

COUNCIL OF COUNCILS

An Initiative of the Council on Foreign Relations



The 2014 Council of Councils Annual Conference *Panelist Papers*

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Session One

Humanitarian Intervention Since Rwanda



Panelist Paper: Humanitarian Intervention Since Rwanda

Council of Councils Annual Conference
May 11-13, 2014
Council on Foreign Relations, Washington, DC

Fred Aja Agwu, Nigerian Institute of International Affairs (NIIA)

In academic literature, humanitarian intervention has been established as intervention to prevent or protect the principles of humanity from being unlawfully violated.¹ Traditionally humanitarian intervention is known to be an inuring right that could be arbitrarily exploited by every sovereign state in customary international law, if citizens were distressed at a level that passed the norm of shock-the-conscience test in the jurisdiction of another sovereign that was either complicit or incapable of controlling the situation.² This right of humanitarian intervention has, since the emergence of the United Nations, denied the sovereign state acting unilaterally.

Now, humanitarian intervention in the positivist international law of the United Nations (UN) system is a general community (Chapter VII of the Charter) or regional (Chapter VIII of the Charter on regional arrangements) prerogative of the members of the United Nations if there is a breach of international law that the United Nations Security Council determines to warrant intervention, especially if the following conditions exist: 1) an immediate and extensive threat to fundamental human rights or humanitarian principles; 2) proportionate use of force by the authorizing and legitimate authority (the UN) that does not threaten a greater destruction of the values at stake; 3) a minimal effect on the authority structures of the state to be intervened in; 4) a prompt disengagement of the intervention immediately when there is the restoration of the status quo ante; and 5) an immediate accountability to the authorizing body like the UN or regional organization.³

At the 68th General Assembly of the United Nations on September 24, 2013, President Barack Obama affirmed these principles of humanitarian and collective community's intervention when he stated that:

...there will be times when the breakdown of societies is so great, and the violence against civilians so substantial, that the international community will be called upon to act. This will require new thinking and some very tough choices. While the UN was designed to prevent wars between states, increasingly, we face the challenge of preventing slaughter within states. And these challenges will grow more as we are confronted with states that are fragile or failing—places where horrendous violence can put innocent men, women and children at risk, with no hope of protection from the national institutions.⁴

Whether conducted by the United Nations itself or by a regional organization like the Economic Community of West African States (ECOWAS), the task of authorizing or approving humanitarian intervention is with the United Nations Security Council, acting under Chapter VII of the Charter. This has been the case in the Korean conflict (North versus South Korea), the Congo crisis, the eviction of Iraq from Kuwait, and the Balkan war. However, the problem with the United Nations approach to humanitarian intervention over the years lies with its use of

peacekeeping forces rather than a de jure enforcement action, as provided for in the UN Charter. Meanwhile, a peacekeeping operation has this unfortunate characteristic of being bestowed with an ambiguous mandate that stultifies rather than robustly effectuating the humanitarian intervention.

Added to the foregoing is the habitual paralysis of the UN Security Council, first by the Cold War, and after the end of the Cold War by self or national interests.⁵ The result is that the United Nations Security Council dithers or wrings its fingers while the house is burning. In doing this, the Council often resorts to a dubious or political implementation of the regional arrangement by way of, for instance (in Africa), the “African Solution to African Problems,” when African countries neither have the resources or logistics to mount humanitarian interventions.⁶ Sometimes, as a result of the inaction in the Security Council, powerful nations like the United States tend to move ahead of the posse to act arbitrarily, thus, getting embroiled in an unanticipated “mission creep” or mess, like the “Somali Syndrome,” in which it lost some Rangers in 1993.⁷

The situation since Rwanda

When in 1994 the Interhamwe struck in Rwanda, killing about 800,000 Tutsis and some moderate Hutus, countries like the United States were still scared by the scar of the Somali Syndrome, while the same UN Security Council’s inaction prevailed.⁸ This forced the abandonment of the humanitarian intervention to the Belgian forces (a peacekeeping operation) that were already on ground, but which had to withdraw when their interest was threatened, abandoning their responsibility to protect the people.⁹ The behavior of the Belgian government during the Rwandan genocide was a clear indication that the United Nations is a mere abstract entity. And further, that the organization is only an expression of the concrete political will of sovereign states, which are bound to act according to their national interests.¹⁰

The basic lesson that the international community learned after Rwanda was embodied in the declaration “never again, not on our watch.” This animated (at the challenge of the then United Nations secretary-general, Kofi Annan) the Canadian government and some renowned foundations to announce the establishment of the International Commission on Intervention and State Sovereignty (ICISS) in the UN General Assembly, as well as a mandate to help find a common ground on humanitarian intervention, now rechristened the “Responsibility to Protect” (R2P).¹¹ A major contribution to humanitarian intervention by the ICISS’s R2P since Rwanda is the expansion of this responsibility; the addition of the civilian component that is inherent in civil society sharing the responsibility with states, acting in concert in the United Nations.¹² In other words, apart from military intervention, there is now an added responsibility of civil society groups, drawing the attention of policy makers to the need to preserve the principles of humanity by generating effective strategies to forestall the abuses by the concerned authorities.¹³

Unfortunately, not much has been gained from the lessons of Rwanda, conceptually and pragmatically. I say this because since Rwanda, the principles of humanity are still abused in many parts of the world, from the Darfur region of Sudan to the now civil conflict-wracked independent South Sudan, Syria, the Central African Republic, and even Libya. In Libya, perhaps, in an attempt to stem the misery in Misrata and other parts of the country under Muammar Gaddafi where the civilian population was beleaguered, the United Nations overreached itself by getting involved in regime change. In Syria, the interests of the hegemonic powers, particularly the United States and Russia, had supervened. The Central African Republic has been torn apart by the rift between Christians and Muslims and now appears to have been abandoned by the international community in the lurch. The murders in Bentui (South Sudan) are enough shock on the conscience of humanity, but the machinery of humanitarian intervention is yet to be activated by the United Nations. The Democratic Republic of the Congo is already an old soup, but no one is stirring. All the violations of humanity by despotic regimes across the globe seem to be happening under the nose of the United Nations that should ordinarily be concerned.

Recommendations

- The United Nations Security Council permanent members should set aside narrow national interests in order to stem the paralysis of the Council at critical moments that humanitarian intervention is needed.
- Peacekeeping forces should be replaced with enforcement actions under Chapter VII of the Charter if the objective goals of humanitarian intervention must be realized.
- The civilian or non-military component of the Responsibility to Protect must be accentuated as a pre-emptive measure against the various abuses of humanity.
- In the event of the persistence of divisions by the national interest of the United Nations Security Council, there should be established, a post-positivist framework for mobilizing for humanitarian intervention.
- Good governance should be encouraged in the developing countries, particularly in Africa, in order to stem the obnoxious trend of marginalization and stigmatization in the catching-up syndrome that is those countries' colonial legacy; and there should be generally a proactive approach to humanitarian intervention.

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1. See Fred Aja Agwu (2005); *United Nations System, State Practice and the Jurisprudence of the Use of Force*, Lagos, Malthouse Press Limited, pp. 22- 23.
 2. Loc. Cit.
 3. Loc. Cit.
 4. President Barack Obama at the 68th United Nations General Assembly, September 24, 2013.
 5. See Fred Aja Agwu (2009); *National Interest, International Law and Our Shared Destiny*, Ibadan, Spectrum Books Limited, pp. 438- 454.
 6. Ibid, pp. 427- 428; Fred Aja Agwu (2011); *The Law of Armed Conflict and African Wars*, Lagos, Ibadan, Macmillan Nigeria, pp. 344- 350; and Fred Aja Agwu (2007), *World Peace through World Law: The Dilemma of the United Nations Security Council*, Ibadan, University Press Plc, p. 149.
 7. See Fred Aja Agwu (2009), *National Interest, International Law...*, p. 452, op. cit; Fred Aja Agwu (2007), *World Peace through World Law ...*, p. 150, op. cit.
 8. See Fred Aja Agwu (2011), *The Law of Armed Conflict...*, pp. 242- 245, op. cit.
 9. Ibid, pp. 240- 245.
 10. See Thomas M. Franck (1985); *Nations Against Nations: What Happened to the UN Dream and what the US can do about it*, New York and Oxford, Oxford University Press, pp. 242- 243.
 11. See Fred Aja Agwu (2009), *National Interest, International Law...*, pp. 374- 378, op. cit.
 12. Ibid, p. 373.



Panelist Paper: The Future of R2P Military Interventions

Council of Councils Annual Conference

May 11-13, 2014

Council on Foreign Relations, Washington, DC

Michael Fullilove and Marty Harris, Lowy Institute for International Policy

Former Australian foreign minister Gareth Evans recently asked whether the “responsibility to protect” (R2P) norm was experiencing a mid-life crisis. There is of course another option: that R2P is coming to the end of its effective life.

From its conception in 2001 (through the International Commission on Intervention and State Sovereignty; of which Evans was a co-chair) through to the UN Security Council-backed intervention in Libya, R2P seemed to be on the up-and-up. At the 2005 World Summit, the largest-ever assembly of UN heads of state and government unanimously adopted R2P. In 2011, the Security Council invoked R2P for the first time when authorizing the use of force: first in Libya via UN Security Council resolution (UNSCR) 1973 and then in Cote d’Ivoire via UNSCR 1975. This represents the zenith of R2P’s trajectory—in one case, Western forces imposed a no fly zone over Libya, helping to protect the civilians of Cyrenaica and eventually assisting in the overthrow of Muammar al-Qaddafi; in the other, UN peacekeepers used “all necessary means” to protect civilians in the violence that raged after a disputed election.

The BRICS states objected strongly to the outcome in Libya, arguing that Western forces had exceeded the Security Council mandate by pursuing regime change. This, in addition to the chaotic outcome of the conflict and the current instability in Libya has fostered disillusionment with R2P. The BRICS, wounded by the outcome in Libya, have backtracked from the R2P doctrine that they, along with the rest of the UN General Assembly, endorsed in 2005. This retraction extends partly from opposition to the way the Libyan intervention turned out (Western-backed regime change) and partly from a conflict between R2P and the norms of state sovereignty and non-interference.

The dispute relates mainly to military interventions which invoke R2P. The two other pillars of the norm—that states have the primary responsibility to protect their populations from genocide, crimes against humanity, war crimes and ethnic cleansing; and that the international community has a responsibility to assist states in fulfilling this role—are not really in dispute. In fact, since the Libya intervention, the Security Council has endorsed about a dozen other resolutions referring directly to R2P.

Syria, in many senses, is a textbook example of where the third pillar of R2P would apply: the Syrian government is unable to prevent (or is complicit in) war crimes or crimes against humanity against its own people. More than one hundred thousand people have been killed, millions of Syrians are seeking refuge in neighboring countries or are internally displaced, and there have been a number of incidents of large scale killing of civilians (the Houla massacre and the chemical weapons attack in the outskirts of Damascus are two prominent examples). Due in part to the aftermath of Libya and the geopolitical considerations of some Security Council members, R2P has not been invoked as a cause for military intervention in Syria. And, when the Security Council agreed on the Framework for the Elimination of Syrian Chemical Weapons (in UNSCR 2118), it did not invoke R2P.

R2P is now held hostage by the geopolitical considerations of individual Security Council members, and the Syrian case in particular underscores the difficulty of reconciling humanitarian ideals with geopolitical concerns. Currently, with the Security Council in a Cold War–like mindset, R2P military interventions are only really possible in areas that are less heavily contested (i.e. Africa).

One option would be to endorse the Brazilian proposal of “responsibility while protecting” (RWP) as means to enhance R2P. RWP has two basic tenants:

- First, there should be a set of prudential criteria to be fully debated and taken into account before the Security Council mandates any use of military force;
- Second, there should be some kind of enhanced monitoring which would enable such mandates to be seriously debated by all council members during their implementation phase, with a view to ensuring so far as possible that consensus is maintained throughout the course of an operation.

In essence, the Brazilian proposal seeks to strengthen the first two pillars of R2P, while seeking to enable Security Council members to better monitor and influence any military operation carried out under the third pillar.

There are a number of problems with this proposal. For one thing, the requirements imposed by RWP would slow down the process, and often in these cases a delayed intervention can mean appalling loss of life. For another, the Brazilian concept note on RWP stipulates that in order for collective military action to be taken, a situation must be “characterized as a threat to international peace and security,” rather than “simply” a regime perpetrating crimes against humanity against its own population. Indeed, the Brazilian RWP proposal will further impede any military interventions under R2P. This is not a sign of the strength of R2P; instead it is a sign of its weakness.

Unless things turn around for R2P, then we are back to the old kind of interventions, whether by a single state or some sort of coalition, without Security Council backing. NATO’s intervention in Kosovo in 1999 is a good example of this. This raises a whole set of accountability and international legal problems, but what else could be done? If the United States has credible evidence that an actor is about to carry out a chemical weapons attack, and knows it will not get support from the Security Council, how is it moral to say that it should not act?

Of course, this kind of intervention still requires a country that has an appetite for it, which the United States currently does not. Indeed there is a palpable war-weariness gripping the United States, verging on a new isolationism. And as was the case in the lead up to the Second World War, congressional Republicans seem at least as opposed to muscular U.S. action abroad as are Democrats. When President Barack Obama was pressing for congressional support for a strike against the Syrian regime, he found many Republicans unenthusiastic.

According to some recent surveys, for the first time in fifty years, more than half of Americans believe their country should “mind its own business internationally and let other countries get along the best they can on their own.” And eight in ten Americans agree that the United States “should not think so much in international terms,” but rather concentrate on problems at home.

Most concerning, the country that seems to have the greatest interest in interventions beyond its borders is Russia. And while it invokes R2P-style rhetoric—stating that its intervention in Ukraine is about the “protection of the most fundamental of the human rights”—it does not seek the approval of the Security Council.

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Session Two

The Future of Internet Governance



Panelist Paper: The Future of Internet Governance

Council of Councils Annual Conference

May 11-13, 2014

Council on Foreign Relations, Washington, DC

Thomas Gomart, French Institute of International Relations (IFRI)

It is often said that the Internet has become the nervous system of the international system. There are few examples of a technological rupture that has so deeply transformed ways of living in so short period of time. To be convinced, recall just the recent past in which you had neither Internet access nor smart phones. The Internet is now a global system connecting roughly 2.5 billion people. Over the course of the last three decades—since the implementation of the Transmission Control Protocol/Internet Protocol (TCP/IP) started in January 1983—a space has emerged, coined as cyberspace, from the Internet that transcends traditional boundaries of territorial geography and social identity. Its early settlers proclaimed themselves as strongly independent and promoted a culture of openness and sharing. Feeling the first attempts to regulate, one of them, John Perry Barlow, famously edited “A Declaration of the Independence of Cyberspace,” in which he addressed “governments of the Industrial World” by asserting “you have no sovereignty where we gather...Cyberspace does not lie within your borders.” It was written eighteen years ago. Today, it seems another world.

Governments clearly intend to regulate cyberspace, despite the fact that the success of the Internet has certainly been a function of its intrinsically decentralized nature. Numerous barriers have been erected by various state and nonstate actors to prevent the free flow of data and information across borders. Cyberspace is no longer an independent and unique space. In addition, the Internet governance ecosystem has become both complex and fast-moving; it includes governments, private sector, civil society, technical community, and academia from all over the world on a supposedly equal footing. The recent NETmundial meeting in Sao Paulo, which occurred in April 2014, has been one of many milestones to promote “an inclusive, multistakeholder, effective, legitimate, and evolving Internet governance framework.” The Internet has been presented as “a global resource which should be managed in the public interest.”

In terms of governance, the crucial word is certainly “resource,” given the fact that there is no power without resources, and that a resource should be activated by a power, not to remain at the stage of potential. For international relations specialists, “resource” relates to issues of access, control, and competition. Conceptualizing the Internet as a “global resource” reflects a particular understanding of its governance. It is a way to focus namely on the infrastructure that should be regulated, and consequently controlled by some actors at the expense of others. Such a focus may be misleading. Not only an infrastructure, the Internet permits the creation of an unlimited set of transnational rules based on social interactions and uses through the web and its applications. Conceptualizing the Internet as a “global resource” leads to the extension of national sovereignty into cyberspace. Many initiatives and achievements are pushing for a more state-centric system of governance, which would destroy an open, global, and secure Internet. Many actors fear the involvement of governments in cyberspace considering that the success of the Internet was based on self-regulation, private sector leadership, and bottom-up processes.

U.S. fundamental ambivalences

Born in the second half of the 1960s, the Internet culture was initially ambivalent, fueled by the military science that developed the Advanced Research Projects Agency Network (ARPANET) and by the protest movement against the Vietnam War. From the outset, the Internet culture has been confined to a counterculture, and related to U.S. government-funded research and development. Today, it promotes freedoms of expression, association, and organization as its most critical components.

In terms of policy discourse, “Internet freedom” has been one driver of U.S. foreign policy since 2008. In May 2009, Hillary Clinton unveiled her Twenty-First Century Statecraft program heralding outreach beyond the traditional interstate relations and the coming of a new era of communications between states and individuals, and within communities of individuals. In January 2010, she urged the disbandment of all types of “digital borders” in order to avoid the emergence of an information iron curtain. At the same time, and for many years prior, the National Security Agency (NSA) was collecting and using metadata and was accountable to no one for its spying activities.

In June 2013, U.S. moral leadership on Internet governance was destroyed by Edward Snowden’s revelations about the PRISM surveillance program to worldwide public opinions. Apparently, PRISM is only one of many components of Washington’s large-scale cyber surveillance, not only on U.S. soil, but mainly abroad. For many years, the U.S. government has claimed to be the ultimate protector of civil liberties at home and of an open and global Internet. Snowden’s revelations dramatically annihilated this idea.

Policy issue: The future of Internet governance will primarily depend on the U.S. global cyber policy. According to the Council on Foreign Relations, this policy should be based on four main pillars: alliances, trade, governance, and security. Regarding the first pillar, what “close friends and partners” should the United States work with, and to what extent is the U.S. government ready to take into consideration their respective views and interests?

Geography of positions

The threat of a Balkanized Internet has come from programs led by numerous and authoritarian regimes to build up national system of control to the global Internet. It should be added that big Internet private actors largely contribute to the Balkanization of the Internet as well. To varying degrees, countries such as Russia, China, Iran, Pakistan, Saudi Arabia, Algeria, and Sudan are firmly pushing for a state-centric system at home and for international regulation within the United Nations. Their views were expressed in Dubai in December 2012 at the International Telecommunications Union (ITU) World Conference. The multistakeholder approach has clearly been targeted by these countries, which are reluctant to trust their own civil societies. In this grouping, China and Russia have played a leading role by noting that the Internet is becoming more international and less Western-oriented. However, over the last decade, both countries did not have similar Internet policies. Russia sought to blur the lines between Internet governance and cybersecurity. One of its objectives has always been to establish an exclusive bilateral dialogue with the United States on Internet-related issues (as it has done on nuclear-related issues). An agreement between both countries was concluded in June 2013. There is also an agreement between the United States and China.

In this debate about Internet governance, the European Union (EU) remained largely silent until Snowden’s revelations. Subsequently, debate has flourished and topics such as “digital sovereignty” or “digital colony” have become more salient in major European capitals, especially in Berlin. Prior to the Snowden leaks, European policymakers mainly approached Internet governance with a commercial point of view. They raised serious concerns about the U.S. government accessing the data of European citizens kept by the servers of U.S. companies, which dominate in cyberspace. Europeans and Americans negotiated over intellectual property rights, standards of “net neutrality.” The problem is that the Snowden case has humiliated Europe (like the grounding of Evo Morales’ plane in 2013), and coincided with the official outset of U.S.-EU negotiations on Transatlantic Trade and Investments Partnership (TTIP).

In this regard, two countries deserve special attention: Germany and Brazil. Having been personally taped, Angela Merkel and Dilma Rousseff were the most vocal political leaders to blame the U.S. authorities for their behavior. Angela Merkel has encouraged a public debate on this issue, and has proposed to think about a “European Internet.” Dilma Rousseff initiated the NETmundial in Sao Paulo to challenge the *status quo*.

Policy issue: The future of Internet governance will depend on countries like China, Russia, Saudi Arabia, or Iran to control access to the Internet for their citizens as a measure of political control. The position of countries such as India (where there is an articulate netizen middle class, a powerful information technology industry) is critical and should be observed carefully in the coming months given the fact that there is no clarity whether it favors a multilateral or a multistakeholder system. Its decisions will impact the global balance.

It is apparent that the future of Internet governance can only lie at the crossroads of opposite visions of governance: taking into account the evolving, re-dimensioned role of nation-states, the increasingly important role of the private sector, and the complexities hidden behind a too-generic civil society label.

Beyond states

Since the Tunis Agenda for the Information Society in 2005, and more recently the World Conference on International Telecommunications in Dubai in 2012, the debate over Internet governance has mainly been focused on the role of states. In March 2014, the United States announced that, by September 2015, it would give up oversight of the Internet Corporation for Assigned Names and Numbers (ICANN). Apparently, the political purpose is to internationalize the Internet Assigned Numbers Authority (IANA) function and to prevent it from being controlled by any other country in the future. Bodies like ICANN will increasingly become central in the future Internet governance and should be challenged about their ways of functioning.

However, the main challenge is elsewhere. It is the type of relationship that the U.S. government (and to a lesser extent other national governments) has with major Internet companies. The real consequence of Snowden’s disclosures was to point out the collusion between these companies and the NSA. Indeed, much data was obtained through cooperation with search companies, social networks, and interface cable producers that had originally held the promise of personal emancipation and democratization. This idea has been killed by Snowden’s revelations. Behind-the-scenes agreements between U.S. intelligence agencies and these monopolistic companies constitute the most challenging issue in terms of global governance.

In addition, it is likely that intelligence agencies in both authoritarian and democratic countries will portray the deluge of digital information, hacking, or deception as the primary transnational threat; after September 11, this threat was manifest by international terrorism. The Snowden case has provoked a paradigm shift in terms of threat perception by state and nonstate actors. There is no consistent convergence anymore on the real threats faced by democratic societies.

Policy issue: The two most sensitive actors in terms of Internet governance are large corporate Internet actors and intelligence communities. Their respective links with national authorities should be questioned. What could be the appropriate framework to do so?



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Marília Maciel, Getulio Vargas Foundation (FGV)

What are the strengths and weaknesses of the existing system of Internet governance (including the role of ICANN)?

States have played a leading role in most international regimes, creating institutional arrangements characterized by hierarchy and clear procedures. In Internet governance, nongovernmental actors played a crucial role, which is a reflection of their early involvement in the development of the Internet. This distinguishing characteristic engendered flexible and distributed governance arrangements, based on a “web of relationships.”¹ It is a regime complex composed by loosely coupled sets of regimes.²

The fact that governments were latecomers was a feature, not a flaw. The lack of regulatory and institutional moorings allowed the fast development of the Internet. In addition, certain values that were dominant in the technical community, such as the universality, openness, and decentralization of the network, were embedded in Internet architecture. These characteristics are important for promoting innovation and fostering social and economic integration across borders. Nevertheless, as the Internet grows and becomes the primary environment for all forms of human interaction, contradictory policy options naturally emerge, reflecting the diversity of interests in society. Increased complexity and politicization put pressure on informal and distributed governance arrangements and give strength to calls for institutional improvement.

Several arguments are presented as “weaknesses” which justify the reform of Internet governance:³ (1) issues of representativeness and inclusion; (2) imbalances of power, especially among countries. The most prominent example is the unilateral control of the United States over the root zone file, which is a fundamental aspect of the domain name system, through a contractual relationship with ICANN; (3) the understanding that distributed governance and lack of agreed procedure lead to opaque governance, which is prone to be captured by the most powerful actors; (4) lack of adequate institutional spaces to deal with some policy areas which are increasingly transnational, such as security and consumers’ rights.

What are the potential dangers or benefits of increasing the role of the International Telecommunications Union (ITU)?

First of all, it is important to emphasize that the International Telecommunications Union has a very important role to play in the Internet governance regime. It develops the harmonization of standards and it fosters the development of infrastructure that is necessary for digital inclusion. The resources and the political support for ITU’s activities should be increased, so the organization can adequately deal with issues under its mandate. It is possible to notice, however, a worrying trend to broaden the scope of ITU’s mandate in order for it to encompass security issues and public policies related to the Internet.

For several years, countries like Russia and China have tried to introduce issues related to security of ITU's outcome documents. During the last World Conference on International Telecommunications (WCIT), in Dubai, many developing countries supported the inclusion of issues related to Internet governance in the International Telecommunications Regulations (ITRs), a treaty under negotiation. This proposal was not successful, but WCIT revealed that there is a rift between different perspectives relating to the evolution of the Internet governance institutional architecture.

The pressure to include Internet governance in the agenda of existing organizations—especially ITU—is a reflex of the fact that there has been little advancement on the implementation of enhanced cooperation (paragraph sixty-nine of WSIS Tunis Agenda) “to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet.”⁴ Some governments and nongovernmental actors believe that an intergovernmental body (existing or to be created) should be responsible for developing public policies, while other actors believe that enhanced cooperation means better communication and synergy among existing organizations. If no understanding is reached and if negotiations about enhanced cooperation remain stalled, it is likely that the pressure to broaden the mandate of ITU will continue.

How did the recent Internet Stakeholder meeting in Brazil affect the global conversations on Internet governance?

The Global Multistakeholder Meeting on the Future of Internet Governance (NETmundial) was convened by the government of Brazil on April 23-24. The fact that a developing country took the lead on these discussions is a symptom of the power shifting that is taking place in the regime after the Snowden revelations. More specifically, the fact that the meeting took place in Brazil reflects the political capital the country has gathered in recent years in Internet related discussions. This is a consequence of many facts, such as the country's early involvement in global Internet processes, of the recent approval of the Civil Rights Framework for the Internet (Marco Civil) and of the existence of a national multistakeholder structure for Internet governance. Moreover, the country was able to develop partnerships with various actors from both the developed and developing world on issues related to the Internet.

Brazil fostered the debate about Internet governance, introduced a resolution on Internet privacy in partnership with Germany in the UN and engaged in conversations with ICANN to hold NETmundial. There are few countries with such a diverse group of partners.

The agenda of NETmundial covered two main points. The first was the identification of universally acceptable principles related to the functioning of the Internet and related to Internet governance. The second topic was a roadmap for the evolution of institutional architecture. This discussion focused on the governance domain names and IP numbers and the process for the development of global public policy issues related to the Internet. One of the main issues is the unilateral oversight of the U.S. government over the root zone file on which the domain name system depends. Recently, the United States announced that it would be willing to transfer the oversight, under some conditions, including that the new responsible group should be a multistakeholder community rather than an international body.

When it comes to public policy issues, there is a wide range of opinions. Some actors like Russia, India, some Arabian countries, and part of civil society would like to create a body under the UN that would be responsible to develop policies for the Internet. Others, such as European countries, the United States and the vast majority of civil society believe that the distributed model of Internet governance should be preserved, even if there is need for coordination among Internet governance institutions. Some important achievements were made at the NETmundial, such as the recognition of the Internet as a global resource that should be managed according to the public interest. In the roadmap section, great emphasis was put on increasing transparency, accountability, effectiveness and globalization of institutions. A distributed model was endorsed at the same time that it was recognized that the roles and responsibilities of actors are different and need to be clarified.

The outcome document of NETmundial will be as relevant as actors decide them to be.⁵ If the ideas contained in the document are good and useful, they will be taken forward to other forums and upcoming meetings, serving as tool to influence the World Summit on the Information Society review process.

How have the NSA revelations changed national and private sector attitudes toward international governance of the Internet?

Among governments, the perception that there are not sufficient mechanisms to deal with themes related to the Internet was strengthened after revelations of mass surveillance of communications. At the opening of the 68th Session of the United Nations General Assembly, the Brazilian president, Dilma Rousseff, defined it as "a breach of international law" and a "grave violation of human rights and civil liberties."⁶ The president also mentioned the need to develop a framework for the governance and use of the Internet.

The flourishing of the Internet has always been built on trust, especially regarding the services provided by private actors. Allegations of the participation of major companies, such as Google, Apple, and Microsoft, in mass surveillance have engendered a scenario of eroded trust. If this is coupled with failure to solve the deadlock on the debate of institutional frameworks, this could mean greater incentives to pursue national solutions. As acknowledged by the Internet Society in their request for changes to the current U.S. National Security Agency surveillance practices, "fragmentation of the Internet is a very real risk."⁷

Moreover, the revelations shifted the balance in discussions over Internet governance. The United States lost its moral high ground and its position as a leader has been challenged. This has served as catalyst for long-awaited changes. For instance, actors that were reluctant to publicly put into question the unilateral oversight of the United States are now willing to start concrete discussions about it. Leaders of organizations responsible for coordination of the Internet technical aspects called for the acceleration of the globalization of ICANN and IANA functions in the Montevideo Statement on the Future of Internet Cooperation.⁸ Recently, the National Telecommunications & Information Agency (NTIA) has announced its willingness to transfer its stewardship over the IANA functions.

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Panelist Paper: The Future of Internet Governance

Council of Councils Annual Conference

May 11-13, 2014

Council on Foreign Relations, Washington, DC

Samir Saran, Observer Research Foundation (ORF)

The global discourse on surveillance and cyber espionage has redefined the perceptions surrounding the use of the Internet. The digital global commons are now suspended between being a medium of contest between nations and a source of the benefits of interconnectedness. The idea of a “global village” has thus far been undermined by the inability of nations and communities to agree to an “international digital treaty”. The creation and functioning of a global digital marketplace has been stalled by the lack of universally accepted norms and laws.

Several dimensions are critical to consideration of any global or domestic policy arrangement on Internet governance. Firstly, understanding the interaction between development and security is imperative to discerning how a vibrant digital society will govern itself. This debate incorporates how we create policies and conditions that would allow for the rapid development and spread of cyber infrastructure in the country. How we could develop tariff and cost regimes that would allow and encourage people to connect to and with the networks this infrastructure creates. And how, given the variety of social and economic activities we seek to conduct over the medium, the nature and form of regulation and security that must align these networks.

The debate surrounding development and security also considers the process of reconciling sovereign constitutional positions on issues such as freedom of expression, free speech, political jurisdiction, as well as state capacity and intervention, to arrive at a formulation that works across a medium that is not restricted by territoriality and borders.

Secondly, Internet governance may be increasingly informed by a lack of ‘universalism’. We may face the prospect of the digital sphere being railroaded down a path chosen by only a few powers. The major powers – the United States, Russia, China, and the European Union – are all engaging and negotiating the ‘rules of the road’ with each other and with a larger group of nations. The relative success of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Free Trade Agreements (FTAs) over a global trading arrangement, and the predominance of the arms control architecture of the twentieth century devised by the United States and Soviet Union, are all indicative of how a future Internet governance arrangement may emerge. Will it be an arrangement shaped by the conversations among the ‘Big Three’ (Russia, China, and the United States), or will it be relatively more inclusive and take into account perspectives from a larger set of countries? Will there be a gridlock or will these countries manage to agree to sets of norms that will allow the Internet to remain a global commons?

This discussion on global governance leads us to the third meta-narrative engaging most thinkers and practitioners today: who should engage on the subject and with whom? Unlike arms control treaties such as the Strategic Arms Limitation Treaties and the Non-proliferation Treaty (NPT), or trade treaties and organizations such as the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), or international treaties in force or being negotiated such as the United Nations Convention on the Law of the Sea (UNCLOS) or the International Code for Outer Space Activities, the Internet involves and affects individuals more than it does states. Each one of us is a contributor and beneficiary; each one of our actions has the ability to influence the entire cyber sphere.

Therefore, the central question that arises is whether the nation state is the most inclusive and efficient interlocutor on Internet governance and cyber security. This leads to discussions on the tension between multistakeholderism (the participation of individuals, academics, citizen groups and non-governmental organizations (NGOs) in the debate) against multilateralism (a largely state-to-state debate that characterized the architecture of the twentieth century). Can these two approaches coexist? Can they be aligned constructively? And if so, how?

For instance, should a nation state conduct an internal debate within itself, create a domestic consensus, and (only) then have its government officials represent this multi-stakeholder position at the global forums? Alternatively, should various stakeholders communicate with each other across national boundaries and within the international arena? The former is somewhat more ordered while the latter is far more cumbersome but also more democratic. This issue is currently treated differently in different countries. More developed democracies see merit in letting their NGOs and corporations into the debate and are in fact clever in using these voices in order to secure the national interests of their state. Other countries, including India, are far more reluctant to include corporations and citizens in Internet governance conversations. While we can debate how best to include views and voices from the private sector and the private citizen, there is no doubt that the future security and stability of the Internet will be largely dependent on the participation of all stakeholders, particularly the private sector that owns and operates cyber infrastructure.

This brings us to the fourth issue that must be debated in detail—the role of the private sector. On the one hand, they are the primary service providers and owners of much of the critical infrastructure; on the other, they have a sizable vested interest in arrangements governing the Internet. How to give the private sector weight in Internet governance decisions without shifting the balance of the narrative away from users and governments will be a central enquiry of our times.

Banks, for example, want a secure and heavily regulated Internet, which would allow them both to exploit the reach of this medium and keep customer transactions safe and secure. Security companies would want to perpetuate a certain appreciation of the Internet architecture that maximizes their ability to leverage the Internet as a business opportunity. On the other hand, a plethora of companies, start-ups and small and medium enterprises (SMEs) that see immense opportunity in the fluidity and reach of the Internet would like to see cyberspace remain loosely regulated, open, and free.

Which then are the private sector voices to heed? Indeed, should they be on the table or should we be guarded in our approach as we include them in the debate? Balancing private sector participation in governance decisions while protecting the interests of small companies and individuals will be a vital consideration for most governments.

The rapid evolution of the digital sphere has incorporated traditional laws, norms, means of communication, and modes of trade and commerce into the debate. The fundamental assumptions of the previous era are being challenged and changed by the digital (dis)order. Will we now be required to develop legal frameworks *sui generis* to accommodate new realities? Will nations have to become far more tolerant of free expression than their individual constitutions allow? Will notions of extraterritoriality, jurisdiction, and sovereignty have to be radically re-imagined? Or will an obstinate defense of the old paradigm lead to a polarization of the web, in effect turning the World Wide Web into the 'World Divided Web,' where traditions and ossified power structures lead to a balkanization of the cyber-whole? Then, will the future of the web be one of multiple gateways and access points?



Panelist Paper: The Future of Internet Governance

Council of Councils Annual Conference

May 11-13, 2014

Council on Foreign Relations, Washington, DC

Adam Segal, Council on Foreign Relations (CFR)

The past year (from June 2013-2014) is likely to be seen as a watershed for Internet governance reform. Spurred in part by the Snowden revelations of widespread surveillance of the web by the National Security Agency (NSA), there has been a burst of activity designed to ask how the multistakeholder model of governance can become more transparent, inclusive, and responsive. This activity includes the recently concluded NetMundial - Global Multistakeholder Meeting on the Future of Internet Governance as well as two prominent commissions, the Center for International Governance Innovation-Chatham House Global Commission on Internet Governance and the High-Level Panel on Global Internet Cooperation and Governance Mechanisms, established by the Internet Corporation for Assigned Names and Numbers (ICANN) and chaired by Estonian president Toomas Ilves.

In addition, the United States announced on March 14, 2014, that it would not renew the contract with ICANN for maintenance of the domain name system (DNS, which translates numeric Internet Protocol addresses into readable domain names like *cfr.org*); management of the root servers that hold those DNS records for use by all other machines on the Internet; and oversight of the growth of new top-level domain names such as *.berlin*, *.cars*, and others that will join *.com*, *.net*, and *.gov*. U.S. officials have stressed that whatever comes after the contract must support and enhance the multistakeholder model and that the department of commerce's role as overseer of the contract must not be replaced with a government-led or an intergovernmental organization solution.

The Snowden revelations, while not directly connected to governance, have led to greater mistrust in the United States' dominant role in Internet governance. The mistrust is driven by economic, cultural, political, and security interests. Many states believe that U.S. companies are disproportionately capturing the benefits of the shift to digital communications. Much of the rest of the world is also uncomfortable with the balances the United States has drawn between individual speech and government security, personal openness and government oversight, and protection of intellectual property versus fair use. Moreover, the NSA revelations have raised concerns that the U.S. government can leverage the dominance of U.S. companies over Internet architecture for security and intelligence gains. U.S. economic, military, and intelligence superiority all appear tightly interlinked on the Internet.

The leaks about PRISM and other surveillance programs have also accelerated technological, political, and economic efforts to fragment the Internet. Numerous countries, for example, are now considering regulations requiring data localization, and Brazil and the European Union announced plans to lay an undersea communications cable from Lisbon to Fortaleza to reduce Brazil's reliance on the United States.

Even without Snowden, however, the ground was shifting. The greatest strength of the multistakeholder model is that it has worked so well. The Internet has expanded from a network that linked a small number of U.S. scientists and researchers to a global knowledge platform that will connect roughly 5 billion people by the end of this decade. In addition, technical decisions are (relatively) immune from outside political pressure. The Internet Engineering Task

Force (IETF), for example, endorses technical standards for the Internet through an iterative, transparent, open, and bottom-up “request for comment” process.

Yet there have been rising challenges—reliability, security, access, privacy, intellectual property, crime—to the Internet. States, seeing the strategic, political, and economic importance of the web, have reasserted control and sovereignty. There is a growing sense of illegitimacy in the current model of Internet governance. This is in part the result of demographics. The United States was the predominant innovator, promoter, and shaper of cyberspace for the last four decades, but the future of the Internet is in the developing world. In Asia, Latin America, and Africa, the number of networked users is rapidly increasing. At present, the Asian region comprises 42 percent of the world’s Internet population (most by region), but ranks only sixth in penetration rates (21.4 percent).

Some of this loss of legitimacy is more cynical, pushed by authoritarian states that see the open Internet as a threat to regime legitimacy. Many politicians and policymakers now see clear domestic political gain from demonstrating their independence from Washington, DC, and for making the Internet less U.S. centric. But it is also rooted in a legitimate critique of the current system, especially in developing countries, which often lack independent civil society actors or strong business players that can meaningfully engage in the existing internet multistakeholder governance structures.

In regards to concrete outcomes, it appears as if the NetMundial meeting will have few. Yet the conference’s final statement is a full embrace of the multistakeholder approach that will help shape the tone of the global conversation moving forward. The statement affirmed that “Internet governance should be built on democratic, multistakeholder processes, ensuring the meaningful and accountable participation of all stakeholders, including governments, the private sector, civil society, the technical community, the academic community and the users.” Russia, Cuba, and India refused to endorse the statement. The roadmap for future evolution, however, provides few specific recommendations. It endorsed the planned transition away from U.S. control over the DNS and increasing support for the Internet Governance Forum, an open forum established by the World Summit on the Information Society in 2006 and convened by the United Nations (UN) secretary-general.

NetMundial does illustrate that while the issue of mass surveillance will continue to be tied to Internet governance, it should be, from the U.S. perspective, manageable. Brazil’s desire to host the conference sprang from the revelations of U.S. spying on President Dilma Rousseff, and Brazil worked with Germany on a UN resolution that affirms “that the same rights that people have offline must also be protected online.” There was, at the conference, a push for a broad statement on mass surveillance as being incompatible with right to privacy, but the final statement is more limited, stating that it undermines trust in the Internet, recommending more dialogue on the topic, and asserting that the “collection and processing of personal data by state and non-state actors should be conducted in accordance with international human rights law.”

All eyes will now be turned to the quadrennial International Telecommunication Union Plenipotentiary Conference in Busan, Korea in the fall. The members will elect new leadership (the next secretary general is likely to be from China) and establish the work of the ITU for the next four years. Internet governance is expected to be high on the agenda.

The United States faces three questions. First, can the government bring the requisite attention to bear on the problem? Closer cooperation with traditional partners such as Germany is a necessity as is a more sustained effort to find common ground with Brazil, India, and other rising Internet powers. The highest level officials are distracted with other foreign policy issues. Other agencies and departments are also using their considerable resources to pursue conflicting, if not counterproductive, objectives in cyberspace.

Second, are the proposed reforms of the multistakeholder model enough to convince swing states like Brazil and India that do want to align themselves with China, Russia, Iran, and other authoritarian states that their economic and political interests will be addressed by incremental reforms? Third, can the United States develop a less absolutist line that recognizes the ITU has a role in cybersecurity and Internet governance, but primarily in the area of education,

technical exchanges, and capacity-building. Interconnectivity issues such as packet switching would remain in the hands of technical and private actors.

The bureaucratic impediments to a more assertive policy will not be resolved in the near term, and the Snowden revelations show no sign of tapering off, further undermining the legitimacy of U.S. government efforts. As a result, the private sector and civil society may be better positioned to defend and revitalize the multistakeholder process.

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Session Three

Governing Global Finance:

Recent Progress, Remaining Gaps



Panelist Paper: Governing Global Finance: Recent Progress, Remaining Gaps

Council of Councils Annual Conference
May 11–13, 2014
Council on Foreign Relations, New York

Barry Desker, S. Rajaratnam School of International Studies (RSIS)

The Asian Financial Crisis (AFC) of 1997-98 and the Global Financial Crisis (GFC) of 2008-09 underscored the dangers of unfettered finance and led to major reforms of global financial governance and global financial architecture. Presently, the global financial architecture has emerged firmly as the fourth pillar of the rules-based international economic architecture established at Bretton Woods, complementing the monetary, trade, and development architectures. Mirroring the efforts to promote global financial safety nets for crisis prevention and crisis management, reforms of the global financial architecture have been multi-pronged: multilateral, regional, and national.

An important multilateral level effort has been the upgrading of two institutions established in response to the AFC. In the post-GFC period, the dominant powers moved quickly to (1) create the G20 Summit by upgrading the G20 finance ministers and central bankers forum, which was started in 1999 but was kept under the shadow of the G7/G8, and (2) upgrade the Financial Stability Forum (FSF) into the Financial Stability Board (FSB) with the responsibility for financial sector oversight and with wider membership of all G20 members. The leaders self-appointed the G20 Summit as the “premier forum for our international economic cooperation.”

The establishment of the G20 was a historic event as important emerging countries were for the first time included in the core of global governance. But the G20 continues to suffer from issues related to “input” legitimacy—its exclusive nature and lack of broader representation—and “output” legitimacy—its ability to strengthen international cooperation and come up with effective solutions. Its agenda is also overcrowded and it does not have a permanent secretariat. The G20, which had made substantial progress in promoting global policy coordination at its first three summits—that is, until the Pittsburgh summit—is now perceived to be a relatively weak institution. For example, its pledge to transfer six percent of quota and voting power and two chairs at the International Monetary Fund (IMF) Board to large emerging markets has been ignored by the U.S. Congress despite pleas from the G20 itself, the IMF Managing Director, and academics.

Under the oversight of the FSB, various standard setting bodies, most notably the Basel Committee on Banking Supervision, have developed standards and codes and best practices to strengthen financial regulation and supervision, and risk management practices. Some of these were diluted a bit in response to opposition from the industry. The most prominent standard that was developed is Basel III, which has tightened the definition of risk-weighted capital, introduced leveraging and liquidity ratios, and developed a framework to address counter-cyclical capital flows. At their Cannes Summit in 2011, G20 leaders called on their jurisdictions to fully implement Basel III by the beginning of 2019.

Actions have also been taken at the regional level. These are most notable in Europe where EU-wide supervisory agencies have been set up for banks, securities markets, and the insurance industry. The European Systemic Risk Board has also been established for macro-prudential monitoring.

The GFC has highlighted that the links between weak banks and government can be toxic when taxpayers land up bailing out banks. This link should be broken by transferring the cost to investors and shareholders of banks. Recently the eurozone countries have reached a number of landmark agreements to establish a banking union. Under these agreements, the European Central Bank is to supervise large eurozone banks. A single-resolution mechanism has also been established to close down or restructure eurozone banks if they run into trouble. This mechanism is to be backed by a fund which will be financed by levies on banks. Binding rules for imposing losses on shareholders and creditors have been agreed. An EU-wide deposit guarantee fund is also to be established by collecting taxes from banks.

In Asia, calls have been made for the establishment of an Asian Financial Stability Board by involving financial regulators, and central bank and finance ministry officials. This Board would, among other activities, promote capital market rules and regulations and maintain financial stability throughout the region through early warning systems. It would also ensure that the Asian context and situation is adequately understood in financial sector policies and regulatory reforms.

In the post-GFC period, countries worldwide have implemented policies to strengthen their financial regulations. In addition to the steps taken in Europe (discussed above), in July 2011, the United States implemented the Dodd-Frank Wall Street Reform and Consumer Protection Act. The major components of this Act are, among others, (1) the establishment of a Consumer Financial Protection Bureau in the Federal Reserve to tackle abusive mis-selling of mortgages and other products (2) the establishment of a Financial Stability Oversight Council to monitor systemically significant institutions and (3) the introduction of the Volker Rule to prevent deposit-taking banks from proprietary trading.

Many emerging markets have also implemented measures to strengthen their financial markets and these are regularly monitored at the international level by the IMF and the FSB. The health and robustness of the financial sectors in these countries have, therefore, improved significantly.

On the whole, despite a raft of policies that have been implemented, a lot more remains to be done. There are many remaining gaps such as, to mention a few, ending the “too-big-to-fail problem,” collusion in fixing LIBOR and foreign exchange rates, establishing crisis resolution mechanisms, and reforming credit rating agencies, hedge funds, and shadow banks. Also many of the agreements that have been reached at the multilateral and regional levels have yet to be legislated at the national level and implemented. There is also a need to promote complementarity between multilateral, regional, and national efforts so that they can reinforce each other in a seamless manner.

A major risk going forward is complacency. Six years ago, credit markets were frozen, international trade had fallen off the cliff, and the global economy was headed toward a great depression similar to the one experienced in the 1930s. There was an acute sense of urgency and the major powers were willing to coordinate policies, design reforms, and implement them. Now financial markets no longer pose an immediate systemic threat to the global economy. Policy coordination is still required to avoid the “race to the bottom” and complete the financial regulatory reforms, but it is difficult to obtain. Policy coordination is also required to lessen the adverse impacts of the Fed’s “tapering off” policies on emerging markets. Complacency could slow the pace of reforms and even reverse them. This could plant the seeds for the next financial crisis in the future.



Panelist Paper: Governing Global Finance: Recent Progress, Remaining Gaps

Council of Councils Annual Conference
May 11–13, 2014
Council on Foreign Relations, New York

Fabrizio Saccomanni, Institute for International Affairs (IAI)

Global financial reform and the role of the G20

The establishment of a new framework for governing global finance has been the top priority of the Group of 20 (G20) since it took charge of dealing with the aftermath of the global financial crisis. At their first meeting in November 2008, the G20 leaders agreed on a set of common principles for the reform of financial markets and called for "intensified international cooperation and strengthening of international standards;" in particular, they pledged "to strengthen our regulatory regimes, prudential oversight and risk management, and ensure that all financial markets, products and participants are regulated or subject to oversight." As the crisis worsened the G20 took measures at the London Summit of April 2009 to forestall the meltdown of the global financial system by committing additional resources to the International Monetary Fund (IMF) for an overall amount of \$1.1 trillion. At their next meeting in Pittsburgh in September 2009, the G20 emphatically stated that their objective was "to turn the page on an era of irresponsibility and to adopt a set of policies, regulations and reforms to meet the needs of the 21st century". They further indicated that "We want growth without cycles of boom and bust and markets that foster responsibility not recklessness." Specifically as regards governance of the financial system, the G20 "committed to act together to raise capital standards, to implement strong international compensation standards aimed at ending practices that lead to excessive risk-taking, to improve the over-the-counter derivatives markets and to create more powerful tools to hold large global firms to account for the risks they take." In order to carry out these major reforms, the leaders "designated the G20 to be the premier forum for our international economic cooperation" and "established the Financial Stability Board (FSB)...to coordinate and monitor progress in strengthening financial regulation".

Fast forward to April 2014

The Chairman of the FSB reported on April 4, 2014 to the G20 Finance Ministers and Central Bank Governors that "we are on track to deliver the core of the G20's program of fundamental reforms for the global financial system during the Australian Presidency" (i.e. in 2014). However, the Chairman noted that "difficult decisions remain to be taken in three particular areas: Ending too-big-to-fail (TBTF); Transforming shadow banking to transparent and resilient market-based financing; Making derivatives markets safer."

In other words, the progress in reforming the global financial system is indeed significant, but the remaining gaps are still very large.

Progress

Important financial reforms have been implemented both at the international level, under the aegis of the G20/FSB, and at the level of individual countries and jurisdictions. In the first category, suffice here to recall the introduction of Basel III requirements for banks, covering capital, leverage, and liquidity. As a result, many banks, including all globally systemic banks, are on course to meet the new minimum requirements well ahead of the 2019 implementation deadline. Core institutions are now more resilient and capable of accessing capital markets. In the second category, major reforms have been introduced in the United States (Dodd-Frank), the United Kingdom (Financial Services - Banking Reform Act 2013) and in the European Union (the set of new directives, regulations, and treaty norms adopted in the context of the banking union project), just to mention the most important examples.

Remaining gaps

The relevance of the remaining gaps in the implementation of the financial reform agenda after five years of intense negotiations casts some doubts about the ability of the G20 to fulfill its mandate within the current year.

- The TBTF issue has important implications for the resilience of financial institutions as it was at the root of the lax risk management practices that eventually precipitated the crisis. In this context, it is essential that capital requirements for banks are implemented in a uniform way across countries in order to reduce financial fragmentation and regulatory arbitrage. Moreover it is essential that systemically important institutions can be resolved in the event of failure without the need for taxpayer support while avoiding disruption to the wider financial system. To this end, intermediaries should have adequate resources to overcome potential crises and a framework based on both contractual and statutory provisions to facilitate cross-border recognition of resolution actions. Work in this sensitive area is still far from being completed.
- Shadow banking also poses a major risk to financial stability because of the opaque nature of its activities and the systemic risk it can generate, affecting institutions operating in the regulated area. Moreover, there is the risk that efforts to strengthen regulation of banks and other traditional supervised intermediaries may result in a transfer of funds and activity to the unregulated world of shadow banking. Indeed the last available (October 2013) monitoring report of shadow banking by the FSB estimated that it rose by \$ 5 trillion in 2012 to reach the level of \$71 trillion, i.e. 117 percent of global GDP. Here again much work remains to be done: a policy framework for strengthening oversight and supervision of shadow banking is being considered and the FSB will finalize this year policies to mitigate the systemic risks of the repo and securities lending markets, which are important sources of funding for shadow banks. The Basel Committee is also addressing the risks from banks' interactions with shadow banks. These initiatives may not be sufficient to stop the growth of shadow banking and to bring it within the regulated system.
- Derivatives markets have also proved to be a source of systemic risks, particularly the lightly regulated over-the-counter derivatives market. This market is now being comprehensively reformed in order to ensure that it remains liquid and its participants are well protected against the default of one of them, so that there is no risk of contagion spreading to other markets and the economy as a whole. The interventions required are substantive and technically very complex: they include the requirement to trade on organized electronic platforms and to report derivative transactions to trade repositories; the requirement to place central counterparties between two participants in a transaction; and minimum capital and margining requirements. Some progress has been made in these areas, but not all G20 jurisdictions have implemented earlier commitments. This is a serious problem as cross-border consistency is essential to ensure an effective reform of derivatives markets: cross-border clearing infrastructures should be allowed to operate in other jurisdictions and supervisors should be allowed to access trade repositories data bases.

Is regulatory reform sufficient to restore global financial stability?

The answer to this question is no and this conclusion is widely shared among academic economists, market participants, and monetary and financial authorities. Financial crises will continue to happen from time to time. However, in order to reduce the frequency and the gravity of global financial crises, regulatory action should be accompanied by a stability-oriented framework for the coordination of policies by the systemically important countries. This requirement was mentioned in the early statements by the G20 and the link between large payments imbalances of major countries and the destabilizing response of global financial markets has been identified as a major source of systemic instability by a growing number of observers, both private and official. Nevertheless very little was done to create a framework for macroeconomic policy coordination within the G20.

Obviously, macroeconomic policy coordination poses major problems in terms of governance as it involves policy decisions that are politically relevant as they may impinge on national sovereignty. Moreover, some decisions are not within the competence of governments, such as fiscal measures (normally requiring parliamentary approval) or monetary policy interventions (normally in the competence of independent central banks). However, a first necessary step towards policy coordination is a better and more widely shared understanding of the international repercussions of domestic policy measures and of their implications for global financial stability. In this context, the interaction between monetary policy actions by major central banks and the evolution of interest rates and exchange rates worldwide is especially relevant. Important analytical work on these crucial issues has been done in recent years by the IMF and it is surprising that the Fund has not been designated to play a major role in the multilateral policy debate. This is not a minor issue. The G20 has taken responsibility also for this chapter of the reform agenda and the IMF has been de facto relegated to a quasi-secretarial role with little responsibility for providing independent policy guidance. At the same time, the delay in the implementation of the package of IMF reforms agreed in 2010 as a result of the opposition by the Congress of the United States has deprived the IMF of the strengthened legitimacy it needs to act as an "honest broker" of compromises among the major players on the global financial scene.

Summing up

The governance of global finance has certainly improved since 2008. However the objective of bringing "all markets, products and participants" within the perimeter of official oversight has proved to be elusive. Shadow banking is in fact growing as regulation is strengthened in the supervised markets. The reluctance of major countries to accept some degree of coordination of their macroeconomic policies makes it unlikely that the main determinants of global financial instability are going to be brought under the control of the international community. The page on "an era of irresponsibility" has not been fully turned, as yet.

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Session Four

Emerging Global Health Challenges: Biosecurity, Infectious Diseases, and Noncommunicable Diseases



Panelist Paper: Emerging Global Health Challenges: Biosecurity, Infectious Diseases, and Noncommunicable Diseases

Council of Councils Annual Conference
May 11–13, 2014
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Laurie Garrett, Council on Foreign Relations (CFR)

How well prepared are global institutions to confront emerging health challenges of biosecurity, (re)emerging infectious diseases, and noncommunicable diseases (NCDs)?

All 194 World Health Organization (WHO) member states adopted the International Health Regulations (IHR), but as of June 2012—the deadline set by the WHO—[only forty countries](#) met the [requirements](#) for surveillance and response capacities necessary for diagnosis and containment of disease.

In May 2013, the World Health Assembly—the governing body for the WHO—passed a severe austerity budget, reflecting a third year in a row of diminished resources for the UN agency, necessitating more than 20 percent staff redundancies. The 2013 cuts eliminated most of the WHO's epidemic surveillance and response capacities. In response, CFR's global health program [recommended](#) that the United States government take the lead in hoped-for multinational donor initiative:

The WHO's World Health Assembly of 194 nations aspires to country self-reliance in IHR compliance, but a bridge in support is needed to get poorer nations to that goal, and keep the WHO disease response program alive. The United States should take the lead; pick up most of that \$100 million tab for FY14, rally other wealthy public donors and commit to provision of a portion of the bridge funds thereafter, diminishing annually as self-reliance grows, and zeroing out by the end of 2019. At no additional cost beyond restoration of now-sequestered monies, Congress should sustain the U.S. Agency for International Development PREDICT Project, which has trained fifteen hundred people worldwide to date and discovered two hundred previously unknown viruses.

As a response to this lack of global preparedness, the U.S. government announced the launch of a new [Global Health Security Agenda](#) on February 13, 2014. The goal of this nine-point agenda is to help all countries achieve compliance with IHR requirements. Over the next five years, the U.S. government will work [with twenty-six partner countries](#)—Argentina, Australia, Canada, Chile, China, Ethiopia, Finland, France, Georgia, Germany, India, Indonesia, Italy, Japan, Kazakhstan, Mexico, Netherlands, Norway, Republic of Korea, Russian Federation, Saudi Arabia, South Africa, Turkey, Uganda, the United Kingdom, and Vietnam—to bolster local disease monitoring, develop diagnostic tests for new pathogens, and ultimately help countries strengthen disease surveillance, reporting, and public health systems. The U.S. Centers for Disease Control and Prevention (CDC) and the U.S. Department of Defense (DOD) have committed [\\$40 million to ten countries](#), and President Barack Obama will ask for an additional \$45 million in his 2015 budget.

It is hoped that other wealthy and emerging market nations will join the United States, augmenting Obama Administration resources to meet the necessary \$100 million per year for the five years estimated to be necessary to bring remaining nations in full compliance with the IHR.

How could institutions be updated to respond to twenty-first century challenges? What are the major gaps in the international management of infectious diseases in an era of globalization?

The current epidemics of Middle East Respiratory Syndrome (MERS) and Ebola, coupled with the worldwide response to H1N1 influenza in 2009, reveal the severe frailties in current disease control and response capacities. These include:

- Though MERS first emerged in Saudi Arabia in April 2012, the virus did not reach world attention until September of that year, after [a traveler from the Middle East](#) succumbed in a London hospital. A sample of the Saudi virus was, however, [shipped to Erasmus University in Rotterdam](#) for analysis and genetic sequencing well before the London case, yet its existence prompted no alerts to the WHO. Though Saudi Arabia is a wealthy nation—twenty-ninth in the [International Monetary Fund's](#) (IMF) GDP per capita country rankings—it failed to recognize the initial 2012 outbreak in Al-Ahsa, and subsequent cases in Riyadh until after the London case was announced. Subsequently the Kingdom, along with its wealthy neighbors Qatar (ranked first by IMF), United Arab Emirates (ranked thirty-second), and Oman (ranked thirty-fourth) have struggled for two years to contain, identify, and understand MERS. In April 2014 MERS cases and deaths [suddenly soared in the region](#). A full-fledged epidemic is now underway, the Hajj is approaching, and religious pilgrims, business travelers, and migrant workers have returned to considerably less-wealthy nations, carrying MERS with them, including [Greece](#), Tunisia, the Philippines, and [Egypt](#).
- As was the case with MERS, the Ebola outbreak in Guinea went unnoticed by the WHO and outsiders until it had claimed lives for several weeks. Response was slow, led by the NGO Médecins Sans Frontières—not by the WHO or other international health agencies. Cross-border spread to Liberia and possibly Sierra Leone created the first deadly, multinational hemorrhagic disease outbreak in known history, calling for coordination between nations. Some countries in the region [shut their borders](#), cancelled air traffic from the afflicted countries, and declined assistance.
- In both the MERS and Ebola cases this year the outbreaks are caused by viruses for which no curative medicines or vaccines exist, and proper diagnosis requires laboratory facilities and technical skills. Yet both can be controlled with relatively inexpensive infection control practices featuring rapid identification of suspected infections, quarantine, proper protective gear for all healthcare and humanitarian assistance personnel, and cessation of public burials. As basic as these measures may be, the relevant countries have struggled to meet them. In West Africa the barriers include dire poverty and logistics limitations, requiring mobilization of significant resources and personnel from overseas. In Saudi Arabia and its neighbor states, financial resources are not of concern, in theory, though proper allocation of disease-control equipment and training of personnel has moved at a snail's pace. MERS points to the difficulties outside agencies and scientific institutions have in providing assistance and direct intervention to wealthy countries that are acutely sensitive about national sovereignty.
- The 2009 H1N1 global pandemic of swine flu drew attention to more profound, and unresolved, issues in disease control. Fortunately the H1N1 virus was a fairly benign influenza, but it was highly contagious, spreading globally in roughly three months' time, appearing more pathogenic based on early Mexican data, which later was proven to have over-represented severe cases. The H1N1 pandemic was marked by a nearly complete breakdown in global solidarity with governments prohibiting jet landings based on flight origins, countries competing for scarce access to the drug Oseltamivir (in short supply due to single site production by one patent-holding manufacturer), more than six months' time for commercial production of vaccines, and initial roll-out of immunizations in such small quantities that only the wealthiest nations had access to the products before the pandemic died down on its own.

The WHO was powerless to slow the spread of H1N1 or bring equity to the global response. Moreover, the agency's own pandemic declaration system, created in 2005 in anticipation of eventual human transmission of the highly virulent H5N1 bird flu, compelled declaration of a pandemic alert based on geographic spread, despite the mild disease caused by H1N1. [In retrospect](#), critics have charged that the WHO overreacted, and countries spent hundreds of billions of dollars on drugs and vaccines unnecessarily.

Effective international pandemic and outbreak response requires global solidarity. The IHR were finally passed in 2005 because of the severe acute respiratory syndrome (SARS) pandemic in 2003, which struck more than [8,500 people in 31 nations](#), spreading from China while that country for months denied the existence of the disease within its borders. The [strongest language of the IHR](#), not surprisingly, refers to transparency, rapid notification, and sharing of information. A subsequent addition discourages nations from taking any steps that may slow international exchange of viral samples used for laboratory analysis of new microbial threats. But the IHR rises, or falls, with equity in access, not only to the risks of globalization, but also its benefits. Bringing the skills and resources necessary for rapid disease surveillance and response to countries all over the world is an important first measure. But failure to provide means for equitable access to medicines, protective gear for healthcare workers, diagnostics, and vaccines ensures that wealthy nations will continue to face pandemic threats by hoarding all available supplies of everything from face masks to vaccines. Middle-income countries will continue to respond to such behavior with aggressive action to void relevant pharmaceutical patents and block a range of drug safety initiatives. And the vast majority of the citizenry of the planet will be denied even a modicum of care and treatment.

Have the International Health Regulations proven capable of ensuring global health security and how could the process be improved?

In addition to the points raised above, the IHR, and their companion regional and national disease control regulations, exhibit two weaknesses for the twenty-first century. First, they are limited in their concept of disease threat to essentially known microorganisms. Priority in many countries, including the United States, Canada, and the United Kingdom, is given to lists of special pathogens, such as those that cause smallpox, plague, anthrax, and botulism. This in large part reflects the countries' concerns about bioterrorism and assumption—quite possibly false—that putative perpetrators would confine their activities to the use of well-understood viruses, bacteria, and toxins.

Such a select list approach offers false security, and by definition misses all novel threats. It would have missed the 1981 emergence of HIV; the 2003 emergence of SARS; the 2005 genetic drift of H5N1 that made the flu virus more dangerous; the 2008 appearance of virtually untreatable extensively drug resistant, or XDR-tuberculosis; the 2011 emergence of the NDM-1 plasmid that renders most bacteria completely antibiotic resistant; and the 2012 outbreak of MERS—all of which were previously unknown and therefore not on any “special pathogens” lists.

This list of naturally arising microbes is dwarfed by the potential of manmade diseases now posed by the twenty-first century revolutions in biology: metagenomics, synthetic biology, and gain-of-function research. Individually, and more so in combination, these three fields and the tool kits they draw upon are expanding at such a dramatic pace that nobody can keep track of the research, its outcomes, and its potential for accidental or deliberate release into general populations. Thanks to faster and cheaper technology it is now possible to construct previously nonexistent life forms, from tiny packets of DNA called plasmids and phages, all the way up to [eukaryotic cells](#) of larger life forms. Scientists are now literally directing evolution, creating [“what-if” forms of influenzas](#) and other microbes to see what the worst case scenario organisms might look like. The IHR, Biological Weapons Convention (BWC), and important agencies such as the WHO, Interpol, and the European Center for Disease Control currently have little or no capacity to oversee the activities of tens of thousands of public and private sector synthetic biologists, and assess the risks inherent in their work.

Moreover, national and multilateral disease agencies have no common language of regulation and threat assessment. Even within the European Union nations do not agree on the definitions of biosafety-level 3 (BSL-3) versus BSL-4

laboratories, or on the boundaries of so-called dual-use research—work that is carried out for beneficial purposes but has direct application for either bioterrorism or accidental production of serious threats to population health. Any serious application of the principles of the IHR to the new twenty-first century biology must provide regulatory harmony around biosecurity.

Finally, one of the most frustrating threats to the IHR, and to Global Health writ large, is extremist objection to public health measures. Over the last eighteen months, for example, the Taliban, Boko Haram, and other Islamist organizations have targeted polio vaccinators, charging that the vaccine is contaminated with HIV or chemicals that render Muslims infertile, as part of a plot by the Central Intelligence Agency of the United States. At least 104 polio workers and members of their security details have been assassinated since July 2012, primarily in Pakistan. In South Africa an estimated 360,000 people perished needlessly because the then president of that country learned from the Internet that AIDS was not a real disease, and that the drugs used to treat it were lethal. Throughout Europe and North America today [outbreaks of measles, pertussis, mumps, and rubella rage](#), thanks to parental refusal to vaccinate children under the completely false belief that immunization causes autism or other ailments. Well-intentioned health regulations, such as the IHR and BWC, derive from acceptance of the scientific method and the germ theory of disease, and recognition that illness is caused by viruses, bacteria and toxins. Where understanding of science is nonexistent, the germ theory is unknown, and religion, politics, or superstition carry equal or superior weight in public opinion, implementation of public health measures will always meet with opposition. None of the mechanisms and agencies of global governance seriously address this issue.

Do global institutions need to elevate the fight against NCDs?

U.S. government spending has decreased from its high of \$8.3 billion in 2011 to \$7.4 billion in 2013, but the overall numbers are not as bleak as conventional wisdom would have one believe. A recent [report from the Institute for Health Metrics and Evaluation](#) (IHME) estimated that global health development assistance reached \$31.3 billion in 2013, 5.5 times greater than spending in 1990, with 74.1 percent of the growth occurring since 2002. The primary sources of growth are attributed to contributions from the United Kingdom's bilateral agencies; the Global Fund to Fight AIDS, Tuberculosis, and Malaria; and the GAVI Alliance. 17.8 percent of all development health spending in 2013 was funneled through these two public-private partnerships. The largest donors to both of these fastest growing agencies are, however, governments: [95 percent](#) of the Global Fund's funding and [75 percent](#) of GAVI's funding come from government pledges and contributions.

A vigorous conversation is unfolding today among a broad swathe of actors in the global health space over the post-2015 Sustainable Development Goals (SDGs). Though debate remains vigorous, all parties appear to share common ground on the aspiration of combining infectious and noncommunicable disease (NCD) targets under vastly improved national health systems. Though nothing is yet certain, provision of [universal health coverage](#), coupled with creation of strong comprehensive health systems seems the likely SDG candidate for health.

Thanks to improvements in infectious disease prevention and treatment, more of the world population is living long enough to experience cancer, cardiac diseases, diabetes, and a long list of ailments classically dubbed “diseases of the rich world.” For example, the WHO projects that nearly 20 million women will develop breast cancer over the coming decade, [half of them](#) residents of lower income countries. The overall burden of cancer has doubled in developing countries over the last 25 years, and [will double, again](#), over the next 16 years, reaching [22 million](#) a year by 2030. The numbers of elderly suffering from Alzheimer's and other forms of dementia [will triple by 2050](#). On the cardiovascular front, 202 million people were living with [peripheral artery disease in 2010](#), 70 percent of them in low- and middle-income countries, representing a 29 percent jump in numbers in a single decade. Similar escalations in incidence and prevalence of most chronic physical and mental health diseases have been documented over the last decade, and are projected to continue rising well into the century.

Health system responses to this increased burden of disease will continue to vary in scope and quality well past mid-century, reflecting the chasm in skills, availability of healthcare workers, national capacity, and infrastructure between rich, middle-income, and poor nations. The biggest bang for the buck in fighting NCDs balances overwhelmingly on the side of prevention, which is also the most appropriate location of global governance solutions. Full implementation of the Tobacco Convention worldwide, coupled with dramatic increases on tobacco and alcohol taxation, would immediately and significantly lower morbidity and mortality due to cancer, heart disease, traumatic injury, and violence. Provision of human papillomavirus (HPV) vaccination to stop viral induction of cervical carcinoma would bring to near-zero deaths due to this, and possibly other cancers, including oral and anal. Restriction of high-cholesterol food intake, lowered consumption of salts and sugars, and enhanced exercise activity would lower prevalence of cardiovascular diseases, obesity, and diabetes. Use of condoms blocks acquisition of viruses and bacteria that contribute to a long list of sexually-transmitted diseases, including several that may be passed in utero or during vaginal delivery to newborns.

In addition to cervical cancer, some other forms of cancer can be prevented through new treatments or vaccines. Liver cancer caused by the hepatitis B virus can be eliminated via universal vaccination. A new drug, Sovaldi, is 100 percent effective in curing hepatitis C infection, thereby potentially eradicating the most aggressive forms of cirrhosis and liver cancer. The Sovaldi story illustrates a new equity challenge for global health, focused on patents. The drug currently costs [\\$80,000](#) for a full treatment course.

Equitable access to prevention and treatment tools for NCDs will continue to boil down to money. Most of the best approaches to prevention are cheap, comprising aggressive government regulatory policies such as banning smoking in public facilities or driving with a blood alcohol level above safe levels. The WHO annually updates its [Essential Medicines List](#), which delineates the drugs, vaccines, and devices considered indispensable for provision of health to populations: No currently patented drug is on that list, and nearly all delineated products are available in generic and inexpensive forms. Nevertheless, most of the world's population lacks access to that list of medicines. Politically the health equity debate typically centers on pharmaceutical patents, the World Trade Organization's provisions, and compulsory licensing, especially in BRICS countries. But as countries endeavor to meet universal health coverage targets and build viable health systems that can handle the burden of NCDs, it is the non-patented elements of the Essential Medicines List that will be most desperately needed, and their access should be a focus of global governance.



Panelist Paper: Emerging Global Health Challenges: Biosecurity, Infectious Diseases, and Noncommunicable Diseases

Council of Councils Annual Conference
May 11–13, 2014
Council on Foreign Relations, New York

Sergey Kulik, Institute of Contemporary Development (INSOR)

Risks to global health remain at the forefront of the development agenda and of global institutions' activities. The growing interconnectedness of the global economy, liberalization of trade, and intensified cross-border travel increases the risks of new diseases and the spread of the existing ones, often with pandemic potential.

If health security is governed poorly, the results will be very serious and will affect the world economy. According to the Organization for Economic Cooperation and Development (OECD), even a relatively small pandemic such as Severe Acute Respiratory Syndrome (SARS) wiped out 2-3 percent of GDP of the countries most affected, and had a huge impact on trade, air travel, food markets, and tourism. A bigger pandemic might put certain parts of the financial sector, especially the insurance industry, under strain unless regulators take pandemic risk into account.

At present there is a certain lack of understanding of the increasing interrelation of health security issues with other areas of global development directly or indirectly connected to these issues. This is manifested, for example, both in the problems of coordination mechanisms under the United Nations and in a shortage of attention given to this issue by leading global governance platforms. It follows that this interrelation should be included in the agendas or given higher priority by the organizations or platforms that address a broad list of challenges to global development, for example, the G20.

At the global level, concerns about health security risks are reflected in the international community's progress on the three health-related Millennium Development Goals, increasingly complex global health architecture, and a steady expansion of funding for global health in the pre-crisis decade. However, despite successes in fighting infectious diseases and child and maternal mortality, old risks persist and new challenges have emerged, in part due to the 2008 financial crisis, the current slackening of economic growth, and growing economic inequality. Investments in global health security are not increasing and in some cases may even be decreasing.

Significant attention should be paid to the task of optimizing the management of the relevant national, regional, and international structures and coordinating their interaction, perhaps with the help of an audit or other such measures. Given the fact that the majority of funds are provided by governments, it is quite difficult to engage in long-term planning to address health security issues, as government commitments can change rapidly if some unexpected difficulties arise. So, one of the most difficult tasks is to find predictable sources of funding for the foreseeable future. Here the coordination of efforts of leading global governance platforms could help facilitate this.

The multilateral institutions, including the World Health Organization (WHO), have a positive record of generating agreements and consent, legal frameworks, and guidance to national policy priorities. They can mobilize greater

burden sharing by leading donors, which is important in an era of scarce resources. But given a declining resource base, they are increasingly competing for funding and are under increasing pressure to provide concrete results. In turn, the multi-stakeholder initiatives—Global Fund against HIV/AIDS, Tuberculosis and Malaria (GFATM), Global Polio Eradication Initiative (GPEI), Advanced Market Commitments (AMC), UNITAID, and others—show how the political will of the leading countries can create added value and change the architecture of the international response to global health challenges, including communicable diseases. But this should be enhanced by global governance platforms.

These platforms (like G8 and G20, together with OECD) are substantial providers of development assistance for health. However, again, most resources are still provided at the national level. They should work more closely with other donors and recipients to develop better information on how health money allocated for healthcare is being spent. The OECD, for example, should accelerate its cooperation with the WHO and the World Bank to develop capacity to account for health spending and measure its effectiveness worldwide.

The international organizations (WHO, OECD, World Bank) should pay closer attention in order to increase aid efficiency and monitoring. In turn, various international platforms (WHO, World Bank, GFATM, UNITAID) should review the global and regional aid architecture to fight infectious diseases as well as to make recommendations in this area for the period after 2015.

Strong national, regional, and global leadership, collaboration in relevant international organizations, and engagement with business are imperatives for ensuring progress in curtailing global health threats. The leading global governance platforms should strengthen political signals calling the attention of the business community to national, regional, and global health security issues as an integral and important part of the large group of global development issues. It is notable that at the starting period of Russia's presidency of the G8, the Russian business community began to demonstrate greater interest in global health security issues.

When looking to expand cooperation with business and other nongovernmental actors, including the scientific community, biosecurity, and healthcare experts, the focus should be on both existing mechanisms and new initiatives. This seems to be an important part of the Global Health Security Agenda, launched by the United States.

- **Food Safety:** Around 70 percent of all infections are foodborne. The globalization of food supply chains calls for strengthening food safety, but without sacrificing free markets and competition. Thus, international efforts to ensure the safety of the global food supply need to be stepped up. To address these challenges the WHO has developed the food safety strategy for 2013-2022. Food safety should be regarded as an integral part of both food safety and the health security agenda. Governments should promote cooperation with the private sector in developing and introducing international food safety standards, including existing endeavors, such as Global Food Safety Initiative (GFSI) and International Featured Standards (IFS). These standards should include appropriate protective measures against “authenticity fraud” and more comprehensive traceability systems. Governments should promote more streamlined national and supranational food safety and integrity systems, with strong capabilities and authority. The leading global governance platforms (like the G20) should more actively send political signals about the importance of food safety as part of food security. This could be based on the WHO's strategy as well as the prospective OECD initiative on food safety and food chains.
- **Infectious diseases:** Infectious diseases are the second leading cause of death worldwide and the leading cause of death of children up to 5 years of age. Vaccination needs to become one of the top priorities on the development agenda. Governments should more strongly support existing public-private initiatives aimed at increasing access to immunization in low-income countries, such as the GAVI Alliance. On the global level a new impulse should be given to the approach to assistance and cooperation. It could be transformed from a vertical model (disease-specific programs and initiatives) to a model of equal responsibility, including cross-

sectoral collaboration, with a strong regional component. The vertical model is oriented more toward donor preferences and less to national demands in a rather uncoordinated and unaccountable manner. The focus of donors should be more concentrated on monitoring those demands and assessing the impacts of assistance provided.

- **Noncommunicable diseases:** Noncommunicable diseases (NCDs), such as cancer, diabetes, cardiovascular, and respiratory diseases are the leading causes of death and illness worldwide. Success in the fight against infectious diseases and rising living standards means NCDs account for a rising proportion of global deaths. NCDs are a growing health and economic challenge for both rich and poor countries. It is estimated that half of the deaths caused by NCDs are preventable. The increasing prevalence of NCDs poses a mounting challenge to healthcare systems worldwide and to public and private finances, which means that prevention represents a cost-effective solution for alleviating the economic burden of such diseases. The international community should launch a global initiative to address this issue. Combating NCDs should be a shared commitment; it requires effective, multi-stakeholder strategies at the global, regional, and national levels that are fully integrated into healthcare systems and extend beyond the traditional health sector. The WHO has been more paying more attention to this challenge. Nevertheless it still allocates substantial resources to other international programs, including infectious diseases. It should reconsider its priorities in this regard and accelerate the implementation of the 2004 Global Strategy on Diet, Physical Activity, and Health.
- **International Health Regulations.** The present situation is exacerbated by the fact that at the time of the WHO's June 2012 deadline, 80 percent of countries had still not complied with the core International Health Regulations (IHR) competencies. They were adopted in 2005 by WHO member states. The objective of this legally binding framework is timely detection of risks and information sharing so that rapid action can be taken to reduce the international spread of diseases. The deadline for final implementation of the IHR is 2016. If all countries meet it, they will have a powerful tool to ensure global health security. But at minimum we need to accelerate implementation of the IHR and at least substantially decrease the number of countries that have not fully implemented them.



Panelist Paper: Emerging Global Health Challenges: Biosecurity, Infectious Diseases, and Noncommunicable Diseases

Council of Councils Annual Conference
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Alan Whiteside, Center for International Governance Innovation (CIGI)

This is a deeply fascinating time for global health. I won't cover biosecurity or infectious diseases (with the exception of HIV); Laurie Garrett has forgotten more than I know on these topics. My focus is on the changing burden of disease, particularly the increasing importance of noncommunicable diseases. Linked to this is the issue of financing health is the question of how much we should spend and what we expect to get for our money. I will also touch on the exceptionality of HIV and AIDS.

Governments and citizens enter a social contract whereby individuals surrender some of their freedoms and submit to the authority of the state in exchange for state protection of their remaining rights. Included in this is the right to health. The preamble of the 1946 World Health Organization (WHO) Constitution defines health broadly as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." The right to health includes access to timely, acceptable, and affordable health care. Governments commit to generate conditions in which everyone can be as healthy as possible.

There have been huge aggregate improvements in wellbeing, health and wealth in low- and middle-income countries. Life expectancy has risen by 50 percent since 1900, and the trend continues; the number of people living on less than \$1 per day has fallen from 42 percent of the world's population in 1981 to 14 percent in 2013. There are, of course, challenges: overall improvement hides growing inequity; progress is not inevitable; and human well-being faces threats such as new diseases and environmental change. In the developed world improvements have not been as dramatic but nonetheless there has been steady progress.

This has been well discussed by Angus Deaton, in his 2013 book *The Great Escape: Health Wealth and the Origins of Inequality*.¹ Deaton notes that the majority of people are living longer, better lives than ever before. As he says, "The epidemiological transition is when diseases move out of the bowels and chests of infants into the arteries of the elderly." These are the noncommunicable diseases (NCDs), the major killers today that are discussed below.

A glance at the recent data from the Global Burden of Disease (GBD) from the Institute for Health Metrics Evaluation (IHME) in Seattle shows communicable diseases remain a major concern in poor countries, among the poor, and particularly for the young—infants and children under five. Geographically Africans have the worst health.² The appendix to this paper shows graphically the years of life lost for women globally, in Western Europe and Southern Africa.

Structural factors underlie the NCD epidemic. High body mass index (BMI) is a major contributor to disability adjusted life years (DALYs) loss and in 2010 was the sixth leading risk factor. It is an indicator of being overweight

and of obesity and it increased by a dramatic 82 percent over the period 1990 to 2010. It is a leading risk factor for cardiovascular and circulatory diseases as well as diabetes. The IHME looked at the health effects of different aspects of diet and physical inactivity. Together, all fifteen dietary and physical inactivity risk factors measured in the study accounted for ten percent of DALYs globally.

The main NCDs are primarily cardiovascular diseases, cancer, and diabetes. Smoking was identified as being linked with lung cancer in the 1950s. The National Center for Biotechnology Information argues the “cigarette is the deadliest artefact in the history of human civilisation” causing about 1.5 million deaths from lung cancer per year. They note this number will rise to nearly two million per year by the 2020s or 2030s, even if consumption rates decline. The challenge is to draw a line between the public and the private space. Where does state intervention begin and end? That depends on financing, but also good policies, which have a long gestation period. Hopefully evidence of interventions on tobacco, seatbelts, and drinking and driving will help policymakers take a long term view of investing in health.

In my set of challenges I must consider HIV and AIDS as I have spent most of my life in Southern Africa. On April 1, 2014, the Human Sciences Research Council in South Africa released the results of the 2012 South African National HIV Prevalence, Incidence and Behaviour Survey.³ This is mostly bad news. By mid-2012, there were an unbelievable 6.4 million people living with HIV in South Africa. Prevalence peaks at 36 percent among women aged 30-34 and at 28.8 percent among men in the 35-39 cohort. The only ‘good’ news is that two million (31.2 percent) “were exposed to ART,” (Anti-Retroviral Therapy) and there was evidence to suggest they were on treatment. In Swaziland, Lesotho, and Botswana, adult HIV prevalence was 26, 23.4 and 23.3 percent respectively.

These figures are shocking. Even more disturbing is the way we seem to have taken them into our stride. There should be research on the economic, social, and political consequences of having this many people infected. Most are or will be dependent on state-provided drugs. Why are we not looking at the social and psychological impacts of this? Should we be rewriting the social contract between state and citizens? The issues for the donor countries of the AIDS epidemic were well illustrated in the article “No Good Deed Goes Unpunished,” published in *Foreign Affairs*, which set out the complexities. They are most recently illustrated by the homophobic actions of a number of African countries, particularly Uganda.⁴

The United Nations 2013 World Mortality Report illustrates the conundrum of AIDS further.⁵ The Department of Economic and Social Affairs of the United Nations Secretariat regards itself as “a vital interface between global policies in the economic, social and environmental spheres and national action.” The department compiles, generates, and analyses a wide range of economic, social, and environmental data and information to review common problems and take stock of policy options.

These reports are dense and require careful study. In the 2013 report, table three gives the ten countries with the highest and lowest life expectancies at birth for the periods 1950–1955, 1990–1995, and 2010–2015. For people with basic economic and political literacy, the data is generally not surprising. In 1950–1955 the highest life expectancy was Norway at 72.2 years; Japan took poll position in the second period (79.4 years) and remained there in 2010–2015 at 83.5 years.

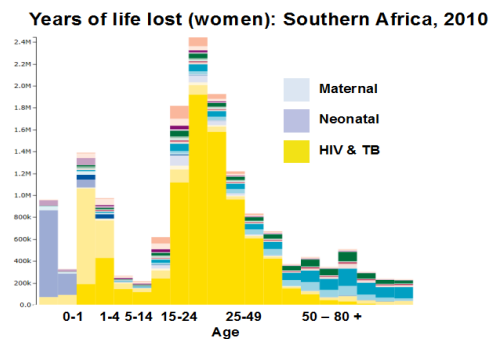
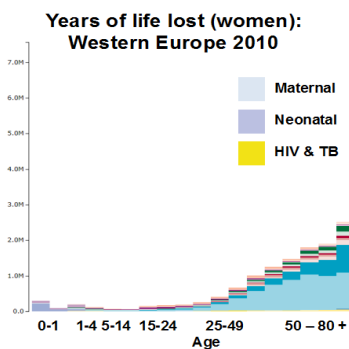
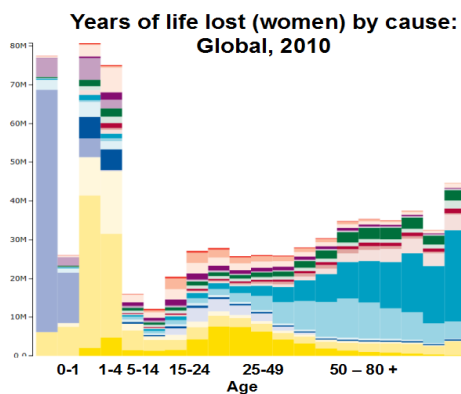
For the most part the low life expectancies are also predictable and unsurprising: in 1950–1955 Yemen leads the list at 25.3, followed by Mali; by the second period, all ten countries are African. Worst was Rwanda, post genocide, where life expectancy was just 23.1 years. The real shock comes when looking at the data for 2010 to 2015. The country with the lowest life expectancy in the world is Sierra Leone (45.3 years). Next is Botswana (47.4), Swaziland (49.2), and Lesotho (49.5), followed by nations such as the Democratic Republic of the Congo and the Central African Republic. Botswana, Lesotho, and Swaziland are all middle-income countries that, by most other measures, are doing well.

Finally, to health financing. The bad news for the developing world is that international development resources for health have probably peaked. The Lancet Commission noted: “We are (also) in an era in which the landscape of global health financing is undergoing major changes. After a decade of rising aid for health—a “golden age” for global health assistance—development assistance budgets are strained.” However they also came out strongly in favour of increasing investment in health, suggesting the returns would be considerable. There is evidence to support this. Better health boosts personal and national income. Health improvements stimulate economic development through increased labour productivity, education, investment, access to natural resources, and the changing ratio of workers to dependants.

The Commission cited work suggesting about eleven percent of economic growth in low-income and middle-income countries in the period 1970–2000 was due to reductions in adult mortality. “In the allocation of finite budgetary resources, making the right investments in health improves social welfare and stimulates economic growth.”⁶

The levels of health spending vary considerably. Using just one indicator—share of GDP—it varies from 1.8 percent in Myanmar to 17.9 percent in the United States.⁷ In the United Kingdom it is 9.4 percent and in South Africa it is 8.8 percent. The question is what level of resources should be devoted to health and where? The balance between curative and preventative is crucial. In South Africa where I lived this related directly to the HIV epidemic. In Canada it is the NCDs and lifestyle issues that are prominent. The questions of value for money, cost effectiveness, and cost-benefit are likely to be increasingly important. The issue of getting more health for the money rather than simply more money for the health is critical. Science makes increasingly complex and expensive treatments available. It was only in the 1940s that the first cancer treatments became available; today there is hope for many cancers that were previously untreatable, but at price.⁸

There are a number of important questions that derive from this brief presentation. The fundamental one is a philosophical one: who takes responsibility for health? Emerging from this is the question of how we decide as a society how much and where to spend. The balance between personal, social, and governmental responsibility, are all ones that make the health challenges of this century deeply fascinating and an area that all foreign relations councils need to consider in more detail. The political economy of health and ill health is not well considered.



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Session Five

Climate Change:

Do Global Institutions Matter



Panelist Paper: Climate Change: Do Global Institutions Matter?

Council of Councils Annual Conference
May 11–13, 2014
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Sunjoy Joshi, Observer Research Foundation (ORF)

Guiding question: what are the prospects of achieving a meaningful UN Climate Agreement by the 2015 deadline and Paris UNFCCC meeting?

An Ad-Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was established at the Seventeenth Conference of Parties of the United Nations Framework Convention for Climate Change (UNFCCC) held in Durban in December 2011. The document recognizes the urgency and gravity of the threat posed by climate change. The document also installs the objective of the Convention as that of strengthening a multilateral regime under the UNFCCC. The Ad Hoc Working Group has been mandated with fulfilling its goals by 2015 in order to legally institutionalize and implement the outcomes by 2020. The ADP's mandate strives to raise the level of ambition for action, being informed by the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) the 2013-2015 review of the UNFCCC work and that of its subsidiary bodies.

The ADP has convened frequently and organized its work under “Workstreams” designated to reflect and implement different dimensions of the Working Group’s agenda. The negotiation texts which incorporate both the Workstreams is expected to be ready by late 2014 and revised by 2015. UN Secretary General Ban Ki-Moon has also announced a World Leaders Convention in 2014 to keep up momentum.

Parties of the ADP voiced differing interpretations of the Working Group’s mandate and the link between the Convention and the future agreement. The G77, China, and the African group opined that the agreement should be premised on the existing convention, not its reinterpreted form. It was thus concluded that the principles and provisions of the UNFCCC will form the basis of the proposed 2015 agreement. The Alliance of Small Island States (AOSIS) and like-minded developing countries also stressed that the level of ambition must ensure a balance between mitigation and adaptation. Apart from emission reduction, support for finance, technology and capacity building must also be prioritized.

Questions of equity in commitments of parties, the need for transparency regarding their commitments, and the possibility of legally binding commitments have also been subjects of contention. However, the issue of a legal framework or a compliance procedure has not been addressed. Developing countries have reiterated that the developed countries must deliver on their financing, technology, and capacity-building commitments.

From the ADP’s deliberations, it also appears that instead of a single agreement emerging from the Paris Conference of the Parties (CoP) there could emerge a ‘Paris package,’ comprising of the agreement, pledges/ contributions from the parties, and decisions concerning the work to be done between 2015 and 2020. The 2015 deadline for conclusion of the work of the ADP is quite tight in view of the fact that the synthesis report of the IPCC’s Fifth Assessment would be available only by October 2014, while the results of 2013-2015 review would be available by mid-2015 at the

earliest. The IPCC's work is quite significant because it will bring out whether or not the impact of climate change is still along the lines as projected in the Fourth Assessment report. It will also clarify what should be the adaptation and mitigation efforts necessary to tackle these impacts, including their economic cause and benefits. While the synthesis report of IPCC is still awaited, it would appear that as compared to the fourth report, the present pace of global warming is a bit slower than previously envisaged. The outcome of the review is significant because it will include the results of mitigation efforts by various countries as well as whether the developed countries have fulfilled their commitments towards the developing countries.

In view of the above, it is still possible to secure the Paris package, with the new agreement, attendant pledges/ commitment/ contributions and relevant CoP decisions, by December 2015. It would, however, require a deeply concerted effort by all the parties, as well as leadership and commitment from the developed countries, particularly the United States and the European Union.

Are mini-lateral (e.g. Major Economies Forum, G2) capable of breaking the impasse at the global level or of comprehensively addressing the challenges of mitigation and adaptation?

Climate change issues have figured since 2006 on the agendas of the meetings of a number of general plurilateral bodies, such as the G8+5, G20, and Commonwealth Heads of Governments. They have also been discussed in specific bodies like the Major Economies Forum for Energy and Climate. The experience has been that the discussions in such bodies are indeed useful for understanding the rationale for negotiating positions, political imperatives, for sharing domestic innovations and initiatives, and for high-level informal interactions. However, deliberations in these bodies cannot be a substitute for negotiations under UNFCCC, which is the only global climate change forum. Of course after the new agreement is finalized at Paris in December 2015, discussions in these forums could be useful for exchanging thoughts on regional adaptation projects, enhancing climate benefits of ongoing cooperative initiatives, technology-related matters, and facilitating high-level informal exchanges about similar issues

What have been the most successful the regional, domestic, and municipal policies and framework?

Mitigation efforts are naturally related to national policy in regard to climate change and in regard to matters such as energy efficiency and forestry, which have climate benefits. The Indian National Action Plan on Climate Change is a prime example of this. This plan is premised on India's active engagement in multilateral negotiations in the UNFCCC with the objective of establishing an effective, equitable, and cooperative global approach based on the principle of common but differentiated responsibilities and respective capabilities. This global vision is inspired by Mahatma Gandhi's dictum, "there is enough on Earth for everybody's need, but not enough for everybody's greed." The plan identifies measures that promote the country's development objectives while also yielding co-benefits for addressing climate change effectively. It hinges on the development and use of new technologies. The mechanism of implementation is through public-private partnerships and civil society action.

A National Solar Mission has been initiated to increase the share of solar energy in the total energy mix, while recognizing the need to expand the scope of other renewable and non-fossil options such as nuclear energy, wind energy and biomass.

The Energy Conservation Act of 2001 also provides a legal mandate for the implementation of the energy efficiency measures through the institutional mechanism of the Bureau of Energy Efficiency in the central government and through energy agencies at the state level. To enhance energy efficiency, initiatives like mechanisms to finance demand-side management programs in all sectors by capturing future energy savings and developing fiscal instruments to promote energy efficiency have also been undertaken.

How can the United Nations Framework Convention on Climate change process be reformed to be more effective?

The negotiating process under the UNFCCC follows the same formal process for negotiations as for other UN bodies. So any reforms which are brought in the overall UN system would apply to UNFCCC also. However, unlike some other UN processes, the climate change negotiations have a substantive degree of urgency because of the rise in greenhouse gas concentrations and the two degree centigrade goal. Each meeting of the Conference of Parties under the UNFCCC has its own goals and successes. However, the CoP at Copenhagen in 2009 did not succeed because a large number of countries felt that the Copenhagen accord was agreed among twenty to thirty countries in a closed setting and was parachuted for approval as the CoP presidency's proposal. At Cancun in 2010, the CoP presidency tried to have a more inclusive and transparent system of ministerial consultations, which led to comparatively smoother acceptance of the Cancun agreement. Bolivia was the only country that dissented. At Doha in 2012, the Qatari presidency brought up a set of proposals for approval which were agreed upon ultimately, with dissent from some east European countries and reservations from the United States—some developed countries and some developing countries. Poland as the CoP president in 2013 further tried to make the process inclusive and transparent—all decisions were taken in the plenary meeting and there was no package proposal from the CoP presidency. It is apparent that an inclusive and transparent process of ministerial consultations and deliberations has a larger chance of success. Sufficient time also needs to be provided, either as additional sessions or extended sessions, to enable the countries to appreciate each other's point of view and to develop confidence in mutual assurances.



Panelist Paper: Wider Commitment and Ambitious Climate Diplomacy Needed For an Effective New Climate Change Agreement

Council of Councils Annual Conference
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Sook Jong Lee, East Asia Institute (EAI)

Climate change is an urgent problem that requires great attention and commitment from all concerned individuals, countries, and international organizations. Despite warnings from scientists, the response to this widespread global problem has been slow and frustrating due to weak rules of enforcement and diverging socioeconomic interests among the involved parties. The recent United Nations Environment Program (UNEP) Emission Gap Report warned that current global emissions are already considerably higher than the emission levels necessary to achieve the two degrees Celsius target by 2020. Narrowing this gap will become more difficult as time passes. Accordingly, the Intergovernmental Panel on Climate Change (IPCC) working group Three of Assessment Report Five (AR5) suggested cutting anthropogenic greenhouse gas (GHG) emissions substantially by mid-century through large-scale changes in energy systems and land use. Can a new global climate change agreement be adopted by 2015 in order to achieve this goal? The political commitment and climate diplomacy among the parties participating in the United Nations Framework Convention on Climate Change (UNFCCC) have been weak the past several years; therefore, a new agreement is likely to be less ambitious—even if a new one is produced.

Prospects for a New Climate Agreement

The 2009 Copenhagen conference of parties (COP 15) under the UNFCCC encouraged countries to submit emission reduction proposals and action plans through 2020. Following the conference, forty-two industrialized countries submitted their emission targets and an additional forty-five developing countries submitted nationally-approved mitigation action plans. The 2010 Cancun Agreement called for deep cuts in greenhouse gas emissions in order to prevent the average global temperature from rising two degrees Celsius above the pre-industrial level. At the 2011 Durban COP 17, the participating countries agreed to develop a new global climate agreement by 2015 that will be put into effect by 2020. The next year, at the 2012 Doha COP 18, the parties agreed to consider elements for a draft negotiation text no later than 2014. However, the COP 19 conference in Warsaw in November 2013 lacked progress for an agreement on mitigating principles and targets. It remained limited to an agreement on the rulebook for reducing emissions from deforestation and forest degradation practices and a mechanism to address losses and damages caused by long-term climate change. Now, only a year and a half remains until the Paris COP 21 in November 2015. UN secretary-general Ban Ki-moon's New York Climate Summit in September 2015 will mobilize political support for the Paris climate conference. Since this summit is not intended for negotiations, the parties of the UNFCCC should realize significant progress in climate negotiations before the summit takes place. Within this timeline, this year's COP 20 in Lima is very important. However, the prospects are not bright for both the Lima conference and the overall goal of achieving a meaningful new climate treaty for several reasons.

In order to limit global temperature increases to less than the agreed-upon two degrees Celsius, the new agreement must contain national, legally-binding targets and actions on mitigation and adaptation supported by finance, technology, and capacity development. However, the ad hoc working group on the Durban Platform for Enhanced Action (ADP), which is in charge of preparing a new agreement, has not yet found mutually-agreeable rules on mitigation responsibilities for all parties. During the negotiation process, the dividing lines have still been strong between developed and developing countries. Developed countries have argued that the binary system of Annex I and non-Annex I of the Kyoto Protocol does not reflect changed responsibilities and capabilities. They want developing countries, emerging economies in particular, to commit to the mandatory reduction mechanisms. Arguing about the historical responsibility of developed countries for global warming, on the other hand, developing countries are opposed to abolishing the two-annex system and would like to create a more vigorous financing and technology transfer program from developed countries. The principle of “common but differentiated responsibilities” needs to be reinterpreted to narrow this gap. Regardless of mandatory or voluntary mitigation efforts, a more flexible integrative mitigation mechanism is needed to provide incentives to both developed and developing countries to participate in a new climate agreement.

Second, major economies, excluding European Union (EU) members, have not demonstrated strong ambitions to combat climate change. It is widely believed that the Congress of the United States would not ratify a new global climate treaty even if President Barack Obama signed it. The biggest carbon dioxide (CO₂) emitting country—China—is also not likely to participate in a new mandatory reduction scheme. Moreover, several Annex I Parties, including Japan, New Zealand, and Russia, have decided not to participate in the second commitment period (2013-2020) of the Kyoto Protocol. The thirty-seven countries currently committed to the second period account for only 13.4 percent of annual global anthropogenic GHG in 2010. In 2012, Canada withdrew from the Kyoto Protocol. Assuming these major economies will not join the Annex I group while submitting their own pledges to reduce emissions, the rules for non-Annex I countries should be placed under transparent and strict accounting and validation schemes. If possible, major economies without mandatory reduction responsibilities should be linked to a new coordinated mechanism. Unless a new climate change agreement induces wider commitment beyond European countries, this agreement will not succeed in reducing GHG to a safer level.

Third, developing countries should demonstrate their commitment to a new climate agreement under new schemes such as the Nationally Appropriate Mitigation Actions (NAMA) or the UN’s Reducing Emissions from Deforestation and Forest Degradation (REDD+) program. The Clean Development Mechanism (CDM) of the Kyoto Protocol has facilitated North-South cooperation in fighting climate change. CDM began in January 2006 and has allowed the Annex I parties (Annex B parties under the Kyoto Protocol) to earn salable Certified Emissions Reduction (CER) credits by assisting emission reduction projects in developing countries. Now, the REDD+ has emerged as a new North-South mitigation effort. In recognition of the critical role of forests in mitigating climate change, more than seventy-five countries have participated with Norway and Australia in leadership roles. While not being pushed for mandatory reduction responsibilities under NAMA, developing countries should report their own nationally-implemented mitigation efforts to the international community and the latter should support these efforts with technical and economic means. Nevertheless, adaptation funding has been too limited for developing countries to commit to active mitigation pledges. Nor are there effective accounting mechanisms to monitor the delivery of these pledges. Among developing countries, the poorest and most vulnerable ones are keen to act, but they are constrained in their resources and must receive immediate support for their adaptation efforts.

More Coordinated Political Support for Climate Ambition

The political will to conclude a new global climate agreement has not been strong in the later stage of the Kyoto Protocol. To produce a sustainable global climate agreement and any other meaningful multilateral climate agreement, climate initiatives should be integrated not only into multilateral major economic forums such as the Group of Seven and Group of Twenty, but also into the bilateral diplomacy of influential countries. In particular, a common fight against climate change must be a crucial component of all the development frameworks of the United Nations, European Union, and other new emerging donor countries. Inviting donors from outside the Organization

for Economic Co-operation and Development's Development Assistance Committee to this cause begs for more systematic cooperation between the international organizations engaged in development assistance and those fighting climate change.

Reform of the UNFCCC

The UNFCCC has been the most authoritative multilateral framework combating climate change to date with 192 participating countries. It successfully launched the Kyoto Protocol, and its COP meetings have made progress, albeit at a slow pace. Governing climate change is a daunting task due to its complex scientific, technical, economic, and political nature. The UNFCCC deserves acclaim for taking on this difficult task. Nevertheless, the performance of this framework, measured by its achievement in mitigating GHG and assisting adaptation, is weak. It is important, however, not to conflate the limits of the Kyoto Protocol framework with the failure of the UNFCCC itself.

Accordingly, UNFCCC reform should incorporate three dimensions. First, it is necessary to reinvigorate political will to fight climate change. UN leadership and EU diplomacy are needed to engage other regional organizations and individual countries. Integrating the United States and China, the two biggest GHG producers in the world, into the framework is very important. Second, it is crucial to overhaul the institutional mechanisms for more effective performances. The Kyoto Protocol's cap-and-trade system for GHGs has been largely limited to the EU region and several other Annex I parties. It has also been accompanied by problems of loose caps, double counting of reductions, and offsets. Bringing in a market approach to the next framework is currently being discussed. One of the market approach ideas is to link rising carbon markets globally. Also under discussion is a method to create sector specific cooperation and coordination, such as through the energy supply or energy end-use sectors. According to the recent IPCC working group Three of Assessment Report Five, CO₂ emissions from fossil fuel combustion and industrial processes have contributed about 78 percent of the total GHG emissions increase from 1970 to 2010, with a similar percentage contribution for the period of 2000 to 2010. If fossil fuel-burning power plants change to gas methods, a significant amount of CO₂ emissions can be reduced. Another approach is to encourage carbon taxes nationally. Third, the UNFCCC needs to support the creation of regional or subregional climate change forums or regional COPs in order to push for the UNFCCC parties to tackle climate change more routinely and urgently at the regional level. Last, but not least, is to integrate science more tightly to the strategy of fighting climate change.

The UNFCCC created the Kyoto Protocol as the first global climate change agreement in history. It took eight years, until 2005, to begin to implement the Kyoto Protocol. It is imperative not to wait long again to put a new global climate change agreement into force. The world should push through quicker ratifications by the involved parties in order to save time. It is needless to say that all concerned people and international networks, including the Council of Councils, should do their best to bring about greater climate change policy ambitions and contribute to the creation of a new agreement that is stronger and more effective.

COUNCIL OF COUNCILS

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Session Six

Proliferation of Unmanned Aerial Vehicles: The Future of Drones



Panelist Paper: Proliferation of Unmanned Aerial Vehicles: The Future of Drones

Council of Councils Annual Conference
May 11-13, 2014
Council on Foreign Relations, Washington, DC

Marcel Dickow, German Institute for International and Security Affairs (SWP)

In recent years Unmanned Aerial Vehicles (UAV) have become one of the most interesting technologies, in particular for security applications. Nevertheless the question how to regulate the civil and military use of drones is often neglected. This background memo offers seven theses regarding future developments and challenges in the UAV sector:

UAVs represent an intermediate step of technology towards robots.

Are drones a revolution? If not, robots will be! Quite some technological developments have shaped our daily life, military capabilities, and security policy recently: personal computers, digital mobile devices and communication, the Internet. While we are becoming increasingly virtual, the separation of man and machine continues. Drones are the intermediate step when it comes to spatial separation of machines from their human operators. The first step—teleoperation—is everything else but new. But we can now observe the way ahead more clearly. Drones, or unmanned / remotely piloted vehicles, will spread out into daily life, from parcel shipping to neighborhood surveillance, and become increasingly autonomous. Obviously aerial systems dominate the scene because it is, technologically spoken, the simplest platform. Land and sea systems are following closely.

The civil market potential will dominate the technology development. Rather than the platform, software drives technological progress.

While military and security applications are the most prominent, the economic potential of remotely piloted platforms is civil. The lack of laws and regulations for civil/commercial use has hampered exploitation, until now. While few autonomous robotic cars are permitted to drive on public roads, the operation of military UAVs still rely on exceptional procedures and a restricted air space in Europe and the United States. Notwithstanding these limitations, drones are on the rise. Apart from some exceptional cases it is not the physical platform but rather software that drives the progress of technology. Miniaturization of sensors and actuators, cognitive functions, and artificial intelligence are cutting-edge research areas. These developments are predominantly coming from universities and civil companies.

The use of drones is a convenient solution for 3d applications but teleoperation is the second best solution.

Unmanned platforms are usually used in the “3d”-areas: dull, dirty, and dangerous. That is why the systems are most asked for in the field of security and defense. Highly hostile environments are coming increasingly into play for commercial applications, too, such as deep water exploration and drilling. The major incentive for the use of drones is

distance of the operator from a potential risks. Miniaturization allows new applications in challenging situations, e.g. disaster areas. It has been mainly the digital revolution with broadband communication and multi-sensor systems that drives the technological development. Although small UAVs can be operated even with commercially available mobile devices (cell phones, tablets), teleoperation has its inherent technical limitations. Not only in complex environments and over long distances, communication to and from the platform is confined by time lags and bandwidth bottlenecks. Beyond-line-of-sight (BLoS) operations require satellite data communication. The military use of UAVs with multi-sensor equipment has expanded this demand significantly. Military requirements for fast real-time operations, rather than surveillance tasks, will increasingly lead to implementing autonomous functions into unmanned platforms.

Future technologies will change the man-machine relationship. Assistance systems alter the decision-making processes in the field.

The trend to focus on the use of drones has strategic consequences. Obviously in the civil and commercial domain, automated systems will replace humans in the longer run. In the meantime, assistance systems will support the operator in controlling the machine, and facilitate the analysis and interpretation of data. It is a shift from the concept of the “man in the loop” to the “man on the loop.” Such systems will become communication partners rather than operated machines, because they will have their contribution into how the human will decide to use the machine.

UAV-technology already has its strategic implications in security policy. Future combat drones may shift military balances. Armed drones and targeted killing practices have shaped the international discussion already

In the field of national and international security policy, UAVs are already enablers of strategic power projection and operations in the field. At least in asymmetric scenarios (e.g., COIN, stabilizing operations) with control over a restricted airspace, armed drones take over in close air support. In the future they will become faster aircrafts with stealthy features and they will be able to carry heavier munitions. It is the aim of force planners to use new generations of armed drones, so called Unmanned Combat Aerial Vehicles (UCAV), in contested airspace and symmetric conflict scenarios, even from an aircraft carrier far away.

While these systems are in the development phase, the United States already relies on armed UAVs in the “global war on terror.” In Yemen, Pakistan, and Somalia (and other African states) the CIA rather than the U.S. Army performs targeted killings against suspected members of terrorist organizations. Neither by numbers nor by intensity would such operations have been possible without armed drones. UAVs offer three main advantages over conventional anti-terror missions on the ground or manned aircrafts: firstly, operations without any risks for the military personnel involved; secondly, operations in regions difficult to access for geographical or political reasons; and thirdly, operations under secrecy, not only to the enemy but with respect to the domestic (and international) public. Recent developments have shown that this strategy has its international repercussions: while it is contentious whether the impact on the leadership of al-Qaeda and other relevant terror organizations is significant enough, drones have become the symbol of targeted killings and have been discredited not only in the regions of concern but in the wider public opinion. Although extra-legal killings are not limited to drone attacks, it is the mean that symbolically stands for the violation of international (humanitarian) law. Obviously the two modes of operations, close air support—e.g. in Afghanistan on the one side and targeted killings on the other—are different, but they converge technically with the use of automated data analysis and pattern recognition. The future military use of robotics will happen under the shadow of the actual perception of armed drones operations.

The use of drones leads to privacy concerns.

On the one hand it is non-controversial that unmanned systems, tactical and Medium Altitude Long Endurance (MALE) UAV in particular, offer important surveillance capabilities for crisis management and humanitarian aid. On the other hand, small and micro drones facilitate personal surveillance through state and nonstate actors. Drones may

become the physical correspondent to the digital surveillance effort and consequently implicate data privacy concerns. The combination of digital and physical individual and mass surveillance would have Orwellian dimensions. Not only for privacy reasons, but with regard to the military use of unmanned systems, rules and regulations are needed.

For safety, security, and privacy reasons, international regulations are needed. This is both a technological and political challenge.

Drone technology is heavily proliferating globally. More than eighty countries have or develop UAVs. Non-state actors like Hezbollah have already used small reconnaissance drones and Iran is developing such systems. Despite the widespread proliferation it is not clear yet how to regulate the technology. Obviously it is dual-use, but even its military applications may have important advantages for peaceful purposes, conflict management, and peace-keeping.UCAV could be the future of air-forces. Many countries including the UK, France, and the United States are developing next generation unmanned fighter aircrafts.

Two areas remain of great concern for regulation: Firstly, personalized warfare, including targeted killing, through teleoperated systems. Secondly, the (future) development of lethal autonomous weapons systems (LAWS). Because it is a smooth transition from assistance systems to autonomous machines, a prohibition of LAWS is nearly impossible to verify. Even a definition is highly problematic. Nevertheless it is indispensable to protect mankind against automated killing and attack decisions. From May 13, 2014, an informal discussion will be held on the framework of the Convention on Certain Conventional Weapons (CCW) in Geneva. In this new working group led by France, CCW member states debate the regulation of the use of military robots. A general prohibition of autonomous kill decisions and automated attacks, to restrict warfare to humans rather than machines, will only be feasible with the agreement of at least some important military powers. The United Nations General Assembly (UNGA) already expressed its position while discussing the Heyns Report on extra-legal killings in 2013. The First Committee of the UNGA and the Geneva-based Conference on Disarmament are predestinated fora to shape political will and to regulate unmanned and autonomous military technology.



Panelist Paper: Proliferation of Unmanned Aerial Vehicles: The Future of Drones

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Sam Roggeveen, Lowy Institute for International Policy

How is the use of drones likely to expand in the future?

As far as military applications are concerned, we should not expect a dramatic shift away from crewed operations for combat missions. The incremental shift away from crewed missions will continue, but mostly for routine operations rather than highly complex and dynamic combat missions. Already drones are widely used as surveillance platforms and for relatively simple combat missions in uncontested airspace. Gradually, other surveillance missions now undertaken by crewed platforms (and by satellites) will fall to drones: broad-area maritime surveillance is the obvious example, but military transport and aerial refuelling could also be conducted by drones.

Commercially, as drone technology becomes cheaper, individuals, small businesses, and NGOs will find uses for it that are yet to be imagined. There is already a thriving DIY drone community in the United States, for instance, which is [collaborating](#) to launch new designs and applications. The primary break on this innovation is likely to be regulatory. Governments, businesses, and the public will need to find ways to share airspace and ensure public safety as an ever-increasing number of crafts take to the sky. Bureaucracy will inevitably lag behind technical progress, which means early commercial applications of drone technology are more likely in remote airspace for applications such as agriculture, forestry, mapping, and environmental monitoring.

What have been the benefits and drawbacks of utilizing drones to date?

From the military perspective, the benefits have thus far outweighed the costs. The overriding justification for the military use of drones is to improve military effectiveness while reducing the risk to friendly personnel, in this case aircrew. Drones have succeeded on both counts.

On the question of aircrew safety, the calculation is simple: taking the pilot out of the cockpit reduces dramatically the chances of death or capture. As for military effectiveness, [two recent studies](#) published in *International Security* concluded that targeting of terrorist leaders has reduced the effectiveness of terrorist groups and can even cause them to disintegrate. Drones have played a major part in U.S. efforts to target al-Qaeda, and drone operations continue to put pressure on al-Qaeda leaders in Afghanistan, Pakistan, Yemen, and parts of Africa.

Drones have also made a contribution to attempts to make war-fighting more just, primarily because the combination of persistent surveillance and precision-guided weaponry allows for more deliberative targeting, which reduces civilian death. Of course, terrible mistakes continue to be made, and a [recent report](#) from the UN special rapporteur

for human rights on civilian deaths from drone strikes points to an urgent need for all countries operating such systems to develop the most rigorous targeting procedures.

Such tragic mistakes can also create 'blowback', in that it can motivate those aggrieved by such incidents to join terrorist groups. The strategic gains and risks of drone strikes therefore need to be carefully weighed, and there is evidence that the Obama administration's use of drones against al-Qaeda has [peaked](#), perhaps in recognition of such risks.

Is there a need for global norms to govern drone use? What are the prospects for negotiating such norms?

The UN has [identified](#) an urgent need for international consensus on a myriad of legal issues raised by the military use of drones. Among them:

Does the international law principle of self-defence entitle a State to engage in non-consensual lethal counter-terrorism operations on the territory of another State against a non-State armed group that poses a direct and immediate threat of attack even when the armed group concerned has no operational connection to its host State? Is the international law principle of self-defence confined to situations in which an armed attack has already taken place, or does it entitle a State to carry out pre-emptive military operations...?

The development of such norms is complicated by the rapid advance of technology, and soon will have to take into account the gradual evolution of drones into robots – that is, the technological process by which aircraft come to operate autonomously rather than just via remote control. Drones already incorporate various degrees of automation, but there is always a 'man in the loop,' an operator or perhaps an entire group of decision makers who can make real-time decisions about which piece of countryside the drone will monitor and even which buildings and individuals will be targeted with weapons. Flying robots, on the other hand, could be programmed to operate without such intervention. The U.S. Navy's U-CLASS program, for instance, will produce an aircraft capable not only of taking off and landing on aircraft carriers without real-time human intervention, but also to perform entire missions—sometimes armed missions—without a human operator in the loop.

Such capabilities invite *Terminator*-like fears, but it is important to note that this level of autonomy does not mean such robots will 'make decisions' about whether a particular adversary will live or die. To refer to robots 'making decisions' suggests a level of moral agency that machines cannot possess. While it is true that future unpiloted aircraft will be able to 'pull the trigger' without real-time recourse to a human operator, the human element nevertheless remains. A robot firing a munition on a target is no more 'deciding' to kill an adversary on the ground than a car assembly line robot 'decides' to pick up component A rather than component B. In both cases, the human programmers are ultimately responsible for the action taken by the robot.

In such a scenario, the real distinction between a drone and a robot is that, while drones remove the human decision-maker from the military theatre of action by distance, robots will remove them by distance *and time*. In that sense, the use of armed robots is no more or less morally problematic than the use of land mines or booby traps, or even of the automated air defence systems, which for more than thirty years have been widely deployed on warships. In fact, armed robots are less likely to cause unintended harm to innocents than mines and booby traps, and pre-programming may prevent the targeting mistakes that inevitably happen when humans are making such decisions urgently or in periods of high stress.

Nevertheless, it will be a challenge for international lawyers to determine whether those who program the robots can be held accountable if a military mission performed by a robot leads to a war crime.

Can drones be employed to improve governance of other global crises (e.g., humanitarian disasters, ecological monitoring)?

Yes. Already we have seen drones used by journalists and protesters to record the activities of security forces during civil disorder in various cities, to monitor the Uganda-Rwanda border for the UN, for disaster relief in the Philippines, and to assess earthquake damage in Haiti and tsunami damage at the Fukushima power plant. The list goes on, and it is not difficult to imagine the scope widening further. For instance, the NGO Project Sentinel uses satellite imagery to provide early warning of mass atrocities in Sudan. Such initiatives will inevitably be emulated by other NGOs, but using far cheaper drone technology.

Drones offer highly persistent surveillance, an attractive capability for the monitoring of ceasefires or arms control agreements. There are ample precedents, such as the 1992 Open Skies treaty, which allows surveillance flights over military facilities in thirty-four countries. Or consider the UN's nuclear monitoring agency, the International Atomic Energy Agency, which uses security cameras inside various nuclear facilities around the world to verify compliance with safeguards. The fact that these cameras are constantly being monitored by the international body creates reassurance in the international community. Similarly, drones operated by a third party could reassure two states that have agreed to disarm their border but which remain mutually suspicious.

Even where no such agreement exists, drones can lower the temperature of an international dispute. Consider how much lower the domestic political stakes would have been for China in April 2001 had the People's Liberation Army air force not lost a pilot when his fighter jet collided with a U.S. Navy EP-3 surveillance plane. And what if the EP-3, which after the collision was forced to land in China with twenty-four crewmembers aboard, had instead been an uncrewed Global Hawk?

What are the dangers of the increased use of drones for military purposes?

Drones do not greatly affect the strategic or moral questions surrounding traditional state-on-state warfare. In that setting, drones merely refine existing military capabilities. But drones do create new questions in the area of transnational threats, which take in not just terrorism and insurgency but drug smuggling, human trafficking, international crime, and cyber crime. The danger is that by lowering the risk and increasing the effectiveness of military action against such threats, drones increase the temptation to use force. They offer a simple technological fix to problems that would otherwise need to be solved by slower and messier methods such as law enforcement, international diplomacy, and intelligence cooperation. In the process, the temptation to take a short cut by using drones to eradicate drug kingpins, weapons smugglers, or the leaders of groups committing atrocities in ungoverned spaces could erode domestic and international norms around justice and due process.



Panelist Paper: Limiting Armed Drone Proliferation

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Micah Zenko, Council on Foreign Relations (CFR)

While the United States remains the lead actor in terms of possessing and using armed drones, the rest of the world will catch up. Three countries—the United States, United Kingdom, and Israel—have used armed drones for bombing missions, approximately a dozen are actively pursuing them, and more will likely follow suit. Russia, China, Iran, South Korea, and Taiwan, for example, have begun to develop increasingly sophisticated indigenous drone capabilities. Other countries, including Pakistan, Turkey, Saudi Arabia, and the United Arab Emirates, have publicized their intent to purchase them. While the armed drones acquired by states in the near-term will not possess capabilities equal to those of the United States, their effects will still be destabilizing. States that acquire armed drones will likely use them as probes and for limited attacks in international waters and across borders, against domestic threats, and, potentially, for even more lethal missions, including delivering weapons of mass destruction (WMDs).

The United States attracts the greatest attention because it is, by far, the most prolific user of armed drones. However, the British military was responsible for 299 drone strikes in Afghanistan through July 2013, and Israel has used drones both in and outside of armed conflicts as well. Many countries are positioning themselves to have the ability to emulate these capabilities. China and Iran claim to have operationally deployed armed drones, but have not conducted strikes. Both countries have showcased their capabilities and claimed they are prepared to use them during a crisis. Consistent with these growth trends, several other countries have announced their own armed drone programs. Rebuffed by requests to procure U.S. armed drones, Pakistan said it will develop them indigenously or with China's help to target the Taliban in its tribal areas. Turkey has about twenty-four types of drones in use or development, four of which have been identified as combat drones. Several European Union member states—including France, Italy, Spain, Greece, and Sweden—have collaborated on the Neuron, a stealth armed drone still in development. The final category comprises the majority of all aspiring drone countries that seek only unarmed surveillance drones while retaining the option to pursue more advanced military purposes later.

The attractiveness of armed drones stems from three inherent advantages. First, the typical medium-altitude long-endurance drone can persist over a target for up to fourteen hours without being refueled, which provides a continuous monitoring of the situation below. In contrast, manned aircraft can neither loiter nor fly repeatedly over an area of interest for more than four to six hours due to fuel or pilot limitations. Second, with a missile attached to the surveillance platform, the responsiveness of armed drones when time-sensitive targets appear in the operator's view is unmatched. Moreover, drone-fired missiles can be diverted by the weapons system operator at the last moment if noncombatants enter the likely blast radius. Third, and most important, unmanned systems do not place human pilots or ground forces at risk of being killed or captured in hostile environments.

Proliferation of armed drones will have many effects of when and how states use force. First, there will be an increased frequency of interstate and intrastate force, though not necessary conflict. Senior U.S. civilian and military officials,

whose careers span the pre- and post-armed drone era, overwhelmingly agree that the threshold for the authorization of force by civilian officials has been significantly reduced. In contested areas, drones will enable governments to undertake strike missions or probe the responses of an adversary that they would be less inclined to do with manned platforms. Domestically, governments could use them in the service of domestic pacification, especially against time-sensitive targets that reside in mountainous, jungle, or other inhospitable terrain.

Second, there is an increased risk of misperception and escalation. Pushing limits in already unstable regions is complicated by questions raised regarding rules on engagement: How would states respond to an armed drone in what they contend is their sovereign airspace, and how would opposing sides respond to counter-drone tactics? Thus, the additional risks associated with drone strikes, combined with the lack of clarity on how two countries would react to an attempted downing of a drone, create the potential for miscalculation and subsequent escalation.

Third, there is an increased risk of lethality. The proliferation of armed drones will increase the likelihood of destabilizing or devastating one-off, high-consequence attacks. The worst-case contingency for the use of armed drones, albeit an unlikely circumstance, would be to deliver WMDs. It is equally noteworthy that civilian officials or military commanders have almost always used armed drones in ways beyond their initially intended applications. Drones do not simply fulfill existing mission requirements; they create new and unforeseen ones, and will continue to do so in the future.

Despite proliferation trends, there are also technological, diplomatic, and domestic political constraints that limit the procurement of armed drones. Technologically, several countries with relatively advanced aerospace programs, including Russia, France, and Italy, have not been able to develop and deploy capabilities equal to those of the United States. Though it is unlikely that countries will indigenously develop these capabilities in the near-term, most have the financial resources to purchase from the United States or Israel—including Pakistan, Turkey, and the United Arab Emirates. Diplomatically, few other countries will have actionable intelligence, sophisticated beyond line-of-sight communications, access to satellite bandwidth, systems engineering, and reliable access to foreign airbases in coming years to conduct lethal operations, similar to those of the United States. Additionally, no other country will develop a blue-water navy capable of supporting intercontinental drone strikes for decades to come. Therefore, it is likely that most drone operations conducted by other countries within the coming years will be across borders or internal. Lastly, domestic politics can constrain armed drone programs even in countries that have the ability to develop the technology. Whereas the U.S. targeted killing program has faced few domestic constraints, the politics of drones looks considerably different in elsewhere, particularly in Pakistan and throughout the European Union.

Currently, the lack of clarity and transparency of the U.S. drone program influences how the United States could set positive precedents for other states and to influence proliferation and use of force norms. The Obama administration will not identify which terrorist groups can be lawfully targeted—only that targeted individuals are members of al-Qaeda or “associated forces”—because doing so would enhance the credibility of named groups. Identifying these groups would reassure other countries that the United States can justify who it targets, and give the United States leverage to call on other countries to explicitly define who they are targeting. Additionally, publicizing what procedures either the CIA or Department of Defense take to prevent or mitigate harm to civilians or to investigate incidents of civilian harm that occur during lethal operations would increase transparency. The United States should also be more explicit in terms of how it applies international humanitarian law and self-defense law to its policy of armed drone strikes—and whether international human rights law applies. These actions would provide transparency on U.S. weapons development and decrease uncertainty among potential adversaries about its capabilities, subsequently decreasing the likelihood of an arms race.

In its remaining years, the Obama administration has the opportunity to play a significant role in what these rules of the road will look like if it commits to help develop and shape them. Currently, the Missile Technology Control Regime (MTCR) is the most relevant legal instrument to govern the proliferation and use of armed drones. However, it faces challenges as it is a nonbinding agreement interpreted at the discretion of signatory states, many armed drone-

producing or -aspiring countries are not members, the Category I annex is arbitrary since it addresses drones by payload and flight distance which disregards that drones under these threshold can conduct destabilizing missions, and the “strong presumption of denial” clause suggests that members states should not export Category I items. Given that the United States cannot get consensus support for modifying the MTCR, any exports of Category I unmanned systems should be concomitant with public confidence-building measures concerning each individual sale. Specifically, the United States should provide detailed descriptions of armed drone exports in its annual report to the United Nations Register of Conventional Arms, which is not currently required for member states.

The most near-term policy decision facing the Obama administration is determining under what conditions the United States will export Category I unmanned systems. As the lead user of drones, the United States has the unique opportunity to determine which countries acquire these systems and hold them accountable for how they use those drones.

If the United States delays and forgoes the opportunity to establish rules of the road for the use of armed drones and constrain their proliferation, there will be grave consequences for U.S. interests, in terms of the prevention of armed conflict, promotion of human rights, strengthening of international norms and legal frameworks, and the future of warfare. Subsequently, the United States should pursue a strategy that limits the proliferation of armed drones and promotes their use in a manner consistent with international law and norms, and that does not threaten U.S. interests or allies. The strategy should consider foreseeable destabilizing or deadly missions over the next decade and beyond, but remain flexible enough should unprecedented uses and missions emerge.