that even though there is a general trend towards expanding the kinds of harms considered as “transboundary” there should still be conditions for their delineation. He provides four: 1) that the harm result from human activity; 2) that there be physical consequences from the activity; 3) that the consequences cross national boundaries; and, 4) that those consequences be significant and substantial; see in: *supra* note 4 at 365-366.

<sup>47</sup> As Ellis discusses in her analysis of *Teck v Pakootas*, the US 3<sup>rd</sup> restatement of foreign law establishes that extra-territorial application is only appropriate when outside conduct “has or is” intended to have substantial effect *and* when such application is reasonable. Ellis explains that otherwise, states elect to exercise comity; see in Jaye Ellis, “Extraterritorial Exercise of Jurisdiction for Environmental Protection: Addressing Fairness Concerns” (2012) 25 LJIL 397 at 405.

<sup>48</sup> *Supra* note 43 at 6-7.

<sup>49</sup> *Supra* note 4 at 56.

<sup>50</sup> *Ibid*.



# **Transforming our World? Gender and Empowerment of Women in the 2030 Agenda for Sustainable Development**

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## **Abstract:**

The 2030 Agenda for Sustainable Development, adopted in September 2015, forms a comprehensive framework that requires the commitment of all United Nations bodies and Member States to the eradication of poverty while promoting gender equality, among many other principles. However, the construction of the categories of gender and women within this framework does not challenge mainstream symbols, norms and institutions that shape gender inequality. Instead, the Agenda furthers a neoliberal top-down understanding of empowerment, offering an uncritical approach to social, political and economic structures that perpetuate gender inequality. Although the SDGs aim at setting a “transformative” agenda for international development, such an approach does not present a departure from how the issue of gender and women’s empowerment has been treated within mainstream development narrative and practice, reinforcing the employment of “gender” and “empowerment” as depoliticized concepts, empty of critical feminist content.

## INTRODUCTION

In September 2015, the United Nations Member States adopted the resolution A/RES/70/1 “Transforming our world: the 2030 Agenda for Sustainable Development”, a new development framework that outlines 17 Sustainable Development Goals (SDGs) and 169 targets with the aim of eradicating poverty, while preserving the planet and promoting gender equality and the empowerment of women and girls.<sup>1</sup> In this framework, gender equality and empowerment of women and girls is considered central to international development efforts.<sup>2</sup> In fact, the experience and the role of women in international development and the relevance of gender equality have been the subject of intense academic and technical debate since the 1970s. Ideas and concepts developed by feminist theorists and activists have influenced, disrupted and shaped development narrative and practice. However, as development institutions and practitioners borrowed feminist ideas and concepts, their content and meaning have become less “political”, distanced from their feminist origins.

The current employment of the word “gender” in the 2030 Agenda illustrates this process. Joan Scott defined gender as a “primary way of signifying relationships of power”<sup>3</sup>, a concept that is fundamental for the construction of any transformative agenda that seeks to eradicate oppression. As such, “gender” is useful for analyzing relationships between socially and culturally constructed categories – such as men and women – which are historically situated and located within multiple power structures. However, the complexity and analytical potential of this concept has been lost in current development narrative and is used instead, as explained by Verschuur, as a “fuzzword”, devoid of its critical value<sup>4</sup>. The use of the concept of “empowerment” is also problematic, as in current development discourse and practice it has been emptied of its original feminist militant content<sup>5</sup>.

Drawing from the principles of feminist methodology proposed by Dargernais, recognizing the “importance of gender social relations in all aspects of life”<sup>6</sup>, this essay will provide a feminist analysis of the Sustainable Development Goals Resolution, describing how “gender” and “empowerment” are employed, and problematizing the framing of these terms in the 2030 Agenda. First, I intend to present one definition of gender as a category of analysis and contextualize the usage of gender in development narrative and practice. Second, I present a brief history of how the term empowerment has been appropriated in development discourse in order to strengthen neoliberal policies. Then, I provide a critical analysis of the 2030 Agenda declaration, goals and targets directly related to gender and empowerment of girls and women. Finally, I suggest some policy measures to address the shortcomings of the Agenda.

### Gender equality in development narrative

The idea that “gender” is a construct is a fundamental premise of feminist theories. It sets the basis for the argument that there is nothing “natural” about the hierarchical relationship between “men and women”, “male and female”, but rather it could be “theorized as the product of specific social, cultural, historical, and discursive processes”<sup>7</sup>. According to Joan Scott<sup>8</sup>, gender can be understood as a “primary way of signifying relationships of power” and a “constructive element of social relationships based on perceived differences between the sexes”. Sex, in this context, should not be understood as an unchanging biological “fact”, but rather as “a determination made through the application of socially agreed upon biological criteria for classifying persons as females or males.”<sup>9</sup> This definition of gender in terms of power offers a

conceptual framework that explains the relationship between gender and social, political and economic structures and the access to material and symbolic resources through history. For Scott, gender as a historical tool of analysis is constituted by the interaction of four aspects: 1) culturally available symbols and myths that evoke certain representations and narratives; 2) normative concepts, based on interpretation of the meaning of symbols and functioning as a containment of their possible and competing meanings; 3) politics, social institutions and organizations, which, at the same time, construct gender and are constructed by it; and 4) subjective identity. This complex definition of gender rejects the naturalization of the binary opposition between men and women and proposes instead, an understanding of how power is articulated through gender.

The extent to which inequalities between men and women are framed in international development discourse and practice in terms of power is debatable. Patriarchy, as a “social framework that privileges men”<sup>10</sup> and furthers male domination, is rarely discussed in development frameworks and projects. The centrality of men’s experiences or male privilege is not usually acknowledged. In most frameworks, including the SDGs, women are mentioned in their subordinated position in relation to men, or because of the perceived economic and social benefits of their increased participation in the development process, marking their construction as the “Other” of men.

Additionally, a critical assessment of the globalization of capitalism and the interaction among power structures such as gender, race and class is usually absent from development discourse and practice. Scott’s formulation of gender in terms of power allows for an interpretation of different power structures in terms of gender. That is, the socially and culturally constructed differentiation between men and women (here understood as unstable categories of discourse and practice) are, to an extent, constituted and reinforced by the globalization of capitalism, race and class. In the intersections between gender and capitalism, we can observe how the sexual division of labour and devaluation of domestic and reproductive work allow for the reposition of the workforce and sustain the subordination of women. By adding the dimensions of class, race and globalization to this scenario, it is possible to analyze which positions differently constituted women occupy in social, political and economic orders. A development framework that ignores the interaction among these multiple systems invisibilizes the multiplicity of the category of “women”, women’s various lived experience with “development” and the different ways in which they are or oppressed or privileged.

Feminist activists, academics and development practitioners have problematized the issue of women and gender relations in development narrative and practice since the 1970s, bringing the debates in feminist theorizing to the development field. The impact of feminist theories on development has been systematized by the literature into three main approaches, Women in Development (WID), Women and Development (WAD) and Gender and Development (GAD),<sup>11</sup> which vary in their critique of the development process and their focus on women and gender.<sup>12</sup>

In the early 1970s, the WID framework institutionally recognized that women experienced development differently than men. Nevertheless, this approach was not critical of the mainstream idea and narrative about development, and therefore offered no critique to the existence and maintenance of social, cultural, economic and political macro-structures that

reinforced gender imbalances. The sole purpose was to “correct” the failure of development in “trickling down” to women, who were understood as a monolith, ignoring other structures of oppression, such as race and class. The premise of this approach was that, once women were economically empowered, gender relations would change themselves and as a consequence, most actions under WID focused on creating income-generating opportunities for women.<sup>13</sup>

By the mid-1970s, some critics to the WID approach proposed another way to tackle this challenge, known as the Women and Development (WAD) approach, which recognized that women had always been a part of development through their reproductive and productive work contributions. This approach recognized that patriarchy was responsible for inequality between men and women, but continued to focus on women’s productive work, and did not offer a critical perspective on the multiple oppression structures that separate women, such as race and class.<sup>14</sup>

From the 1980’s on, the perspective that power relations between men and women as categories should be the focus of development narrative and practice gave rise to the Gender and Development approach (GAD), which centers its analysis of women’s oppression around gender roles. As such, it seeks to de-naturalize the reproductive/productive, public/private dichotomy reinforced by previous approaches, considering the entirety of women’s contributions to development, and emphasizing women’s oppression inside the home and the role of the state in promoting changes in this sphere. This approach also goes further in recognizing how patriarchy operates across multiple social structures and institutions.<sup>15</sup> In this sense, the GAD approach, as it articulates gender as an analytical tool of analysis that constructs “social relationships based on perceived differences between the sexes”,<sup>16</sup> could effectively contribute to the broadening of the mainstream narrative of development, by acknowledging the articulation of different power structures contributing to systemic inequality.

Nevertheless, the widespread acknowledgement of the GAD approach in development literature and the popularization of the word “gender” in development discourse in the last decades does not mean that the concept of gender is employed with all its critical content in development narrative and practice. In fact, it can be argued that the word “gender” is, most of the times, simply replacing the word “women”, a usage that empties this term from its critical content,<sup>17</sup> and does not speak to gender in terms of power. As explained by Cornwall, the “gender focus” in development narrative and practice has promoted mainly the self-improvement of individual women, a focus that largely ignores “relational dimensions of power.”<sup>18</sup>

Important documents that frame gender mainstreaming in international development, such as the Beijing Platform for Action, fail to problematize the role globalization and capitalism and the production and reproduction of gender equality, in this sense, failing to provide a systemic critique of gender oppression.<sup>19</sup> In the Millennium Development Goals (MDGs), the precursor development framework to the SDGs, gender equality was a standalone goal “not integrated to the broader goals of development”<sup>20</sup> and uncritical of the causes of inequality and poverty, which left “the prevailing economic, trade and financial systems unchallenged.”<sup>21</sup> The word gender in this context was not used to re-think social transformations or question the many mechanisms of power that produce and perpetuate inequalities.<sup>22</sup> It became a “fuzzword”, which was “stripped of its critical dimension”,<sup>23</sup> depoliticized, disconnected with ideas about systemic inequalities and revolutionary alternatives.

### **Empowerment in development narrative**

While the term “gender” was borrowed from feminist theorists and emptied in order to better fit a mainstream development narrative, the term empowerment had a different origin, but a similar fate. This term was inspired by the Pedagogy of the Oppressed, by Paulo Freire, and centered around the creation of critical consciousness about oppression from the point of view of the oppressed, who thus acquires the power to overcome oppression and domination<sup>24</sup> In this conception, empowerment referred not only to individual consciousness of oppression, but also to a process of collective transformation of power relations.<sup>25</sup> This term started to be employed in international development by DAWN (Development Alternatives with Women for a New Era) as a reaction to top-down development discourse and practice, critical of social, economic and political structures that perpetuated the domination of women and poor people. As such, they rejected any efforts to include women or the poor in any pre-existing and non-radical development framework, denying work that ultimately contributed to the perpetuation of patriarchy, as well as structures of racial and class oppression. In this context, this approach sought to “question the ideologies that justify inequality; changing the modalities of access and control of economic, natural and intellectual resources; transforming the institutions and the structures that reinforce and support the existing power relations (such as the family, the state, the market, education and media)”<sup>26</sup> Inseparable from the idea of empowerment of women in order to dismantle patriarchy is the conception that the colonial past – and present – constitutes a historical process of exclusion from social, political and economic power for individuals and collectivities in the global South, resulting in their “disempowerment”.<sup>27</sup>

As the United Nations and international development agencies began to adopt this term, it began to be emptied of its critical content, in a similar process as “gender”. The Beijing Platform for Action defines empowerment in very broad terms and its inclusion in this document has contributed to the adoption of empowerment in many other programmes and frameworks that target women, but in such a way that strengthens the “fuzziness” of the term.<sup>28</sup>

This term has been stretched thin in order to fit multiple agendas, eventually even contradicting its original intention. The current usage of the term by UN Agencies and the World Bank, among other institutions, illustrates a turn from collective consciousness and actions towards social transformation to an individualistic and neoliberal idea of empowerment, mainly focused on individualized indicators and “empowering” methods.<sup>29</sup> This new “content” of the concept of empowerment fits the needs of a capitalist mode of production, positively valuing the advancement of some women over others. As such, inequalities among women, based on class and race are not really addressed. Social transformation is not the goal of such top-down empowerment processes, but the “deliverance of goods”<sup>30</sup> that further the mainstream development project: women’s education should guarantee healthy families that supply workers for the capitalist order; women’s reproductive rights are of fundamental importance for countries’ demographic policies. Such an instrumental-oriented approach is void of critical content that challenges systemic barriers. Rather, it reinforces gender roles and stereotypes in order to further development goals, presented in a politically correct language of empowerment.<sup>31</sup>

### **The 2030 Agenda for Sustainable Development: The Declaration**

The 17 Sustainable Development Goals and 169 targets laid out in the United Nations General Assembly Resolution A/RES/70/1, adopted in September 2015, are preceded by a declaration that, in 59 articles, narrates the vision, the principles and the challenges for sustainable development in the next 15 years. It is centered around 5 pillars:

- 1) People (“end poverty and hunger... to ensure that all human beings can fulfill their potential in dignity and equality and in a healthy environment”);
- 2) Planet; 3) Prosperity (“ensure that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with nature”);
- 4) Peace (“foster peaceful, just and inclusive societies which are free from fear and violence”); and
- 5) Partnership.<sup>32</sup>

The stated objective of the resolution is, according to paragraph 3,

“to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources”<sup>33</sup>.

Differing from the MDGs, the SDGs are applicable to all UN Member States, and not only “developing nations”. However, the resolution is not clear regarding the expectations and responsibilities of “developed nations” in relation to this set of goals. A common thread with the MDGs, in regards to “women”, was the supposition that they constitute a monolithic category. In the terms proposed by Mohanty,<sup>34</sup> a “coherent group” with similar needs “regardless of class, ethnic or racial location”, implying a “notion of gender or sexual difference or even patriarchy that can be applied universally and cross culturally”.

The concept of “gender” in the document is employed uncritically, at the same time, recognizing systematic oppression of women but not acknowledging the system of power that generates and perpetuates such oppression, articulated around cultural, normative, institutional and subjective dimensions. As such, no considerable analytical insights and alternatives are offered. A future where “every woman and girl enjoys full gender equality” is envisioned in paragraph 8<sup>35</sup>, but no effort is made in recognizing social, political and economic structures that uphold gender oppression. This occurs in other historically situated processes, such as extreme poverty, extremism and even climate change, arguably deeply connected to structures such as capitalism and colonization, which are acknowledged as challenges to sustainable development<sup>36</sup>, but are depicted in an ahistorical way.

In establishing why gender equality is important, the Agenda fails to make a rights-based argument, and instead focuses on the instrumentalization of both gender equality and empowerment of women in relation to other goals (“realizing gender equality and empowerment ... will make a crucial contribution to progress across all the goals and targets”<sup>37</sup>). The issue is also framed through the prism of investment, with the affirmation that a “significant increase in

investments to close the gender gap” will be accomplished. What exactly constitutes the “gender gap” is unclear, although, from the information in the article, it is presumably related to access to “education, economic resources and political participation” and equal opportunities in “employment, leadership and decision making”. This perspective disconnects gender from the multiple dimensions where it is constituted and simplifies the issue as an unbalanced distribution of economic resources. This perspective is further delineated by the Addis Ababa Action Plan on Transformative Financing for Gender Equality and Women’s Empowerment, adopted at the Third International Conference on Financing for Development, which places the delay in meeting commitments in the Beijing Platform for Action on the lack of financial resources.<sup>38</sup>

What constitutes “empowerment of women and girls” is not precisely defined, but the document establishes the vision of a future where “all legal, social and economic barriers to [the] empowerment” of women and girls would be removed. This view is compatible with the neoliberal turn in “empowerment”, which is seen as an individual process, something women and girls can do in order to fully participate in existing economic, social and political structures. The issue being addressed by the resolution does not lie with “disempowering” structures and, as such, does not require bottom-up method of *prise de conscience*.<sup>39</sup>

### **Gender and Empowerment in the Goals and Targets**

As mentioned, gender inequality is referred to in the declaration, as one of the greatest challenges to sustainable development. As such, this issue is addressed by a standalone goal, as well as within other goals, which will be discussed below. However, it is important to highlight that the SDGs framework is not yet complete, as there is an ongoing discussion on indicators for the targets, which should specify how gender is going to be mainstreamed into other goals and targets in the future. The analysis below will be restricted to the goals and targets available on resolution A/RES/70/1.

The importance given to “gender equality” in the declaration, though devoid of its critical content, seems to have motivated the use of “men and women” in targets 1.4, 4.3, 4.6 and 8.5<sup>40</sup>, instead of “people” or any similar word. Although this phrase acknowledges that women should also be targeted in the effort of reaching the goals, it also reinforces the binary between men and women, while not necessarily addressing structures that produce and reproduce gender inequality. It promotes the idea that the targets are “balanced” in terms of gender, due to the inclusion of “men and women” in the targets, while avoiding any substantive engagement with the issue of power.

Interestingly, the resolution recognizes that the previous international development framework, the MDGs, failed most remarkably in the goal related to maternal and reproductive health. However, the framing of this issue in the declaration suggests that the reason for this failure was technical (“We recommit ourselves to ... the off-track Millennium Development Goals, in particular by providing focused and scaled-up assistance to least developed countries”)<sup>41</sup>. There is no mention of the need to have a gender approach to this issue<sup>42</sup> – one that recognizes the cultural norms that hamper women from having control of their bodies<sup>43</sup> and deciding on reproductive matters, normative frameworks that hinder access to information about reproductive health as well as institutions that deny reproductive rights. This issue is addressed in target 3.7, under goal three: “Ensure healthy lives and promote well-being for all ages”,

envisioning “universal access to sexual and reproductive health-care services, including for family-planning, information and education, and the integration of reproductive health into national strategies and programmes”. The absence of a rights perspective reinforces the idea that maternal mortality is something that can be dealt with solely by improving access to services, an approach that is not transformative of structures that produce and reproduce gender inequality. This approach is also compatible with a perspective on reproductive health that aims primarily at demographic control,<sup>44</sup> and not sexual and reproductive freedom and rights.

Goals 5<sup>45</sup> is the standalone goal dedicated to achieving gender equality and empowering women and girls. Targets 5.1 to 5.6 are broad and general targets, that list “principles” necessary to the achievement of the goal, while the last three targets, which are not numbered, but referred to as 5.a, b and c, deal with more specific actions. The first three targets focus on efforts that have already been subject to different international normative frameworks and therefore, delineate aims that most UN Member States are already formally committed to achieve for women and girls, namely the eradication of discrimination, the elimination of all kinds of violence against, and the elimination of harmful traditional practices. Since other international norms already address these commitments, it would be helpful if the indicators, to be set in 2016, would try to measure gender dimensions that have been overlooked by the original international frameworks.

Target 5.4 deals with the articulation of the productive and the reproductive spheres, and thus the unpacking of this target can provide some insights into gender roles that are implied by the Agenda, the intersection of systems of oppressions and the beneficiaries of *status quo*. The target is to “recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shares responsibility within the household and the family as nationally appropriate”. While the declaration affirms that the private sector has a role to play in the implementation of the Agenda<sup>46</sup>, this target fails to recognize that this sector, certainly the great beneficiary of unpaid reproductive work, should have a role to play in the provision of services that allow the reposition of the labour force. Additionally, the assumption that the devaluation of domestic work affects all women equally erases the intersectional role of other social structures, such as race and class, that determine how the devaluation of domestic work affect women in different place,<sup>47</sup> that is, how racialized and poor women are more negatively affected by the devaluation of domestic work, for example. Similarly, the suggestion that in some national contexts, gender roles regarding responsibilities within the household cannot or should not be discussed is based on the false assumption that the oppression faced by some women – notably “Third World women”, as opposed to the “free” and “liberated” “First World women” – is static, ahistorical, and that “Third World” women are victims of cultural systems that remain unchanged. This idea fails to recognize the historical, material and symbolic power structures that reproduce gender roles and as such, this system is not immutable.<sup>48</sup>

The lack of recognition regarding women’s sexual rights is once again patent in target 5.6, which reads “ensure universal access to sexual and reproductive health and reproductive rights”, a sentence that clearly negates sexual rights, enforcing a normative idea about the sexuality of women, to be exerted within the confines of culturally approved relationships, in which a women’s right to her sexuality should not be problematized. Target 5.2 mentions the



eradication of sexual violence against women and, considering the negation of the sexual rights of women in target 5.6, it is necessary to acknowledge that sexual violence, in this context, is extremely difficult to define. Additionally, the fact that, in the document, women are the only recognizable victims of sexual violence contributes to the invisibilization of sexual violence against men. Sexual violence is about exerting power and enforcing hierarchies and, as such, men are also vulnerable to it.

A depoliticized conceptualization of empowerment underscores target 5.5, about women's participation in leadership, decision making in public and economic life, through the focus on participation and opportunities within existing structures of political and economic power. Such perspective is reflected in targets 5.a, about economic reforms; 5.b, that links technology directly to empowerment; and 5.c, that stresses the need for an appropriate legislative framework on gender equality and empowerment of women and girls. These attempt to advance the idea that empowerment is something that is hindered by obstacles – laws, lack of technologies, even discrimination, but is possible within existing power structures. The idea of “disempowerment” as a condition of power and knowledge systems, built on the subjugation of others on the basis of gender, race and class, is not acknowledged.

### **Conclusion and Recommendations**

The SDGs have been created in order to influence international development programmes and policies for the next 15 years. They are intended to be a transformative development framework; however, they bring little innovation in terms of how gender equality and empowerment of women and girls is addressed. The framework is not yet complete and it remains to be seen how the entirety of the goals and targets will address gender mainstreaming when the SDGs indicators are unveiled, in 2016.

The 2030 Agenda intended to take a step forward, compared to previous agreements, in recognizing that “development” is an issue that cannot be achieved focusing solely on the so-called “developing nations”. Nevertheless, when the calls for participation of “developed nations” and the private sector are focused solely on praising their potential to support developing countries, steering clear from any mention of the producing and reproducing of power structures that constitute the “fundamental inequalities of the international system ... and social construction of gender”,<sup>49</sup> it becomes difficult to expect that the framework will have any transformative impact in power relations, between and within countries.

The framing of the issues of “gender inequality” and “empowerment” maintains the same uncritical approach of previous development frameworks and agreements. Although gender inequality is stressed as a challenge for “sustainable development”, gender is not “viewed in terms of an analytical tool” central to the understanding of inequalities and the diagnosis of inequalities between men and women “did not develop within an overall analysis of the globalization of capitalism”.<sup>50</sup> Empowerment remains an unclear term alluding to specific obstacles, such as lack of resources and legal reforms, which do not require a bottom-up transformation of power structures. From a feminist perspective, the development narrative that emerges from this framework falls in line with mainstream development discourse of the past 20 years.

Moving towards a feminist understanding of gender and empowerment is fundamental for the promotion of gender equality, and the ability to measure social, economic and political change in a way that reveals changes in symbols, norms and institutions that construct and uphold gender inequality is central to any transformative agenda. The indicators for the SDGs could address some of the shortcomings of the declaration and the goals, by focusing on the transformation of gender norms and institutions. For example, the assessment of time-use could shed light on the issue of domestic work and how the private and public spheres are articulated in the reproduction of gender hierarchies. Qualitative indicators on changing perspectives about gender roles within the household could provide important insight about participation of women in public life. The issue of maternal mortality could also be tracked by qualitative indicators that assess media representation of reproductive rights and health. Additionally, it is important to stress that measuring the inclusion or exclusion of women from certain areas and institution (schools, job market, parliament) is not enough. Indicators should provide an idea of who these women are, in terms of race, class, and other categories, so as to unveil other power structures that interact with gender. It is necessary to go further than indications that provide a glimpse of “women who overcome obstacles” and understand that the production and reproduction of symbols, ideas and institutions are constitutive of gender inequality.

A critical perspective of the Agenda is paramount if significant changes are to be expected in the next 15 years. The narrative framework of the Agenda already sets this aim back. The participation of grassroots feminist and women’s organizations in the design, implementation and evaluation of policies, programmes and projects within the framework of the Agenda at local and national level could, help modify the top-down approach to empowerment. This, however, remains unlikely – at least in any significant way – as the marginalization of such transformative forces are usually strongly opposed both domestically and internationally.

<sup>1</sup> United Nations General Assembly. 2015. Resolution A/RES/70/1, *Transforming the world: the 2030 Agenda for Sustainable Development*, preamble.

<sup>2</sup> Christine Verschuur, “Quel genre? Résistances et mésententes autour du mot genre dans le développement,” *Revue Tiers Monde* 200 (2009): 793.

<sup>3</sup> Joan Scott, “Gender, a Useful Category of Historical Analysis,” *The American Historical Review* 91 (1986): 1069.

<sup>4</sup> Verschuur, “Quel genre?,” 796.

<sup>5</sup> Jules Falquet, “Genre et développement: Une analyse critique des politiques des institutions internationales depuis la Conférence de Pékin,” in *On m’appelle à régner. Mondialisation, pouvoirs et rapports de genre. Actes des colloques genre*, ed. Fenekke Reyssoo and Christine Verschuur (Geneva: UNESCO-DDC-IUED), 65.

<sup>6</sup> Huguette Dagenais, “Methodologie Feministe et Anthropologie: une alliance possible” *Anthropologie et Societes*, 11 (1987): 22.

<sup>7</sup> Mary G. Dietz, “Current Controversies in Feminist Theory,” *Annual Review of Political Science* 6 (2003): 401.

<sup>8</sup> Scott, “Gender, a Useful Category”, 1067-1069.

<sup>9</sup> Candace West and Don H. Zimmerman, “Doing Gender,” *Gender & Society* 1, 2 (June 1987): 127.

<sup>10</sup> Lorena Parini, *Le système de genre. Introduction aux concepts et théories* (Zürich: Editions Seismo, 2006): 36.

<sup>11</sup> Eva Rathgeber, “WID, WAD, GAD: Trends in research and practice” (paper originally presented at the meetings of the Canadian Institute for the Advancement of Women, International Development Research Center, Ottawa, November 1988).

<sup>12</sup> Another approach emerged in the late 1980s, known as WED (Women, Environment and Development), which, following WID, questioned not only the position of women in development but the dominant model of development itself. Also known as “ecofeminism”, the WED approach problematized the focus on economic development, alerting for issues of environmental degradation, and placing women, pointedly women from the South, as the main interested, knowledgeable and responsible actors in altering mainstream development narrative and practice. The depiction of women from the South as somehow more connected to the environment was harshly criticized by other feminist authors. For a critical review of the WED approach and its contributions to the on gender and development

debate, see: Fiona Nunan, *Understanding Poverty and the Environment: Analytical Frameworks and Approaches* (London: Routledge, 2015): 90-92.

<sup>13</sup> Rathgeber, "WID, WAD, GAD", 3-9.

<sup>14</sup> Rathgeber, "WID, WAD, GAD", 9-11.

<sup>15</sup> Rathgeber, "WID, WAD, GAD", 11-14.

<sup>16</sup> Scott, "Gender, a Useful Category", 1067.

<sup>17</sup> Verschuur, "Quel genre?," 769.

<sup>18</sup> Andrea Cornwall, "Revisiting the Gender Agenda," IDS Bulletin 38 (2, 2007): 71

<sup>19</sup> Christine Verschuur, "A History of Development Through a Gender Prism: Feminist and Decolonial Perspective," in *Under Development, Gender*, ed. Christine Verschuur et al. (London: Palgrave MacMillan, 2015): 23.

<sup>20</sup> Verschuur, "A History of Development," 24.

<sup>21</sup> Ibid.

<sup>22</sup> Verschuur, "Quel genre?," 797.

<sup>23</sup> Verschuur, "A History of Development," 23.

<sup>24</sup> Anne-Emmanuèle Calvès, "Empowerment: généalogie d'un concept clé du discours contemporain sur le développement," *Revue Tiers Monde* 200: 737.

<sup>25</sup> Falquet, "Genre et développement," 63-64.

<sup>26</sup> Calvès, "Empowerment: généalogie," 739.

<sup>27</sup> Ibid., 740.

<sup>28</sup> Naila Kabeer, "Discussing Women's Empowerment – Theory and Practice," *Sida Studies* 3 (2002): 18.

<sup>29</sup> Falquet, "Genre et développement," 65.

<sup>30</sup> Kabeer, "Discussing Women's Empowerment," 50.

<sup>31</sup> Calvès, "Empowerment: généalogie," 741.

<sup>32</sup> UNGA, Resolution A/RES/70/1, preamble.

<sup>33</sup> Article 3 of A/RES/70/1: "3. We resolve, between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources. We resolve also to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities."

<sup>34</sup> Chandra T. Mohanty, "Under Western eyes: Feminist scholarship and colonial discourses," in *Feminism without borders: Decolonizing theory, practicing solidarity*, ed. C. T. Mohanty, (Durham: Duke University Press, 1998): 21.

<sup>35</sup> Article 8 of A/RES/70/1: "We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity. A world which invests in its children and in which every child grows up free from violence and exploitation. A world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed. A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met."

<sup>36</sup> Article 14 of A/RES/70/1: "We are meeting at a time of immense challenges to sustainable development. Billions of our citizens continue to live in poverty and are denied a life of dignity. There are rising inequalities within and among countries. There are enormous disparities of opportunity, wealth and power. Gender inequality remains a key challenge. Unemployment, particularly youth unemployment, is a major concern. Global health threats, more frequent and intense natural disasters, spiralling conflict, violent extremism, terrorism and related humanitarian crises and forced displacement of people threaten to reverse much of the development progress made in recent decades. Natural resource depletion and adverse impacts of environmental degradation, including desertification, drought, land degradation, freshwater scarcity and loss of biodiversity, add to and exacerbate the list of challenges which humanity faces. Climate change is one of the greatest challenges of our time and its adverse impacts undermine the ability of all countries to achieve sustainable development. Increases in global temperature, sea level rise, ocean acidification and other climate change impacts are seriously affecting coastal areas and low-lying coastal countries, including many least developed countries and small island developing States. The survival of many societies, and of the biological support systems of the planet, is at risk."

<sup>37</sup> Article 20 of A/RES/70/1: "Realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and

opportunities. Women and girls must enjoy equal access to quality education, economic resources and political participation as well as equal opportunities with men and boys for employment, leadership and decision-making at all levels. We will work for a significant increase in investments to close the gender gap and strengthen support for institutions in relation to gender equality and the empowerment of women at the global, regional and national levels. All forms of discrimination and violence against women and girls will be eliminated, including through the engagement of men and boys. The systematic mainstreaming of a gender perspective in the implementation of the Agenda is crucial”.

<sup>38</sup> UN Women, “Addis Ababa Action Plan on Transformative Financing for Gender Equality and Women’s Empowerment,” presented at the Third International Conference on Financing for Development, 16 July 2015.

<sup>39</sup> Calvès, “Empowerment: généalogie,” 744.

<sup>40</sup> Targets 1.4, 4.3, 4.6 and 8.5 of A/RES/70/1: “1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance”; “4.3 By 2030, ensure equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university”; “4.6 By 2030, ensure that all youth and a substantial proportion of adults, both men and women, achieve literacy and numeracy.” Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”; and “8.5 By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value”.

<sup>41</sup> Article 16 of A/RES/70/1: “Almost 15 years ago, the Millennium Development Goals were agreed. These provided an important framework for development and significant progress has been made in a number of areas. But the progress has been uneven, particularly in Africa, least developed countries, landlocked developing countries and small island developing States, and some of the Millennium Development Goals remain off-track, in particular those related to maternal, newborn and child health and to reproductive health. We recommit ourselves to the full realization of all the Millennium Development Goals, including the off-track Millennium Development Goals, in particular by providing focused and scaled-up assistance to least developed countries and other countries in special situations, in line with relevant support programmes. The new Agenda builds on the Millennium Development Goals and seeks to complete what they did not achieve, particularly in reaching the most vulnerable.”

<sup>42</sup> B. Simwaka, S. Theobald, Y. Amekudzi and R. Tolhurst, “Meeting Millenium Development Goals 3 and 5” BMJ 331 (2005): 708.

<sup>43</sup> Women’s control and autonomy over their bodies is an issue everywhere in the world, as evidenced by sexual violence and restrictions to women’s reproductive rights in the global north as well as in the global south. The idea that women cannot make autonomous decisions regarding reproduction can take different forms, such as: the primacy of a husband or family members in deciding over a woman’s reproduction; State’s criminalization or prohibition of birth control, abortions or reproduction; religious leaders’ and institutions’ condemnations of reproductive rights; to cite a few.

<sup>44</sup> Shailaja Fennell, “Population: policy and ethics,” in *The Elgar Companion to Development Studies*, ed. Alexander Clark (Cheltenham: Edward Elgar, 2006), 444.

<sup>45</sup> Goal 5 of A/RES/70/1: “Achieve gender equality and empower all women and girls. 5.1 End all forms of discrimination against all women and girls everywhere; 5.2 Eliminate all forms of violence against all women and girls in the public; and private spheres, including trafficking and sexual and other types of exploitation; 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation; 5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate; 5.5 Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life; 5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences; 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws; 5.b Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women; 5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels”.

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<sup>46</sup> Article 41 of A/RES/70/1: "We recognize that each country has primary responsibility for its own economic and social development. The new Agenda deals with the means required for implementation of the Goals and targets. We recognize that these will include the mobilization of financial resources as well as capacity-building and the transfer of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed. Public finance, both domestic and international, will play a vital role in providing essential services and public goods and in catalysing other sources of finance. We acknowledge the role of the diverse private sector, ranging from micro-enterprises to cooperatives to multinationals, and that of civil society organizations and philanthropic organizations in the implementation of the new Agenda."

<sup>47</sup> Mohanty, "Under Western eyes," 36.

<sup>48</sup> Mohanty, "Under Western eyes," 28.

<sup>49</sup> Rathgeber, "WID, WAD, GAD," 16.

<sup>50</sup> Verschuur, "A History of Development," 23.

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# Determinants of Microfinance Use and Impacts on Firm Performance

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## **Abstract:**

**Abstract:** This quantitative study seeks to understand the determinants of microfinance use among informal firms, with a particular emphasis on the role of transaction costs, risks in the business climate, and the motivation of an entrepreneur. Furthermore, the study explores the relationship between an informal firm's use of microfinance and labor productivity. The econometric analysis is based on data from the World Bank's Enterprise Surveys, which were undertaken within the informal sectors in Kenya, Ghana, and the Democratic Republic of Congo (DRC) in 2013. The results show that reductions in transaction costs and improvements to the business climate have a positive effect on the use of microfinance. In addition, the study finds that entrepreneurs that are driven by opportunity are more likely to be users of microfinance than entrepreneurs that are driven by necessity, though this finding varies by country. There is no evidence that the use of microfinance is positively related to labor productivity. However, the study finds that a firm's use of traditional bank loans and insurance have a greater effect on this performance metric, highlighting new opportunities for microfinance institutions to better serve their clients.

## **I. Introduction**

Improving access to financial services is increasingly recognized as an imperative for economic development. Studies demonstrate how access to finance removes growth constraints for small and medium-sized enterprises,<sup>1</sup> reduces income inequality and boosts aggregate economic growth.<sup>2</sup> Despite these positive effects, access to financial services remains limited. The World Bank estimates that over 2.5 billion adults lack access to formal financial services with a majority of these individuals living in developing countries.<sup>3</sup>

Microfinance has emerged as a valuable tool to increase access to financial services, particularly credit. In order to expand the scope of this tool, it is important to understand the factors that determine a firm's decision to obtain funding from microfinance institutions. Research in this area remains scant. Few researchers (for example, Pearlman) have sought to apply the theories that explain the demand for financial services in the context of microfinance and the informal sector. The literature is limited to assessments of microfinance borrower characteristics in specific countries. These assessments often omit an important characteristic that is harder to observe yet could be a significant determinant of microfinance use: that is, the motivation of an entrepreneur. This research contributes to the literature in the following ways: a) it explores the role that motivation may play on microfinance use; b) it applies a theoretical lens to the study of microfinance determinants, focusing on transaction costs and risks in the business climate; and c) it includes a cross-country sample from the informal sectors of three African countries: Kenya, Ghana, and the Democratic Republic of the Congo (DRC).

Specifically, the following hypotheses will be tested:

H1: Entrepreneurs that are motivated by opportunity are more likely to use microfinance as a source of financing than entrepreneurs that are motivated by necessity. This is because the ventures started by opportunity entrepreneurs can be expected to generate sufficient returns to service debt repayments and avoid default.

H2: Firms that face lower transaction costs in obtaining funds are more likely to resort to microfinance loans than firms that face higher transaction costs. Lower transaction costs decrease the cost of borrowing and are expected to stimulate greater demand for credit.

H3: Firms that face higher risks from the business climate are less likely to resort to microfinance loans than firms that face lower risks. This is because high-risk environments increase a borrower's probability of default, thus raising the cost of borrowing.<sup>4</sup>

Furthermore, this paper will explore the relationship between a firm's use of microfinance and firm performance. Recent randomized evaluations (for example, by Banerjee et al.) have investigated in detail the link between microfinance and household consumption, investments, and business profits. The World Bank Enterprise Survey databases that guide this research are well-suited for an assessment of firm performance as they contain rich information on key variables, such as sales metrics. This research will therefore contribute to the existing literature by looking at a performance measure that has not been measured in other studies: labor productivity. Hence, the last hypothesis for this paper is as follows:



H4: Firms that finance their operations with microfinance loans will have higher labor productivity growth than firms that do not have such financing. This could be expected if firms are able to use their loans to make productivity-enhancing investments.

## **II. Literature Review**

### ***Determinants of Microfinance Usage***

As mentioned previously, few authors apply theories of demand for financial services to the field of microfinance research. An exception is the work of Pearlman, which looks into the determinants of microfinance use through an empirical investigation and is particularly focused on the role of a borrower's vulnerability. Pearlman defines vulnerability as "the inability to smooth consumption across adverse shocks to income."<sup>5</sup> The author develops a theoretical model, whereby micro-entrepreneurs face the choice of either: a) financing low yield/low risk projects with internal or informal funds, such as those obtained from suppliers, moneylenders or friends and family, or b) financing high yield/high return projects with microfinance (which typically permits access to a larger amount of credit than that granted by informal sources). The model predicts that vulnerable individuals will underinvest in the high yield/high risk projects, that is, they are less likely to resort to microfinance.<sup>6</sup>

Pearlman's research draws on panel data from micro-entrepreneurs in Lima, Peru, which originates from a USAID evaluation of Accion Comunitaria del Peru (ACP), a large microfinance organization in Lima.<sup>7</sup> The dataset consists of 520 observations. Samples were then grouped into a client and a non-client group. In this work, the author employed indirect measures of client vulnerability due to limitations on the data. Specifically, the author's approach sought to capture vulnerability by using three measures related to a client's links to informal networks: 1) marital status, 2) tenure in Lima (percentage of life spent in Lima), and 3) whether the household has given gifts or remittances to other household.<sup>8</sup> These measures gauge a borrower's ability to access informal networks for funding during times of need.

The investigation offers the following key results: a) unobserved factors (such as a client's entrepreneurial skill) explained 50-70% of microfinance participation; b) observed factors that were expected to predict microfinance use were not generally significant (e.g. wealth, education or gender); and c) marital status is the largest predictor of microfinance use, where entrepreneurs that had spouses were 14-16% more likely to resort to microfinance.<sup>9</sup> While there are limitations to the validity of the measures (i.e. they measure vulnerability indirectly), these results seem to suggest that vulnerability is an important determinant of microfinance participation.

There is an opportunity to complement this literature with other theories of financial accessibility that could be relevant to the microfinance context. One of these is transaction cost theory. For example, the work of Jack and Suri looks at transaction costs in the context of remittances. The authors find that the lower transaction costs associated with the mobile payment system M-PESA facilitate the transfer of remittances to households that experience a negative shock, which improves the household's ability to smooth consumption.<sup>10</sup> Lower transaction costs associated with mobile payments could similarly improve access to microfinance loans. Another relevant theory is related to business climate quality. For example, Love finds a positive relationship between access to finance and the business climate in the form of court quality.<sup>11</sup>

This relationship could be explained in terms of the lower risk facing finance users and providers due to better courts. Similar measures of business climate risk can thus impact microfinance use. Finally, some studies have sought to identify individual characteristics that make microfinance borrowing more likely in a given country (for example, Khandker's study in Bangladesh<sup>12</sup> or Imai et al.'s work in India).<sup>13</sup> These studies typically focus on basic individual attributes, such as gender, education, and religion. Nevertheless, these measures do not capture the motivation of an entrepreneur. Amin shows that the motivation of an entrepreneur matters: in studying Africa's informal sector, Amin finds that entrepreneurs motivated by business opportunities are more likely to use external finance.<sup>14</sup> Thus, this variable is also likely to affect microfinance use.

### ***Impact of Microfinance***

Banerjee et al. conduct the first randomized evaluation of the group model of micro-lending, where group participants have a shared responsibility in making their repayments to qualify for subsequent loans. The randomized approach serves to overcome self-selection issues, which can weaken comparisons between treatment and control groups. For this experiment, 104 poor neighbourhoods in Hyderabad, India were identified as areas that a microfinance institution, Spandana, was interested in serving.<sup>15</sup> The researchers paired neighbourhoods based on average per capita consumption and per-household debt, and randomly assigned one of these neighbourhoods to the treatment group.<sup>16</sup> Overall, this resulted in 52 neighbourhoods in which Spandana would open a microfinance branch. Two surveys were undertaken to assess the impact of greater access to microfinance: the first took place 15-18 months after Spandana began lending, and the second took place two years after the first survey.<sup>17</sup>

The authors report the following findings for the first survey. Fifteen to eighteen months after borrowing, clients of microfinance see no difference in monthly per capita consumption.<sup>18</sup> Nevertheless, there is an average increase of Rs.1154 in the purchase of durables, which was also accompanied by a decrease in the purchase of temptation goods, which are defined as goods that households would like to spend less on (such as alcohol and tobacco).<sup>19</sup> Businesses are found to invest more by a difference of Rs.389 and the authors also find an increase in average profits of Rs.2194 for businesses that existed before Spandana entered, though this occurs for businesses above the 95th percentile.<sup>20</sup> In terms of the results of the second survey, Banerjee et al. find that increases in average business profits now occur above the 85th percentile.<sup>21</sup> Businesses have purchased more assets across this time period, but there is still no difference in average consumption per capita.<sup>22</sup>

The findings suggest that the impact of microfinance is more modest than previously believed. As a poverty reduction intervention, it appears to have shortcomings as it is unable to increase consumption over a three-year period. Microfinance does appear to have a positive impact on firm performance variables, such as investment and profitability, but this is limited to the already well-performing businesses. Limitations of this study include a non-randomized baseline survey (before either impact survey was undertaken) and a blurring of control conditions, as other microfinance organizations set up operations in both treatment and control neighborhoods, which was beyond the control of the researchers.<sup>23</sup> The addition of labor productivity into the analysis of firm performance complements the knowledge that we have about the effect of microfinance on businesses. Given that businesses

invest more with microfinance, it is possible to posit that labor productivity will be higher for these businesses as investments on capital are likely to increase the productivity of each worker.

### III. Data Analysis

The data for this investigation was drawn from the World Bank Enterprise Surveys undertaken within the informal sectors in Kenya, Ghana, and the Democratic Republic of Congo (DRC) in 2013. The surveys in these countries are well-suited to the research as they are specifically focused on the informal sector and also gather valuable information on microfinance usage at the firm level. The dataset is, therefore, useful for analyzing a wide array of owner and firm characteristics that may have an impact of a firm's use of microfinance. The dataset also contains important information on performance-related characteristics, making it possible to evaluate the impact of microfinance loans on firm performance. The following section presents the methodology and findings of these two lines of inquiry: it first proceeds by exploring the determinants of microfinance usage before turning to the link between a firm's use of microfinance and its performance.

#### *Determinants of Microfinance Usage: Variables*

- The dependent variable for this section of the analysis is a dummy variable that indicates a firm's use of microfinance for financing the operations of the business. A firm is considered to be a user of microfinance by answering "yes" to the following question: "In the last year, did you finance the day-to-day operations of this business or activity by using microfinance institutions?" Microfinance users are assigned a value of 1.
- The independent (and policy-relevant) variables used to test the hypotheses are the following:
  - Opportunity entrepreneur dummy variable: Opportunity entrepreneurs are defined as entrepreneurs that established informal businesses to take advantage of business opportunities, whereas necessity entrepreneurs establish informal businesses because their owners cannot find an adequate job.<sup>24</sup> Opportunity entrepreneurs are assigned a value of 1, while necessity entrepreneurs are assigned a value of 0.
  - Cellphone use dummy variable: Cellphone usage is used as an indication of reduced transaction costs in the transfer of funds. According to Jack and Suri, the average cost of a mobile money transfer in Kenya (KES 51.35) is much lower than common alternatives, including postal banking (KES 184.30) and direct deposits (KES 104.78).<sup>25</sup> Hand deliveries are also more costly after taking into account transport costs.<sup>26</sup> Cellphone users are identified by answering "yes" to the following question: "At the present time, does this business or activity use cell phone(s) for its operations?" Cellphone users are assigned a value of 1.
  - Region-sector average of crime dummy variable: Perceptions of crime provide an indication of risks associated with the business climate. Firms' perceptions of crime are identified by their answers to the following question: "Is crime a severe obstacle to the current operation of this business or activity?" It takes a value of 1 if a firm perceives crime to be a severe business obstacle. Following the approach of Dollar, Hallward-Driemeier, and Mengistae, the region-sector average of the variable is taken to reduce biased estimates of the effects of the business climate.<sup>27</sup>

- Region-sector average of corruption dummy variable: Perceptions of corruption also provide an indication of risks from the business climate. The dummy variable takes a value of 1 if the following question is answered positively: “Is corruption a severe obstacle to the current operation of this business or activity?” Once again, the region-sector average of the variable is calculated for each observation.
- Additional controls that are typically identified in the literature (for example, in the works of Pearlman, Khandker, or Imai et al.) are also used as they could have an effect on microfinance use, thus confounding the relationship between the policy-relevant and dependent variables.
  - Female ownership: a dummy variable that takes the value of 1 if the majority owner of the firm is female.
  - Education: a dummy variable that takes the value of 1 if the owner’s highest level of education is secondary school or higher.
  - Marital status of owner: a dummy variable that takes the value of 1 if the owner is married.
  - Owner experience: years of working experience that the owner has in his/her current sector of work.
  - Landowner: a dummy variable that takes the value of 1 if the owner of the firm owns land. Used as an indicator for owner wealth.
  - Age of firm: number of years since the business started.
  - Size of firm: Given that the number of employees is typically small in informal sector firms, two categories were created – firms with only one employee and firms with more than one employee. Multi-worker firms are those with more than one worker. It is a dummy variable that takes the value of 1 for multi-worker firms.
  - Firm’s use of electricity: firms that use electricity are given a value of 1. The use of electricity provides an indication of a firm’s financial capacity.
  - Regional dummies: dummy variables created for each of the three countries and all of the regions within each country for which data is available.
  - Industry dummy: the variable takes the value of 1 if a firm is in the manufacturing industry and 0 if it is in services.

### ***Probit Model for Determinants of Microfinance Usage***

The following probit model is used to conduct the empirical analysis:

$$P_i = \beta W_i + \gamma X_i + \delta Y_i + \theta Z_i + v_i$$

Where  $P_i$  is the probability that firm  $i$  uses microfinance as a source of funding,  $W_i$  is a vector of control variables,  $X_i$  reflects the opportunity entrepreneur variable,  $Y_i$  is a vector measuring

transaction costs,  $Z_i$  is a vector measuring risks in the business climate, and  $v_i$  is the unobserved error term.

The model is first estimated using the database from Kenya's informal sector only. The same regressions are then undertaken using the sample from all three countries. This approach allows us to compare differences between variables that could be significant at a country-specific level, versus variables that could be significant across countries. These comparisons are informative as they may reveal: a) determinants that are relevant only in a particular country; and b) determinants that are relevant for various countries. In the regressions that follow each policy-relevant variable is added onto the model one at a time to test each hypothesis and a complete model is then estimated using all variables jointly (measures of business climate risk are kept separate to mitigate multicollinearity). The coefficients and corresponding marginal effects are presented in separate tables for ease of interpretation (see tables 1 and 2 below).

By testing each variable individually (columns 1-4), the following results are obtained. First, there is no statistically significant difference between opportunity entrepreneurs and necessity entrepreneurs in terms of microfinance use. This suggests that, at least in the Kenyan context, necessity entrepreneurs are not less likely to demand microfinance funds. Because these firms obtained a loan, this suggests that microfinance providers in Kenya are not less likely to make their loan products available to necessity entrepreneurs. It is unclear whether this is due to a conscious decision to serve both groups or due to an inability to distinguish between them. Second, cellphone use stands out as being not only statistically significant, but also economically significant. Cellphone users are more likely to obtain microfinance by a difference of 18.7 percentage points. This offers support for the importance of reducing transaction costs to expand access to microfinance. In terms of risks from the business climate, both crime and corruption can be seen to have a negative effect on microfinance use, but only the corruption variable is statistically significant. Thus, corruption may represent a greater risk to firms than crime, greatly reducing the probability that a firm will use microfinance, as shown by its large marginal effect.

**Table 1 - Probit Regressions on Microfinance Use (Kenya) - Coefficients**

<i>Specification</i>	(1)	(2)	(3)	(4)	(5)	(6)
Opportunity entrepreneur	0.282 (0.239)				0.255 (0.249)	0.310 (0.279)
Cellphone user		1.084*** (0.355)			1.034*** (0.361)	1.242*** (0.378)
Crime			-3.384 (4.414)		-3.260 (4.632)	
Corruption				-5.623* (3.394)		-5.928 (3.669)
Female	-0.301 (0.206)	-0.297 (0.210)	-0.303 (0.207)	-0.217 (0.225)	-0.274 (0.214)	-0.183 (0.236)
Education	0.120 (0.230)	-0.0888 (0.245)	0.135 (0.229)	-0.00652 (0.246)	-0.0936 (0.247)	-0.365 (0.278)
Married	0.613** (0.288)	0.707** (0.295)	0.624** (0.286)	0.632** (0.301)	0.587* (0.300)	0.642** (0.321)
Years of experience	-0.0512* (0.0292)	-0.0532* (0.0310)	-0.0438 (0.0291)	-0.0485 (0.0304)	-0.0540* (0.0320)	-0.0644* (0.0342)
Landowner	-0.584** (0.279)	-0.777*** (0.286)	-0.577** (0.281)	-0.621** (0.285)	-0.671** (0.294)	-0.741** (0.301)
Age of firm	0.0977*** (0.0320)	0.0968*** (0.0335)	0.0862*** (0.0314)	0.0916*** (0.0324)	0.0978*** (0.0348)	0.105*** (0.0365)
Multi-worker firm	-0.333 (0.222)	-0.325 (0.223)	-0.340 (0.225)	-0.322 (0.233)	-0.397* (0.233)	-0.433* (0.247)
Firm uses electricity	-0.0100 (0.211)	0.0319 (0.216)	0.0391 (0.214)	-0.0442 (0.222)	0.0628 (0.219)	-0.0166 (0.231)
Central	-1.132*** (0.411)	-1.057*** (0.407)	-0.421 (0.950)	-0.330 (0.512)	-0.481 (0.985)	-0.211 (0.543)
Nyanza	-0.617* (0.338)	-0.644* (0.346)	0.504 (1.590)	0.254 (0.525)	0.532 (1.677)	0.420 (0.567)
Mombasa	0.444 (0.297)	0.459 (0.301)	0.254 (0.422)	0.856** (0.352)	0.160 (0.441)	0.774** (0.370)
Nairobi	-0.223 (0.293)	-0.234 (0.299)	0.619 (1.158)	1.324 (0.907)	0.538 (1.211)	1.346 (0.967)
Manufacturing	0.0122 (0.211)	0.0359 (0.215)	0.151 (0.278)	0.458 (0.342)	0.162 (0.287)	0.542 (0.365)
Observations	260	261	256	213	255	212

Standard errors in parentheses

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

Taking all policy-relevant variables together (columns 5-6), we see that the relationships described above are maintained, thus strengthening the findings. Specifically, the opportunity entrepreneur variable is once again statistically insignificant as is the crime variable. Conversely, the marginal effects of the cellphone user and corruption variables continue to be large and statistically significant (see table 2).

**Table 2 - Probit Regressions on Microfinance Use (Kenya) - Marginal Effects**

<i>Specification</i>	(1)	(2)	(3)	(4)	(5)	(6)
Opportunity entrepreneur	0.0700 (0.0561)				0.0579 (0.0536)	0.0830 (0.0702)
Cellphone user		0.187*** (0.0402)			0.179*** (0.0416)	0.249*** (0.0486)
Crime			-0.871 (1.126)		-0.775 (1.092)	
Corruption				-1.712* (1.013)		-1.670* (1.011)
Female	-0.0768 (0.0514)	-0.0699 (0.0488)	-0.0768 (0.0516)	-0.0649 (0.0661)	-0.0642 (0.0497)	-0.0508 (0.0647)
Education	0.0306 (0.0569)	-0.0218 (0.0611)	0.0338 (0.0559)	-0.00199 (0.0751)	-0.0227 (0.0609)	-0.110 (0.0883)
Married	0.137** (0.0534)	0.141*** (0.0471)	0.137*** (0.0522)	0.166** (0.0659)	0.119** (0.0510)	0.153** (0.0633)
Years of experience	-0.0133* (0.00746)	-0.0128* (0.00725)	-0.0113 (0.00738)	-0.0148 (0.00909)	-0.0128* (0.00740)	-0.0182* (0.00930)
Landowner	-0.126** (0.0491)	-0.144*** (0.0402)	-0.124** (0.0493)	-0.161*** (0.0608)	-0.127*** (0.0445)	-0.169*** (0.0544)
Age of firm	0.0254*** (0.00806)	0.0233*** (0.00771)	0.0222*** (0.00786)	0.0279*** (0.00957)	0.0233*** (0.00790)	0.0296*** (0.00975)
Multi-worker firm	-0.0830 (0.0525)	-0.0747 (0.0490)	-0.0835 (0.0522)	-0.0946 (0.0657)	-0.0889* (0.0490)	-0.116* (0.0620)
Firm uses electricity	-0.00261 (0.0550)	0.00767 (0.0518)	0.0101 (0.0550)	-0.0135 (0.0677)	0.0149 (0.0520)	-0.00467 (0.0652)
Central	-0.192*** (0.0413)	-0.166*** (0.0408)	-0.0929 (0.177)	-0.0902 (0.123)	-0.0947 (0.157)	-0.0551 (0.131)
Nyanza	-0.136** (0.0613)	-0.128** (0.0555)	0.146 (0.504)	0.0819 (0.177)	0.145 (0.508)	0.131 (0.191)
Mombasa	0.129 (0.0958)	0.125 (0.0926)	0.0702 (0.125)	0.293** (0.127)	0.0399 (0.116)	0.249* (0.129)
Nairobi	-0.0554 (0.0694)	-0.0534 (0.0648)	0.178 (0.360)	0.445 (0.301)	0.142 (0.349)	0.432 (0.315)
Manufacturing	0.00317 (0.0550)	0.00864 (0.0518)	0.0389 (0.0716)	0.140 (0.102)	0.0385 (0.0680)	0.153 (0.0996)
Observations	260	261	256	213	255	212

Standard errors in parentheses

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

Among the control variables, the following observations are noteworthy. Three variables are consistently found to be statistically significant: marital status of the owner, land ownership, and age of the firm. The first of these has been interpreted in the literature as vulnerability to external shocks (married individuals are less vulnerable to shocks than non-married individuals). The negative marginal effect of owning land may suggest that wealthier individuals are less likely to resort to microfinance, as they can perhaps access traditional banking institutions. Next, as a firm becomes older, the probability of financing through microfinance increases but only

slightly (between 2.22 – 2.96 percentage points). This could be due to the increased level of confidence that credit officers may have when reviewing loan applications from established firms. Lastly, female ownership, which is typically believed to be associated with microfinance use, is not significant. This seems to suggest that microfinance providers make their products available to both groups, and demonstrates a shift from their traditional focus of serving mostly women.

Tables 3 and 4 (below) show the results of the regressions, this time incorporating the observations from all three countries. Once again, the tables report coefficients (table 3) and marginal results (table 4) separately for ease of interpretation. As above, policy-relevant variables are first added one at a time into the model to test each hypothesis and are then included jointly. The same controls are used as in the previous regressions, with the addition of more regional and country dummy variables, which are omitted from the tables.

There are four key findings that emerge from these results by testing variables individually. First, the opportunity entrepreneur variable is statistically significant and it shows that, on average, opportunity entrepreneurs are 5.29 percentage points more likely to use microfinance than necessity entrepreneurs. This finding offers support for the first hypothesis and could be explained as follows: as opportunity entrepreneurs recognize profitable business opportunities, they may be drawn to a greater extent towards microfinance loans to meet these opportunities. It is important to note that while this finding is supported on average across all three countries, local conditions affect the results. In Kenya, the relationship is not significant and suggests that necessity entrepreneurs use microfinance as much as opportunity entrepreneurs. This could be due to local supply (e.g. there could be greater availability of credit for smoothing consumption rather than pursuing business opportunities) or non-discrimination in part of microfinance institutions in Kenya (whether deliberate or not). That is, necessity entrepreneurs could be as likely to use microfinance as opportunity entrepreneurs to the extent that the local market enables them to participate. It is important for providers to be aware of demand differences to ensure products meet client needs.

**Table 3 - Probit Regressions on Microfinance Use (All countries) - Coefficients**

<i>Specification</i>	(1)	(2)	(3)	(4)	(5)	(6)
Opportunity entrepreneur	0.390** (0.154)				0.341** (0.157)	0.426** (0.172)
Cellphone user		0.550*** (0.174)			0.491*** (0.181)	0.558*** (0.195)
Crime			-2.181*** (0.697)		-1.739** (0.681)	
Corruption				-1.390* (0.808)		-1.240 (0.830)
Female	0.0829 (0.133)	0.0811 (0.134)	0.0710 (0.134)	0.0681 (0.143)	0.122 (0.137)	0.127 (0.147)
Education	0.0520 (0.141)	0.0430 (0.141)	0.0456 (0.142)	0.0571 (0.152)	0.0107 (0.144)	-0.00799 (0.157)
Married	0.303** (0.154)	0.358** (0.153)	0.299* (0.153)	0.328** (0.163)	0.234 (0.157)	0.234 (0.169)



Years of experience	0.00472 (0.0143)	0.00580 (0.0140)	0.00443 (0.0140)	-0.0326* (0.0195)	0.00422 (0.0145)	-0.0353* (0.0204)
Landowner	-0.146 (0.135)	-0.160 (0.135)	-0.101 (0.136)	-0.205 (0.149)	-0.0815 (0.138)	-0.182 (0.152)
Age of firm	0.00771 (0.0156)	0.00628 (0.0153)	0.00792 (0.0153)	0.0470** (0.0204)	0.00573 (0.0157)	0.0467** (0.0212)
Multi-worker firm	0.0202 (0.132)	0.0360 (0.132)	0.0760 (0.134)	0.0794 (0.141)	0.0523 (0.135)	0.0490 (0.143)
Firm uses electricity	0.129 (0.132)	0.110 (0.133)	0.151 (0.134)	0.188 (0.142)	0.1000 (0.137)	0.122 (0.145)
Manufacturing	-0.0666 (0.126)	-0.0731 (0.126)	-0.0346 (0.127)	-0.00345 (0.137)	-0.0571 (0.129)	-0.0288 (0.139)
Observations	893	897	891	783	887	779
Standard errors in parentheses						
*** p<0.01, ** p<0.05, * p<0.1						
Includes country and region dummies						

Second, the use of cellphones is once again an important determinant of microfinance use, albeit the effect is lower across countries: cellphone users are more likely to use microfinance than non-users by a difference of 6.95 percentage points. This lower marginal effect could reflect the extensive use of mobile payment technology in Kenya in relation to other countries. Nevertheless, the implications remain: lower transaction costs from mobile technology are associated with a higher probability of microfinance use, thus supporting the second hypothesis.

**Table 4 – Probit Regressions on Microfinance Use (All countries) – Marginal Effects**

<i>Specification</i>	(1)	(2)	(3)	(4)	(5)	(6)
Opportunity entrepreneur	0.0529** * (0.0186)				0.0437** (0.0184)	0.0514** * (0.0185)
Cellphone user		0.0695** * (0.0185)			0.0606** * (0.0190)	0.0654** * (0.0195)
Crime			- 0.324*** (0.100)		- 0.246*** (0.0950)	
Corruption				-0.205* (0.118)		-0.170 (0.113)
Female	0.0127 (0.0206)	0.0120 (0.0200)	0.0106 (0.0202)	0.0101 (0.0215)	0.0175 (0.0200)	0.0177 (0.0208)
Education	0.00776 (0.0208)	0.00626 (0.0203)	0.00668 (0.0205)	0.00829 (0.0218)	0.00150 (0.0203)	-0.00110 (0.0216)
Married	0.0416**	0.0469** *	0.0403**	0.0434**	0.0306	0.0295

	(0.0191)	(0.0178)	(0.0187)	(0.0193)	(0.0190)	(0.0197)
Years of experience	0.000715	0.000853	0.000657 (0.00208)	0.00482*	0.000597	0.00484*
Landowner	(0.00217) -0.0217 (0.0198)	(0.00206) -0.0231 (0.0190)	) -0.0147 (0.0196)	(0.00285) -0.0295 (0.0209) 0.00695*	(0.00205) -0.0114 (0.0191)	(0.00277) -0.0244 (0.0200) 0.00641*
Age of firm	0.00117	0.000923	0.00117 (0.00227)	*	0.000810	*
Multi-worker firm	(0.00236) 0.00305 (0.0199)	(0.00226) 0.00528 (0.0192)	) 0.0112 (0.0195)	(0.00298) 0.0116 (0.0204)	(0.00223) 0.00737 (0.0189)	(0.00288) 0.00668 (0.0194)
Firm uses electricity	(0.0192) (0.0192)	0.0159 (0.0188)	0.0219 (0.0189)	0.0270 (0.0197)	0.0139 (0.0187)	0.0165 (0.0191)
Manufacturing	-0.0101 (0.0190)	-0.0107 (0.0185)	-0.00513 (0.0189)	-0.000509 (0.0202)	-0.00807 (0.0182)	-0.00394 (0.0191)
Observations	893	897	891	783	887	779

Standard errors in parentheses

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

Includes country and region dummies

Third, perceptions of crime and corruption greatly affect the use of microfinance: a firm's perception that crime is a significant business obstacle reduces the likelihood of using microfinance by 32.4 percentage points. For corruption, the perception of this variable as a significant business obstacle reduces the probability by 20.5 percentage points. These effects suggest that risks associated with the business climate are an important determinant of microfinance use, thus supporting the third hypothesis. A possible explanation is that risk poses a threat to any investments that are made, increasing the likelihood of financial distress, thus increasing the costs associated with borrowing.

Importantly, these findings are also largely supported when incorporating all policy-relevant variables into the model (columns 5-6). Opportunity entrepreneurs continue to be more likely to use microfinance by a statistically significant difference of 4.37 – 5.14 percentage points. Cell phone users are also more likely to use microfinance than non-users by 6.06 – 6.54 percentage points. Regarding the business environment measures, corruption is once again negatively related to the use of microfinance but it is no longer statistically significant. The crime variable, however, continues to reflect a large and statistically significant marginal effect thus supporting the third hypothesis.

Lastly, it is also worth noting that, across countries, the variables for marital status and age of the firm remain significant, but the significance of the landowner variable is lost. This could be an indication that microfinance providers in Kenya are more effective at reaching the

poor and landless when offering their products than the providers operating in the other countries.

### ***Microfinance and Firm Performance: Variables***

- The dependent variable for this section of the analysis is labor productivity. The variable is defined as a firm's total sales in the previous month divided by the firm's total number of workers (paid and unpaid) in the previous month. The natural log of labor productivity is calculated for each observation. Thus, the variable measures percentage change in labor productivity.
- The policy-relevant variable is the dummy variable that indicates a firm's use of microfinance for financing the operations of the business. This is the same variable created for the analysis conducted in the previous section.
- Several controls from the previous section are incorporated into the analysis, including: education, owner experience, owner's marital status, land ownership, age of the firm, size of the firm, firm's use of electricity, country/region dummy variables, and industry dummy variables. Moreover, the following variables were also created as additional controls:
  - Bank loan: a dummy variable that takes the value of 1 if the firm financed the operations of the business through a traditional bank in the last year.
  - Insurance: a dummy variable that takes the value of 1 if the firm's owner has insurance.

### ***OLS Model for Firm Performance***

The following OLS model is used to estimate the results:

$$\ln(Y) = \alpha + \beta_1 X_1 + \beta_2 X_2 + \varepsilon$$

Where  $\ln(Y)$  is the percentage change in labor productivity,  $\alpha$  is the constant,  $X_1$  is the dummy variable for use of microfinance,  $X_2$  is a vector of control variables, and  $\varepsilon$  is the error term.

The results from the regressions are presented below in table 5. The first regression (corresponding to the first column) is conducted using the microfinance dummy variable with country, regional, and industry controls. The use of microfinance is statistically significant at the 1% level and shows that using microfinance is associated with a 26.4 percentage increase in labor productivity.

The second regression (column 2) introduces several control variables that could have an effect on labor productivity. The microfinance coefficient continues to be positive but it is no longer statistically significant. Instead, it appears that the marital status variable was responsible for the spurious correlation: marriage not only increases the likelihood of using microfinance, but it is also associated with a 16.5 percentage increase in labor productivity. Marriage can be understood to have an impact on labor productivity if interpreted in terms of lower vulnerability to external shocks (i.e. marriage acts as a form of insurance). That is, married firm owners may be better protected against external shocks allowing them to benefit from higher labor

productivity in comparison to other firms. Other variables that can be seen to have an effect on labor productivity include: a) use of electricity, which results in a 17.6 percentage increase in labor productivity; b) size of the firm, whereby increasing the number of workers from one to more than one reduces labor productivity by a 39.3 percentage decrease (reflecting diminishing returns); and c) use of bank loans, which is associated with a 43.8 percentage increase in labor productivity, making it the most economically significant variable in explaining productivity.

**Table 5 - OLS Regressions on Labor Productivity (All Countries)**

<i>Specification</i>	(1)	(2)	(3)
Microfinance	0.264*** (0.0956)	0.142 (0.118)	0.137 (0.119)
Manufacturing	-0.0431 (0.0543)	0.0181 (0.0763)	0.0207 (0.0767)
Education		0.0981 (0.0892)	0.0841 (0.0896)
Years of experience		-0.00191 (0.00917)	-0.00195 (0.00918)
Married		0.165* (0.0843)	0.167** (0.0846)
Landowner		0.0593 (0.0769)	0.0453 (0.0774)
Age of firm		0.0132 (0.0101)	0.0139 (0.0101)
Multi-worker firm		-0.393*** (0.0794)	-0.396*** (0.0798)
Firm uses electricity		0.176** (0.0767)	0.185** (0.0770)
Bank loan		0.438** (0.178)	0.410** (0.179)
Insurance			0.217** (0.105)
Observations	1,534	817	811
R-squared	0.849	0.871	0.872

Standard errors in parentheses

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

Includes country and region dummies

The third regression (column 3) is conducted to better understand the role that marriage plays on labor productivity. If marriage has positive effects on labor productivity because it acts as a form of insurance, then a variable that measures insurance directly should also be

statistically significant and positive. In this regression, a dummy variable for an owner's possession of insurance is introduced as another control. The results show that insurance is indeed statistically significant and associated with a 21.7 percentage increase of labor productivity. This offers additional support to the notion that marriage has a positive impact on labor productivity because it may be acting as an informal type of insurance.

These results do not offer evidence to support the hypothesis that a firm's use of microfinance is associated with higher labor productivity. Instead, the more significant factors in determining labor productivity are the use of bank loans, the use of insurance (formal or otherwise), and the use of electricity. Given that the size variable is a dummy variable, it does not provide enough accuracy to assess the precise impact of one additional worker at different size levels, but it does provide a general indication that the relationship is statistically significant and negative.

#### **IV. Policy Recommendations**

The findings carry important implications for the policies of microfinance institutions and the governments of the countries in which microfinance is popular. The recommendations can be grouped into two categories: actions that can be taken to expand access to microfinance and actions for enhancing the impact of microfinance on firm performance.

##### ***Expanding Access to Microfinance***

This study shows that expanding access to microfinance depends on reducing transaction costs and the risks associated with the business climate. Microfinance institutions have a great opportunity to reduce transaction costs by adopting technological innovations, such as mobile payment systems. These innovations already exist and have the potential for significantly reducing costs and increasing access. In addition to adopting current technologies, microfinance institutions would benefit from identifying new opportunities to further reduce the costs of fund transfers by experimenting with new technologies. The expansion of the internet in Africa<sup>28</sup> brings tremendous opportunities to make transfers more direct and less costly. New platforms that increase the ease of transferring money are increasingly being developed – one recent example is Facebook's work on a mobile payment system.<sup>29</sup> Microfinance institutions need to be at the forefront of the technological frontier to keep transaction costs low and increase access to their services.

The business climate has been shown to be an even more significant factor in determining use of microfinance. Therefore, microfinance institutions should work closely with the public sector to improve the quality of the business climate. Microfinance institutions should demand improvements from local governments. Public officials, in turn, need to appreciate the relationship between access to finance and risks from the business environment and undertake practices and investments to mitigate risks related to crime and corruption. As the relative importance of these factors varies by country, it is also important to ensure that the most severe risks in the business climate are prioritized. This study finds that perceptions matter: access to finance can be improved if public officials demonstrate a commitment to improving the business environment.

Lastly, it is important to consider the results from the ‘opportunity entrepreneur’ hypothesis in this context. The findings from this paper do not suggest that opportunity entrepreneurs are more likely to use microfinance because they are inherently more compatible with microfinance services; rather, it appears that there are two different market segments and opportunity entrepreneurs are more likely to use microfinance to the extent that the market is shaped to serve them. By discriminating against necessity entrepreneurs, opportunities to expand finance are reduced. This does not have to be the case. It is clear that necessity entrepreneurs also have a demand for financial services. It is important for microfinance institutions to be aware of the existence of segments to ensure that financial products are designed to meet the needs of a particular group.

### ***Improving the Impact of Microfinance on Performance***

Even though microfinance has not been shown to have a direct impact on labor productivity, there are several actions that microfinance institutions can undertake to positively contribute to a firm’s performance. Among the most notable findings of the investigation is the positive association between traditional bank loans and labor productivity. The effect of a bank loan is very significant – it is associated with a 43.8 percentage increase in labor productivity. This result is consistent with other research that finds a positive and causal effect of corporate debt on total factor productivity in several European countries.<sup>30</sup> The effect of microfinance is likely to be unnoticeable because loans are typically small. Nevertheless, microfinance institutions are well-positioned to create a pathway toward bank loans. Microfinance borrowers are usually unable to access bank loans as they lack collateral and are deemed too risky. Microfinance institutions can act as an important intermediary, through which borrowers can begin developing a credit history and eventually pose a lower risk to traditional banks. Therefore, microfinance institutions need to consider how to best develop a system of credit history that will allow the best clients to move toward larger and more productivity-boosting loans.

Another recommendation that microfinance institutions should consider is the introduction of a micro-insurance product. Insurance is an important variable that has a positive association with labor productivity. The effect is considerable – insurance is associated with a 21.7 percentage increase in labor productivity. It may also have an impact on expanding access to finance, as potentially indicated by the role that marital status plays on determining microfinance use. Microfinance institutions are ideally placed to offer a micro-insurance product as they are already in contact with informal sector individuals that are marginalized from formal insurance opportunities.

### **V. Conclusion**

This paper has explored the role that transaction costs, risks in the business climate, and motivation of an entrepreneur have on determining a firm’s use of microfinance. It has found that reductions in transaction costs and improvements on the business climate affect microfinance usage positively. The investigation has also found that entrepreneurs that are driven by opportunity are more likely, on average, to use funds from microfinance institutions than entrepreneurs driven by necessity. Nevertheless, this finding varies by local context and, therefore, microfinance institutions must be aware of these differences to design products that best meet the needs of their clients.

Furthermore, the paper has investigated the relationship between a firm's use of microfinance and its performance. The results do not offer evidence to suggest that microfinance is positively related to labor productivity. Instead, the paper finds that factors such as the use of a bank loan and the use of insurance have a greater effect on this performance metric. These results suggest that microfinance institutions would benefit their clients to a greater degree by providing a wider range of financial products – particularly, insurance – and placing themselves in a larger context by building a pathway for their clients toward the traditional banking sector. Future research should strive to better understand the impact of other financial products typically offered by microfinance institutions (such as micro-savings and micro-insurance) on a wider variety of firm performance indicators.

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<sup>1</sup> Thorsten Beck and Asli Demirguc-Kunt, "Small and Medium-Size Enterprises: Access to Finance as a Growth Constraint," *Journal of Banking and Finance* 30 (2006): 2937.

<sup>22</sup> Thorsten Beck, Asli Demirguc-Kunt and Ross Levine, "Finance, Inequality, and the Poor," *Journal of Economic Growth* 12, no. 1 (2007): 29-30.

<sup>3</sup> Asli Demirguc-Kunt and Leora Klapper, "Measuring Financial Inclusion: The Global Findex Database" (World Bank Policy Research Working Paper 6025, World Bank, 2012), 2.

<sup>4</sup> Stewart Myers, "Capital Structure," *Journal of Economic Perspectives* 15, no. 2 (2001): 88-89.

<sup>5</sup> Sarah Pearlman, "Too Vulnerable for Microfinance? Risk and Vulnerability as Determinants of Microfinance Selection in Lima," *The Journal of Development Studies* 48, no. 9 (2012): 1349.

<sup>6</sup> Ibid, 1344-1346.

<sup>7</sup> Ibid, 1346.

<sup>8</sup> Ibid, 1350.

<sup>9</sup> Ibid, 1352-1354.

<sup>10</sup> William Jack and Tavneet Suri, "Risk Sharing and Transactions Costs: Evidence from Kenya's Mobile Money Revolution," *American Economic Review* 104, no. 1 (2014): 185.

<sup>11</sup> Inessa Love, "What are the Determinants of Financial Access in Latin America?" in *Does the Investment Climate Matter?*, ed. Pablo Fajnzylber, J. Luis Guasch and J. Humberto Lopez (Washington, DC: The World Bank; New York: Palgrave Macmillan, 2009), 237-238.

<sup>12</sup> Shahidur Khandker, "Microfinance and Poverty: Evidence Using Panel Data from Bangladesh," *The World Bank Economic Review* 19, no. 2 (2005): 273-276.

<sup>13</sup> Katsushi Imai, Thankom Arun and Samuel Kobina Annim, "Microfinance and Household Poverty Reduction: New Evidence from India," *World Development* 38, no. 12 (2010): 1764-1765.

<sup>14</sup> Mohammad Amin, "Necessity vs. Opportunity Entrepreneurs in the Informal Sector" (Enterprise Surveys Note Series No. 17, World Bank, 2010), 3.

<sup>15</sup> Abhijit Banerjee et al., "The Miracle of Microfinance? Evidence from a Randomized Evaluation," (MIT Department of Economics Working Paper No. 13-09, Massachusetts Institute of Technology, 2013), 3.

<sup>16</sup> Ibid, 7.

<sup>17</sup> Ibid, 8.

<sup>18</sup> Ibid, 20.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, 23-24.

<sup>21</sup> Ibid, 26.

<sup>22</sup> Ibid, 33-34.

<sup>23</sup> Ibid, 8.

<sup>24</sup> Amin, "Necessity vs. Opportunity Entrepreneurs", 1.

<sup>25</sup> Jack and Suri, "Kenya's Mobile Money Revolution," 197.

<sup>26</sup> Ibid.

<sup>27</sup> David Dollar, Mary Hallward-Driemeier and Taye Mengistae, "Investment Climate and Firm Performance in Developing Economies," *Economic Development and Cultural Change* 54, no. 1 (2005): 10.

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<sup>28</sup> Joel Macharia, "Internet Access Is No Longer a Luxury," *Africa Renewal Online*, April 2014,

<http://www.un.org/africarenewal/magazine/april-2014/internet-access-no-longer-luxury>.

<sup>29</sup> Samuel Gibbs, "Facebook Working on Mobile Payments Using Messenger, Leak Reveals," *The Guardian*, Oct. 6, 2014, <http://www.theguardian.com/technology/2014/oct/06/facebook-mobile-payments-messenger-app>.

<sup>30</sup> Oliver Levine and Missaka Warusawitharana, "Finance and Productivity Growth: Firm-level Evidence," (Finance and Economics Discussion Series Working Paper, Federal Reserve Board, 2014), 1-2.



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## **Cuba: Post-Normalization US National Security Policy**

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### **Abstract:**

Normalized US-Cuba relations present significant opportunities for the citizens of both countries, however, the development of robust US national security policy should be the chief priority as the relationship moves forward. This paper provides historical background, enumerates contemporary challenges, and builds the realist case for rescinding the embargo. Cuba's geopolitical value to US adversaries is significant. The Castro regime yearns for a repeal of the demoralizing embargo but will take full advantage of the mounting advances by US strategic rivals during this new period of hegemonic transition. It is time to lift the embargo, but in so doing, the US should prioritize national security. Embargo rescission should be accompanied by a policy framework that compels Cuban geopolitical neutrality in order to thwart the growing aegis of these adversaries. Additionally, the status of Naval Station Guantanamo Bay should be formalized with an updated lease agreement which reflects the base's immense strategic value.

## INTRODUCTION

For over three decades, Cuba has held a notorious distinction as the sole nation in the western hemisphere designated by the United States (US) as a state sponsor of terrorism.<sup>1</sup> This status was given for the country's direct support of armed leftist revolutions across the globe, but has endured primarily as a reflection of intense US disapproval of the totalitarian Castro regime. President Obama's abrupt announcement of normalized diplomatic relations in late 2014, followed more recently by Cuba's removal from the state sponsors of terrorism list, represents a dramatic shift in US policy. While these decisions open the door for previously unobtainable opportunities, the US must proceed with caution and craft policy tempered both by existing realities and historical lessons. This paper will identify a primary area of focus for US-Cuba policy in the wake of normalization and will explain why US national security should be at the forefront of further concessions. The US should build off normalization with Cuba diplomatically, to preempt against geopolitically enticing overtures by adversaries. The central mechanism for such policy would involve a conditional lift of the embargo, under terms which set Cuba on a positive path of neutrality. These terms should also formalize continued US control of the strategically critical Naval Station Guantanamo Bay (GTMO.)

## Cuba in Perspective

Cuba played a central role in what was arguably the nadir of all US foreign relations and a moment which imperiled national security unlike ever before or since. In a remarkably short one-decade period, the country accelerated through a full continuum of international relations with the US; a popular tropical tourist destination became an unstable irritation, then a great-power proxy state, and finally culminated as the staging point of a potentially existential nuclear threat, during the Cuban Missile Crisis in 1962. Fortunately, cooler heads prevailed and agreement between Kennedy and Khrushchev abated Cuba's role as an immediate danger to US existence.

Today, Cuba remains a country frozen in time. Since the end of the Cuban Revolution in 1959, the Castro regime has maintained totalitarian communist rule and the US has isolated the regime through a comprehensive embargo. With eleven-million citizens, Cuba is the largest and most populous island in the strategically significant 28-nation Caribbean Basin.<sup>2</sup> The 780-mile wide mainland is surrounded by critical air corridors and sea lines of communications including the sole sea link to the Gulf of Mexico.<sup>3</sup> On Cuba's southern shore, the US continues over a century of military operations at GTMO, its oldest overseas naval base. Cuba's closest point is only ninety-miles from the US shoreline and the surrounding year-round warm water and generally favorable sea-states provide an optimal setting for an array of nefarious trafficking activities. The Castro regime continues to display a clear and reciprocated propensity for building close ties with countries that seek to impede US national security interests. In the US, an established and influential Cuban-American political class and a vocal constituency have elevated the recent normalization initiatives to a contentious national discourse.<sup>4</sup> This combination of traits complicates an already tenuous relationship and leaves little room for rapid positive change. Although it is unlikely that foreign nuclear missile sites will return to Cuba in the foreseeable future, there should be no question that national security will be imperiled in other ways without thoughtful policy which fully considers the state's broader role with relation to US national interests.

## Policy Background (1961-2016)

Building the case for the recommended policy proposal should begin with the context of relevant US-Cuba policy. This discussion will render a baseline and help reveal the foundational underpinnings which continue to define an intricate US-Cuba relationship.

We start in 1961, as Fidel Castro begins turning his auger anchors. Amidst the transition between the Eisenhower and Kennedy administrations, and fresh off severing all diplomatic relations with Cuba, the US attempted to topple and replace the Castro regime with a CIA-trained and funded counter-revolutionary military. This operation, the Bay of Pigs Invasion, was an abject failure and was followed by Cuba's official self-declaration as a Marxist-Leninist state.<sup>5</sup> The result has proven durable for over half a century, and was perhaps best encapsulated in Che Guevara's private letter to President Kennedy; "Thanks for Playa Girón. Before the invasion, the revolution was weak. Now it's stronger than ever".<sup>6</sup>

Convinced of imminent follow-on invasion attempts and seeking to balance against US hegemony, Castro sought geopolitical partnership with the Soviet Union and quickly developed the island into a de facto Satellite Bloc. In less than a year, as many as 43,000 Soviet troops were in Cuba and Operation *Anadyr* was well underway in fortifying the island with intermediate and medium-range nuclear armed missiles capable of devastating much of the US homeland.<sup>7</sup> Gambling against his Chairman of the Joint Chiefs of Staff's recommended full-scale attack, President Kennedy successfully employed a naval blockade (fig 1) and secret negotiations to divest Cuba of its newfound nuclear backed posture.<sup>8</sup> The US has since learned that the Soviet arsenal was accompanied by over 100 tactical nuclear weapons, poised to repel a US attack.<sup>9</sup> A nuclear engagement was avoided but this episode set the enduring tone for US-Cuba policy thereafter.

## Embargo

A broad-reaching US embargo on Cuba, first initiated under Eisenhower, continues to cover almost all financial, commerce, and economic activity. Building off the Trading with the Enemy Act of 1917, domestic enforcement authority is codified primarily by the Cuban Assets and Control Regulations of 1963.<sup>10</sup> This law has been updated by numerous pieces of legislation, the most impactful of which was the Helms-Burton Act of 1996. This regulation was fueled by Castro's forays into seeking foreign investment and was passed by Congress shortly after the Cuban Mig shoot-down of two American Cessnas which were dropping pro-democracy leaflets over Havana.<sup>11</sup> The law was designed to tighten sanctions while simultaneously incentivizing incremental democratic change and moved embargo rescission



Figure 1 - The Threat of Cuban Missiles, 1962 Map. Holt, Reinhart, Winston Educational Publishers-Think Central, Social Studies.

authority from the president to the Congress. It also levied a new class of penalties against any company caught conducting business with Cuban factories which had been seized during the revolution. Helms-Burton has been widely disparaged by major US trading partners who claim US overreach in penalizing their own trade deals with Cuba, which were previously unencumbered.<sup>12</sup> The act has likewise been criticized by human rights groups which emphasize adverse consequences to the Cuban population's access to food and basic goods. During the era of the Soviet threat, the purpose of the embargo was directly linked to enhancing US national security by inhibiting Cuban access to American goods, and capital. The purpose has largely shifted to punishing the Castro regime for failure to comply with international human rights standards.

## Immigration

The domestic turbulence during the Cuban Revolution was accompanied by mass exodus. In the immediate aftermath, many Cubans arrived in America with round trip tickets, hopeful for a positive outcome.<sup>13</sup> When it became apparent that conditions in Cuba would not facilitate return, the US sought to regularize the status of Cuban nationals who had fled and those who were likely to continue to seek safe harbor. Accordingly, the Cuban Adjustment Act of 1966 was written and passed into law. The Act grants Legal Permanent Resident (LPR) status after physical presence in the US for one year. Furthermore, an *automatic* one year parole is granted for illegal entry, thereby guaranteeing LPR status to any Cuban national who can reach the US regardless of conveyance.<sup>14</sup> These features do not exist in US law for any other country and have been exercised by over 1.1 million Cubans to date.<sup>15</sup>

Since the end of the Cuban Revolution, there have been several notable mass migration events which have led to iterative immigration policy change. Seeing an opportunity to scorn the US and defray select domestic tensions in 1980, Fidel Castro declared the port of Mariel "open" to anyone wishing to depart. Over 125,000 undocumented Cuban migrants, including thousands from intentionally purged prisons and mental facilities, flooded across the Florida straits aboard a rag-tag fleet of various watercraft.<sup>16</sup> What ensued was the largest peacetime Coast Guard operation in US history, and remarkably all but 27 migrants completed successful passage to south Florida.<sup>17</sup> In the wake of the Mariel boatlift, the US passed the Refugee Assistance Act, designating a new status for "Cuban-Haitian Entrants," and providing automatic federal benefits commensurate with those conferred upon asylum seekers. Currently, this amounts to over \$1600 a month, for a period of up to seven years.<sup>18</sup>

Following the mass migration to south Florida of an additional 37,000 Cubans in 1994, the Cuban Migration Accords of 1994/1995 were enacted. These updates to the Cuban Adjustment Act introduced several key changes in which "both governments pledged to promote safe, legal, and orderly migration between Cuba and the United States".<sup>19</sup> Prior to the accords, Cubans intercepted at sea by the Coast Guard were generally assured safe passage and resultant LPR status in the US. Under the newly introduced "wet-foot, dry-foot" provision, at-sea interdictions mandated repatriation. Conversely, Cubans who touch charted land are permitted to remain. To help reduce the flow of illegal immigration, the US pledged to admit a minimum of 20,000 Cubans a year through legal immigration which was agreed to be made more readily available by the Cuban government. Despite this agreement, immigration through the legal

system continues to be a remarkably complex and elusive process which typically takes many years if pursued successfully.

The combination of a desire to pursue a better life, a difficult legal immigration process, and the promise of generous financial incentives continues to compel thousands of Cubans to make the dangerous seaward trek to the US each year (either the indirect route via the Yucatan peninsula and across the Mexican border or direct to South Florida). Lucrative smuggling operations offer the highest success rates and can complete the 90 mile journey in only a few

hours for those willing to pay upwards of \$10,000.<sup>20</sup> Those unable to pay, hastily cobble together rudimentary floating devices (fig 2) and set off across the unpredictable and shark infested Florida Straits. Despite its relatively small population, Cuba ranks fifth in the world as a top migrant sending country.<sup>21</sup> Following the normalization announcement, fears that favorable immigration laws such as “wet-foot, dry-foot” will be repealed have led to a massive uptick in illegal migration from Cuba to the US.<sup>22</sup> Over the ensuing twelve-months, in excess of 40,000 Cubans have made the dangerous trek, making 2015 the most significant



Figure 2 – Converted truck; Cuban migrant vessel. ([www.ft.com/news](http://www.ft.com/news))

year for Cuban migration since 1980.<sup>23</sup> This increased has been further complicated by frequent instances of both violence towards Coast Guard interdiction teams and self-injury to oblige land-based medical care in order to induce “dry-foot” status.<sup>24</sup> Restricted by limited resources, enforcement remains a major challenge for federal agencies. The Coast Guard’s operating budget has been slashed by 25% over the past five fiscal years.<sup>25</sup>

## GTMO

Although the detention camp at Naval Station Guantanamo Bay has been the subject of great national attention during the Obama administration, in reality, this facility represents only a

very minor component of the base’s broader strategic role. The 120 square-kilometer base houses seven distinct military units comprised of over 5,800 US service members and is located directly in the geographic heart of the Caribbean as depicted in figure 3.<sup>26</sup> The base provides contingency and logistical support for a host of defense and security components including US Southern Command, Joint Interagency Task Force South, DHS, and allied partners.<sup>27</sup> As the sole US forward operating base in the Caribbean, GTMO acts as the centerpiece of a

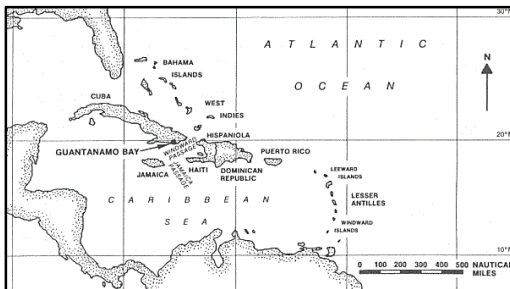


Figure 3 – GTMO’s strategic location

(<http://www.globalsecurity.org/military/facility/images/guantanamo-bay-fig21-1.gif>)

exclusively on continuous maritime presence. In addition to providing the ideal staging point for law enforcement, humanitarian, and stability operations, the base has been developed with the capacity to act as the “in theater” site for housing migrants during mass migration events.<sup>28</sup> Furthermore, the extensive level of Coast Guard forward operations throughout the Caribbean Basin simply would not be possible without access to GTMO.<sup>29</sup> For these reasons, the Obama administration has drawn a clear distinction between the detention facility and the actual naval base, expressing the intention to “keep the base open indefinitely”.<sup>30</sup>

Following its loss in the Spanish-American War, Spain ceded control of the entire island to the US under the Treaty of Paris in 1898. The US has maintained control of this facility since signing a lease agreement with the nascent Cuban government in 1903. The base’s central positioning and naturally protected harbor have been a vital asset to US operations for over a century. Its continued control by US forces is seen by the Castro regime as representing a history “of US empire and conquest, the Caribbean and its people, and resistance and survival under the gaze of bellicose governments”.<sup>31</sup> Needless to say, overcoming the vehement opposition to continued US control will require a commensurate incentive.

Normalization: Following eighteen-months of secret negotiations between US National Security Council aides and high level Cuban government officials, brokered by Pope Francis, and a phone call with current Cuban president Raul Castro, President Obama announced revival of Cuban diplomatic relations on 17 December, 2014.<sup>32</sup> Although a prisoner swap was the central mechanism of this executive branch initiative, the move has far broader policy implications and has been met with a mix of welcomed support, disbelief, and vitriolic disapproval. The administration first initiated key policy changes in 2009 under the title of “Reaching Out to The Cuban People.” These changes were made to “support the desire” of “all who embrace core democratic values” to “freely determine their country’s future,” and include abolishing restrictions on transactions related to travel of family members to Cuba, eliminating remittance caps to family members, and increasing access to telecom resources through deregulation.<sup>33</sup> The 2014 normalization builds off these concessions in an effort to “empower the Cuban people” and has been declared by the administration as a means to “cut loose our anchor to the past” in recognition that “decades of US isolation have failed to accomplish our enduring objective of promoting the emergence of a democratic, prosperous, and stable Cuba”.<sup>34</sup> The normalization includes reestablishment of mutual embassies, drastically eased travel restrictions with liberal personal commerce freedoms, and a quarterly donative remittance limit increase from \$500 to \$2000 from Americans to Cuban entities of their choosing.<sup>35</sup> These changes have already begun to result in an influx of capital, however the overarching embargo remains in place.

### **Pre-emption**

It is safe to assume that a democratic Cuba will not readily materialize merely by virtue of the White House’s stated goal through normalization. To the contrary, immediately following the announcement, President Castro delivered a forceful public speech demanding an end to the embargo and stating “We must not expect that in order for relations with the United States to improve, Cuba will abandon the ideas that it has struggled for”.<sup>36</sup> Ideological incompatibilities aside however, the normalization has been initiated and diplomatic momentum should now be directed towards optimizing US national security. Incentivizing Cuban geopolitical neutrality should be the central ambition of this objective. Freshly bolstered by a narrative of extracting



normalization on its own terms, the Castro regime is likely to seek self-preservation by more invigorated band-waggoning against the US.<sup>37</sup> Accordingly, US policy must incorporate levers to check these efforts and should make it abundantly clear that Cuba stands to forfeit a momentous opportunity for true prosperity if it engages in behavior contrary to US national security interests.

As our sphere of interactions gains size, one key tenet of US-Cuba policy should be a focus on mitigating the influence and cooperation foothold of adversaries who are strengthening and forging alliances with Cuba. Invoking a realist lens, this goal is underpinned by our nation's historical philosophy that "Security could best be assured, by making certain that no other great power gained sovereignty within geographic proximity of the United States".<sup>38</sup> In the contemporary setting of established but declining American hegemony, a more nuanced application is appropriate. The "sovereignty" that John Lewis Gaddis (2005) alludes to should be thought of more as "balancing activities" and "great power" should be expanded to include clear adversaries.

In addition to continuing its deep ties with countries such as Russia and Venezuela, Cuba has gained growing interest and engagement by North Korea, Iran, and China. Although Cuba's ability to mount any semblance of a direct conventional threat to the US has waned considerably, its connection with these states elevates the national security implications of a continued US-Cuba status quo. Over the past fifty-years, Cuba "has long seen itself as exceptional, a defiant rebel under political and economic attack... playing David to the Goliath of the north".<sup>39</sup> During this period, the Castro regime has largely defined Cuba's relationship with the US through its alignment with our adversaries. Averting the notional threat of a US Goliath has been seen as necessitating bandwaggoning with more powerful states. Realism provides a compelling explanation for this path. Using Stephen Walt's three pronged hypothesis on alliances, we can develop an understanding of these motivations. (1) With its close geographic proximity to a powerful state, (2) fear of US attack given our drastically "greater offensive capabilities", (3) the Cuban Revolutionary government "aligned with others to oppose the state(s) posing the threat".<sup>40</sup> The decision to follow this path turned the Caribbean island into a communist stronghold which is approaching sixty years of suffering under Castro rule and its resultant seclusion. The regime has maintained a fluid narrative explaining away this suffering as a function of continued US oppression, and as the necessary cost for having "freed itself from U.S. hegemony in Latin America and (having) declared independence in Uncle Sam's own backyard".<sup>41</sup>

Until the end of the Cold War, Cuba's ability to weather isolation by the US was largely a function of Soviet support. The Soviet Union was the cornerstone of the Cuban economy, accounting for 80% of its imports and exports.<sup>42</sup> This financial support and direct access to Soviet hardware enabled a disproportionate militarization and relatively expansive Cuban involvement in a variety of destabilizing foreign affairs. Castro financed revolutionary movements across the globe and directed troop and hardware deployments in numerous foreign theaters. In addition to propping up leftist guerilla campaigns in South America, these ventures included long term occupation by hundreds of thousands of troops serving in Angola and Ethiopia.<sup>43</sup> By the late 1980s, Cuba was considered by many to be "the most thoroughly militarized nation on earth".<sup>44</sup> At the conclusion of the Cold War, Russian funding dried up and Cuba was thrust into the abject poverty of what the Castro regime termed the "Special Period." What could have been "an unprecedented opportunity to promote peaceful transition to

democracy” instead resulted in a doubling down of Castro rule and descent to a new normal.<sup>45</sup> Cuba kept ties with Russia, but sought opportunities for new foreign support. One of the country’s strongest assets is human capital: doctors, nurses, educators, well trained military commanders, and personnel with specialty training unique to the Cuban experience.<sup>46</sup> The Revolutionary government continues to leverage this resource to enhance ties with willing partners and acquire the assistance necessary to assure continued rule. Many of the governments which avail themselves of such an arrangement are seeking the band-waggoning benefit of increased self-reliance within an ideological circle that runs counter to continued US hegemony. Following is a brief synopsis of selected relations which fall into this category.

Russia remains a key ally. In 2014, Putin abolished 90% of Cuba’s \$350 billion debt and expanded mineral extraction trade agreements.<sup>47</sup> In conjunction with the generous financial injection, Russia arranged the reopening of its Lourdes signals intelligence (SIGINT) base, south of Havana.<sup>48</sup> Although this move has been downplayed by the US government, the fact remains that the Russian military will now operate a spy base 155 miles from the US homeland. Even the symbolic value of this move achieves the goal of denting the aging armor of US hegemony. As of December of 2015, disputed reports claim that Cuban troops are actively participating in Russian military operations in Syria.<sup>49</sup>

Cuba’s alliance with Venezuela has strengthened greatly under the Chavez and Maduro regimes, establishing the country as one of the Revolutionary government’s primary financial supporters. In exchange for the deeply discounted petroleum, which provides most of Cuba’s energy needs, and subsidies amounting to well over \$2 billion per year, Cuba provides a revolving stream of tens of thousands of doctors, medical professionals, and educators.<sup>50</sup> The extent of Cuba’s relationship with North Korea is not entirely clear, but should be of concern. In 2013, a North Korea bound freighter laden with Cuban exports was detained in the Panama Canal for suspicious cargo. In addition to 10,000 tons of sugar, the hull contained over 240 tons of weaponry, including anti-aircraft batteries, disassembled ballistic missiles, and two Mig fighter jets.<sup>51</sup>

Calling upon its well-honed counter-propaganda skillset, Cuba recently provided Iran with radio jamming expertise to prevent US government broadcasting across its borders and perhaps more nefariously has assisted Tehran with building a modern genetic engineering laboratory.<sup>52</sup> In return, Iran has extended Cuban a credit line of over \$600 million and has signed a variety of trade agreements.<sup>53</sup>

Although historical relations have been relatively innocuous, China’s rise as a world power has been accompanied by a focused effort to bring Cuba under its wing. China’s highest ranking military official, Vice Chairman of the Central Military Commission, General Fang Changlong, called for increased military cooperation during his June of 2014 visit to Havana, proclaiming that “China is Cuba’s firm and reliable friend”.<sup>54</sup> In 2015, Vice Premier Wang Yang traveled to Havana and commemorated the 55<sup>th</sup> anniversary of diplomatic ties between Havana and Beijing. Vice Premier Yang conveyed China’s desire to “enhance bilateral practical cooperation” and expressed intent to substantially augment annual trading which is valued at over \$1.3 billion.<sup>55</sup> US intelligence reports have indicated that Chinese SIGINT professionals have already been embedded in Cuba’s well established domestic spying facilities for over a

decade, which “permits enhanced electronic surveillance of broad areas of the U.S. at present,” and yields the potential geographically conferred capability “to disrupt critical U.S. strategic communications during a period of conflict”.<sup>56</sup>

In terms of empirical measurements, Cuba is the overwhelming beneficiary in each of these relationships. Why then do Russia, Venezuela, North Korea, Iran, and China increasingly seek greater ties with the island? By extension, these countries are willing to cede the objective material advantage to Cuba as part of a larger strategy to balance against and chip away at US hegemony. Cuba’s combination of geography, power structure, and ideology represent an unparalleled platform to advance these goals. Admittedly, it is a bit of a stretch to proclaim that each of these selected relationships will result in an immediate grave threat to US national security. Rather, it is important to illuminate the cast of characters that are seeking a Cuban foothold in order to reveal the bandwagoning that could develop into a true threat in the longer term. Prudence would dictate that denying the potential for an unknown array of such geopolitical incarnations is best handled at this incipient stage. As it stands, the US maintains at least one trump card to mitigate and potentially eliminate these advances; the embargo.

Cuba’s centrally controlled economy continues to yield a low standard of living and an existence of the barest necessities for the overwhelming majority of its citizens. Current annual Cuban salaries average \$240 and in 2014, the country’s physicians were granted a veritable windfall with the doubling of monthly compensation to a new high of \$67.<sup>57</sup> The Revolutionary government’s ability to support these meager wages and the population’s ability to subsist are heavily reliant on the existing support provided by the aforementioned countries. Cuba’s only other meaningful revenue comes from private remittances sent by Cuban-Americans in the US and its limited state-controlled tourism industry, which caters primarily to Canadian travelers.<sup>58</sup> As a result, the fragile welfare of 11 million Cubans is largely subject to the economic conditions in foreign-supporter domestic markets. In fact, the volatility of Venezuela’s recent political upheaval and concurrent plummeting oil prices has been cited as a major factor in Raul Castro’s willingness to condone the negotiations which led to last year’s normalization announcement.<sup>59</sup> Further decreases in foreign support would be devastating. US Adversaries are acutely aware of this dynamic and those best positioned to profit from the situation (such as China) will seek to maximize the potential geopolitical gains of increased support and collaboration with Cuba. Normalization has provided the US with an opening to counter this opportunity.

The Castro regime fully understands Cuba’s immense reliance on a narrow group of external supporters and perceives the isolation imposed by the longstanding US embargo as the greatest impediment to self-reliance.<sup>60</sup> Furthermore, the Castros have largely entrenched their rule on the central premise of vilifying US oppression. Both Castro and President Obama have called for an immediate end to the embargo, without binding conditions. The Helms-Burton Act moves rescission authority to Congress and influential elected officials on both sides of the aisle continue to vocally denounce the normalization and have made it clear that they will block any attempts to lift the embargo.<sup>61</sup> Such a change in policy, they say, would deal a blow to American credibility and would amount to tacit approval of a brutal tyrannical regime. Florida Senator and former Presidential candidate Marco Rubio, stated of the embargo: “I don’t know of a single contemporary, reluctant tyranny that has become a democracy because of more trade and tourists”.<sup>62</sup> Indeed, if the goal is democratization, a congressional decision to lift the embargo is

unlikely to yield the desired result. Detractors would be well advised to understand that the objective should instead focus on displacing the geopolitical advances of our adversaries. This track has the potential to bridge the aisle. Lifting of the embargo satisfies the humanitarian concerns projected by the political left and, if properly structured, the development of a security-centric framework will satisfy the political right. Although, the oppressive nature of the Revolutionary government is unlikely to dampen immediately, the ensuing increased flow of goods and capital has the very real possibility of curtailing the volume of illegal migration. The conclusion of Cuba's isolation is likely to elevate the general standard of living, thereby eroding the allure of the perilous option to seek US landfall by sea. By lifting the embargo, the US also stands to realize the ancillary benefit of enhanced relations with the many peace-minded countries who are currently penalized economically by contentious Helms-Burton provisions.

At this juncture, the US holds maximum leverage. Adversaries have not yet taken full advantage of the situation, "normalization" has commenced, and Cuba intensely desires a lift of the embargo. US policy makers should strike while the iron is hot and use this leverage to negotiate a conditional embargo abolishment. Terms of this deal should develop a framework for Cuban geopolitical neutrality to thwart the growing aegis of US adversaries. Such an arrangement would admittedly be complex, however the looming prospect of de-isolation provides such vast incentive, that the Castro regime will be inclined to privately accept terms which facilitate accountability. An additional and far more straightforward condition of embargo repeal should be a formalized agreement on GTMO. As a sign of good faith and with deference to the immense strategic value of this asset, continued US control of Guantanamo Bay should be accompanied by an appropriately indexed lease agreement, updating the monthly \$4085 rent checks that have remained uncashed by Havana since 1959.<sup>63</sup>

Cuba's geopolitical value to adversaries is significant. The Cuban people yearn for a repeal of the demoralizing embargo but the Castro regime will take full advantage of mounting advances by US challengers as an alternative. It is time to lift the embargo, but in doing so, the US must take forward leaning policy measures which optimize US national security.

### **State of Play**

The Castro regime now finds itself at a precipice. The inexorable force of time has caught up with the brothers and much of their aging inner circle. US normalization efforts have precipitated the uncomfortable discussion of a very different post-Castro future. In April of 2016, the seventh Congress of the Communist Party of Cuba convened to discuss the path forward. Despite the olive branch of US normalization, and in the face of a contemporary era of global free-enterprise, the Castros elected to double down on communist rule. Rather than acknowledging normalization as a favorable development, Fidel made an appearance to publicly denounce US led efforts as a "Trojan horse" designed to usurp the regime's authority and advance US imperialism.<sup>64</sup>

On the surface, it would appear that the proposals presented in this paper would be fundamentally incompatible with the will of Cuba's recalcitrant octogenarian leadership. The secretive dealings throughout normalization negotiations might suggest that this recalcitrance is at least somewhat for show and that the regime is in fact open to the prospect of advancing mutually beneficial interests with the US. If properly framed, embargo rescission is most

certainly mutually beneficial. The days of direct Castro leadership are rapidly approaching termination. We will soon find out if the brothers intend to leave a legacy of stubborn indignation and national decay, or choose to lay claim to ending “el bloqueo” and unleashing Cuba’s vast potential for national prosperity.

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<sup>8</sup> Ibid.

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<sup>15</sup> U.S. Public Law 89-732. 1966. Cuban Adjustment Act.

<sup>16</sup> Wasem, Ruth Ellen. 2009. “Cuban Migration to the United States: Policy and Trends.” Washington DC: Congressional Research Service.

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<sup>18</sup> Ibid.

<sup>19</sup> Miller, Paul J. 2015. “After Normalization” Proceedings. Volume 141/3/1. Issue 345.

<sup>20</sup> U.S. State Department. 2014. US-Cuba Migration Talks press release.

<sup>21</sup> [www.state.gov/r/pa/prs/ps/2014/01/219530.htm](http://www.state.gov/r/pa/prs/ps/2014/01/219530.htm)

<sup>22</sup> Wasem, Ruth Ellen.

<sup>23</sup> Ibid.

<sup>24</sup> Adams, David and Fagenson, Zachary. May 15, 2015. “Cuban immigration surges after thaw in US-Cuba relationship.” Reuters. Accessed December 20, 2015. <http://www.reuters.com/article/us-cuba-usa-migration-idUSKBN0NY2S220150514>

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<sup>26</sup> Ibid.

<sup>27</sup> McKnight, Terry Adm. October 13, 2015. “Coast Guard Budget Reductions Put US at Risk.” US Naval Institute. Accessed December 23, 2015. <http://news.usni.org/2015/10/13/opinion-coast-guard-budget-reductions-puts-u-s-at-risk>

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<sup>28</sup> Hein, Robert N. and Tama, Jason. March 25, 2015. "Keep the US Naval Station at GITMO open." Brookings.edu. accessed May 18, 2016. <http://www.brookings.edu/research/opinions/2015/03/25-keep-united-states-naval-station-guantanamo-bay-open-hein-tama>

<sup>29</sup> Author's note: In addition to conducting numerous maritime law enforcement operations staged out of GTMO, the author has served as supervisor to the Coast Guard's permanently stationed GTMO detachment. This unit provides essential support to the hundreds of deployed ships and aircraft which structure their deployments around the availability of GTMO's resources.

<sup>30</sup> Ibid.

<sup>31</sup> Reynolds, Tim. March 25, 2016. "Returning Guantanamo." Jacobini Magazine.

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<sup>41</sup> Norton, Ben. March 30, 2016. "The US has terrorized Cuba for over 50 years." Salon Magazine.

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<sup>61</sup> Risen, Tom.

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## **Post 9/11 Intelligence Failures**

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### **Abstract**

This paper assesses three post-9/11 attacks - the 2009 shooting at Fort Hood, the 2009 “underwear bomber” incident on Northwest Airlines Flight 253 (NW253), and the 2013 Boston Marathon bombing to determine whether there are recurring factors that contribute to the inability to prevent such attacks. It finds that, despite the bureaucratic and legislative changes that were instituted after 9/11, five factors contributed to the intelligence failures that allowed the attacks to occur. Three of these factors - incomplete investigations into radicalized individuals, failures to respond to public displays of radicalization, and issues with technical systems - were present in all of the cases under examination. Two additional factors were also present - lack of information sharing and competition between governmental agencies- but were not found in all three cases. Finally, this paper will explore various policy recommendations that may prevent the recurrence of failure.

## INTRODUCTION

The terrorist attacks of September 11, 2001 were the most sophisticated and devastating attacks in American history and resulted in the most dramatic restructuring of the US intelligence apparatus since the Cold War. Nonetheless, Al-Qaeda (AQ) inspired terrorism has persisted since 9/11, even though US intelligence and law enforcement agencies have been working diligently to detect and prevent similar attacks from occurring. This paper assesses three post-9/11 attacks - the 2009 shooting at Fort Hood, the 2009 “underwear bomber” incident on Northwest Airlines Flight 253 (NW253), and the 2013 Boston Marathon bombing - to determine whether there are recurring factors that contribute to the inability to prevent such attacks. These three cases were chosen because they were all inspired by AQ, they occurred after recommended bureaucratic and legislative reforms to the US intelligence apparatus were approved and implemented, and they were investigated thoroughly in studies and reports that are now publicly accessible. This paper finds that, despite the bureaucratic and legislative changes that were instituted after 9/11, five factors contributed to the intelligence failures that allowed the attacks to occur. Three of these factors - incomplete investigations into radicalized individuals, failures to respond to public displays of radicalization, and issues with technical systems - were present in all of the cases under examination. Two additional factors - lack of information sharing and competition between governmental agencies - were also present, but not found in all three cases.

The first section of this paper engages scholarly literature and discusses various definitions of intelligence failure. The second section illustrates some of the gaps in the United States (US) intelligence and national security apparatus that prevented authorities from disrupting 9/11 and briefly discusses some of the reforms introduced in response to the attacks. The third section reviews the three aforementioned cases of AQ-inspired attacks to identify the factors that contributed to each intelligence failure. Government documents were the primary sources of information for each case review in this section. While some may view this as a limitation, this method ensured that each case review was factually grounded and not based on erroneous or unconfirmed information from secondary sources. Finally, the fourth section determines the frequency of the factors that led to the three intelligence failures and examines various policy recommendations that may prevent the recurrence of the failures.

### *Defining “Intelligence Failure”*

To begin, it is appropriate to review some of the literature that has provided definitions of intelligence failure. Through his assessment of the bombing of a Marine Barracks in Beirut (1983), Dahl acknowledges two sides of the argument regarding the reasons for failure.<sup>1</sup> First, he stated that without intelligence failures “rest with policy-makers for not having paid enough attention to the warnings they were given”, but then concedes that in the Beirut bombing, “military intelligence personnel and national intelligence agencies all did a poor job of helping decision-makers prepare for what should have been a foreseeable danger.”<sup>2</sup> Lowenthallater sided with the initial failure explanation, and proceeded to define intelligence failure as “the inability of one or more parts of the intelligence process – collection, evaluation and analysis, production, dissemination – to produce timely, accurate intelligence on an issue or event of importance to national interests.”<sup>3</sup> This suggests that the failure is more attributable to the agencies involved in intelligence collection, a view that is contradicted by Shulsky and Schmitt, who agree more with the second reasoning for failure in Dahl’s analysis. They stated that it is “a misunderstanding of the situation that leads a government (or its military forces) to take actions that are inappropriate

and counterproductive to its own interests.”<sup>4</sup> This shifts the attribution of responsibility to the government, rather than the intelligence agencies involved.

This paper adopts the definition given by Colonel Darin L. Brockington of the US Army, who agrees that it is more likely a combination of the two competing definitions, while adding that the definition must also account for an enemy. He stated that “[i]ntelligence failure is the result of an adversary’s actions that were not identified during the intelligence cycle and achieves strategic surprise, despite the government having all the information necessary to anticipate the events and its consequences.”<sup>5</sup> In other words, the government agencies responsible had the necessary requirements or contacts to uncover an attack or potential threat, yet failed to make the correct decision. It is important to note that there is not the expectation of zero attacks, which would require complete surveillance and monitoring. Rather, it is expected that correct links are made and explored when sufficient evidence is presented. This provides us with a consistent definition of intelligence failure and from this we can proceed with the main focus of the paper.

### ***Post 9/11 Reforms***

A year after 9/11, President George W. Bush established a bipartisan commission mandated to investigate the “facts and circumstances” related to the attacks. In its final report, the commission concurred with then Director of Central Intelligence George Tenet that “the system was blinking red” in the months before the 9/11, but numerous errors and shortcomings by the security and intelligence community prevented the US Government from foiling the attacks.<sup>6</sup>

Two of the hijackers of American Airlines Flight 77 - Khalid al-Mihdhar and Nawaf al-Hazmi - as well as the ‘mastermind’ behind the attacks - Khalid Sheikh Mohammed - were known to US authorities before 9/11, but their movements were not adequately monitored and new information about them was not immediately shared between the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI) due to travel and security issues and confusion over access rights. Foreign intelligence agencies were searching for threats to targets abroad and domestic intelligence agencies were searching for threats to domestic targets, but none were searching for foreign threats to domestic targets. Pertinent information in the Presidential Daily Brief of August 6, 2001 - titled “Bin Laden Determined to Strike in US” - was not relayed in subsequent Senior Executive Intelligence Briefs, and intra-agency information sharing was also prevented due to fundamental misunderstandings of agency rules and operating procedures.<sup>7</sup> Furthermore, the apparent ‘20th hijacker’ - Zacarias Moussaoui - was arrested shortly before the attacks, but legal restrictions prevented authorities from obtaining a warrant to search his laptop computer for information that might have been useful.<sup>8</sup>

Legislative acts designed to address these intelligence gaps began to be introduced shortly after the attacks. Although the *USA PATRIOT Act of 2001* - which aimed to, *inter alia*, enhance domestic security, reform surveillance procedures and border security, remove obstacles to terrorism-related investigations, increase information sharing, and improve intelligence networks - was undoubtedly the most well-known act in this series, subsequent acts such as the *Homeland Security Act of 2002*, the *Intelligence Reform and Terrorism Prevention Act of 2004*, the *SAFE Port Act of 2006*, and the *Implementing Recommendations of the 9/11 Commission Act of 2007* have been of paramount importance in uniting intelligence agencies to detect, prevent,

and disrupt terrorism. Still, several AQ-inspired attacks – such as the 2009 shooting at Fort Hood, the 2009 “underwear bomber” incident on Northwest Airlines Flight 253 (NW253), and the 2013 Boston Marathon bombing – have occurred within the US since 9/11 despite these reforms. The next section will analyze three of these attacks to determine whether the changes mentioned in the aforementioned acts were sufficient in addressing similar factors that contributed to intelligence failure.

### *Case Studies*

#### *Fort Hood*

On November 5, 2009, US Citizen Army Major Nidal Malik Hasan entered the Fort Hood deployment center, yelled “Allahu Akbar” and fatally shot 13 individuals, wounding 42 others.<sup>9</sup> This section discusses the factors that contributed to the intelligence failure prior to the attack, based on the findings from the Webster Commission on the FBI,<sup>10</sup> the Report to the Director of National Intelligence on the Fort Hood and Northwest Airlines Flight 253 Incident,<sup>11</sup> and Senate Committee on Homeland Security and Governmental Affairs Report.<sup>12</sup>

#### *Failure to Respond to Overt Displays of Radicalization*

The first factor that contributed to the intelligence failure concerns the DoD’s lack of response to Hasan’s persistent use of extremist rhetoric. Throughout his career, Hasan displayed overt signs of radicalization; however, his superiors at the DoD failed to report or discharge him, instead issuing positive evaluation reports and promoting him.

Hasan’s radicalization was instantly apparent when he began his residency and fellowship at the Uniformed Services University of Health Sciences. Hasan constantly vocalized his fundamentalist beliefs, causing his colleagues to describe Hasan as holding radical views about Islam and expressing these beliefs at every opportunity.<sup>13</sup> He also conducted three off-topic presentations on Islamist extremism instead of assigned medical topics.<sup>14</sup> Furthermore, Hasan defended suicide bombings twice, justified Osama Bin Laden’s actions in writing, expressed Islam’s superiority to the US constitution, and asserted three times that Muslim Americans in the US military were susceptible to fratricide.<sup>15</sup> Despite ranking in the bottom 25% of his class and being placed on academic probation, Hassan’s Officer Evaluation Reports described him positively, stating that his research on Islam had “extraordinary potential to inform national policy and military strategy.”<sup>16</sup> While Hasan’s *superiors* failed to reprimand him, a number of his colleagues reported him and two described him as a “ticking time bomb.”<sup>17</sup> His colleagues asserted that Hasan was not discharged due to political correctness and ignorance about Islam. However, Hasan’s superiors disagreed with this assessment. Nonetheless, the Senate report cites political correctness as a primary reason for the intelligence failure, arguing that the DoD lacks the institutional culture to detect and confront radicalization.<sup>18</sup>

#### *Incomplete FBI Investigation*

The second factor that contributed to the intelligence failure concerns the FBI’s incomplete investigation into Hasan after learning of his communications with Anwar al-Awlaki. Awlaki, a fundamentalist Yemeni Imam and US citizen, is known for his role in Al-Qaeda in the Arabian Peninsula (AQAP), and for inspiring homegrown terrorists through his websites and lectures on the virtues of violent Jihad.<sup>19</sup> The San Diego Joint Terrorism Task Force (SD-JTTF)<sup>20</sup> intercepted Hasan’s first email to Awlaki on December 17, 2008 as part of their broader

investigation on Awlaki.<sup>21</sup> SD-JTTF sent an investigative lead to the Washington Field Office (WFO) on January 7, 2009.

The Webster Commission argues that the FBI investigation was incomplete due to an inadequate records check, the decision not to interview Hasan, the failure to search for additional messages, excessive workload and lack of formal policy for assigning deadlines. First, upon being assigned the Hasan investigation, WFO-TFO performed an incomplete record check on Hasan in the DoD Database. The record check only brought up Hasan's promotion orders and Officer Evaluation Reports, which praised his "research" on Islam.<sup>22</sup> Accordingly, the WFO-TFO was unaware of Hasan's academic probation report and the memo written on Hasan's unprofessionalism.<sup>23</sup> Second, WFO-TFO believed that Hasan's communications with Awlaki were part of Hasan's "research" on Islam, and decided not to interview Hasan, as this might have harmed the Awlaki investigation and Hasan's career.<sup>24</sup> Third, neither WFO-TFO nor WFO-SSA (Supervisory Special Agent) searched DWS, the database relevant to the investigation, to ascertain whether Hasan responded to or contacted Awlaki again.<sup>25</sup> Furthermore, SD-JTTF failed to search DWS for further information that would push WFO to reassess the case.<sup>26</sup> Fourth, the excessive workload and lack of formal policies on assigning deadlines caused a fifty day delay in assigning the lead to WFO-TFO and a ninety day delay in conducting the assessment.<sup>27</sup> Formal deadlines would have required that the investigation take place earlier. However one cannot ascertain whether an earlier investigation would have prevented the attack from taking place.<sup>28</sup>

The DNI report claims that neither SD-JTTF nor WFO took ownership over the investigation and the handoff from SD-JTTF to WFO was weak.<sup>29</sup> This is illustrated by the failure to take further investigative action after the WFO shared its assessment with SD-JTTF, despite SD-JTTF advising WFO that their assessment was "inadequate."<sup>30</sup> Furthermore, the Senate Report contends that the FBI investigation disproportionately focused on whether Hasan engaged in an act of terrorism as opposed to whether he had been radicalized.<sup>31</sup>

#### *Absence of Adequate Information Technology and Training*

The third factor that contributed to the intelligence failure concerns the lack of adequate information technology and training in the FBI prior to the attack.<sup>32</sup> The inadequate IT is attributed to the cumbersome technical tools and the absence of training and knowledge of DWS-EDMS (DWS), the database that stored the Hasan-Awlaki communications.<sup>33</sup> DWS is a dated database, with limited search and information review capabilities.<sup>34</sup> Moreover, none of the required FBI IT training courses instructed analysts on how to use DWS.<sup>35</sup>

WFO-TFO, the primary analyst responsible for investigating the case at WFO did not know that DWS existed at the time of the investigation.<sup>36</sup> Thus, he was unaware of Awlaki's responses to Hasan's emails. The SD-JTTF analysts marked Awlaki's responses to Hasan's emails as "not a product of interest," and failed to include Awlaki's responses in the lead sent to WFO.<sup>37</sup> This illustrates that human error also played a role. Nevertheless, based on the information WFO-TFO was privy to, he concluded that Hasan had not engaged in terrorist activities. Upon presenting his assessment to WFO-SSA, WFO-SSA asked if WFO-TFO searched all FBI databases and WFO-TFO claimed that he had. However WFO-SSA was unaware that WFO-TFO did not know that DWS existed.<sup>38</sup> According to the Webster Commission, if DWS was properly searched, Hasan's communications with Awlaki might have

challenged the belief that Hasan's contact with Awlaki was limited to his research on Islam.<sup>39</sup> Ultimately, all three reports concur that antiquated IT contributed to the intelligence failure.<sup>40</sup>

#### Underwear Bomber - Northwest Airline Flight 253

On the 25<sup>th</sup> of December 2009, Umar Farouk Abdulmutallab, a Nigerian citizen, boarded a flight from Amsterdam to Detroit.<sup>41</sup> He had a bomb hidden in his underwear and attempted to detonate it.<sup>42</sup> As the plane approached its destination, passengers smelled smoke coming from a toilet cabinet. There, Abdulmutallab was discovered and subdued.<sup>43</sup> Abdulmutallab failed his attack and no one was hurt in the process. The man, claiming links with AQ in Yemen, was arrested as soon as he got off the plane.<sup>44</sup> This event is an example of intelligence failure because US agencies were unable to prevent it, despite having sufficient information to do so.

This analysis draws on the Report to the Director of National Intelligence on the Fort Hood and NW253 Incidents by the Intelligence Community Review Panel and the Report of the Select Committee on Intelligence of the United States Senate on the Attempted Terrorist Attack on NW253.<sup>45</sup> These reports highlight different causes of failures and propose recommendations to prevent similar events from happening in the future.

#### *Failure to Respond to Radicalization*

To begin, both reports address the failure to recognize and respond to Abdulmutallab's radicalization. Before the event, his father reported that his son "had fallen under the influence of unspecified religious extremists" and that he "would be willing to engage in illegal acts in the name of religion."<sup>46</sup> The American Embassy in Nigeria also sent reports to different US agencies concerning the possibility that Abdulmutallab was linked to extremist groups.<sup>47</sup> The problem here is that once this information was processed, no further action was taken.

#### *Technological Issues*

This is related to the second cause of failure identified in the reports: analysts were unable to link Abdulmutallab's name to different relevant reports due to technological problems. To begin, intelligence databases are scattered across different servers, rendering it nearly impossible for one analyst to access and link relevant reports together.<sup>48</sup> Moreover, the Intelligence Community Review Panel's report found "that many officers do not know what data exists and how to access it or use it."<sup>49</sup> In addition, the lack of a name variant search mechanism in the search tool used by analysts, combined with a mistake in the spelling of Abdulmutallab's name, resulted in the failure to link Abdulmutallab to other reports and to signal that he had a valid US visa.<sup>50</sup> The inability to link different report on Abdulmutallab also prevented authorities from linking him with an "unnamed Nigerian affiliated with Aulaqi[sic]."<sup>51</sup> Had the reports been linked, Abdulmutallab certainly would have been on a higher priority list of dangerous individuals.

#### *Failure to place suspect on a relevant Watch-list*

This links to the third cause of failure, the inability to put Abdulmutallab on a watch-list, such as the "Terrorist Screening Database" (TSDB), Selectee List, or No Fly List.<sup>52</sup> Since analysts were unable to link information about Abdulmutallab's radicalization and the fact that he had a US visa, he was *not* put on a watchlist and was *not* prevented from flying to the US. Another factor that can explain the failure to put Abdulmutallab on a watch-list concerns the role



of each agency and the lack of clarity surrounding which agency was responsible for putting individuals on a watch-list. The DNI report discusses the “confusion among the agencies about roles, responsibilities, and procedures.”<sup>53</sup> This lack of cooperation and clear understanding of the roles of each agency allowed Abdulmutallab to board a plane to the US with a bomb in his undergarments.

### *Interagency Competition*

The Intelligence Community Review Panel’s report explains how the competition between agencies such as the CIA’s Counterterrorism Center (CTC) and the National Counterterrorism Center (NCTC) could have affected either’s ability to detect the threat.<sup>54</sup> This could be due to the overlapping goals and capabilities of these two bodies.

It is also important to note the failure of both agencies to conceive a possible attack on US soil from AQAP. The intelligence agencies overemphasized threats to US interests abroad, as opposed to foreign threats on homeland targets.<sup>55</sup> Due to this, agencies were unable to link different valuable information prior to the failed attack on December 25<sup>th</sup>.

In sum, per the two government reports, the intelligence community failed to prevent the attempted bombing of NW253. They failed to respond to signs of radicalization because they were unable to link valuable reports together. This was caused by technological problems and a lack of inter-agency cooperation. This also caused the inability to put Abdulmutallab on a watch-list. In addition, inter-agency competition and a focus on threats to foreign interests created a situation that could have been catastrophic.

### *Boston Marathon Bombers*

On April 15, 2013, Tamerlan and Dzhokhar Tsarnaev detonated two bombs at the Boston Marathon, killing three people and injuring 260 others.<sup>56</sup> The brothers made these bombs using pressure cookers. The suspects fled the scene and a manhunt ensued. Days later, Tamerlan was killed during an altercation. Dzhokhar fled the scene and was later arrested. In the spring of 2015, Dzhokhar was convicted and sentenced to death, however his case is currently under appeal. This section analyzes the factors which led to the intelligence failure of the Boston Marathon Bombings.

### *Lack of Interagency Information Sharing:*

The Office of Director of National Intelligence (DNI) and The Select Committee on Intelligence reports both argue that one of the main factors of intelligence failure was due to the lack of interagency information sharing within US intelligence agencies. In 2011, Tamerlan visited Dagestan in Russia, a region known to harbour cells of extreme Islamist Jihadists. He returned to the US after a stay of several months. Many suggested that this added fuel to Tamerlan’s radicalization.<sup>57</sup>

It is unclear whether the travel notifications of Tamerlan’s visit to Russia were shared properly between the Border Protection Office and the FBI Counterterrorism agent.<sup>58</sup> In 2011, the Russian Federal Security Service requested that the FBI notify them if Tamerlan planned to travel to Russia, as they feared Tamerlan would connect with militants in the Caucasus.<sup>59</sup> The FBI and JTTF conducted an investigation, and found no links to terrorism, failing to analyze the

issue further.<sup>60</sup> However, a record was created in the Treasury Enforcement Communications System (TECS) system; an anti-terrorism information database that collects travel alerts and notes of terrorism suspects. Despite the alert, the CBP officer failed to inform the Counter Terrorism agent of Tsarnaev's return and outbound flight to Russia.<sup>61</sup>

When questioned, the Boston JTTFs testified that they were never made aware of Tamerlan's ongoing FBI investigation and the threat he posed, before the bombings, nor that he had travelled to the Chechen region.<sup>62</sup> The committee describes how information sharing between the FBI and the Boston JTTF would have allowed the police to investigate and further monitor Tamerlan, which may have given indicators of the impending attack.

The absence of information sharing not only occurred within domestic intelligence agencies, but also between the US and Russian intelligence agencies. Russia was not made aware of Tamerlan's outbound travel before arriving to Russia before his departure, which would have allowed for a second examination and deeper investigation of Tamerlan at the borders.

#### *Incomplete Intelligence Investigation:*

One of the main factors that contributed to the intelligence failure was the inadequate intelligence investigations on the brothers before the attack. With regard to Tamerlan's visit to Russia, the Department of Justice (DoJ) found that the Counter-terrorism (CT) agent did not probe for or elicit enough information during investigations with Tamerlan's parents and wife after receiving information that he may be visiting Dagestan. The committee argues that this trip was a potential cause of his radicalization.<sup>63</sup> Furthermore, the CT agent did not ask enough information from the family on the brothers' changes in behavior, lifestyles along with the acquired sympathy and knowledge they had towards militant separatists in Chechnya and Dagestan.<sup>64</sup> Furthermore, the DoJ and the Office of the Inspector General found that the CT agent did not use every relevant search term known or available at the time of query in the databases searched on the Tsarnaev brothers.<sup>65</sup> This may also be due to the inability and absence of knowledge of these databases. The FBI did not investigate deeply on the tips and concerns of Russia.

#### *Issues with Technical Systems:*

A factor of intelligence failure in the Boston Bombing case is the TECS alert, which was not correctly and fully responded to by the Customs and Border Protection (CBP) officer. The TECS record did not illustrate a high priority or mention a high-risk to the CBP officers. Thus, CBP officers did not send Tamerlan for secondary screening during outbound travels. Priority of second assessment at airports is given to individuals put on the no fly-list and those who have additional comments on the TECS record. Tamerlan did not have these additional comments or alerts.<sup>66</sup> The TECS system does not send e-mail notifications, and it lacks the ability to share information across intelligence agencies. Arguably, the lack of secondary screening of Tamerlan, was an essential failure to understanding his level of threat.

Additionally, Tamerlan's last name and date of birth were incorrect in the TECS report. Accordingly, the CBP officer failed to further screen Tamerlan on his departure to Russia. A secondary examination upon his return may have shown evidence of jihadist or extremist material,<sup>67</sup> which was not discovered due to the deficiency of the TECS system. It was unable to

capture discrepancies in spelling or dates. A different warning system could have resulted in the proper questioning and secondary examination of Tamerlan, which would have allowed for further understanding of Tamerlan's threat.<sup>68</sup>

*Systemic Failure to respond to public displays of radicalization:*

Another source of failure in the intelligence would be the lack of responding to public displays of radicalization to Tamerlan. After his trip to Russia, Tamerlan created a YouTube account and saved multiple Russian-language videos about Islam and videos supporting Jihad.<sup>69</sup> This was an indication of possible radicalization, as it occurred after his trip from Russia. These videos depicting terrorist Jihadists from the Dagestan region, arguably, display the likelihood that Tamerlan was inspired by their ideology and beliefs. Furthermore, a mosque Tamerlan occasionally attended mentioned he displayed signs of radicalization. However, this was only shared with authorities after the bombings.<sup>70</sup>

***Common Factors Towards Intelligence Failures & Legislative Changes***

**Factor #1: Incomplete investigations**

Incomplete intelligence investigations into the perpetrators of the attacks is cited as a common factor in all three cases under analysis. With regard to the intelligence cycle, this represents a failure in the *collection* of intelligence. For the Fort Hood attack, a more in-depth investigation of Hasan's communications would have led to further interviews which could have uncovered his radicalization. In the NW253 case, a more thorough investigation would have uncovered Abdulmutallab's US Visa, which should have been revoked. The NSA also did not use available opportunities to collect intelligence on Abdulmutallab that could have led to placing him on a watch list. It is also important to note that in both the Fort Hood attack and the NW253 incident, the assailants were both in contact with Anwar al-Awlaki, a known recruiter and motivator of AQAP. Further investigation into these connections may have revealed valuable intelligence regarding potential attacks. Finally, prior to the Boston Marathon bombings, there was not enough probing of Tamerlan's travels or lifestyle changes after travelling, and they did not have a record detailing who knew of his travels.

One of the recommendations provided by the House Homeland Security Committee Report for the report on the Boston Marathon bombings was that there should be improvements made (automation) to the TECS alert system.<sup>71</sup> Automatization would reduce the amount of human error surrounding the transfer of information between involved agencies.<sup>72</sup> Another potential policy recommendation is to create formal deadlines for investigation because, as per the Fort Hood attacks, the lack of formal deadline policies at the FBI backed up the investigation.<sup>73</sup> With strict deadlines, investigations would have to occur earlier, which could uncover intelligence relevant to attacks that could be prevented if found early enough. The implementation of these options could significantly aid future investigations, however fixing the system will not necessarily ensure that valuable information is not overlooked. We must recognize that there are two constraints on any effective action, resources and time. In hindsight, it is easy to point out which cases should have been priority, but without enough intelligence officers and time to assess all cases, doing so in real time is challenging.

## Factor #2: Failure to Respond to Radicalization

Another factor that contributed to the intelligence failure common among the three attacks was the failure to respond to overt displays of radicalization. While connected to the incomplete intelligence investigations (as it is related to the collection step in the intelligence cycle), this failure focuses specifically on public signs and indicators of radicalization. If this information was collected, then it is also a failure in the *analysis* section of the intelligence cycle. Hasan repeatedly demonstrated overt signs of radicalization through giving presentations regarding violent extremism, voicing his support for bin Laden and vocalizing other radical beliefs prior to the Fort Hood attack. Furthermore, Abdulmutallab's father came forward and told officials that his son had been radicalized and was willing to perform violent extremist attacks. The US embassy in Nigeria also sent reports that Abdulmutallab was connected to extremist groups, yet no action was taken to respond to this. Finally, Tamerlan Tsarnaev created a public YouTube account where he watched and saved multiple videos related to violent jihad within the Chechen region. However, after the Boston Marathon bombing occurred in 2013, the Mosque Tamerlan attended reported that Tamerlan had displayed radical beliefs.<sup>74</sup>

The Mosque's failure to report Tamerlan's radical beliefs illustrates the importance of generating public awareness on radicalization to violence and reporting suspicious behavioral patterns to the authorities such as having radically provoked conversations or showing the desire to travel abroad to fight, for instance. In 2010, the DHS launched a program called, "If You See Something, Say Something." However, after the Boston Marathon Bombing occurred, it was ineffective in getting public participation in the Tsarnaev brothers' identities.<sup>75</sup> Improvements on this program could help to reveal relevant information and identify persons of interest that intelligence agencies should monitor. Also, after ignoring Hasan's displays of radicalization, the military must focus efforts on recognizing the differences between peaceful observance of Islam and radicalized views.<sup>76</sup> This could be accomplished through more formalized training for members, or by providing a handout or pamphlet showing differences, but it must be addressed as it would have resulted in Hasan's discharge from the military.<sup>77</sup>

## Factor #3: Problems with Technological Systems and Training

The third factor that contributed to intelligence failure in each of the three cases was an absence of robust information technology systems or adequate training for those systems. Clearly, this is an issue with the information processing step of the intelligence cycle. In the Fort Hood case, the obsolete DWS system was not known to the WFO-TFO. Furthermore, the SD-JTTF improperly marked Awlaki's responses to Hasan "not a product of interest."<sup>78</sup> In the NW253 case, many officers were unfamiliar with the databases where important information on Abdulmutallab was stored. Moreover, these databases were fundamentally disjointed insofar that intelligence reports were scattered across different servers and the lack of a name variant search mechanism prevented hits to appear after Abdulmutallab's name was queried. Ultimately, this prevented the Abdulmutallab-Awlaki link from being detected. Finally, in the Boston Marathon case, Tamerlan Tsarnaev was not properly flagged in the TECS system, which lacked the ability to disseminate information across intelligence agencies or recognize discrepancies in spellings or dates.

To address this failure, the DCI's report on Fort Hood and NW253 suggests that the intelligence community "needs more efficient internal processes for locating, retrieving, and

disseminating terrorism-related intelligence that may be submerged in ‘the noise.’”<sup>79</sup> Such processes should include “more rapid sharing of reports, updating of dissemination lists, more rigorous visa checks, and all-source approaches to name tracing.”<sup>80</sup> In the short term, the Webster Commission recommends that enterprise data management projects be advanced, data integration and visualization systems be expanded, and DWS systems be modernized.<sup>81</sup> In the long term, the DCI report states that systems with more complex algorithms that allow “data [to] talk to data” may be able to automatically bring salient information “out of the noise.”<sup>82</sup> These should be created alongside the Technical Support Working Group; an inter-agency forum designed to coordinate technology development for combatting terrorism across the US government.<sup>83</sup> However, even if these advanced systems are developed, they will only address one half of the issue as analysts must also be aware that these systems exist and must be able to use them effectively. Thus, simple steps like training officers on FBI databases *before* they join JTTFs and re-certifying them afterward would help to reduce human errors in the future.<sup>84</sup>

#### Factor #4: Lack of information sharing

The fourth factor contributing to intelligence failure was an inability or an unwillingness of certain departments and agencies to share information. This is a problem that affects both the analysis and production phases of the intelligence cycle. In the Boston Marathon case, both the DNI and Committee reports concluded that lack of interdepartmental information sharing was one of the main reasons why the attacks were not foiled. This argument was primarily based on the facts that the Boston JTTF remained unaware of the FBI’s ongoing investigation into Tamerlan Tsarnaev before the bombing and that the Tsarnaevs’ travels to Russia were not reported to Customs, the Border Protection Office, the FBI’s counterterrorism unit, the Boston JTTF, or Russian authorities in a timely manner. Similarly, in the NW253 case, confusion among the agencies about roles, responsibilities, and procedures prevented Abdulmuttalab’s name from being added to watch-lists.

Certain post-9/11 reforms - such as the creation of the Department of Homeland Security and the DCI - were expressly designed to remove these types of barriers preventing information sharing, but clearly these measures were insufficient in the NW253 and Boston Marathon cases. *The Webster Commission* recommends the establishment of formal policies on “the counterterrorism command-and-control hierarchy” and “the ownership on counterterrorism leads” within the FBI.<sup>85</sup> The DCI report of Fort Hood and NW253 goes even further, recommending that the NCTC take the lead over the FBI “on all threats with the potential to reach US soil.”<sup>86</sup> Whatever the resolution, it is clear that ownership and reporting structures must be clarified and reinforced *across the intelligence network*.

#### Factor #5: Competition Amongst Agencies

A problem which was only raised by official reports for NW253 was interagency competition. The problem of competition addresses all level of failures (collection, evaluation and analysis, production, dissemination), since it’s more a general factor of failure, affecting every step of the investigation. The Intelligence Community Review Panel’s report considers that one of the factors of intelligence failure in the case of the NW253 is the competition between two similar agencies: the CTC and the NCTC.<sup>87</sup> As explained earlier, this might be due to the fact that both agencies have similar missions and that they “draw mainly on the same talent pool.”<sup>88</sup> Moreover, the uncertainty about who’s in charge of the threats to the homeland

may act as an aggravating factor.<sup>89</sup> The report further explains that interagency competition might damage the “creative energy” of each agency and could prevent the agencies from correctly identifying threats amongst the “noise.”<sup>90</sup> When agencies focus on the competition between them, it hampers their capacity to correctly do their job and to work cooperatively.

Despite the similarities between the CTC and the NCTC, the report does not recommend merging the two agencies, considering the fact that they both have different and relevant capacities.<sup>91</sup> On one hand, NCTC has a greater access to homeland data and has a better relationship with the FBI.<sup>92</sup> On the other hand, CTC focuses more on terrorists abroad, being a part of CIA’s expertise.<sup>93</sup> The recommendations of the report are to enhance leadership in both agencies and to focus on their respective “comparative advantages” in order to reduce the competition.<sup>94</sup> These vague recommendations are only accompanied by one concrete proposition: to increase the rotation of officers among both agencies.<sup>95</sup> No precise legislation addressed the issue of interagency competition. While the issue of interagency competition was not found in other cases, it is possible that lack of information sharing, which is present in other cases, is in fact due to competition amongst agencies.

### **Conclusion**

This paper finds that, despite the bureaucratic and legislative changes that were instituted after 9/11, five factors contributed to the intelligence failures that allowed the attacks to occur. Three of these factors - incomplete investigations into radicalized individuals, systemic failures to respond to public displays of radicalization, and issues with technical systems - were present in all of the cases. Two additional factors - lack of information sharing, and competition between governmental agencies - were also present, but not found in all three cases.

This paper also suggested potential policy responses to rectify factors that recur in the cases of intelligence failure. Most of these responses were aimed at improving automated systems and hastening investigations, educating the public on radicalization and counter-radicalization initiatives, making internal processes designed to extract terrorism-related intelligence from “the noise” more efficient, and clarifying the ownership of files within the command-and-control hierarchies of the US government. Recommendations related to the latter may include making the NCTC the *de facto* leader on all threats with the potential to reach US soil. This could also resolve the problem of competition between the NCTC and the CTC. By clearly identifying each agency’s role, the risk of responsibilities overlapping is reduced. Apart from that, since the issue of competition is unique to the NW253 case, not many recommendations have been made. Furthermore, it is worth noting that many factors that were present in these cases were also found in the 9/11 Commission Report. This raises the question of whether new policies need to be implemented to prevent the same causal factors from re-emerging in the future.

After this thorough analysis, one recommendation can be made. In order to make reports more effective, analysis should be conducted where causal factors of intelligence failure are looked at in comparison, as opposed to in isolation. One should look at cases of intelligence failures in comparison to one another, rather than studying each case separately, to ensure a more holistic understanding. This would allow the authorities to identify patterns of previous incidents and find solutions that would be relevant in the long term. It is inaccurate to say that all future

mistakes and failures will be similar or the same as past intelligence failures, however, it is essential to be aware of the recurring mistakes to begin a process of solution and perfection of the intelligence system. This will allow for the tactics and methods used to not become outdated, and a constant upgrade in the system is facilitated. Such an approach may be able to generate policy recommendations, which would prevent similar failures from occurring in the future.

## ANNEX

### *Annex A: Factors that led to intelligence failure in the case studies*

<b>Case</b>	<b>Incomplete Investigations Into Known Radicals</b>	<b>Systemic Failures to Respond to Public Displays of Radicalization</b>	<b>Issues with Technical Systems</b>	<b>Lack of Information Sharing within the Intelligence Community</b>	<b>Competition Between Intelligence Governmental Agencies</b>
Fort Hood (2009)	x	x	x		
NW253 (2009)	x	x	x	x	x
Boston Marathon (2013)	x	x	x	x	

<sup>1</sup> Erik J. Dahl, "Warning of Terror: Explaining the Failure of Intelligence Against Terrorism." *The Journal of Strategic Studies* 28, no. 1 (2005): pp.32.

<sup>2</sup> Dahl, 32.

<sup>3</sup> Mark M. Lowenthal, "The Burdensome Concept of Failure," in *Intelligence: Policy and Process*, ed. Alfred C. Maurer, Marion D. Tunstall, and James M. Keagle (Boulder, CO: Westview Press, 1985). pp.51.

<sup>4</sup> Gary J. Schmitt and Abram N. Shulsky, *Silent Warfare: Understanding the World of Intelligence*. (Washington, D.C.: Brassey's, 2002). pp.63.

<sup>5</sup> Darin L. Brockington, *Preventing Intelligence Failures in an Unpredictable 21st Century*. (Carlisle Barracks, PA: U.S. Army War College, 2012). pp.9.

<sup>6</sup> National Commission on Terrorist Attacks Upon the United States. *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*. New York: W.W. Norton & Company, 2004. <http://avalon.law.yale.edu/sept11/911Report.pdf>. pp. 254-77.

<sup>7</sup> National Commission on Terrorist Attacks Upon the United States, 260-3, 266-7 & 271.

<sup>8</sup> National Commission on Terrorist Attacks Upon the United States, 273-6.

<sup>9</sup> William H. Webster Commission. *"The Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas on November 5, 2009."* U.S. Government Printing Office.2012.

<sup>10</sup> <https://www.fbi.gov/news/pressrel/press-releases/final-report-of-the-william-h.-webster-commission>.pp. 1.

<sup>11</sup> "The Federal Bureau of Investigation, Counterterrorism Intelligence, and the Events at Fort Hood, Texas on November 5, 2009." U.S. Government Printing Office. 2012.

<sup>12</sup> Intelligence Community Review Panel. *Report to the Director of National Intelligence on the Fort Hood and Northwest Flight 253 Incidents*. USA, 15 April 2010.

<sup>13</sup> "A Ticking Time Bomb:" *Counterterrorism Lessons from the US Government Failure to Prevent the Fort Hood Attack*. Washington: U.S. Government Printing Office, 2011.

<sup>14</sup> William H. Webster Commission, 28

<sup>15</sup> William H. Webster Commission, 28-30

<sup>16</sup> William H. Webster Commission, 30;31.

<sup>17</sup> William H. Webster Commission, 33.

<sup>18</sup> United States Senate Committee on Homeland Security and Governmental Affairs pp.25.

<sup>19</sup> United States Senate Committee on Homeland Security and Governmental Affairs, 9.

<sup>20</sup> United States Senate Committee on Homeland Security and Governmental Affairs, 20.

<sup>21</sup> The Joint Terrorism Task Force is part of the FBI.

<sup>22</sup> United States Senate Committee on Homeland Security and Governmental Affairs, 34.

<sup>23</sup> William H. Webster Commission, 56.



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- <sup>23</sup>William H. Webster Commission, 80.
- <sup>24</sup>William H. Webster Commission, 57.
- <sup>25</sup>William H. Webster Commission, 82.
- <sup>26</sup>William H. Webster Commission, 82.
- <sup>27</sup>United States Senate Committee on Homeland Security and Governmental Affairs, 84.
- <sup>28</sup>William H. Webster Commission, 84.
- <sup>29</sup>Intelligence Community Review Panel, *Report to the Director of National Intelligence on the Fort Hood and Northwest Flight 253 Incidents*. USA, 15 April 2010. pp.18.
- <sup>30</sup>William H. Webster Commission, 58.
- <sup>31</sup>United States Senate Committee on Homeland Security and Governmental Affairs, 10.
- <sup>32</sup>William H. Webster Commission, 86.
- <sup>33</sup>William H. Webster Commission, 27.
- <sup>34</sup>William H. Webster Commission, 29.
- <sup>35</sup>William H. Webster Commission, 29.
- <sup>36</sup>William H. Webster Commission, 82.
- <sup>37</sup>William H. Webster Commission, 87.
- <sup>38</sup>William H. Webster Commission, 82.
- <sup>39</sup>William H. Webster Commission, 82.
- <sup>40</sup>Intelligence Community Review Panel, 18.
- <sup>41</sup>The Associated Press, "Terrorist Attack Foiled Aboard Detroit-bound Plane," OregonLive.com. Last modified December 25, 2009. <[http://www.oregonlive.com/news/index.ssf/2009/12/terrorist\\_attack\\_foiled\\_around.html](http://www.oregonlive.com/news/index.ssf/2009/12/terrorist_attack_foiled_around.html)>.
- <sup>42</sup>Intelligence Community Review Panel, 9.
- <sup>43</sup>Intelligence Community Review Panel, 9.
- <sup>44</sup>Intelligence Community Review Panel, 9.
- <sup>45</sup>Select Committee on Intelligence, United State Senate, and Additional Views. *Attempted Terrorist Attack on Northwest Airlines Flight 253*. Washington: U.S. Government Printing Office, 2010  
<http://www.intelligence.senate.gov/sites/default/files/publications/CRPT-111srt199.pdf>.
- <sup>46</sup>Intelligence Community Review Panel, 9.
- <sup>47</sup>Intelligence Community Review Panel, 7.
- <sup>48</sup>Select Committee on Intelligence, United State Senate, and Additional Views, 5.
- <sup>49</sup>Intelligence Community Review Panel, x.
- <sup>50</sup>Intelligence Community Review Panel, vii; 7.
- <sup>51</sup>Also referred to as Awlaki; Intelligence Community Review Panel, x.
- <sup>52</sup>Select Committee on Intelligence, United State Senate, and Additional Views, 4.
- <sup>53</sup>Intelligence Community Review Panel, viii.
- <sup>54</sup>Intelligence Community Review Panel, xii.
- <sup>55</sup>Select Committee on Intelligence, United State Senate, and Additional Views, 9; Intelligence Community Review Panel, 31.
- <sup>56</sup>House Homeland Security Committee Report, *The Road to Boston: Counterterrorism Challenges and Lessons from the Marathon Bombings*. Washington: U.S. Government Printing Office, 2014  
<https://homeland.house.gov/files/documents/Boston-Bombings-Report.pdf>. pp. 1 and 17.
- <sup>57</sup>House Homeland Security Committee Report, 1; 17.
- <sup>58</sup>Inspectors General for the Intelligence Community, Central Intelligence Agency, Department of Justice, and Department of Homeland Security, *Unclassified Summary of Information Handling and Sharing Prior to the April 15, 2013 Boston Marathon Bombings*, 2014 <http://www.dni.gov/index.php/newsroom/reports-and-publications/204-reports-publications-2014/1042-unclassified-summary-of-information-handling-and-sharing-prior-to-the-april-15,-2013-boston-marathon-bombings>. pp. 21.
- <sup>59</sup>House Homeland Security Committee Report, 11.
- <sup>60</sup>House Homeland Security Committee Report, 12.
- <sup>61</sup>House Homeland Security Committee Report, 23.
- <sup>62</sup>House Homeland Security Committee Report, 29.
- <sup>63</sup>House Homeland Security Committee Report, 8.
- <sup>64</sup>Inspectors General for the Intelligence Community, 22.
- <sup>65</sup>Inspectors General for the Intelligence Community, 22.
- <sup>66</sup>Inspectors General for the Intelligence Community, 30.

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- <sup>67</sup>House Homeland Security Committee Report, 34.  
<sup>68</sup>House Homeland Security Committee Report, 30.  
<sup>69</sup>House Homeland Security Committee Report, 15.  
<sup>70</sup>House Homeland Security Committee Report, 16.  
<sup>71</sup>House Homeland Security Committee Report, 32.  
<sup>72</sup>House Homeland Security Committee Report, 32.  
<sup>73</sup>William H. Webster Commission, 85.  
<sup>74</sup>Homeland Security Committee Report, 16.  
<sup>75</sup>Homeland Security Committee Report, 36.  
<sup>76</sup>United States Senate Committee on Homeland Security and Governmental Affairs, 48.  
<sup>77</sup>United States Senate Committee on Homeland Security and Governmental Affairs, 48.  
<sup>78</sup>William H. Webster Commission, 87.  
<sup>79</sup>Intelligence Community Review Panel, viii.  
<sup>80</sup>Intelligence Community Review Panel, viii.  
<sup>81</sup>William H. Webster Commission, 141-2.  
<sup>82</sup>Intelligence Community Review Panel, xi.  
<sup>83</sup>United States Department of State."Programs and Initiatives."United States Department of State.Accessed November 28, 2015. <http://www.state.gov/j/ct/programs/index.htm#CVE>.  
<sup>84</sup>William H. Webster Commission, 154.  
<sup>85</sup>William H. Webster Commission, 136.  
<sup>86</sup>Intelligence Community Review Panel, viii.  
<sup>87</sup>Intelligence Community Review Panel, xii.  
<sup>88</sup>Intelligence Community Review Panel, xii.  
<sup>89</sup>Intelligence Community Review Panel, xii.  
<sup>90</sup>Intelligence Community Review Panel, xii.  
<sup>91</sup>Intelligence Community Review Panel, xiii.  
<sup>92</sup>Intelligence Community Review Panel, xiii.  
<sup>93</sup>Intelligence Community Review Panel, xiii.  
<sup>94</sup>Intelligence Community Review Panel, xiii.  
<sup>95</sup>Intelligence Community Review Panel, xiii.