

# Democratic and Rule-of-law Implications of Military Deployments Abroad

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# US Military Deployment and Its Effects on South Korea's Politics and Economy

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# **US Military Deployment and Its Effects on South Korea's Politics and Economy**

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## **Abstract**

Due to the lack of studies on the effects of US troops on an individual host state, we studied the effects of US troops on South Korea's politics and economy. Based on security enhancement benefits, we hypothesized that USFK would have positive effects on South Korea's investment, trade, economic growth and political development. Employing Heo and Ye's (2019) empirical models, we conducted statistical analyses and found that the effects of USFK on South Korea's trade, democracy level, and economic growth are statistically insignificant and the effect of USFK on investment is negative and statistically significant. These findings need to be cross-validated with a different measure of estimating USFK's effects because our measure, size of USFK, may not capture its effects completely although there is no other measure.

## **Key Words**

**US Forces Korea, democracy, investment, trade, economic growth**

## Introduction

Since the end of World War II, the United States has played the role of “world police” for regional security and stability. To this end, the US government has deployed a substantial portion of its troops around the world. According to Kane (2012: 255), “Counting one soldier serving in a country for 1 year as a *troop-year*, the number of US troop-year deployments on foreign soil from 1950 to 2009 is 31 million, or 30,597,594 to be exact.” On average, this means that approximately 456,000 American soldiers, or about a third of US active duty troops, were annually deployed in foreign land (Heo and Ye 2019).

Despite the important theoretical and policy implications of the effects of foreign troop deployment on the host nation, few studies have analyzed the political and economic effects of US troops on host nations systematically. Previous studies (e.g., Dobbins et al. 2003; Carafano 1997) focused on historical cases of Germany, Japan, and Iraq, or arms management after conflict (see Jones and Kane 2012). The primary reason for the lack of empirical studies was the shortage of readily available information about US troops deployed overseas (Schramm 2010).

As the US troop deployment data became available, scholars began to examine how US troop deployment abroad affects the host nation (e.g., Bell et al. 2017; Heo and Ye 2019; Jones and Kane 2012; Kane 2012). Yet, previous studies employed a time-series, cross-national research design, examining the data for dozens of countries over several decades. Findings of these studies revealed only the overall effects of US troop deployment on host nations without disclosing the individual effects on specific countries. To fill the gap in the literature, we investigate how the presence of US troops affects South Korea’s economy and politics.

It is important to study the South Korean (Republic of Korea, ROK) case for two reasons. First, ROK has hosted a relatively large size of US troops since the end of the Korean War due to the long-lasting North Korean security threat. With the lasting North Korean nuclear crisis and the recent friction between Washington and Beijing, South Korea has been strategically important for the United States.<sup>1</sup> Thus, US troops in South Korea (US Forces-Korea, USFK) are unlikely to leave the region for the foreseeable future.

Second, Washington and Seoul have recently had disagreements concerning defense burden sharing. US President Donald Trump publicly expressed his discontent about the current level of burden sharing by South Korea considering its wealthy economy and the security benefits they receive from US military presence. By contrast, the South Korean government seems to perceive that the current level of burden sharing is fair as it is the outcome of negotiation (see Lee and Heo 2001). Due to the disagreement, there was even a report that Washington is considering withdrawing some US Forces in South Korea although the Pentagon denied it (Reuters, November 20, 2019).

Theoretically, USFK makes significant contributions to regional security, which produces multiplier benefits. For instance, security enhancement gives way to increase in investment and trade, which indirectly helps economic growth. In addition, given the US government's efforts to promote democracy around the globe, it is possible that USFK may also help political development in South Korea. That said, USFK may harm the South Korean economy due to the opportunity cost of the land used for US military bases, social expenses of crimes committed by American soldiers, and environmental damage caused by USFK (see Bell et al. 2017). Altogether, these harmful effects may dampen bilateral relations.

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<sup>1</sup> For a detailed discussion, see Heo and Woo (2008).

Hence, in this study, we investigate the effects of USFK on South Korea's politics and economy, particularly political development, investment, trade, and economic growth employing Heo and Ye's (2019) empirical models. Findings of this study will have significant theoretical and policy implications.

## **Previous Studies**

### *Positive Effects of US Troops on Host Nations*

Jones and Kane (2012: 240) and Kane (2012) were the first to conduct empirical analyses on the effects of US troop deployment on host nations. To theorize the effects of US troop deployment on host nations, Jones and Kane (2012) introduced three theories: expenditure theory, diffusion theory, and security theory. The expenditure theory posits that an increase in foreign troop deployment will lead to an increase in host government's expenditures to meet the needs and expectations. Increased government expenditures by the host government is likely to result in augmenting aggregate demand, which will lead to employment enhancement.

Diffusion theory focuses on the externality effects of foreign troop deployment on the host state, particularly technology transfer. With this theory, Jones and Kane (2012) contend that US troop deployment will increase business cooperation and trade between the host nation and the United States. In the process of economic cooperation, productivity enhancing technologies and advanced knowledge of business management and marketing may transfer to the host nation, which indirectly helps the host nation's economic growth.

Finally, security theory postulates that the presence of US troops directly and indirectly improves the host nation's security. Security enhancement includes subduing intra-state violence (e.g. civil war, domestic terrorism) and deterrence from external attack. Considering that security

is a necessary condition for economic activities, security enhancement provides the host nation an opportunity to seek economic growth without significant disruption (Jones and Kane 2012).

Based on the theories described above, Jones and Kane (2012) analyzed the data for 94 countries that hosted US troops from 1950-2000. The results of their analysis reveal that US troop deployment helps host nations' economic growth. Based on these findings, they contend that US troop deployment has positive externality effects on host nations in addition to security benefits.

In another study, Kane (2012) investigates the effects of US troop deployment on the host nation's public health and infrastructure. He (2012: 256) argues that host governments increase its spending to meet the needs and expectations of US troops deployed, which advances social development by increasing public and private consumption. To test this argument, Kane (2012) analyzes the data on the relationship between US troop deployment and host nations' social development indicators, such as child mortality, life expectancy, and the number of telephone lines. He finds that the presence of a significant number of US troops results in lower child mortality, higher life expectancy, and more telephone lines.

Heo and Ye (2019) also studied how the presence of US troop affects the host nation's economy and politics. Agreeing to Jones and Kane's (2012) security enhancement argument, they presume that US troop presence will enhance regional security and stability, which will facilitate an increase in the host nations' investment and trade. Given the positive effects of investment and trade on economic growth, they argue that US troop presence helps host nations' economic growth. Based on the modernization theory that economic development leads to political development, they hypothesize that US troop deployment helps political development indirectly through economic development.



Based on the logic stated above, Heo and Ye (2019) conduct an empirical test using data from 154 countries between 1960 and 2014. Since the security enhancement effects of US troop appearance are likely materialize when a substantial size of US troops is deployed, they selected only the countries that hosted more than 100 US troops per year on average for the period under investigation. The results of their analysis reveal that as the number of US troop deployment increases, host nation's investment and trade go up. Host nations also enjoyed a small but positive economic growth. However, US troop deployment was not a meaningful factor for political development.

#### *Negative Effects of US Troops on Host Nations*

In contrast to the benefits of US troop deployment reported in previous studies, Vine (2015a, 2015b) asserts that the effects of US military deployment in foreign land is generally harmful. The only short-term benefit may come from constructions building military bases as it will increase capital investment and employment. However, long-term negative effects would be far greater, which include the opportunity cost of the host nations' land offered for US military bases, environmental damages caused by the US military's dumping of hazardous materials, human toll due to US soldiers' violent crimes such as murder or sexual assault, and the common proliferation of prostitution near US military bases around the world. The US military also receives training including bombing, firing guns, cannons, and missiles will inflict serious damage on the environment. Moreover, crimes committed by US military personnel where significant cultural differences exist, may tarnish the national image of the United States as well as strain the relationship between the US and the host nation (Allen and Flynn 2013; Bell et al. 2017).

According to Vine (2015b), these detrimental effects of US troop deployment can dampen the host nation's economy in two ways. First, anti-American sentiment can rise, leading to a reduction in US military deployment. This translates into the decrease in US security support for the host nation and may result in decline in domestic and foreign investment because of the enhanced security concerns. Second, the heightened anti-Americanism may aggravate the relationship between the US and the host nation and cause trade amount between the two nations to fall, which can dampen the host nation's economic growth (Vine 2015b).

### **Effects of US Troop Deployment on South Korea**

#### *US Forces in Korea (USFK)*

After the end of the Korean War, the US government made a security commitment to South Korea by signing a Mutual Defense Pact in 1953. Through the treaty, both the US and South Korean governments agreed to “act to meet the common danger in accordance with its constitutional processes.” To this end, approximately 75,000 US troops remained in South Korea near the demilitarized zone (DMZ) and North Korea's likely invasion routes into South Korea. The troops included two combat divisions until President Nixon withdrew one of them in 1971, which brought down the size of USFK to 43,000. With the end of the Cold War, the size of USFK further shrank during the Bush administration to approximately 37,500 (Heo and Roehrig 2018).

After the September 11 terrorist attack in 2001, the US military revisited its military strategies to deal with the “new” threat, the so-called Global Posture. To this end, the Pentagon redesigned US troops to be more flexible and expeditionary in order to respond swiftly to the “new” security threats. Secretary of Defense Donald Rumsfeld's statement in a Senate testimony

in 2004 well represents the new plan, “We have entered an era where enemies are in small cells scattered across the globe. Yet America’s forces continue to be arranged essentially to fight large armies, navies, and air forces, and in support of an approach—static deterrence—that does not apply to enemies who have no territories to defend and no treaties to honor” (Rumsfeld 2004).

In the same testimony, Rumsfeld stated about USFK that, “our troops were virtually frozen in place from where they were when the Korean War ended in 1953.” With the new plan, the Bush administration devised a new approach that would gradually reduce the size of US troops in South Korea over several years. However, the plan was rescinded later. As of 2020, there are approximately 28,500 US military personnel in South Korea including Combat Aviation Brigade, Armored Brigade Combat Team, Cavalry Division, Field Artillery Brigade, and Chemical Battalion along with supporting personnel. USFK also includes Air Force made up of two fighter wings composed of a squadron of F-16 and A-10 aircrafts (see Roehrig 2014).

According to Heo and Roehrig (2018), USFK has played three important roles since its deployment. First, USFK is an important indication of the US defense commitment to South Korea. Second, USFK plays a tripwire function that leads to “automatic” US intervention in the case of a conflict in the Korean peninsula. Since this function “guarantees” US involvement in case of another war in the region, it is critical in deterring North Korean hostility. Third, with its advanced weapon systems, USFK plays an important role in preventing North Korean military attack in the early stages of conflict if a war breaks out, buying time before more US troops are dispatched.

USFK also provides South Korea with nuclear extended deterrence. In 1958, the US military deployed tactical nuclear weapons to South Korea under the US nuclear umbrella. With the deployment, Washington declared that the US military is willing to use nuclear weapons to

defend the ROK. After the end of the Cold War, however, the US military removed all tactical nuclear weapons from the Korean peninsula by December 1991 for two reasons. First, North Korea used USFK's nuclear weapons as their excuse for nuclear development. To dissuade Pyongyang, Washington removed tactical weapons from the Korean peninsula. Second, the two Koreas agreed to denuclearize the Korean peninsula by signing the Joint Declaration on the Denuclearization of the Korean Peninsula which became effective in February 1992.<sup>2</sup> Although USFK no longer possesses tactical nuclear weapons, the US government assured the ROK government by repeatedly proclaiming that South Korea is under the US nuclear umbrella.<sup>3</sup>

#### *Positive Effects of USFK on South Korea*

According to Heo and Roehrig (2018: 197), "The central rationale for the ROK-US alliance has been and remains security and the need to deter, and if need be, defend South Korea from attack." Since the end of the Korean War, South Korea has technically been at war with North Korea because the ROK government never signed the armistice. During the Cold War period, the two Koreas were resolutely entrenched on opposite sides. As a result, throughout the 1960s, North Korea sent agents to collect intelligence and carried out terrorism campaigns. For example, during the peak of the terrorism campaign from 1967 to 1969, North Korea committed more than 750 infiltrations including the unsuccessful assassination attempt of Park Chung-hee and infiltration of 120 North Korean armed commandos in Uljin and Samcheok. The campaign

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<sup>2</sup> The Two Koreas agreed and initialed the treaty in the 5<sup>th</sup> high-level talks in December 1991.

<sup>3</sup> Despite the important security contributions of USFK to South Korea, some analysts argue that it is time to pull out US forces from South Korea. Douglas Bandow at Cato Institute periodically makes this argument. He claims that the justification for USFK does not exist any longer. The reason is that South Korea can defend itself, and South Korea is not strategically vital to US national interests. Furthermore, withdrawal of USFK may stabilize the region because North Korea's nuclear development is for regime survival (Bandow 2016). Although this kind of argument surfaces from time to time, a significant majority of scholars and policymakers agree that USFK is an important element of deterrence in the Korean peninsula even today.

of military threat could foist devastating harm on the South Korean economy, but the damage was limited due to the presence of USFK.

In the 1970s with the global *détente*, the relationship between the two Koreas thawed on the surface, but the hostile nature of the bilateral relationship persisted because the fundamental perception of Seoul and Pyongyang toward each other was a zero-sum game. North Korea continued provocation, including unsuccessful assassination attempts of South Korean President Park Chung-hee in 1979, and Chun Doo-hwan in 1983. In 1987, North Korean agents blew up Korean Air Flight 858 over the Andaman Sea killing 115 people on board (Roehrig 2003, 2009).

As described, North Korean threat continued throughout the Cold War period, but the presence of USFK provided security assurance, which helped maintain relatively low country risk. As a result, the damage on the South Korean economy incurred from North Korea's security threat was rather limited.

These security contributions made by USFK to South Korea are nicely summed up in the President of US Chamber of Commerce and Industry Jeffrey Jones' remarks at the conference on USFK's Role and Status in the 21<sup>st</sup> Century in 2002. He said, "USFK and the US-ROK alliance is absolutely necessary for the stable Korean economy. Foreign investors perceive USFK as their investment protection" (Monthly Chosun 2003). Considering that foreign investment was a critical element for recovery when South Korea experienced a financial crisis in 1997, USFK's security contributions to the South Korean economy is priceless.

Although ROK military capabilities have substantially improved and regional power configurations have changed over time, the security benefits of USFK are invaluable. Because of the USFK's security contribution, if USFK is completely withdrawn, the price South Korea will have to pay is very high. First, defense spending will have to increase significantly. According to

the Korean Ministry of National Defense's 2016 Defense White Paper, USFK has 90 aircrafts, 20 Apache helicopters, 50 M1 Abrams Tanks, 50 armored vehicles, 60 PAC-3 Air-Defense missiles, and a unit of THAAD (Terminal High Altitude Area Defense) battalion. The value of these weapon systems is estimated about \$40 billion (Shindonga 2018). As a result, if USFK is completely withdrawn, South Korea will have to significantly increase its military spending. In fact, a newspaper, Kookmin Ilbo (2003), estimated that South Korea will have to double its military expenditures if USFK leaves.<sup>4</sup>

The value of USFK is not limited to weapon systems. USFK includes 28,500 American soldiers. If they leave, military experts argue that the Korean military needs to add at least 80,000 more soldiers, and it will cost hundreds of millions of dollars to train and equip them. According to former commanding general of the First ROK Army Park Sung-kyu, it is virtually impossible to estimate the replacement cost of USFK because US military has superior capability than any other militaries in early alert system, intelligence collection, medium and long distance attack capability, and early response in case of a conflict. Moreover, USFK plays a critical role in deterring North Korean threat, which cannot be replaced (Shindonga 2018).

In addition to the security benefits, there are two other boons of US troop deployment in South Korea: (1) reduction of defense expenditures; and (2) positive effects on the economy. To estimate the defense spending reduction effects of USFK on the ROK government budget, Cho (2004) estimated the economic effects of US troop withdrawal. Based on his analysis, he argues that if USFK is completely withdrawn from the Korean peninsula, South Korea's annual economic growth rates will decline by as little as 0.44 percent and as much as 2.27 percent

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<sup>4</sup> Avey, Markowitz, and Reardon (2018) estimated the probability of instability in the Korean peninsula in case USFK is completely withdrawn. Their analysis reveals that it is unlikely that the USFK withdrawal will result in greater conflict. Yet, it may lead to conventional arms race and nuclear proliferation that may increase the future likelihood of war.

(Kwon 2011). Kwon (2011) estimates how much defense spending increase would be necessary in case USFK completely left the Korean peninsula, employing the Korea Institute for Defense Analysis's Korean Defense Economics Model. The results show that South Korea would have to double its annual defense budget, meaning approximately 10 to 11 percent of South Korea's GDP would be allocated to defense expenditures.

There are four positive effects of USFK on the South Korean economy: (1) facilitating trade, (2) enhancement in aggregate demand through consumption; (3) construction in military bases and operation and maintenance expenses; and (4) purchasing Korean products for USFK (Kwon 2011). First, USFK maintains cutting edge weapon systems and plays a stabilizing role in northeast Asia by indirectly facilitating trade (Kwon 2011; see also Lee, K. 2000).

Second, the size of USFK has been in the range of 28,500 to 75,000. During the tour, some American soldiers' family members also reside in South Korea. In addition, there are 125,000 South Korean labor workers employed by USFK (Hankyoreh 2020). Their consumption contributes to enhancing aggregate demand of the South Korean economy. Third, construction in US military bases creates jobs for Korean construction workers and utilizes Korean building materials. Finally, the US military purchases South Korean products and agricultural produce to support the troops. According to Baek et al (2005), USFK's contribution to the South Korean economy is estimated to be almost \$1.3 billion in 2004.

Because of the consumption generated by USFK, the Korea Veterans Association and the Korea Retired Generals and Admirals Association asserted that more than 90 percent of South Korea's defense burden sharing comes back to the Korean economy in the form of employment, purchasing construction equipment and materials, and other forms of expenses. A similar claim was also made in the 2018 Korea Defense White Paper which stated that, "Most defense burden

sharing returns to the Korean economy and contributes to job creation and economic growth” (Chosun Ilbo 2019). These contributions help the South Korean economy although the direct benefits of employment and aggregate demand enhancement may be limited considering the size of the Korean economy.

### *Negative Effects*

In general, the negative effects of USFK on the Korean economy are indirect rather than direct because they are social and environmental. One of the most harmful social effects is prostitution around USFK bases. Since the Korean War, many prostitutes have appeared around USFK military bases. In the 1960s, it was estimated that there were more than 20,000 Korean prostitutes near the 62 USFK military bases (Hankyoreh 2000). Prostitution not only had culturally harmful effects on Korean society, but also caused a serious social issue: mixed race children. Although mixed race children are not a social problem any longer, it was a serious issue in the 1950s and 1960s. There were approximately 25,000 mixed race children, but Korean society did not accept them as fellow Korean citizens due to its ethnically homogenous nature. As a result, mixed children were seriously discriminated against. They were not even required to complete compulsory military service despite South Korea’s conscription system (Lee 1987).

Crimes committed by American soldiers are another harmful effect of USFK on Korean society. They directly affect Koreans’ perception of the United States as well as USFK, which indirectly influences the relationship between the two countries. Crimes include murder, theft, assault, rape, robbery, and drug trafficking. Annually, American soldiers committed 1,500-2,000 crimes until the early 1990s. However, American soldiers were not subject to the ROK legal authority. South Korea could not indict American soldiers even if they were arrested at the crime



scene. As a result, the Korean public perceived SOFA (Status of Forces Agreement) as an unfair treaty and wanted to amend the agreement for decades. After the murder of Yun Geumyi in 1992, SOFA was amended to provide indictment authority to the ROK government. As a result, crime rates declined to about 700 per year on average today. Although the ROK government has indictment authority, only about 30 percent of American criminals are indicted by the ROK authority considering the security contribution of USFK (News 1 Korea 2017).

Opportunity cost of land for US military bases is another negative effect of USFK. US military bases in Seoul, Daegu, Chuncheon, and Uijeongbu are located in the middle of cities, which was a hindrance to local development. A good example is the US military base in the Yongsan area in Seoul. Since Yongsan is located between Gangbuk (north of the Han River) and Gangnam (South of the Han River), the US military base there caused serious inconveniences for traffic and city development, which inflicted economic and social cost. A similar problem exists in the third largest city, Daegu. In Daegu, the city government planned to construct a beltway surrounding the city in 1968, but it is still not complete due to the US military base, Camp Walker. These cases are just two examples and there are many like them. The total amount of land provided to USFK is approximately 265 square kilometers in 96 regions. The value of the land is estimated at \$12.6 billion (Hankyoreh 2000).

Finally, environmental damage also negatively affects the Korean economy in the long run. According to Korean National Assembly News On (2019), there have been 144 inspections of USFK bases from 2008 to 2018. Among them, the Korean authority has found the leaking or dumping of toxic waste 80 times. Local authority cleaned the sites and requested reimbursement for the cost to USFK. However, USFK never provided compensation. In addition to the

environmental damage, Korean citizens who live near US air bases suffer from airplane noise up to 107 decibels, causing them to complain that normal life is not possible (Hankyoreh 2000).

## **Empirical Models**

### *Increase in Domestic and Foreign Direct Investment*

There is a general consensus in economics literature that investment is critical for economic growth. This is because investment provides necessary capital resources for economic outputs. Increase in economic outputs attracts more investment, leading to a virtuous cycle of investment increase leading to higher growth and greater investment (Blomstrom, Lipsey, and Zejan 1996).

Nonetheless, there are numerous factors that affect investment. They include security, economic prospect, political stability, regime types, rule of law, individual property rights, interest rates and so on (Hall and Taylor 1988). Among them, as noted, security is a key element because few investors are willing to take high risks by investing where security is volatile (Biglaiser and DeRouen 2007; Jone and Kane 2012; Kane 2012). Thus, security affects investors' decisions whether to invest and whether to reduce or increase investment.

Security not only affects domestic investment, but also influences foreign direct investment (FDI). Just like domestic investors, foreign investors also consider risk before making investments. As a result, they avoid conflict-prone states and regions because of the high level of risk for losing capital. Kim (2016) analyzed the effects of conflict on FDI in 95 less developed countries (LDCs) from 1980 to 2000. The analysis results reveal that both internal and external conflicts dampen FDI.

In summary, security is necessary for both domestic and foreign direct investment. The US military is typically considered the strongest in the world. Thus, US troop presence will considerably improve security wherever deployed (Collier 2007). In other words, US troop deployment enhances security in South Korea, which will lead to greater domestic and foreign direct investment. Based on this logic, we hypothesize that USFK will have a positive effect on domestic and foreign investment in South Korea.

**Hypothesis 1 (Investment Hypothesis):** USFK will have a positive effect on domestic and foreign investment in South Korea.

#### *Trade Increment*

Scholars of the political economy of defense generally agree that conflict has negative effects on international trade (e.g. Anderton and Carter 2001; Kastner 2007; Simmons 2005). The reason for this is that private firms do not want to take high risks by trading with countries that are likely to be or already involved in conflicts (Morrow 1999). Even security concerns without conflicts may dampen trade because of (1) the possibility of trade sanctions imposed; (2) exchange rate fluctuations due to security volatility; and (3) potentially unstable product supply due to security concerns (Kastner 2007).

As noted earlier, USFK significantly improves security and stability in the Korean peninsula, which is likely to subdue any potential security concerns and risks in the region. South Korea has developed its economy through an export-oriented industrialization approach, meaning trade has been a critical element in South Korea's economic success. In other words,

USFK has made an indirect but positive effect on South Korea's trade with other countries (see Bove et al. 2014). Therefore, we hypothesize as follows.

**Hypothesis 2 (Trade Hypothesis):** USFK has a positive effect on South Korea's trade.

### *Promoting Democracy*

There are many factors that affect the transition to democracy. One of them is external influence. According to Huntington (1991), an external actor's influence was one of the factors that facilitated the Third Wave of democratization. Heo and Ye (2019) argue that US promotion of democracy using military deployment as bargaining leverage made a significant contribution to the transition to democracy in many developing countries.

For the South Korean case, President Carter pressured the Park Chung-hee administration by threatening to pull out US troops unless South Korea improved its human rights record. In 1987 when the public protested demanding democracy, the Reagan administration strongly dissuaded the authoritarian Chun Doo-hwan administration from using force to quell the protest. The US influence was a significant element in South Korea's transition to democracy. What made this possible was US troop deployment, which provided critical security assistance to South Korea (Heo and Roehrig 2010, 2014).

There is no consensus on the effects of democracy on economic performance. That said, a significant majority of empirical studies show that democracy is more conducive to economic growth than other types of government because democracy attracts more investment and protects individual property rights (Feng 1997; Heo and Hahm 2015; Heo and Tan 2001; Leblang 1996; Olson 1993). Sirowy and Inkeles (1990) assert that democracy is better for economic growth

than other types of government because democratic political processes facilitate favorable social conditions to economic development. Thus, we hypothesize that:

**Hypothesis 3 (Political Development Hypothesis):** USFK has a positive effect on South Korea's political development, which indirectly helps economic growth.

### *Economic Growth*

As noted earlier, USFK provides significant security enhancement in South Korea, which facilitates increase in investment and trade promotion. USFK also helped the transition to democracy in South Korea. Moreover, USFK enhances aggregate demand through consumption. Since they directly hire local workforce, there is a positive externality effect on economic growth. USFK also saves the ROK government's defense budget. Thus, we hypothesize that:

**Hypothesis 4 (Economic Growth Hypothesis):** USFK has a positive effect on South Korea's economic growth.

### *Empirical Models*

To test these hypotheses, we employ Heo and Ye's (2019) empirical models.

*Investment* Heo and Ye's (2019) investment model is a textbook type model, controlling for government expenditures, growth rate of the previous year, economic openness, interest rates and democracy level. The model controls for government expenditures because a significant amount of public spending is used to improve economic infrastructure. The rationale for

including growth rate of the previous year is that the previous year's economic performance affects an investor's decision to invest. Investors will augment investment if the economy is expanding while reduce it otherwise. Level of economic liberalization also affects investor's decision, and economic openness well represents the level of economic liberalization. Interest rates are inversely related to investment because low interest rates increase access to capital resources and vice versa. Finally, democracy level is included in the model because democracies tend to be more investment-friendly than other types of government due to the rule of law (Olson 1993). The Investment model is:

(Equation 1) Investment

$$\text{Domestic and Foreign Investment}_t = \alpha_1 + \beta_1 \text{USFK}_t + \beta_2 \text{Government Expenditures}_t + \beta_3 \text{Interest Rates}_t + \beta_4 \text{Democracy Level}_t + \beta_5 \text{Economic Growth}_{t-1} + \beta_6 \text{Openness}_t + e_1$$

*Trade*            The trade model is based on controlling for exchange rates and democracy level. A country's currency value against the US dollar is a significant element in determining the country's international competitiveness because exchange rates directly affect the price of goods. If exchange rates rise, exports are likely to increase and vice versa. Democracy level is included in the model because democracies typically employ a market system and trade more than other types of government. The trade model is:

(Equation 2) Trade

$$\text{Trade}_t = \alpha_2 + \beta_1 \text{USFK}_t + \beta_2 \text{Exchange Rate}_t + \beta_3 \text{Democracy Level}_t + e_2$$

*Democracy*            The democracy model is developed by controlling for economic development, education level, and economic openness. There is a general consensus in the literature that economic development is one of the critical factors that leads to the transition to democracy. Scholars also agree that education level plays a significant role in the democratization process because people with higher education tend to demand their political rights. Economic openness helps the transition to democracy because people learn about democratic system through trading activities. The democracy model is:

(Equation 3) Democracy

$$\text{Democracy Level}_t = \alpha_3 + \beta_1 \text{USFK}_t + \beta_2 \text{Openness}_{t-1} + \beta_3 \text{GDP PC}_{t-1} + \beta_4 \text{Education}_{t-1} + e_3$$

*Economic Growth*    The growth model is a Barro (1990) type model, which is based on assumptions that economic output is a function of capital investment, education level, employed labor, and government expenditures (see Dunne et al. 2005). We also controlled for trade because South Korea has developed its economy by employing an export-oriented industrialization approach. Following common practice, we also added the previous year's GDP to the model. The growth model is:

(Equation 4) Economic Growth

$$\begin{aligned} \text{Economic Growth}_t = & \alpha_4 + \beta_1 \text{USFK}_t + \beta_2 \text{GDP}_{t-1} + \beta_3 \text{Domestic and Foreign Investment}_t \\ & + \beta_4 \text{Labor}_t + \beta_5 \text{Trade}_t + \beta_6 \text{Government Expenditures}_t + \beta_7 \text{Education}_t + e_4 \end{aligned}$$

## **Empirical Analysis**

## Data

To conduct empirical analyses of the effects of USFK on South Korea's investment (sum of domestic and foreign investment), trade (total amount of trade volume), political development (democracy level), and economic growth, we collected data for the period of 1970-2017.<sup>5</sup> All economic data except foreign investment and employed labor are from the World Bank's *World Development Indicators* (WDI).<sup>6</sup> Foreign investment data are from UNCTAS Stat and employed labor data are from Penn World Table version 9.1.<sup>7</sup>

Since the data are in current values, we converted them to constant values (2012=100) using the GDP deflator reported in Federal Reserve Economic Data (<https://fred.stlouisfed.org/series/GDPDEF>). Data for political development indicator (democracy level) are from the Polity 5 Project.<sup>8</sup> Data for USFK (number of US troops deployed in South Korea) are from Kane's (2016) US Troop Deployment Dataset and updated with the data from Defense Manpower Data Center's (DMDC) "Personnel, Workforce Reports, and Publications."<sup>9</sup> Since the DMDC's data are published quarterly, we used the numbers reported in the December issue. A summary of the variables and data sources are reported in Table 1.<sup>10</sup>

Table 1. Summary of Variables and Data Sources

Variables	Description/Operationalization	Source
Investment	sum of gross domestic investment and foreign direct investment	WDI
GDP	Gross domestic product	WDI
Government expenditures	Government final consumption expenditures	WDI
Interest rate	Real interest rate (lending interest rate adjusted for inflation, %)	WDI
Democracy level	Combined polity score	Polity 5

<sup>5</sup> Data for employed labor is available only up to 2017. <https://www.rug.nl/ggdc/productivity/pwt/?lang=en>

<sup>6</sup> The data are available at <http://data.worldbank.org/data-catalog/world-development-indicators>.

<sup>7</sup> The data are available at [https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS\\_ChosenLang=en](https://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en)

<sup>8</sup> The data are available at <https://www.systemicpeace.org/polityproject.html>

<sup>9</sup> The data are available at [https://www.dmdc.osd.mil/appj/dwp/dwp\\_reports.jsp](https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp)

<sup>10</sup> Our data and STATA command files are available at [http://politics.khu.ac.kr/contents/bbs/bbs\\_content.html?bbs\\_cls\\_cd=002001&cid=09080612011368&no=8&bbs\\_typ=e=G](http://politics.khu.ac.kr/contents/bbs/bbs_content.html?bbs_cls_cd=002001&cid=09080612011368&no=8&bbs_typ=e=G)



Trade	Sum of exports and imports of goods and services	WDI
Exchange rate	Average exchange rate between Korean Won and US dollar	WDI
Openness	Percentage share of Trade in GDP	WDI
GDP per capita	GDP divided by total population	WDI
Economic growth	Annual percentage growth rate of GDP (%)	WDI
Education	Education attainment completed primary, population 25+ (%)	WDI
Labor	Total persons employed	Penn World Table

### *Methods*

For estimation, we have four equations, so we can estimate them jointly using Zellner's (1962) Seemingly Unrelated Regression (SUR) or estimate them separately employing Ordinary Least Squares (OLS). According to Zellner (1962), when there are multiple equations for estimation, joint estimation is asymptotically more efficient (smaller variance) than separate estimation if the error terms in the system of equations are contemporaneously correlated. Otherwise, OLS (separate estimation) is preferable (Judge et al. 1985). To test the contemporaneous error correlation between error terms of the equations, we conducted the Breusch-Pagan Test. The test results reveal that the error terms of the equations are not contemporaneously correlated ( $\chi^2 = 8.680, p < .192$ ), meaning separate estimation is better. Thus, we separately estimate the equations using OLS.

According to Granger and Newbold (1974), if any variable included in the equation of time-series analysis is integrated, the results of regression analysis can be spurious. To this end, they recommend testing for the presence of unit root using the augmented Dickey-Fuller test to determine stationarity. Thus, we conducted the augmented Dickey-Fuller (ADF) test to examine the stationary of our data. The test results reveal that all the variables except investment, interest rates, and economic growth are non-stationary. If time-series data are non-stationary, the stochastic components of the time-series data contain unit root. In that case, they are

unpredictable and cannot be modeled because the results would be spurious. Thus, we differenced them to address this issue.

## Findings

First, we report descriptive statistics of each variable included in the model in Table 2.

Table 2. Descriptive Statistics of Variables

Variable	Mean	Standard Deviation	Minimum	Maximum
Investment	1.60e+11	1.47e+11	2.26e+09	4.75e+11
USFK	37121.06	5598.189	24176	52197
Employed Labor	18.65294	5.0174	9.60755	26.30536
GDP	5.12e+11	4.76e+11	9.41e+09	1.53e+12
Government Exp	2.64e+10	1.74e+10	1.36e+09	6.05e+10
Interest Rates	9.23	5.3959	1.56	22.8
Trade	3.40e+11	3.68e+11	2.82e+09	1.10e+12
Exchange Rates	855.3029	291.1775	310.56	1401.44
Growth Rates	6.9277	4.1213	-5.71	14.79
Openness	0.5775	0.1342	0.3	0.9
GDP PC	10673.88	9333.837	292	29728
Education	82.366	12.791	64.08	95.51
Democracy Level	2.583333	6.655	-9	8

The results of our empirical analyses are reported in Table 3.

Table 3. Effects of USFK on Korean Politics an Economy

Independent variables	Model 1 (Investment)	Model 2 (Trade)	Model 3 (Democracy)	Model 4 (Economic Growth)
USFK	-8201641* (3803314)	2357634 (3238140)	0.0000292 (.0001603)	0.0000678 (0.0001622)
Government Expenditures	2.835163* (1.264927)			8.35e-11 (5.47e-11)
Interest Rates	-2.26e+10** (2.39e+09)			
Democracy Level	8.82e+08 (4.62e+09)	7.15e+07 (4.00e+09)		
Exchange Rates		-3.78e+08** (8.76e+07)		
Trade				5.51e-12 (6.67e-12)
Openness	2.32e+11 (1.87e+11)		-0.8414071 (6.016254)	
Economic	-6.77e+09*			

Growth <sub>t-1</sub>	(3.03e+09)			
GDP PC			5.52e-06 (.0002216)	
Education			-0.0113959 (0.1130029)	-0.1457736 (0.1113875)
Investment				-1.38e-11** (2.76e-12)
Employed Labor				7.486368** (1.153489)
GDP <sub>t-1</sub>				-9.93e-12 (5.19e-12)
Constant	4.35e+11* (2.31e+11)	2.86e+10** (9.02e+09)	0.1302524 (0.3766239)	7.043007** (0.7330911)
Adjusted R <sup>2</sup>	0.769	0.255	0.096	0.695
Observations	47	47	47	46

\*\* $p < 0.01$ , \* $p < 0.05$

Overall, the results of statistical analysis do not support our hypotheses. In fact, the effects of USFK on South Korea's politics and economy seem to be limited as the effects of USFK on trade, economic growth, and democracy level are not statistically significant. Surprisingly, the effects of USFK on South Korea's investment is negative and statistically significant. This result is counterintuitive as security enhancement is likely to attract greater investment. This may be due to the fact that the size of USFK gradually declined over time from 52,197 in 1970 to 24,176 in 2017 while total investment increased from \$2.26 billion to \$475 billion during the same time period. Particularly, foreign direct investment (FDI) rose sharply after the financial crisis in 1997. For example, FDI inflow in 1996 was a mere \$3.9 billion, but reached \$20 billion in 2015. Concurrently, the size of USK shrank from 36,539 to 28,034.

These results may be a product of the way we measure USFK. There are two possible options for measuring USFK: (1) number of US troops deployed in South Korea (size of USFK) or (2) a dummy variable coding 1 when US troops were deployed in South Korea and 0 when there was no USFK. Since USFK always stayed in South Korea during the period under analysis, we could not use the latter. Moreover, many previous studies employed the former, number of

troops deployed in South Korea, for USFK based on the assumption that as the size of USFK increases, the security enhancement effect would also rise (e.g. Heo and Ye 2019; Jones and Kane 2012; Kane 2012). However, during the period of analysis, the size of USFK declined over time as noted, but the ROK economy developed and South Korea transitioned to democracy.

Turning to the result of control variables in the investment equation, as expected, government expenditures showed a positive and statistically significant effect on investment, and interest rates have a negative and statistically significant effect on investment. Yet, growth rate of the previous year showed a negative and statistically significant effect on investment. Given that investment is likely to increase when the economy is expanding, the result is not reasonable, and we do not have a good explanation for this result. Democracy level and economic openness do not have a statistically meaningful effect on investment.

As noted, the effects of USFK on trade are statistically insignificant. The level of democracy also showed no statistically meaningful effect on trade. But, exchange rates have a negative and statistically significant effect on trade. Given that low currency values (high exchange rates) often lead to increase in trade due to comparative price advantage, this result does not make sense. It may come from the fact that South Korea's exports continuously increased while exchange rates gradually went down from 881 Korea won for US 1 dollar in 1986 to 804 Korean won in 1996. During the 1997 financial crisis, exchange rates sharply went up while exports declined (see Heo and Kim 2000).

In the democracy equation, none of the control variables showed statistically meaningful effects, and adjusted  $R^2$  was merely 0.096. Heo and Ye's (2019) democracy model was good for estimating the effects of US troop deployment on the host nation's economy with global data, but

the model did not capture the effects of USFK on democracy level in the single case of South Korea.

Finally, control variables in the growth equation showed no statistically significant effect on South Korea's economic growth except for investment and employed labor. As expected, employed labor has positive and statistically significant effects on economic growth. However, investment implausibly showed negative and statistically significant effects on economic growth.

## **Conclusion**

Despite a plethora of studies in the political economy of defense, few studies have investigated the effects of US troop deployment on host states' economies. Considering that the United States has deployed its troops all over the world since the end of WWII, it is surprising that there is a void in the literature studying the effects of US troop deployment on host nations. The reason for the lack of study is because US troop deployment data were not readily available. As the data became available, scholars began to investigate the issue. Jones and Kane (2012) and Kane (2012) led the statistical analysis on the effects of US troop deployment on host nations. Heo and Ye (2019) furthered early efforts by examining the impact of US troop presence on the host state's investment, trade, political development, and economic growth. These empirical studies report positive and statistically significant effects on various aspects of the host nations' economy. Yet, these studies do not reveal the unique effects of US troops on an individual host state as the analyses utilize time-series and cross-national data including all the countries that host US troops.

To investigate the effects of US troops on South Korea, we conducted an empirical analysis employing Heo and Ye's (2019) models. The statistical analysis results reveal that the

effects of USFK on South Korea's trade, economic growth, and democracy level are statistically insignificant. The effect of USFK on investment is negative and statistically significant.

Given USFK's security contribution to South Korea and its role in South Korea's democratization process, the results are rather counterintuitive. The cause of these results may come from the measure we employed to estimate the USFK troop size. Since USFK was stationed in South Korea after the Korean War, the size of USFK has fluctuated. Overall, however, the size of USFK declined. During the same time period, South Korea enjoyed rapid economic growth through export-oriented industrialization. With the growing economy, investment and trade increased, followed by the transition to democracy. In other words, the results of the statistical analysis are not surprising.

That said, it would be desirable to corroborate the findings of this study with another measure of USFK because measuring USFK based on its size may not capture the contribution USFK makes in the South Korean case. Future studies may also analyze the local effects of USFK on the region where USFK bases are or investigate the role USFK played at a specific time period, such as the transition to democracy in the 1980s and the end of the Cold War.

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# "Undermining the rule of law but reflecting US law: The Politics of US Bases Relocation and Environmental Cleanup in South Korea"

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**Undermining the rule of law but reflecting US law:  
The Politics of US Bases Relocation and Environmental Cleanup in South Korea**

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This paper is written for the international workshop, entitled “Democratic and Rule-of-Law Implications of Military Deployments Abroad,” organized by Dr. Asif Efrat at Lauder School of Government, Diplomacy, and Strategy, Interdisciplinary Center (IDC) Herzliya. Please do not cite from it or circulate it outside this workshop without the author’s permission.

## INTRODUCTION

The global and transnational presence of US military bases has undergone significant change in the past few decades. Mainly contributing to this change are the end of the Cold War, the proliferation of neoliberal globalization, and the rise of the Global War on Terror (GWOT) in the aftermath of the 9-11 attacks in the continental U.S. The end of the Cold War led to the closing and conversion of numerous domestic and overseas military bases and thereby raised hope of demilitarization. Yet the globalization has expanded the logic of unhinged profit accumulation to military operations through outsourcing and privatization and the GWOT has heightened militarization and securitization of everyday life at the expense of the democratic rule of law. Situated in global geopolitics as a central hub of US military deployment overseas, South Korea has witnessed some noticeable changes.<sup>i</sup> Not only the number of US troops deployed in the country has decreased, but also a majority of US bases there have been relocated within the country and returned or are to be returned to South Korea. In the processes of negotiating the terms of base relocations and returns, numerous cases of environmental contamination of land and water caused by the US military have been finally revealed and confirmed. Contentions over environmental contaminations and cleanup costs between the two countries have become the latest trouble in the seven-decade long military alliance.<sup>ii</sup>

This paper focuses on how the two unequal “allies” have dealt with the problems of environmental contaminations and cleanups and argues that the handling of the problems has shown not only undermining of the rule of law but also reflecting US law regarding the cost of environmental cleanup in its overseas bases. Furthermore, this paper contends that despite significant political and economic changes in both countries, especially in South Korea, the transnational military relations remain the site of the neocolonial relationship between the two

unequal partners, the US empire state and its South Korean client state.<sup>iii</sup> This asymmetry of power was initially imposed by the exigency of liberation/decolonization under the US military occupation (1945-48) and the Korean War (1950-53), but over time it was internalized by Korean civilian and military elites and their conservative supporters in the citizenry as an inevitable reality.

## THE RELOCATION OF US BASES AND THE EXPOSURE OF ENVIRONMENTAL CONTAMINATIONS

Under the 2002 Land Partnership Plan (LPP) Agreement, its 2004 revision, and the 2004 Yongsan Relocation Plan (YRP) Agreement, which were ratified by the National Assembly of South Korea, the two allies agreed to relocate and consolidate 91 US bases that were scattered around South Korea to two major hubs and 49 bases. The two hubs refer to the P'yongt'aek and Osan area which is located near Seoul and houses combat troops, and the Pusan and Taegu area which is located in the Southeastern region and houses supporting troops.<sup>iv</sup> The relocation project includes the return of vast land mass in both urban and rural areas, which were freely granted to the US military, to the host and the additional expansion of existing bases (Office 2014, 4).<sup>v</sup> Initially, the two allies agreed to complete the relocation project by the end of 2008 but it has been repeatedly delayed mainly due to recurring and prolonged disputes over who should pay for the cleanups of environmental contaminations in and around US bases (Ibid. , 5). The total number of US bases to be returned was modified to 82 over time and as of January 2021, 66 bases were completely returned and 16 bases, including 4 bases with partial returns, remained to be returned (Kang 2021).

These delays have generated not only serious health problems, but also socioeconomic problems for South Korean citizens (Cho 2014; Han 2014; Won 2019). Foremost, local residents have to live with dangerous environmental contaminations everyday while disputes between the two allies continue often without a clear time line. They have also suffered from suspended or truncated community development projects. Because land has been a highly limited resource in South Korea as a largely mountainous and small country, such delays have aggravated land development problems with far-reaching socioeconomic consequences. The central and local governments of South Korea have planned and pursued the conversion of former bases into public parks, museums, cultural and educational space, and residential and commercial districts.<sup>vi</sup> The suspended return of Camp Long in Wŏnju-City in Kangwŏn Province highlights how this complication wreaked havoc on lives of ordinary citizens in addition to the problem of environmental contamination. Its return has been suspended **over a decade** due do the prolonged conflict over its environmental cleanup among the US military, the Korean Government, and Wŏnju City. This camp was a US base from 1951 until 2010, when US troops there were relocated to P'yŏngt'aek, one of the two hubs in South Korea. After there was an accident of petroleum leakage in 2001, the US military and the Korean Ministry of National Defense (MND) in 2002 agreed to return the camp. In 2013, Wŏnju City and the MND signed the purchase and sale agreement of the former base and the city fully paid for it in 2016. Yet, the tug of war between the US military and the Ministry of Environment of South Korea over the soil contamination cleanup cost has prevented the transfer of the base to the city. In response, citizens of Wŏnju organized a countermeasure committee to request timely return of the base. These residents had suffered from economic and social problems caused by the suspension of the camp's return (Won 2019, 3-4).<sup>vii</sup>



The contaminations of land and water caused by the US military range from accidental petroleum leakages from routine military exercises and operations, which is the most common type of problem, to deliberate dumping and release of toxic chemicals and wastes into soil and ground water.<sup>viii</sup> According to the list of accidental environmental contaminations since the year 2000, such accidents are as numerous and widespread across South Korea as the number of US bases are (Office 2014, 11-14). The types of contaminants found in and around these bases have been quite diverse, including hazardous chemicals and heavy metals. The following chemicals were commonly identified: arsenic, BTEX compounds (benzene, toluene, ethylbenzene and xylene), phenol and PCE (perchloroethylene). The following heavy metals were also commonly found; cadmium, copper, lead, nickel, and zinc (Office 2014, 16-23; Han 2014). In 2007, twenty-three US bases were returned to South Korea without cleaning up environmental contaminations (Ibid., 10). In particular, the case of Chunch'ŏn City in Kangwŏn Province, where Camp Paige is located, is alarming. In the city, a death rate from cancer had exceeded far above a national average for five consecutive years from 2005 to 2009 and Camp Paige revealed the highest level of Total Petroleum Hydrocarbons (TPH) contamination, which exceeded more than 100 times of its accepted level. In March 2011, it turned out to be the only city in the country where cesium was detected in an atmospheric radioactive test. Two months later in May 2011, Dallus Snell, a retired US soldier, testified that 42 years ago he buried a nuclear missile with an exposed nuclear warhead in a southern outskirts of the city (Ibid., 10). As uncovered cases of US base contaminations grew, more former US soldiers testified about the burial of Agent Orange and other toxic chemicals in Camp Carroll (Ch'ilgok in Northern Kyŏngsang Province), Camp Mercer (Puch'ŏn City in Kyŏnggi Province), and Camp Market (Pup'yŏng City and Incheon City) (Cho 2011, 28; Yo 2011).

## US REFUSAL TO RECOGNIZE ENVIRONMENTAL CONTAMINATIONS AND TO PAY FOR CLEANUPS

In the face of mounting cases of contaminations, the US military has persistently denied its responsibility for cleanups with rare exceptions of two facilities, which were returned to South Korea during the first two years of the relocation project; one was the site of Arirang Taxi in the Yongsan Garrison, which was returned in December 2003, and the other was the site of Betasouth powder magazine storage in Osan City, which was returned in August 2004. Both sites revealed serious soil contaminations excessive of an accepted standard indicated in the Soil Environment Conservation Law of South Korea. In accordance with the global convention of polluter-pay principle, the US military cleaned up the contaminations before their returns. The Ministry of Diplomacy and Trade of South Korea reported the site of Arirang Taxi as a successful case (Park 2011, 15; Office 2014, 8). These positive examples may be attributable to their timing, tiny size, and perhaps specific individuals involved in handling the problems. During the early years, it is likely that the US military did not develop its own pragmatic rules to deal with the problem and therefore it was open to follow the global convention. The small land mass of the sites did not impose a sizeable financial burden on the military, either. Further investigation is necessary to identify what contributed to their positive difference from a majority of negative cases to follow.

The US military has repeatedly denied danger of contaminations to humans by using its own standards for and interpretations of them while refusing to pay for cleanup even when it recognized environmental contamination (South Korea-US Joint Investigation Corp 2011; Joint Committee 2017; National Defense Committee 2017). When participating in joint investigations,

the US military refused to make necessary information public and imposed methods of investigation that it preferred and limited types of toxic and hazardous materials to be measured in order to assess the extent of environmental contaminations. It also prolonged a time frame for the completion of an investigation. As a result, it appears that the US military authorities have tried to minimize their responsibility, rather than identify problems clearly and being accountable for them (Park 2011, 2). To give a few specific examples, on April 7, 2006, the US authorities announced “a blueprint for land return executions” but excluded environmental cleanup of contaminated land from it and only mentioned conventional cleaning of building facilities (Park 2011, 2). In the case of Camp Carroll, a burial site of Agent Orange, during a Status of Forces Agreement (SOFA) Environmental Sub-Committee meeting, the South Korean side proposed an investigation of soil but the US side rejected it. The US insisted on using its own methods to examine soil and water and reduced the number of investigation sites. Nor did it publicize the schedule of joint investigations. Even after a former US soldier testified to the burial of Agent Orange, the US military did not allow the Korean team to inspect Camp Carroll (Yo 2011).

To be precise, the problems of environmental contaminations are not new but have been going on for several decades. During the Cold War globally and military authoritarian rule domestically up to the early 1990s, the problems were completely hidden and overlooked. It was not until 1990 that the US Congress legally required the Department of Defense (DoD) to establish environmental policy concerning overseas US bases. Such policy was not only to protect health and safety of US soldiers and US citizens, but also to establish cleanup standards for environmental contaminations. In 1992, the DoD established “the Overseas Environmental Baseline Guidance Document” (OEBGD) (Park 2011, 16, 17; Office 2014, 32-38). It was only in 2001, when the SOFA between South Korea and the U.S. was revised for the second time, that

environmental issues were mentioned in it by including Special Minutes of Understanding concerning Environmental Protection (SMOUEP).<sup>ix</sup> Yet this MOU conveys merely perfunctory statements without the power of legal enforcement (Park 2011, 5, 6). This symbolic change was largely in response to a highly publicized incident of environmental crime in 2000, committed by Albert McFarland, a civilian employee of the US military's mortuary in the Yongsan Garrison, located in the center of Seoul. Mr. McFarland ordered his subordinates to dump approximately 25 gallons of formaldehyde, a toxic chemical commonly used to preserve bodies, directly into a drain leading to the Han River, which has been the main source of drinking water for Seoulites. The Seoul District Court charged him for the environmental crime but he had repeatedly refused to comply with a court summons.<sup>x</sup> After a lengthy prolongation for five years, finally, he avoided a jail sentence in exchange for a probation for two years.<sup>xi</sup> While this crime sensitized the Korean public about environmental contaminations caused by the US military, its unfolding, which was fraught with delays and lack of accountability, was a microcosm of how later cases of environmental contaminations would be handled. As discussed below, the lack of accountability stems from de facto practices of extraterritoriality that the US military has enjoyed in its bases in South Korea. As anachronistic as it may appear to be in 2021, the US military has repeatedly claimed its immunity from cleaning up environmental contaminations it has caused and the Korean government has reluctantly accepted it in the name of protecting the enduring military alliance (Choi 2019, xx).

#### POLITICS OF ACCOMMODATING THE IMPERIOUS ALLY:

While community organizations and civic organizations working for environmental issues have criticized the US immunity, the South Korean government has given up its sovereignty and

thereby perpetuating the privilege of extraterritoriality of the US military. Outcomes of a series of negotiations over environmental cleanups in and around US bases have repeatedly shown *de facto* giving up of Korean sovereignty. In response to the US refusals, the South Korean government has taken up the responsibility and tried to justify its practice of accommodating the imperious attitude of the US military. There has been two common ways to deal with the cost of environmental cleanups. Firstly, the Korean government has utilized a special law to create a special budget for US base cleanups. An example of this was the Special Law to Support P'yŏngt'aek City and Others regarding the relocation of US bases. However, according to the Office of Chief Members of the National Defense Sub-Committee of the National Assembly, the special budget for cleaning up environmental contaminations in returned US bases did not meet the conditions for creating a special budget from taxes. The special law allows for the use of tax money in order to redress noise and environmental damages generated by a new construction of military and residential facilities in a land newly granted to the US military but could not be extended to pay environmental cleanup of an old US base returned to South Korea (Cho 2011, 28).

Secondly, the Korean government justified its accommodation in the name of preserving the military alliance with the U.S. During a 2007 public hearing on Cleanup of Environmental Contaminations at Returned US Military Bases, Jang-su Kim, former Minister of National Defense, conveyed how contentious negotiations with the US military came to an end. He highlighted difficulty in reducing differences between the two countries and revealed that the ministry determined that “further delay and conflict would not be beneficial to the South Korea - US alliance” and discussed with the Minister of Environment to pay for the cleanups (Cho 2011, 29). In the case of Camp Carroll where Agent Orange was buried, the City of Inch'eon formally

requested the Office of Prime Minister, the Ministry of Environment, and the Ministry of National Defense to conduct a joint investigation of the base but received excuses for not being able to do so (“lack of capacity” and “no plan yet”). Furthermore, when the US military sent its investigation report on the contamination of soil and water in Camp Carroll to the Korean government, the government refused to release it to the National Assembly by mentioning the SOFA. But the SOFA articles suggested for national security do not apply to environmental contaminations (Yo 2011). Similarly, during the 2010 negotiation over the cleanup of Camp Hyaria in Pusan City, the South Korean Ministry of Diplomacy and Trade (MDT) accepted the Korean payment of the cleanup cost to end the stalemate, despite the confirmation of contamination by the joint investigation team (Cho 2011, 29). The MDT justified its accommodation of the US imposition as follows; “the problem site represents only 0.26% of the entire military base and Pusan City, the city preferred its speedy return to further delay for local development, benefit, and convenience.” (Park 2011, 8).

The reference to benefit and convenience raises a question as to whose benefit and convenience are being served when we consider how the South Korean Ministry of Environment (SKME) handled the carcinogenic danger of soil contamination in Camp Hyaria. According to its own guidelines to assess the carcinogenic danger of soil contaminants, the acceptable level of danger is one cancer patient per 100,000 to 1,000,000 persons. Comparably, the US federal standards have used one cancer patient per 10,000 to 1,000,000 persons but if a level of cleanup to be done cannot be clearly determined, the stricter standard of 1,000,000 persons is used. However, the SKME applied the lower standard of 10,000 persons without specific legal ground. When this standard was applied, only four areas in the camp were subject to cleanup whereas the

common standard of 1,000,000 persons was applied, the entire camp was subject to cleanup (Office 2014, 43).

#### UNDERMINING THE RULE OF LAW BUT REFLECTING US LAW

The repeated denials and refusals by the US military since mid 2000s have undermined the rule of law as a basic expectation for international relations between at least formally democratic countries. They have violated not only South Korean law, but also US federal law that regulate or address environmental contaminations and cleanups. In accordance with the OEBGD, the US forces in South Korea have used the following criteria to be interpreted by US military officers; “known, imminent, and substantial” contaminations that “endanger” human beings (KISE).

During the 2005 SOFA Environment Subcommittee meetings (which were held from June to September), the two allies negotiated how to cleanup environmental contaminations but generated conflicting interpretations. While the Korean side interpreted environmental contaminations in US bases to be returned as “dangerous” in accordance with the country’s Soil Environment Conservation Law, the US side interpreted them not imminently dangerous because they presumably did not endanger health of US soldiers until that point. Using its discretionary power to interpret the KISE guideline, the US military insisted that no bases to be returned meet the guideline and imposed this view on South Korea. Such self-serving interpretation, however, violated the US DoD guidelines that specify the following; a standard more protective of human health and environment will be chosen if there is a conflict between a host country’s standard and internally agreed standard between the host and the US military (Park 2011, 6, 7; Park, et al. 2017, xxx)

The imperious attitude and practices overriding the rule of law continued in the next decade. The US Forces in South Korea established their Environmental Governing Standards (EGS) in 2000 and revised it in 2004 and 2012. While the EGS referred to Air Environment Conservation Law and Soil Environment Conservation Law of South Korea, its 2012 revision further reduced US responsibility and liability by expunging an article concerning Total Petroleum Hydrocarbons, which has been one of the most common contaminants identified in investigations. This change violates South Korean environmental law (Soil Conservation Law) as well as the SOFA (the article 7), which mentions US respect for South Korean environmental law (Cho 2011, 29). Yet, the SOFA article is symbolic without any legal force and the two allies interpret it differently. While South Korea interpreted it as a requirement for complying with the Korean law, the U.S. does not (Office 2014, 33-35). This discrepancy has mobilized progressive Korean citizens and politicians to advocate a SOFA revision.

In the face of confirmed cases of contaminations, the US military authorities have justified their immunity from the responsibility for cleaning up by abusing the SOFA (article 4, section 1 and article 5, section 2). These sections do not directly address environmental issues but specifies immunity of the U.S. concerning buildings and facilities constructed in US bases; the SOFA sections do not require the US military to restore a land used for its base to its original state when it is returned and the South Korean government does not ask it to pay for the cost of such restoration. According to Burwell B. Bell, III, a Commander of the US Forces in South Korea (2006-2008), the immunity from restoring buildings and facilities at a time of base return means compensation for the US loss of its investment in constructing and maintaining them. Yet the application of these sections to environmental contaminations caused by the US military is a logical stretch of legal interpretation. Hence, in 2001, the Constitutional Court of South Korea



ruled against the application of the SOFA. From a legal perspective, the SOFA sections do not overrule “territorial sovereignty” of South Korea as an independent country unless Korea clearly gives it up (Park 2011, 4-5; Park, et al. 2017, xxx).

The US military’s claim of immunity from environmental cleanups also violates the global convention for environmental cleanups based on the “polluter-pay principle.” Initially adopted by the Organization of Economic Cooperation and Development (OECD) in the early 1970s, this principle was incorporated into the 16 principles of the UN Conference on Environment, which was convened in Rio de Janeiro in 1992. Since then, the polluter-pay principle has been widely accepted and used as a fundamental principle in environmental cleanups domestically and internationally (Park 2011, 14). Certainly, it resonates with a primordial sense of justice that most sensible human beings can recognize and accept. Both South Korea and the U.S. have complied with the principle in their domestic handlings of environmental contaminations. South Korea has relied on Environmental Policy Basic Law and Soil Environment Conservation Law, which honor the principle. The U.S. has relied on federal laws that comply with the polluter-pay principle when it comes to environmental cleanups and restorations of contaminated military bases within its own territory linked to base closings and relocations.

Nevertheless, the US federal environmental laws are rarely applied to its military facilities overseas. Secrecy and expediency of military operations far away from homeland have been accompanied by immunity from public scrutiny and accountability based on the rule of law. Furthermore, certain elements of US laws regulating environmental issues in overseas bases in fact contribute to the imperious practices of the US military overseas. In the case of the OEBGD, the violation of this guidance does not necessarily lead to a legal trial and hence

renders it toothless. This resonates with a *de facto* principle that the final decision about cleanup of environmental contamination in an overseas base is the authority of the US DoD. The 2013 revision brought some positive changes but included regressive setbacks in terms of accountability of the US military. The positive change included the elevation of officials in charge of the cleanup of environmental contaminations in overseas bases from Assistant Deputy Secretary to Deputy Secretary and a plan to use “scientific procedure to assess influence on health” (Office 2014, 38). The regressive setbacks included the exclusion of surrounding areas of US bases from environmental cleanups and narrowly focused on inside bases. While the problematic KISE criteria were eliminated, they were replaced by comparably problematic, if not more, ones; these new criteria include “actual influence” defined as “immediate response to an exposure to contaminants or health problems in 3 to 5 years after the exposure that exceeds the US standards” (Ibid. 38). In terms of the cost of an environmental cleanup, the guidance does not guarantee such cost as a necessary budget but merely mentions that its financing is “subject to the availability of funds.” This reflects inconsistency of the US Congress in handling this matter; while it required the DoD to establish guidelines for cleaning up environmental contaminations in US military facilities overseas, it failed to require the DoD to include a budget necessary for such cleanups (Park 2011, 15, 16, 17, 19; Office 2014, 32). It has been an exception rather than a norm for the US military to pay for environmental cleanup costs for its overseas bases. Consequently, the US military has frequently failed to cleanup and shift cleanup costs to a host country. Or worse, health and lives of local residents living around US bases are reduced to “collateral damage” of the US global military operations.

## CONCLUSION

Unfortunately, the US military's repeated refusal to be responsible for environmental contaminations in South Korea is not an exception but its common practice in many other countries "hosting" US bases. In particular, countries with a colonial history with the U.S. or in neocolonial relations in the present have been subject to its imperious attitude and behavior; for example, the Philippines, Puerto Rico (Vieques), Panama, and Japan (Okinawa) (Hoehn and Moon 2010). Although relatively less unequal than SOFAs with these lesser countries, Germany-U.S. SOFA as a supplement to the NATO SOFA still showed in the early 2000 inequality between the two countries in terms of environmental cleanup costs. Although the German SOFA specified US responsibility for environmental cleanup costs, it simultaneously included the following condition: the costs cannot contradict financial availability and budget procedure of the US government (Park 2011, 12, 13).

The examples of how environmental negligence and crime committed by the US military have been handled in South Korea reconfirm the undermining of the rule of law in unequal military alliance and the reflection of the US law concerning environmental cleanup in its overseas bases. They reveal that the rule of law is not an automatic mechanism that guarantees democratic relationships in international or transnational military affairs, but a basic condition for developing and maintaining them. As a social institution, law has always required interpretations, which are profoundly structured by unequal power relations between actors and social groups involved in interpreting law. As I theorized elsewhere (Moon 2021), unequal power relations between South Korea and the U.S. military have become further complicated by its internalization by political leaders and their conservative supporters as the inevitable reality.

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<sup>i</sup> In particular, Japan/Okinawa and South Korea continue to “host” a majority of overseas U.S. military bases, including its soldiers, civilian employees, and their families in Asia. Japan hosts approximately 50,000 U.S. troops with a majority of them stationed in Okinawa. South Korea hosts roughly 28,500 U.S. troops. To give a comparison, Germany hosts 48,000 U.S. troops. See “Report: US paying billions more for military bases overseas despite troop reductions” (<http://washington.cbslocal.com/2013/04/17/report-us-paying-billions-more-for-military-bases-overseas-despite-troop-reductions/>; accessed on 4/01/2014). While the U.S. has maintained rotational presence of its troops in South and Southeast Asia, no partner countries in this region have allowed access to their territory for the permanent presence of the U.S. forces. See RAND National Defense Research Institute, “Overseas Basing of U.S. Military Forces: An Assessment of Relative Costs and Strategic Benefits” (2013), p. xxxi. Regarding the size of U.S. military families in Asia, as of April 2014, South Korea has 4,096 families sponsored by the U.S. military command and 1,337 families that are not sponsored by the command. See [http://www.usfk.mil/usfk/Uploads/120/USFK\\_CS\\_NCS\\_Families\\_Report\\_02\\_APR\\_14.pdf](http://www.usfk.mil/usfk/Uploads/120/USFK_CS_NCS_Families_Report_02_APR_14.pdf) (accessed on April 1, 2014)

<sup>ii</sup> Before this problem became revealed and publicized by the mass media, civic organizations, and the National Assembly, US bases have generated the problems of excessive noise and fatal accidents from routine military training and operation, as well as crimes against Korean civilians.

<sup>iii</sup> See Moon (2021) and Kim and Moon (2001) for more detailed discussion of the concept of transnational militarism.

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<sup>iv</sup> The distance between Seoul and Osan is 44 kilometers and that between Seoul and P'yongt'aek is 65 kilometers. The distance between Seoul and Taegu is 237 kilometers and that between Seoul and Pusan is 325 kilometers.

<sup>v</sup> Residents of P'yongt'aek area had been severely affected by the expansion of the US bases under the relocation plan. For a study of resistance movement by local residents and their supporters, see Moon (2012).

<sup>vi</sup> These government projects are not always beneficial to ordinary citizens in their local communities. There have been a range of problems in conceiving and implementing such development projects, including the lack of communication with local residents and the lack of transparency in decision making processes. For the example of the Yongsan Garrison in Seoul, see Cho (2014), Hong (2014), Kim (2014), Pae (2014), US Military Base Relocation Project Corp (2014), Yongsan Park Project Corp (2014), Yongsan Ward Assembly Members (2014), and Yoon (2014).

<sup>vii</sup> Additionally, several US bases have been virtually abandoned after US troops relocated without being returned to South Korea. These unoccupied bases sit still like a white elephant in a room and thereby preventing repairs of basic infrastructure and redevelopment of local communities. The Korean government has been secretive about the status of these suspended spaces (Kang 2021).

<sup>viii</sup> While there is also a related problem of deadly germs used as biological weapon, for example, anthrax, which is hidden in US military bases, this paper will not deal with it as it requires a separate paper. For the presence of anthrax, see Choi and Civil Society Meeting (2015).

<sup>ix</sup> Although South Korea demanded a SOFA since the signing of the 1954 South Korea-U.S. Mutual Defense Treaty, the SOFA was not drafted until 1966. It had never been revised until

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1991. See Moon (2010) for the detailed discussion of enduring consequences of the neocolonial SOFA.

<sup>x</sup> See “Summons delivery fails in McFarland case,” *Korea JungAng Daily*, October 10, 2003.

<https://koreajoongangdaily.joins.com/news/article/article.aspx?aid=2043553> (accessed on 9/22/2021). This incident also inspired Bong, Joon-ho, a director who won four major Academy Awards for his *Parasite* in 2020, to make a film about a mutated amphibian monster which lives in Han River and attacks Seoulites. Released in 2006, the film was entitled *The Host* (Korean title: *The Monster*).

<sup>xi</sup> See “Morgue official in Korea convicted of dumping chemical avoids jail,” *Stars and Stripes*, January 20, 2005. See <https://www.stripes.com/news/morgue-official-in-korea-convicted-of-dumping-chemicals-avoids-jail-1.28241> (access on 9/23/2021).

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# "The Dogs that Don't Bark: The Persistence of Basing Arrangements in an Age of Increasing Nationalist Mobilization"

**Sebastian Schmidt**

NOVEMBER 2021

**The Dogs that Don't Bark:  
The Persistence of Basing Arrangements  
in an Age of Increasing Nationalist Mobilization**

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## Introduction

The topic of foreign military basing, while perhaps niche relative to the more dominant concerns of IR scholarship, offers a particularly compelling window onto a number of issues relating to the nature of the state and the linkages between domestic and international politics. These issues include, but are not limited to, international hierarchy (Cooley 2017, Lake 2007), empire (Höhn and Moon 2010; Gillem 2004; Lutz 2009), sovereignty (Cooley and Spruyt, Schmidt 2020), and the international political consequences of social movements (Yeo 2011), and public opinion (Kim and Boas 2020; Allen et al. 2020). This fecundity of the basing literature is due to the liminal nature of basing relations. That is, basing relations very clearly transgress the often implicit but still widespread tendency in security scholarship to conceive of states as unproblematically bordered entities. Despite the acknowledgement of extensive transnational phenomena, most often tied to economic and social linkages under the heading of “globalization,” security politics – outside of the critical literature – is still understood largely through the image of the nation state. Because basing practices are by definition transnational phenomena, studying them has shed light on various consequent linkages between domestic and international politics.

One crucially important phenomenon that foreign basing might help us get a better hold of is nationalism and the potential power and limitations of nationalist mobilization in shaping international order. Specifically, foreign military basing is a foundational part of the current practice of international security politics, and the presence of such installations structures much of the day-to-day cooperative (and confrontational) security practices of states around

the world. It is an important part of the “infrastructure” of the current world order (Cooley and Nexon 2020). At the same time, the increasing salience of nationalism and populist politics, both in the United States and across the world, suggests that such arrangements might become more precarious in the face of a politics more conflictual and zero-sum in character. The presidency of Donald Trump, after all, was characterized by his broadly nationalist “America First” agenda, which was marked by a transactional approach to foreign relations, unilateralism, and a bellicosity that strained alliance relations. This turn is not limited to the United States, of course, and has found fertile ground in many states.

What is surprising in this context of an intensification of nationalist discourse is the apparently limited impact this development has had on foreign basing relationships in general and the US basing network in particular. With a rising tide of nationalist sentiment in various host states as well as blatantly nationalist rhetoric in the United States no longer clothed in platitudes about the liberal order – in fact at times seeking to directly undermine aspects of this order – we might expect a concomitant rise in nationalist pressure on basing networks. Indeed, with the lack of broader ideological conflicts within which national particularisms might be obscured, we might expect basing arrangements to become increasingly fragile targets of nationalist mobilization. Yet there is no indication that this has happened or might happen any time soon. Why not? There is little in the way of a developed body of research on this or related questions.

Nationalism has of course not been completely absent from discussions of basing, and scholars have made frequent reference to nationalist elements, for instance in the context of resistance to basing deals (Yeo 2011; Cooley 2008). However, there is little scholarship that has

examined the relationship between foreign basing and nationalism more specifically and how this relationship might or might not impact the contemporary international order. This is a particularly prescient time to ask such questions given the rise of populist and nationalist movements across the globe.

### **Nationalism in IR**

The conventional understanding of nationalism in IR literature would in fact suggest that we have a significant puzzle on our hands. Outside of a few signal contributions (Barkin and Cronin 1994, Bukovansky 2002), nationalism has remained relatively unstudied in IR, with most of the pertinent work falling within the purview of Comparative Politics. In light of this relative lack of engagement, an implicit theory of what I call “unitary nationalism” appears to stand in for more sustained analysis in IR. In outlining this implicit theory, I build off the characterization of Kocher et al. (2018), who note that nationalism is often assumed to have a single valence with regard to perceptions of foreign interference or invasion: that of resistance. More generally understood, nationalism is perceived as a “unifying ideology” that “exacerbates conflict between nations” (Kocher et al. 2018, 123). While their work is focused on the role of nationalism in responses to military occupation, I link their characterization of the nationalism literature – and in particular its territorial referent – to how nationalism is often portrayed in IR as the ideological underpinning of the modern anarchical (territorial) state system. According to the perspective of unitary nationalism, nationalism constructs states as individuated units, primed to be suspicious of one another’s motives, self-regarding, and wary of cooperation – a

realist picture of international politics, in other words. Realist scholars have themselves claimed an affinity of the nation with a state-centered ontology and conflictual understanding of anarchy. This affinity is not limited to classical realists with more primordial readings of the nation, but extends to contemporary scholars, such as John Mearsheimer, who understand nationalism to be “probably the most powerful political ideology in the world” and the guarantor of an anarchic state system far into the future (Mearsheimer 2001, 365-66). Non-realist traditions of IR scholarship do not make such strong claims with regard to nationalism, but with regard to security, the mainstream leaves this congruence of nationalism with the state system largely in place, or at least unchallenged.

The tendency in IR literature to assume a neat congruence between state, society, and territory was identified long ago by John Agnew as the “territorial trap.” Specifically, “when the territoriality of the state is debated by international relations theorists the discussion is overwhelmingly in terms of the persistence or obsolescence of the territorial state as an unchanging entity rather than in terms of its significance and meaning in different historical-geographical circumstances” (Agnew 1994, 53). In other words, the territorial nature of rule does not necessarily imply territorial exclusion or some time-invariant understanding of the territorial capacities of states. While the extensive globalization literature has more than answered these concerns in the realm of economics and to an extent in terms of transnational social linkages as well, security studies remains something of an outlier. Moreover, contemporary readings of nationalism, despite having shed the inherited primordialist baggage, are easily grafted onto readings of the nation-state as unitary actors, particularly vis-à-vis the external environment, even if this is not their principal intention. For Keith Darden and Harris



Mylonas, for example, the decision by elites to engage in nation-building is driven by “ruling elites’ conscious efforts to nation-build using mass schooling with national content,” which is a reaction “to external threats to the territorial integrity of their states” (Darden and Mylonas 2016, 1469). The persistent themes of unity and territoriality continue to inform the significance of nationalism for IR literature (Cederman 2013).<sup>1</sup> according to such perspectives, nationalism may vary by time and place in terms of its political salience, but there is usually a reserve of untapped potential to overcome collective action problems in defending the nation against perceived threats.

This territorial referent of the nation coincides with the usual Weberian cast of understanding the state so common in IR: that the state wields a monopoly on the legitimate use of force within a territory. It is in this context that foreign basing is a potentially egregious violation of the national ideal. In such arrangements, the territory is, after all, in part claimed for use by a foreign military, the very national instrument that is so often used to seize territory. Base areas are in a sense occupied by a foreign military that wields power independent of the host state’s authority. Significantly, military presence was, prior to the second world war, intimately linked with the idea of territorial control, and a foreign military presence could not be conceived as anything but occupation (Schmidt 2020).

### *Reconsidering nationalism*

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<sup>1</sup> For a sympathetic argument from a critical IR perspective, see Heiskanen 2019.

Given this baseline understanding of nationalism, why has the American basing structure remained unperturbed in the face of increasing nationalist sentiment? And what developments in the end might actually perturb it, if this exceptionally favorable context for nationalist politicization of basing relationships is apparently passing without much activity? It seems reasonable to look to the literature on occupation as guidance given the earlier exclusive association of a foreign military presence with occupation or annexation. Indeed, to take anti-base activists at their word, foreign military presences *are* occupations and therefore represent the kind of impairment of sovereignty that requires redress. According to the literature on military occupations, nationalist sentiment favors the expulsion of foreign occupying forces, a hypothesis in line with the theory of unitary nationalism.<sup>2</sup> More recent considerations of nationalism, however, seek to amend this perspective. Specifically, nationalism, at its base, entails the preservation and security of the national community – no more, no less. This broad goal, however, is potentially compatible with a wide range of strategies. As Kocher et al. (2018) show, nationalists might favor a wide range of potential relations with an occupying force, from active collaboration to violent resistance, which each strategy undergirded by sincere concern for the nation. International and domestic political dynamics in the occupied country, for example, might suggest to some nationalists that collaboration with an occupying force is the best option for the time being. In Occupied France, conservative military and civilian leaders with impeccable nationalist credentials sought to collaborate with the Nazi occupation given the prospect of Nazi victory in the wider war and the opportunity to attain the upper hand

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<sup>2</sup> See for example Edelstein 2004.

against leftist domestic political rivals. Conversely, nationalists on the left found it in their interest to resist occupation.

Nationalism according to this account has no real positive substance – it provides no particular direction for action, and the particular policies chosen will be heavily context dependent. Theoretically, this issue relates to the epistemological difficulty of tracing a definitive effect of identity on action. This recent work on nationalism, which highlights its complexity and contingency, underscores the difficulty of “getting into the heads” of actors – and ultimately the futility of positing a cause (a national identity) that is only known through its effects. Just as the popular use of the category “nation” does not require scholarship to use it as a category of analysis and thereby reify it, Frederick Cooper and Rogers Brubaker remind us that “identity” also need not be used as a category of analysis, despite its frequent popular use (Brubaker and Cooper 2000). Indeed, recent work in IR has moved in the direction of substituting processes of “identification” for the nebulous – and potentially static and essentialized – category of “identity” (Bucher and Jasper 2017). This is not to argue that national claims are without political effect, of course. Rather, the idea is to focus analysis on the reification of such categories by societal actors and the work those categories do for the actors concerned. While this paper is not the place to probe these issues further, these relational – as opposed to essentializing – perspectives on nationalism suggest the importance of contextual factors in the role nationalism has and will play in base politics.

### **Nationalism and base politics**

Nationalist rhetoric has long been prominent in anti-basing protests (Cooley 2008), but its importance is unclear. One instance in which nationalism appears to have played an important role in the expulsion of a US military presence was President Rafael Correa's 2009 refusal to renew the agreement governing the US presence at Manta Air Base in Ecuador (Bitar 2016, chapter 4). Around the same time, however, strategic US basing relationships with Uzbekistan and Kyrgyzstan came under strain and were cancelled without a substantive reference to nationalism. These states both emerged from the collapse of the Soviet Union without well-developed nationalist discourses (Cooley 2008, 222). Moreover, the ending of the basing relationship with Ecuador arguably happened within an extraordinarily unfavorable political context for the United States that made presences across the globe potential targets for local nationalist movements. The strains, which had their own domestic origins, continued during the US invasion of Iraq and the remarkably bellicose and unilateralist rhetoric of Bush administration officials in the context of a proclaimed Global War on Terror that was apparently boundless. These developments called forth a response that highlighted the global US military presence not as a stabilizing factor, but rather as a cause of war and the foundation of imperialist policies. Yet while local protests continue to this day (and had also preceded the Iraq war), this remarkable moment of broad, transnational counter-base mobilization has largely passed with the waning of large-scale US involvement conflict in the Middle East and Central Asia.

Another interesting case is that of Rodrigo Duterte, the populist president of the Philippines who has made no bones about his distaste for being told how to govern in the context of a violent domestic crackdown on drug trafficking and use (Landler 2016). In a visit to

China early in his presidency, Duterte actively distanced himself from the US alliance (Perlez 2016). Despite somewhat warmer relations between Duterte and Trump – a dynamic that recalls the literature on the “autocratic peace” and the transnational links of nationalist movements – Duterte cancelled the Philippines-United States Visiting Forces Agreement (VFA), in place since 1999 that governed the rotational presence of US troops in the Philippines, citing infringements of sovereignty and backed by nationalists who cited a lack of US support. Without the pact, the security ties between Manila and Washington would be severely weakened (Lema et al. 2020). Tellingly, however, the legal end of the arrangement was deferred multiple times by Duterte until he recently walked back the scuttling of the deal altogether (McCarthy 2021) – interestingly after the election of the Biden administration, which has shifted to a more traditional foreign policy emphasizing human rights. While the US-Philippine security partnership does not have the same stability compared to the time before Duterte’s election, the prospects for continued partnership in the face of increasing tensions with China are good, with a majority of the population recently surveyed as expressing significantly more trust in the United States than China (McCarthy 2021).

The qualified importance of nationalism in dynamics such as these raises questions about the future prospects of transnational basing infrastructures. Recent work by Claudia Kim and Taylor Boas (2020) helps to disaggregate the influence of nationalistic appeals in regard to the fate of basing relationships. Kim and Boas distinguish between the nationalistic appeals of anti-base activist and those that are more “pragmatic,” addressing concerns such as environmental and social harms that accompany the presence of a foreign military base. To tease out the relative importance of these issues, Kim and Boas develop an online survey

experiment targeted at host communities of American bases in Japan and Korea. Their findings reveal a significant relationship between the pragmatic framing of how the base affects people's lives and opposition to the base, while framings of the base issue cast in more nationalistic terms had no such effect. As a result, Kim and Boas suggest that anti-base activists in these countries may frequently frame their arguments in ways that – while they may cater to a select group of political activists – are out of touch with public opinion at large.

While providing much-needed insight, Kim and Boas's work is limited to two US allies with particular characteristics and histories that limit comparison to a broader array of US base hosts. Japan and Korea, unlike many of the basing partnerships that the United States has entered in recent years, have been close US allies for decades, and the bilateral relationship consists of significant mutual economic interests aside from closely shared security priorities. As a result, the question naturally arises how widely shared this divergence between pragmatic and nationalist appeals is among the residents of other base hosting states. Yet their finding is at least suggestive of the durability of these agreements even in an era of what many observers hold to be the progressive fragmentation of the American-led liberal order. Specifically, the issues concerned in pragmatic framings are much more easily addressed: procedures for dealing with environmental contamination can be developed in conjunction with host governments, base activity can be shifted to accommodate concerns about noise, staffing might be reduced, or in serious instances, bases can be relocated. While perhaps not easy to swallow and potentially incurring significant costs, accommodating such demands is often within the realm of possibility. To be sure, the United States may try to ignore such demands for as long as is politically feasible given the expense of meeting them, but the possibility of addressing them

at least in part is usually an option. By contrast, there is no coming to terms with a successful anti-base movement whose demands are informed by principled nationalistic opposition aside from removal of the base. Yet as Kim and Boas's data suggest, it is framing opposition in precisely this manner that seems to be relatively ineffective.

This contrast in the effectiveness of nationalist as compared to pragmatic framings of anti-base opposition has parallels in recent work on anti-colonial movements concerned with the shift of the focus of such movements from the reform of colonial governance to national independence. As Adria Lawrence has shown, scholarship has generally assumed rather than explained the nationalist character of such anti-colonial movements, when in fact many such movements first started out without demands for national independence. According to Lawrence, in the case of French decolonization struggles, their initial focus was often equality within some framework of continued association with France. In contrast, the conventional wisdom on nationalist movements falls short of an accurate portrayal because the attention paid by analysts to "differences between the French and the people of the colonies...led analysts to underestimate how much people care about being treated as equals and overestimate how much they care about national divides" (Lawrence 2013, 20). The data Kim and Boas gathered can be interpreted as echoing these findings: a pragmatist framing is in part more effective in generating collective action on basing issues in part because its concern is for greater equality of treatment in practical, local circumstances rather than more abstract notions of national difference or sovereignty.

## **Implications**

What does this mean for the development of contemporary security relations and the broader question of international order? It means first that we should not assume a baseline of nationalist sentiment waiting to be mobilized in particular circumstances. The relationship of nationalism to particular courses of action is contingent at best. This also means that despite the prominence of populist and nationalist discourse, both in the US and globally, we should not infer that this development will necessarily have much of an independent effect on the fate of basing arrangements. The broader implications are more significant in terms of how international order is effected by the changing relations of states. Despite the tendency for security to be conceptualized in terms of the territorial or nation-state, this kind of analysis will likely be limited in elucidating the contours of the coming world order. A resurgence of populism does not necessarily entail a fragmentation of the security architecture into discrete nation-states once again. The re-territorialization of security in the widespread severing of basing agreements is an unlikely outcome of the present destabilization of the liberal order. This analysis does not of course suggest anything in particular about the durability of the liberal order itself, but merely that the intimate transnational security linkages that characterize global governance of conventional violence are likely quite stable, at least relative to the resurgence of populist and nationalist rhetoric.

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# "Crime and perception"

**Mike Flynn**

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## Chapter 5

# Crime and Perception

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**Summary:** The previous chapters have examined positive contact, economic benefits, and the role of minority groups in basing and perceptions. We take a deeper look at a negative interaction between service members and host-state civilians by looking at how national media reports, personal victimization, and criminal victimization within a respondent's network influence respondents' views of the US military and other actors. Those that live near a well-publicized criminal event, experience criminal victimization, or report victimization in their social network are both more likely to have an informed view of the US military presence and more likely to have a negative perception of crime. However, these effects are (compare to contact/economic benefits). Given this comparison, in the competition for consent, it seems the good outweighs the bad absent media reporting.

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During the early morning of a Wednesday on April 17th in 2019, local police arrested an airman from Kadena Air Base in Okinawa for suspicion of drunk driving. The 26-year old ran into a motorcycle and injured two civilians; a police-issued breathalyzer calculated his blood-alcohol level “was nearly twice Japan’s legal limit of 0.03 percent”.<sup>1</sup> Although, the act of driving under the influence and injuring host-state civilians is certainly something that would make the local news, it was not the only case of misconduct in Okinawa that April. An additional drunk driving incident happened a week later. More staggeringly, a Hospital Corpsman 3rd Class in the Navy murdered a 44-year old Okinawan woman by stabbing her in the neck and then committing suicide by surgically cutting his groin.<sup>2</sup> The clustering of events provided further fuel to Okinawa’s anti-

basing movement. The movement argues that the presence of US service members and their history of heinous and routine crimes had rocked the prefecture for decades before the events in 2019. Moreover, Okinawa has a long history of US military scandals that shocked people's conscience in both the region and the country as a whole.

As reports of service members committing mundane to heinous infractions in the regions that host them, some subset of these behaviors will gain local, regional, national, or international attention. As such stories trickle back to the United States, it is not clear if the United States sees these as isolated events, another cost of providing global security, or a pattern of behavior that the military has been incapable of curtailing. Even overseas, it is not clear if the behavior is systemic, sensationalized, or somewhere in between. It is feasible that the crime rate among service members may be at or below the crime rate in the nations that host them; the relatively lower rate of the criminality of the military relative to other host populations is something US military leaders have used as a defense.<sup>3</sup> Still, the very fact that it is a foreign military member committing crimes against a host population makes each incident more noteworthy and more likely to garner media and local attention. Our research found some evidence that military deployments correlate with increases in property-related crimes but less evidence on other changes in the rate of crime within society.<sup>4</sup> In understanding how military member crimes play a role in this book, the incidence rate is less of a concern than the perception those incidents create. Of course, the more crimes that occur, the more opportunity for negative views generated by those crimes to proliferate.

In the previous chapters of the book, we have discussed the role that contact has on producing positive and negative perceptions of the United States. We have discussed interpersonal contact creating positive interactions and how economic benefits can reinforce positive support for the US military presence. However, most of our discussion has focused on the positive aspects of interpersonal contact in breaking down stereotypes and encouraging familiarity. While the chapter on minority presence indicates fewer positive trends for the United States, this chapter delves into a directly negative effect: crime. In this chapter, we develop our expectations as to where we see service member crime events make national media venues and the role of crime in affecting perceptions among the 42,000 people we surveyed.

In understanding competition for host-state consent to base, crime plays an insidious role for basing powers that may be hard to curtail. A country that deploys tens of thousands or hundreds of thousands of people into other nations will have some criminal infractions within its deployed populations. It would be difficult for any military or institution to perfectly select members of its community that have no capacity or willingness to commit a crime. Doing so would rely on outdated notions of why crime occurs. There are complex determinants of what causes crime, and no social institution has successfully eliminated all crime within its membership. In considering reducing or limiting criminal offending within its ranks, the military can certainly invest in other structural, incentive, and training changes. A big picture decision for a basing power is to decrease the opportunities for crime by isolating their own population or increase the monitoring of, incentives against, and punishments for criminal behavior. The United States has increasingly chosen the first option in the last two decades. By choosing isolation, the United States attempts to internalize criminal behavior to its population and decreases the likelihood of a negative story causing basing ramifications.

Additionally, building self-contained military cities requires mostly large fixed costs (land, buildings, etc.), while the option to monitor and police behavior requires long-term, enduring costs to maintain. Isolation is cheaper and easier than integration and monitoring. While the Navy has a history of maintaining an insular presence, the rest of the military started following a similar path by the mid-2000s.<sup>5</sup> The trade-off with this strategy is that the non-personnel-related costs from deployment will remain and the positive contact and economic flows from personnel will evaporate as a result of the American city with a fortress strategy. As we've seen elsewhere here, while isolation may limit the bad interactions, it may also limit the good ones and create an increased sense of suspicion among local populations that could further exacerbate tension between US personnel and locals and create space for conspiratorial counter-narratives about the nature of the US presence. This could leave the politics of basing worse off than if crimes occurred in a basing community but against the backdrop of a robust series of positive social relations between local populations and US basing personnel.

We first explore our current understanding of the relationship between US military deployments

and crime within host states to understand our data. We then use this to build our expectations of and how crime affects the perceptions of host-state civilians. Next, we use these hypotheses to return to our model of perceptions to estimate how crime influences people's positive and negative views of the United States. Finally, we conclude by evaluating how crime influences the domain of competitive consent.

## Research and Expectations

We begin our theoretical development of the impact of crime on perceptions by host-state civilians by reviewing the existing body of work on service member crime. The presence of crime among foreign-deployed military communities might be one of the better-studied aspects of overseas deployments. The documentation of the crimes through local police and internal military investigations allows for a closer examination of the record than other aspects of overseas deployments. These records, when public, also allow for ease of media reporting and scrutiny that other social harms may be harder to track and document. Beyond the nature of crime reporting, case study research on particular countries or deployment communities has been key in how basing changes the social fabric of established towns and cities.

The foundational work that systematized understanding and conceptualizing crime in the armed forces is Clifton D. Bryant's *Khaki-collar Crime*.<sup>6</sup> This sociological and criminological examination argues that understanding criminal deviance requires additional assumptions than civilian crime as it takes place in a context that has additional, layered social institutions and responsibilities within it.<sup>7</sup> In discussing these added layers, Bryant adds several additional causal factors into why military crime occurs, including the nature of the military population (typically young, male, lower- or lower-middle-class, and low skilled when he is writing in the 1970s), the stress of military existence, the conditioning aimed at reducing individual choices, over-regulation through a dearth of formal rules, informal norms, responsibilities, and resources make infractions inevitable. Military culture and the totality of the institution in a service member's life, normalization of abuse of subordinates throughout training, a culture of violence that cultivates violent responses, combat offering opportunities to cloak violence against superiors, over-bureaucratization, military socialization, official tolerance for some criminal infractions, and subcultures encouraging deviance from official military

training all play a role in creating military crime. In getting a handle on the multifaceted ways the military creates space for crime to occur and how service members can commit a crime, Bryant categorizes crime into three types: crime against property, crime against people, and crimes against performance. The first two are more well-known, while the final category deals with crimes that hinder one's own duties or duties of others.

For those three types, there are three supra-categories where crime occurs. Crimes can occur within one's service (intraoccupational), against those outside of one's service (extraoccupational), or against those that are in another service (interoccupational). Extraoccupational crimes warrant subdivision across three different areas as the unique nature of military service affords three kinds of interactions in which crime can occur: against American civilians, against foreign-friendly civilians, and against enemy civilians. The types, details, examples, and causes of these crimes are vast within his work. Since we are primarily interested in how crime affects the perceptions of host-state civilians, the primary category this chapter examines is extraoccupational crimes against foreign-friendly civilians. This focus has a few caveats. First, there is quite a bit of overlap between the factors related to crimes against American civilians and foreign civilians in Bryant's analysis of many crimes. Still, there are additional opportunities in interactions with foreign civilians, often owing to slippage in the degree to which individuals will be held accountable by the host government or the US military. Second, Bryant lists alcohol and drug use as an intraoccupational crime due to the use of the drug. Still, we certainly see the purchasing and sale of illegal substances, which is true of general participation in the black market, as an extraoccupational crime in addition to its intraoccupational nature.<sup>8</sup>

The third caveat in understanding his work for our purposes is that much of his study of crimes against foreign civilians is in the context of a US military deployed during wartime. Our study is exclusive to deployments in non-war zones. This distinction creates a qualitative difference in interpreting the opportunity, meaning, and punishment of crimes against civilians. As Bryant illustrates overly well, service members can hide their crimes during a conflict. Primarily drawing upon examples from the Vietnam conflict, there are several examples where service members victimize South Vietnamese civilians in brutal ways and claim before, during, or after the person was



a member of the Vietcong. Many of these acts would be war crimes even if the victim were enemy combatants, but the designation as an enemy excuses the behavior in the perpetrator's account. Beyond the cover conflict gives to criminal actions, the salience of the conflict makes prosecution of crimes less likely than if the same crime happened during a peacetime deployment. These dual factors make the impact, reporting, and punishment of crime fundamentally different from the contexts we examine within this chapter.

Several important works in this area help us understand the prevalence and role of service member extraoccupational crime globally. Bucher builds upon these foundations to argue that "General Strain Theory" is useful in understanding military offending.<sup>9</sup> A combination of straining factors (such as the inability to achieve personal goals, negative experiences, inability to meet family needs, etc.) can lead individuals to pursue crime when they lack access to adequate alternative coping mechanisms. The study finds a relationship between measures of strain and drug use, violence, and theft.

Moon's book is a close examination of how both the United States and South Korea institutionalize, manage, and react to the culture of sex work and prostitution within South Korea.<sup>10</sup> Historically, the United States has maintained a fine line between seeing prostitution as an illegal activity in most jurisdictions it operates in while also tolerating or encouraging its promotion as a seemingly necessary outlet for deployed personnel. This dual-track of both officially being against prostitution while, at times, all but condoning the existence of prostitution has led to inconsistencies in how the military approaches the issue. The US military in South Korea has gone through several periods of tacit encouragement and complete rejection by the US military.<sup>11</sup> Enloe argues that the US military historically treats prostitution as both a resource (for personnel) and as a consistent threat due to the spread of venereal disease—these views mimic Great Britain's approach to similar issues within its empire.<sup>12</sup> In South Korea, towns go through a period where illegal sex work flourishes despite local and military restrictions. Eventually, when the US military becomes more interested in reshaping its domestic image, it engages in a cleanup campaign with the South Korean military to curtail prostitution in the camptowns surrounding the nearby bases. At other times, the military largely ignores the issue because "you don't wash your laundry in public".<sup>13</sup>

Having a tolerated black market for prostitution leads to a proliferation of additional types of crimes. Fundamentally, without legal sanctification of a business that flourishes, the state has abdicated the responsibility for enforcing property rights. By the state criminalizing particular aspects of the business, associated crimes become easier as the victims are afraid to go to the police. For example, if a armed forces member decides to assault a sex worker while being a client of their services, the sex worker is unlikely to report the crime to authorities. The victim's occupation makes it possible to face legal sanction without any recourse for their victimization. Beyond this, private actors need to enforce property rights in place of the state without legal protection of property rights. This leads to increases in violence to protect people and goods and to enforce contracts. For example, if a client refuses to pay a sex worker, the sex worker either loses out on that income or turns to another person to threaten or commit violence to recoup their lost revenue. This issue is prevalent in nearly any market where the state abdicates the role of protecting property rights, whether it is sex work, drugs, farms in New World colonies, or just heavily taxed goods.<sup>14</sup>

In the specific example of South Korea, the black market for sex work created several negative externalities. Moon details how the social stigma around sex work often made it impossible for women to reintegrate into Korean society and, for many, the end goal was to marry an American soldier in the hopes of leaving Korea altogether.<sup>15</sup> While marriage and leaving South Korea were prospects, the danger of violence and murder was also present. The occupation was not lucrative for many women either as bar owners that controlled the lives of many of these workers would keep them in a debt bondage system that made escape financially impossible.<sup>16</sup> The lack of state regulation allows social norms to regulate the market in Korea partially. Sex workers with predominately white clients became the targets for abuse, alienation, and murder if they were found working for black soldiers.<sup>17</sup> Enloe mentions a similar situation arising in Vietnam, and Gillem discusses how contemporary South Korean bar owners seek only to serve Americans in camptowns and dissuade local Koreans from patronizing their establishments.<sup>18</sup> Moon demonstrates that even during the Camptown cleanup campaigns in the 1970s, there was an effort to reduce racial discrimination among sex workers and enforcement and punishment of the anti-discrimination regulations fell

on the women. More recently and despite these cleanup campaigns, NGOs have worked to raise awareness about women's sexual labor in US basing districts.<sup>19</sup>

Given the proliferation of other grey and black market services that arise around a tolerated black market, it follows that permissive conditions for one type of crime will spawn additional crime networks to support the tolerated market and provide cover for other kinds of crime to proliferate. This building of networks is not unique to prostitution. Still, we see similar effects when significant issues with drug use lead to a contagion of other crimes, including drug trafficking, sexual assault, and robbery. Drugs have been an endemic problem within the armed forces in different periods, though the military has successfully combating drug use in some high profile deployments, though marijuana and steroid use remained high in the 2010s.<sup>20</sup>

In many US deployments, the US brings with it millions of dollars of capital-intensive goods, supplies, food, and other resources that are ripe for service members to pilfer and sell on secondary markets.<sup>21</sup> Not only do service members act as a demand in the marketplace for illicit goods, but by having access to robust stores of goods, they can act as suppliers for local demand. During the Cold War and post-Cold War eras US deployments have several cases where millions of dollars of equipment or, more concern, thousands of firearms have disappeared from the military and found their way onto the black market. (citations) The influx of cash and the proliferation of grey and black market activities because of the blind eye turned to certain areas produces overall trends, where US military deployments correlate with increases in aggregate property crime rates.<sup>22</sup>

Trying to quantify the number of crimes service members do is a difficult task. Notably, base commanders have historically pointed out that service members commit crime at lower rates than the country's general population.<sup>23</sup> Early research within our team tried to assess whether the presence of troops correlates with higher levels of criminal activity within a country; that is, does the demand for illicit goods create a proliferation of other crimes within society. Our research found some connection with property-related crimes but was generally limited in its overall assessment.<sup>24</sup> Much like we pointed out about other research in Chapter 3, this is another case of ecological inference issues that make conclusions about individual behaviors difficult to draw. It is possible that the military deployments are not causally related and that other factors create the relationship

we found in that case. There are threats to inferences about individual behavior and some questions about the spuriousness of the relationship.<sup>25</sup> Recent work by Efrat uses primary source documents from the US army to catalog 361,487 offenses from 1954-1970, with 74% of those crimes taking place in NATO countries.<sup>26</sup> As he notes, these crimes are likely under-reported as crimes statistics are already an under-reported figure for a variety of reasons; the perpetrators being US military members may increase that under-reporting further since victims may fear retribution or believe that reporting the crime will not result in meaningful justice.<sup>27</sup> In a separate study, Efrat also uses judicial records to find that most crimes do get referred to the military for prosecution.<sup>28</sup> Cooley also finds evidence that as many as 50,000 crimes committed by US service members in South Korea alone between 1967 and 2003 by tracking the number of SOFA incidents and criminal jurisdiction and waiver cases that occurred in the ROK.<sup>29</sup> This number also does not consider crimes committed by dependents and other civilians present as a result of US basing arrangements.

### **Theorizing crime reporting and perceptions**

While we have reviewed the major understandings of crime within this chapter, our goal is to look at the effects of those crimes. Setting up our argument in this chapter is a short affair as much of our discussion extends from chapters 2 and 3. First, we are interested in whether highly reported crimes are more likely to influence the views of our respondents. These events are most likely to galvanize public backlash and understand whether the crimes media outlets decide to cover have an independent effect on individuals' perceptions. Using a new data set on widely reported crimes by service members, we expect that people nearer to places with reported crimes are more likely to have negative views of the US actors we ask about.

**Hypothesis 5.1.** *Individuals living near the reported location of a crime committed by a US service member will be more likely to express negative views of the American presence/government/people.*

Naturally, there might be a presumption that countries with more service member crimes are more likely to have overall more negative assessments of the US military, but this does not seem to bear out in the data. Gillem reports:

More telling from a socio-spatial perspective is the variation in crime rates within the

military community. In the same three-year period that South Korea experienced 1,246 criminal acts by US soldiers, in Okinawa, Nawa, Japan, soldiers committed 198 criminal acts. The annualized per capita difference is quite instructive. In South Korea, there were 11.2 crimes per 1,000 soldiers. In Okinawa, there were 2.4 crimes per 1,000 US soldiers. Why is the disparity so striking? I suggest that it is largely the result of policies related to housing and land use.<sup>30</sup>

We expect to see more reports of Japanese crime rates than Korean crime rates despite the disparity in offenses between the two countries. Given a higher reporting for a lower rate of occurrence, those near those crimes are more likely to report negative views. In addition, Gillem's measure of crimes per US soldier may not be the most instructive measure of impact since the crime rate per US soldier may matter much less than the crime rate compared to the population of the host community. South Korea's much larger population means that the media will likely ignore some level of crime in a country with a larger population. However, in Okinawa, which has a much smaller population, even a lower number of crimes is likely to impact society and receive greater news coverage disproportionately.

While some may argue that the proper comparison is South Korea to Japan as a whole and not Okinawa in particular, Okinawa's isolated geography, distinct history, and ethnic identity mean that crimes committed in Okinawa are likely to be treated as a highly important local issue. The same may not be the case of a crime committed in Tokyo or Seoul. Given these varying dynamics that likely play a key role in how societies react to crimes committed by members of the US military, we expect distance from a crime and news coverage of the crime to matter more than Gillem's measure of crimes per US soldier. For most people not directly impacted by crimes to themselves or their social network, their perception of crime will be highly mediated by the media. Therefore, a critical determining factor is not only whether someone has been directly impacted by crimes to themselves or their social network, but whether the media chooses to highlight stories featuring crimes by US soldiers.<sup>31</sup>

When it comes to media coverage of crimes committed by members of the US military, prior work in this area indicates that the wider context likely matters a great deal. Whether the basing

arrangement is highly politicized helps determine the degree of coverage that crimes receive, even when crime rates by members of the US military appear to be at a low ebb.<sup>32</sup> US military officials object to the media's coverage of crimes, claiming that the media overly focuses on negative stories and distort the facts in an effort to paint the US presence in a negative light. Such complaints miss the idea that the news stories about crime are a reflection of a wider public discontent over the basing arrangement, rather than necessarily a reflection of the views on crime itself. US officials can point to lowered crime rates, but the coverage will continue because the fundamental issues related to the basing arrangement remain.

Returning to questions within our survey data, we clearly expect that respondents who report criminal victimization will be more likely to have negative views of the United States military presence, government, and people.

**Hypothesis 5.2.** *Individuals who report being criminally victimized by a member of the US military will be more likely to express negative views of the American presence/government/people.*

As with Chapter 3, we expect this to extend to social networks as well. Hearing reports of friends or family members becoming victims of crimes carried out by US military service members should correlate with more negative perceptions of the US military and other actors.

**Hypothesis 5.3.** *Individuals who report criminal victimization within their social network by a member of the US military will be more likely to express negative views of the American presence/government/people.*

With these expectations, we turn to develop the data and models to test our hypotheses.

## **Estimating the Effect of Crime and Crime Reporting**

### **Outcome Variable**

As we outline in Chapter 3, we have three outcome variables of interest: Individuals' views of the United States military, the United States government, and the United States people. We collapse the survey responses into four categories to estimate our models: 1) Positive, 2) Negative, 3) Neutral, and 4) Don't know/Decline to answer. Our primary focus here is on how crime experiences

affects individual attitudes about the US military presence in each country. However, we are also interested in how these relationships compare across different groups, so we run two additional sets of models using views of the US government and US people as outcome variables. Using these additional outcomes will help us determine how general the effects of the key predictor variables are and will help us better understand the contours of attitudes towards the US in general.

## **Predictor Variables**

We are interested in how exposure to crime by the media, personally, or through social networks affects people's views of the three actors we have used throughout this book. To do so, we employ the same models that we use in Chapter 3, but we add a few relevant controls for crime-related experiences. First, turning to the survey, we ask two important questions of respondents. First, we ask respondents, "Have you personally been the victim of a crime committed by a member of the US military?" As with our contact questions, they can answer yes, no, or don't know/decline to answer. We ask them about their social network as well when we ask, "Do you know someone who has been the victim of a crime committed by a member of the US military?" Their set of responses to these questions are identical to the previous question.

We expect responses to these questions to have a similar effect as responses about contact and economic benefits. People who respond yes to experiencing or knowing about crime are more likely to have informed opinions on the US military than those that say they don't know or decline to answer. Having that experience or hearing stories of other people's experiences will correlate with people having more and stronger thoughts about the military. Furthermore, we expect that people who have exposure to crime are more likely to report negative perceptions of the US military.

Beyond our survey, we have collected additional data to help refine our expectations regarding reporting and views of the military. We are interested in criminal offenses committed in peacetime deployments by United States service members. Using a database of news reports written in English, we used a series of search terms to construct a list of crimes officially reported by various national and global news agencies from 1988-2020.<sup>33</sup> Importantly, we know that this list is not a comprehensive list of all crimes committed by military personnel nor all crimes reported in local or national news media.<sup>34</sup> Notably, as Efrat points out in recent work, there are hundreds of thousands

of crimes occurring over the first few decades of the Cold War for just army deployments, so our list of 32 reported crimes is woefully incomplete as a comprehensive listing.<sup>35</sup> However, what the list does represent is a list of cases that have bubbled up from that latent background of ongoing crimes and results in substantial news coverage.

We have geocoded the city center where any crime has occurred and use that in conjunction with respondent's self-reported city locations to see how far away they are from a major crime event. We expect that those closer to such news events are more likely to report negative perceptions of the military (and the other actors by proxy). This variable inclusion is mostly a correlative exercise to examine if a relationship exists at all. We expect a bidirectional relationship in that negative events correlate with negative views and negative views make it more likely that the news will cover significant events in those areas. In other words, preexisting negative perceptions make news coverage of negative events more likely, which in turn drive even more negative views.

## **The Effect of Contact and Economic Reliance**

### **Conclusions**

The results of our models may not be too surprising. Writing in 2006, Gillem points out that the media focus on crime and other negative externalities seems to have less long-term effect on people's attitudes than the physical presence of the base itself.<sup>36</sup> The presence and massive land use of the base are also fundamental factors of opposition for people in Okinawa than the litany of social harms caused by the base. However, as examined throughout this book, perceptions of the US military are multidimensional and bring to bear a variety of inputs. Local populations incorporate crimes committed by American military personnel into their wider view of the US military presence, its wisdom, and their other personal experiences with American personnel.

While we do not have data on public opinion related to how cases are handled in the aftermath of a crime, anecdotal accounts indicate a situation in which there is not much the US military can do to lessen public outcry, especially in the presence of significant media coverage. Many instances of harsh justice against US service members who committed a crime did not positively impact public opinion. One former ambassador to a country that hosts US military personnel stated it



directly, “no matter how strictly we deal with them, it will never be enough.”<sup>37</sup> In that particular instance, the US service member received a 50-year sentence after being tried in the United States. Panamanian journalists went to the United States to cover the case, and a JAG officer was brought to Panama to explain the case to the local population on television. In the end, “it doesn’t matter when it comes to public opinion,” he said. While this is one example, others from around the world indicate a similar story, with high-profile and lengthy sentences for US service members not being met with a public response that is less negative.

Thus, two main issues likely help determine the effect of crimes on overall public perception. First, it appears critical to prevent crimes from occurring in the first place through monitoring and policing of service members deployed abroad. Of course, crimes against individuals and their social networks are likely to have a highly negative effect on the views of those directly affected, as shown here. Still, it also shows the degree to which more widespread positive interactions can create a buffer to this type of sharp public response among the wider society. In the absence of personal experience to the contrary, individuals are far more likely to believe that a criminal act by a US service member is representative of the whole presence rather than an anomaly. While isolation of US personnel from the community would appeal to cautious base commanders, in the event of a crime against a member of the local population, there is little they could do to limit the fallout without a robust set of social connections to the community. In the presence of dense social networks between the US presence and the community, locals are more likely to attribute the criminal behavior to individuals responsible rather than the wider presence.

Second, it shows the degree to which crimes committed against local civilians can create focal points for discontent in places that are already disapproving of the American military presence. News coverage is more likely to capitalize on crimes that paint American personnel in a negative light when the local community already perceives the presence to be a malign influence. Thus, crimes are likely to have the most dramatic effects on public perception where there is a reservoir of discontent. That has certainly been the case in South Korea and Okinawa in particular moments of heightened coverage over crimes committed against the local population, which occur in the backdrop of larger conversations in these host societies about the wisdom of hosting American

forces.

Addressing these larger concerns about the general relationship between the United States military presence and the host community, about the size of the US presence, or about issues of land use or environmental destruction can likely to play a large role in determining the effect of crimes on overall public perception. Without addressing these more fundamental issues, crimes against local civilians can see anti-basing sentiment grow beyond individual groups and create a wider, cross-cutting movement against the US presence, which will be discussed in the next chapter.

## Notes

<sup>1</sup>Burke, Matthew M. and Ichihashi, Aya (2019). “Okinawa-based airman arrested in suspected drunken-driving crash that injured two”. *Stars and Stripes* April (18).

<sup>2</sup>Simkins, J.D. (2109). “‘Everyone is going to die ... no need to get anxious about it’ — inside the Chatan murder no one predicted”. *Navy Times* September (11).

<sup>3</sup>Gillem (2007).

<sup>4</sup>Allen (2011).

<sup>5</sup>Gillem (2007).

<sup>6</sup>Bryant (1979).

<sup>7</sup>To be clear, deviance in the sociological and criminological research is not a normative judgment but is instead a label used to those that violate social norms. Bryant goes to lengths to argue that crime is a socially constructed event. Social scientists miss studying several kinds of behavior that would be criminal by most accounts except that it has legal sanctions. Going beyond this observation, he argues that crime, as we conceptualize it, is a natural partner to the social institutions that we construct.

<sup>8</sup>Notably, much of the research, surveys, and analysis of offending is either on intraoccupational offenses or crime by veterans. There is robust research on substance abuse (see: Bray, Robert M et al. [2010]. “Substance use and mental health trends among US military active duty personnel: key findings from the 2008 DoD Health Behavior Survey”. *Military Medicine* 175.6, pp. 390–399. DOI: <https://doi.org/10.7205/MILMED-D-09-00132>), sexual harassment and assault (see: Bostock, Deborah J and Daley, James G [2007]. “Lifetime and current sexual assault and harassment victimization rates of active-duty United States Air Force women”. *Violence Against Women* 13.9, pp. 927–944. DOI: <https://doi.org/10.1177/1077801207305232>; Stander, Valerie A. and Thomsen, Cynthia J. [2016]. “Sexual harassment and assault in the US military: A review of policy and research trends”. *Military Medicine* 181.1, pp. 20–27), intimate partner violence (see: Sparrow, Katherine et al. [2020]. “Prevalence of self-reported intimate partner violence victimization among military personnel: a systematic review and meta-analysis”. *Trauma, Violence, & Abuse* 21.3, pp. 586–609. DOI: <https://doi.org/10.1177/1524838018782206>), and offending among veterans (see: Moorhead, Justin [2021]. “‘A veteran space’: A Military Integrated Nested Ecological Model to understand offending”. *Probation Journal* 68.1, pp. 64–84. DOI: <https://doi.org/10.1177/0264550520979355>).

<sup>9</sup>Bucher, Jacob (2011). “General issue (GI) strain: Applying strain theory to military offending”. *Deviant Behavior* 32.9, pp. 846–875. DOI: <https://doi.org/10.1080/01639625.2010.538353>.

<sup>10</sup>Moon (1997).

<sup>11</sup>Baker (2004).

<sup>12</sup>Enloe, Cynthia (2000). *Maneuvers: The international politics of militarizing women’s lives*. Berkeley: University of California Press; Gillem (2007).

<sup>13</sup>Interview with Ambassador (2018).

<sup>14</sup>Resignato, Andrew J (2000). “Violent crime: a function of drug use or drug enforcement?” *Applied Economics* 32.6, pp. 681–688. DOI: <https://doi.org/10.1080/01639625.2010.538353>; Fleenor, Patrick (2003). “Cigarette taxes, black markets, and crime”. *Policy Analysis* 468, pp. 1–20; Reynolds, Lucy and McKee, Martin (2010). “Organised crime and the efforts to combat it: a concern for public health”. *Globalization and Health* 6.1, pp. 1–13. DOI: <https://doi.org/10.1186/1744-8603-6-21>; VanDusky-Allen, Julie Ann (2011). *The polycephalic Leviathan: The concurrent development of centralized, decentralized, and private property protection mechanisms within the state*. State University of New York at Binghamton.

<sup>15</sup>Moon (1997).

<sup>16</sup>Moon (1997); Gillem (2007).

<sup>17</sup>Moon (1997).

<sup>18</sup>Enloe (2000); Gillem (2007).

<sup>19</sup>Cooley (2008).

<sup>20</sup>Nelson, Daniel J. (1987). *Defenders or Intruders? The Dilemmas of US Forces in Germany*. Boulder: Westview Press; Ballweg, John A and Li, Li (1991). “Trends in substance use by US military personnel”. *Armed Forces & Society* 17.4, pp. 601–618. DOI: <https://doi.org/10.1177/0095327X9101700406>; Baker (2004); Bucher, Jacob (2012). “Soldiering with substance: substance and steroid use among military personnel”. *Journal of Drug Education* 42.3, pp. 267–292. DOI: <https://doi.org/10.2190/DE.42.3.b>.

<sup>21</sup>Bryant (1979); Nelson (1987).

<sup>22</sup>Allen and Flynn (2013).

<sup>23</sup>Gillem (2007).

<sup>24</sup>Allen and Flynn (2013).

<sup>25</sup>King, Tanner, and Rosen (2004).

<sup>26</sup>Efrat, Asif (2021b). “Troop Crime in Peacetime: Criminality and Accountability of US Troops Worldwide During the Cold War”. *Armed Forces & Society* Forthcoming. DOI: <https://doi.org/10.1177/0095327X211011578>.

<sup>27</sup>Allen and Flynn (2013).

<sup>28</sup>Efrat, Asif (2021a). “Facing US Extraterritorial Pressure: American Troops in Foreign Courts during the Cold War”. *Journal of Politics* Forthcoming. DOI: <https://doi.org/10.1086/715254>.

<sup>29</sup>Cooley (2008).

<sup>30</sup>Gillem (2007), p.48.

<sup>31</sup>Song, Yonghoi (2004). *News Realities on Crime of the US Military Personnel in Korea: A Constructionist Approach to the Media Coverage of the Death Cases in 1992 and 2002*. Ph.D. dissertation, School of Journalism, University of Missouri-Columbia.

<sup>32</sup>Cooley (2008), p.123.

<sup>33</sup>Primarily, we looked for strings of words that were proximate to each other, including United States (and its abbreviation), soldier or service member, and crime (or various kinds of disaggregated crime types). Then we examined

every article that included these terms and examined if an article was a case of a service member committing a crime during a peacetime deployment or a false-positive. We ignored the false positives and coded information about the date, city, year, type of crime, service branch of the offender, source of the story, and any other important information about the event.

<sup>34</sup>The English speaking papers included *Japan Times*, *Stars & Stripes*, *Malaysia Global News*, *Xinhua*, wires like *Agence France Presse*, and other national news sites.

<sup>35</sup>Efrat (2021b).

<sup>36</sup>Gillem (2007).

<sup>37</sup>Interview with Ambassador (2018).

## Chapter 6

# The Good, Bad, and Ugly American: Variation in Global Anti-US Military Base Protests

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**Summary:** Previous chapters examined how military deployments affect beliefs and attitudes. This chapter turns to focus on individuals' behavior. US military deployments have long been cited as causing negative externalities in host countries. These negative events may help to mobilize opposition to the US presence. Drawing on new country-level protest data and individual-level survey data, our analyses yield several important findings. First, larger US troop deployments cause more frequent anti-US protest events. Second, our models of individual behavior correctly classify more than 90% of survey respondents' involvement in anti-US protest activities. These models show that individuals' attitudes and experiences—not simple demographic traits—offer the strongest predictive power in determining who participates in anti-US protest events. Finally, crime victimization, in particular, is a very strong predictor of protest involvement.

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In the middle of an extraordinary July heat wave sweeping through continental Europe in 2019, while locals sought refuge from 40 degrees Celsius temperatures in the few air-conditioned restaurants they could find, we sat in a small office in a nondescript building in Berlin's Mitte district. "It's a long story," began the German peace activist, as he leaned back on his chair with

# "Agendas for Continued Research on Basing and Troop Deployments Overseas: A Memo on What we Have and What we Need"

**Michael A. Allen**

NOVEMBER 2021

# Agendas for Continued Research on Basing and Troop Deployments Overseas: A Memo on What we Have and What we Need\*

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October 5, 2021

## Abstract

This memo seeks to identify the major sources of data on basing and troop deployments. It then identifies areas of critical growth for future studies on global basing and deployments. It focuses on a few areas of immediate concern, including security, economic, social, and environmental areas of future research and development.

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\*Memo prepared for the Democratic and Rule-of-law Implications of military deployments abroad workshop. Special thanks to Asif Efrat for organizing the conference and Thomas Campbell in help preparing the memo.

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The deployment of bases into foreign territories extends back thousands of years ([Luttwak 2016](#)). Still, the scope of major powers having military forces across the vast majority of the globe is only a few hundred years old. The colonial period gave way to British hegemony (with competition for basing from other major powers), and World War II facilitated the United States creating a global security system where it has troops deployed in most parts of the globe and has permanent bases (or occupies permanent bases) in several of those countries ([Harkavy 1982](#)). The US practice of basing differed from previous colonial-territorial systems as the United States crafted a network of basing that included both conquered countries (Germany and Japan) and allies that sought to increase their security in response to the Soviet Union or other regional threats.

This method of alliance building and security provision is novel historically, and the scholarship of basing and deployments are playing catch-up to understand the ramifications of this global network. Deploying a foreign presence in another country is a revolutionary act that dramatically reconfigures social, political, environmental, and economic realities to accommodate a foreign population living near or with a domestic host population. While the security implications of each of these deployments may be more prominent, the negative and positive externalities of basing are less well studied.

Notably, qualitative research has dramatically advanced our understanding of basing's impact in several areas. [Bryant's \(1979\)](#) work on *Khaki-collar crime* progressed our sociological understanding of how and why service members engage in deviant criminal behavior under different contexts. [Moon's \(1997\)](#) work examines the influence bases have on social and sexual dynamics in South Korea as well as how that influence changed as both the United States and South Korea changed their policies in regards to camptowns. [Hohn and Moon's \(2010\)](#) edited volume examines the cultural and racial influence of basing in South Korea, Japan, and Okinawa and discusses topics including relationships, militarism, sexuality, and violence. [Calder \(2007\)](#) demonstrated the comparative nature of domestic political changes

and how that can make bases vulnerable if the local conversation sees bases as an extension of Empire. [Cooley \(2008\)](#) advanced our understanding of how democratic transitions can create new focal points around bases in national debates and lead to limitations or complete removal of bases ([Cooley and Nexon 2013](#)). [Yeo \(2011\)](#) examined how coalitions can form around anti-basing politics to manifest in effective anti-basing movements. The edited volume by [Lutz \(2009\)](#) highlights several points of negative externalities from basing and the corresponding active resistance by local communities to US bases globally.

The above non-exhaustive sample of pivotal works is not exhaustive but instead serves to underscore some of basing scholarship's critical advances. The quantitative work on basing is even younger than its qualitative peer as it advances based on data availability. This memo identifies the primary data sets composing our knowledge of the quantitative work and the advances those data have afforded. I then outline four critical areas to understand better the role of basing and deployments: security, economics, social, and environmental. By outlining these areas, I hope to identify what would facilitate a summative assessment of the effect of basing abroad. While such an assessment would never likely be complete due to the immaterial nature of some of the externalities of basing, measuring some subset of basing's implications would advance the dialogue.

## **What we have**

To begin this section, there are two kinds of overseas deployments that make up most of the scholarship: Bases and troops. While these are related kinds of overseas presence, they have different kinds of quality to them that have other implications for research ([Allen 2011](#)). Importantly, bases represent a fixed asset that cannot be moved or redeployed with ease, and a loss of access to a base is a loss of fixed assets. Troops can be considered liquid assets that are redeployable and fluctuate in response to new threats or needs of the deployer.

Additionally, a basing state can deploy troops without a base present, and a deployer can have access to a base that it does not have formal control over ([Allen, Flynn and Martinez Machain 2021](#)). These different conditional deployments can have other domestic and international implications and likely matter in the decision-making that generates deployments.

In collecting data on overseas bases, the most comprehensive data comes [Harkavy \(2009\)](#) and [Vine \(2019\)](#). Vine’s data is far more complete and builds from Harkavy’s initial collection of data but has serious limitations. Notably, the basing data mainly organizes around snapshots of years and whether US bases exist in a particular country in a given year. Additionally, the data treats most US facilities abroad from the Base Structure Report as a base and lists over 800 US bases. Still, many of these sites are not traditional bases but represent annexes, housing outside of a base, fueling stations, or recreation property like a golf course ([Office of the Deputy Assistant Secretary of Defense \(OASD\) for Infrastructure 2018](#)).

Alternatively to bases, some scholars use the number of military personnel abroad as an essential independent (or rarely dependent) variable for their research. The catalyst for a surge in publications using this metric is [Kane’s \(2004\)](#) work that compiles the Department for Manpower Data Center (DMDC) count of US military personnel from 1950–2005. Scholars have used this data to understand topics ranging from economic diffusion ([Jones and Kane 2012](#)) to configurations of global hierarchy ([Lake 2009a](#)). My co-authors and I have updated the Kane data through 2020 with a stated goal of continuing to provide publicly updated data annually when the DMDC releases new reports. Our recently published research on this topic includes a literature review of the research that uses this data as well as several neat data features ([Allen, Flynn and Martinez Machain 2021](#)).

[Braithwaite’s \(2015\)](#) work offers an additional source of troop deployments globally. Braithwaite draws from the International Institute for Strategic Studies’ *Military Balance* publication to create a composite of all foreign deployed troops from 1981-2007 ([Hackett 2020](#)). This data is notable as it is not US-specific but includes other overseas basing states.

Additionally, the *Military Balance* data differs from the DMDC data due to different methods for estimating the number of troops in a country and contains fewer observable years.

Finally, a third vein of research looks at peacekeeper deployments by the United Nations. These types of deployment represent a distinctly different kind of deployment than purely stationing forces abroad. They represent multinational forces and have varying rules of engagement as the UN peacekeeping missions have evolved. The Geocoded Peacekeeping Operations (Geo-PKO) data set looks at all UN missions to Africa from 1994-2014 and focuses on both size and location of peacekeepers deployed (Cil et al. 2020). The Robust Africa Deployments of Peacekeeping Operations (RADPKO) covers 1999-2018 and has monthly data covering peacekeeper type, gender, and nationality (Hunnicuttt and Nomikos 2020). Notably, these data sets can provide a foil for other troop deployment data. Scholars can use UN deployments to build a comparative narrative of troops deployed on behalf of a multinational peacekeeping effort compared to those deployed for external security.

## What We Need

While these data are a good stepping stone to understanding a series of relationships in the political, economic, and social world, there are quite a few areas where we need more research and data to understand the relationship between deployments and broader phenomena fully. I categorize these areas into a few areas: security, economic, social, and the environment.

### Understanding Deployments and Security

While security is one of the more obvious reasons why the United States posts troops to other countries, actually measuring the effect of those troops is a difficult task. There are some correlative studies on how troops influence defense burdens or Militarized Interstate Dispute initiation, this only gives us a partial picture of how the presence of troops affects

the security of a country. There are a few avenues in which we can find better information:

1. **Force Composition:** There are a few projects that have examined the trade-off between US forces in their country and defense spending, but fewer projects have paid attention to force composition as a potential area of a trade-off between the United States and a host-state ([Martinez Machain and Morgan 2013](#); [Allen, VanDusky-Allen and Flynn 2016](#); [Allen, Flynn and VanDusky-Allen 2017](#)). Importantly, little research has paid attention to disaggregated deployments as a whole. However, we know that different military branches bring different types of material, interactions with off-site civilians, and meaning in terms of security provision.

There are a few directions this research can and should go. First, do different kinds of personnel matter for the theories that employ the utility of troop deployments? For example, [Allen and Martinez Machain \(2019\)](#) have explored the role of airpower in various capacities, but do Air Force personnel offer a different kind of effect on the security of a state? Do the Marines provide a different type of deterrent for weaker states than soldiers from the Army? Does the Army provide a more reasonable tripwire for deterrence than an Air Base that houses drones for targeted killings ([Schelling 1960](#); [Reiter and Poast 2021](#))?

Shifts in defense expenditure is an aggregate measure of state commitment to defense, but it does not paint a micro-picture of how a state might be adjusting its priority. It would be revealing to see if personnel commitments by the United States lead to in-kind reductions, increases, or trade-offs with other kinds of forces. A country that has a limited Air Force may abandon its Air Force in favor of US commitments. Alternatively, it may up its commitment to air superiority if it believes that technology transfers and modernization by the United States would lead to advances for its air forces. Bureaucratically, we can hypothesize shifts in either direction that would be

fascinating to understand further. Do host-states see their forces as complementary or substitutable with deployed US forces?

2. **Terrorism:** The relationship between deployments and terrorism requires further exploration. [Braithwaite \(2015\)](#) offers a clear correlation between the presence of troops and increased terrorist activity within a state. This logic follows documents such as Osama bin Laden's fatwa against the United States, where US bases in Saudi Arabia are a listed grievance with the United States ([Bin Laden 1998](#)). Braithwaite tests for a reciprocal relationship in the model and shows that even when controlling for deployments responding to terrorism, the presence of troops correlates with higher levels of terrorism. However, we do not know whether troops have a flypaper effect for terrorism where their presence causes terrorism to concentrate in areas where they are ([Joyner Jr 2004](#))? If troops divert terrorism from other locations to their existence, then this is an important causal process to know. However, if their presence uniquely increases terrorism without having decreased in other areas, that suggests a causal process unique to generating grievances.
3. **Capital Intensity, Effective Force Projection, Drones:** The United States has focused on the gains from capital intensity since its rise to global power status, if not before. Capital intensity allows the military to increase the relative security provision of each soldier; the labor to security provision ratio has increased favorably relative to the labor required. The United States can either enjoy the accumulation of these gains or decrease the labor it employs to cut the costs of security. In overseas deployments, the United States has increasingly opted for the latter as the number and percentage of overseas troops has declined from its height during the Cold War ([Allen, Flynn and Martinez Machain 2021](#)). This may seem like an obvious result of a change in systemic pressures for the United States, but the United States has engaged in multiple conflicts

since the end of the Cold War and has just exited the longest war in US history. While there were some increases in the number of personnel overseas during the Iraq and Afghanistan wars, they did not parallel Cold War activity.

If we see trade-offs between US deployments and spending between host-states, it is feasible that these exchanges happen at different rates for different countries. A US soldier might be interchangeable with the average NATO ally soldier but might represent a higher level of force in countries with less capital-intensive militaries. A better understanding of relative troop strength might allow for unique insights into contextualizing the security provision of US deployments.

Research should try to handle the meaning of capital intensity and its effect on various aspects of military and security provision. [Lemke's \(2002\)](#) way of calculating effective power projection by examining the ability of states to put troops in regional countries is a unique way of thinking about this dynamic. However, he is interested in mostly pre-state systems. Understanding the effective range and capability of troops might offer a more useful understanding of the meaning of a base.

Notably, the rise of drones and the expected rise of autonomous weapons systems offer a different dynamic for international relations and what a positioned base means for both host-states and the United States. A base in Germany operating drones in Central Asia offers a different set of experiences than a traditional Air Force base in Germany. The quasi-legal nature of drones and their relationship to country sovereignty appear to be more fluid than conventional aircraft violations of airspace. The nature and use of drones vary across the branches, and their functionality offers different implications. A pure battlefield support drone will have less meaning for international interactions than a drone used for targeted assassinations of terrorist targets in a third country.

## Economic

The economic implications of US troops in other countries is more well explored than many of the other topics in this list. However, it still offers ample ground to look at the sum positive and negative effects of troops abroad.

1. **Property Rights:** There is an embedded argument in liberal international relations research about the relationship between security and trade. Notably, we know that security relationships seem to facilitate increases in bilateral trade independent of the pacifying effect that trade may (or may not) have on conflict ([Keshk, Pollins and Reuveny 2004](#)). This finding has a logically compelling argument. Investors are less likely to invest in cross-border economic activity unless the reward sufficiently covers the risk or if security guarantees minimize the risk of conflict.

If alliances produce increased economic activity through their pacifying and normalizing effects on relationships between two states, then the deployment of troops offers a similar causal path ([Biglaiser and DeRouen 2007](#); [Fordham 2010](#)). The presence of troops may make it so that foreign investors would be more willing to do business within a country. We have some evidence that the presence of soldiers increases FDI within a country, but there are a few more interesting threads to pull at here ([Biglaiser and DeRouen Jr 2009](#)). First, is the FDI localized to where bases are, or does it apply to a country as a whole? Second, where does the FDI come from? In theory, we should see a few sources. Increased US FDI is likely. Second, how much increased FDI flows are going to base activities versus going to local communities? The bases themselves are going to increase FDI from merely existing as the base seeks to serve the needs of its residents.

Other countries allied with the US or host significant US troops are likely to see such deployments as encouraging trade activity with the host state. Finally, it is feasible that



non-hosting states also invest as the US makes a general commitment to its stability. Ultimately, do bases provide a semblance of the United States securing property rights for investors broadly or do most FDI flows come from the United States.

2. **Economic Outflows:** Tracking how US money flows into local communities overseas is generally under-researched at present. We have some case studies that look at some of the flows, but there are few sum assessments overall. The flows of economic resources represent a host of positive and negative effects that reshape the local community and affect attitudes towards troops. Better attempts at detailing this data would prove fruitful for researchers interesting in the ramifications of basing and feeds a few of the subsequent topics in this list. We have compiled some data for 14 countries on the DoD C-1 construction program (2011-2019) and Operation and Maintenance Overview (2013-2020) to use some of these outflows as important indicators of economic activity near bases, but these outflows are a small portion of the full scope of economic activity happening overseas (Allen et al. 2020).<sup>1</sup>

3. **Localized Economic Development:** As Moon (1997) shows convincingly in her work on camptowns in Korea, the presence of the base and the demand-driven by soldiers massively reshape the community around it. In terms of economic forces, bases deployed in low population to medium population areas will reconfigure the economic factors within a region as people seek to meet the demands of the base and its soldiers. This reconfiguration is more likely to be true when there is limited economic activity, low populations, or a disparity between the soldiers' income at a base and the income of the local residents. Understanding the winners and losers of base-driven economic forces and how businesses emerge, grow, or die is important in understanding the

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<sup>1</sup>These data are available here: <http://ma-allen.com/military-deployments/>. The C-1 data is of note as we provide geocoding for base location of these expenditures to allow for location-based spatial modeling.

impact of bases.

4. **Economic Diversion:** Related to the previous idea, there is likely to be some level of diversion from local sources in deference to the base itself. When I originally researched the creation of bases for my dissertation, I came across a few stories of local politicians petitioning the United States to *lower* the wages paid to locals hired by the United States (Allen 2011). While this includes nations we historically denote as lesser developed countries, I was shocked to see a local Canadian mayor requesting similar relief. The massive injection of money into a local economy is not without negative consequences. Inflation is a natural result, but tracking how this occurs would be illuminating. There are a few essential processes. First, local businesses will have to compete for local labor and adjust their wages to compete for those hired by bases. With a large enough labor pool, this will not be an issue. With a small labor pool, the gravitational force of the base will be massive.

Second, in our field research, we encountered a few reports housing and rental prices changing due to base activity (Allen et al. 2020). While this process partially resembles just a greater demand, there is an added component to the puzzle. Notably, when service members rent off-base, they are given a housing allowance that becomes public knowledge. This can have a few different effects. In some cases, like my colleagues have reported in Manhattan, KS, the rents on the average rise to meet that allowance. This can leave non-military renters more difficult if local conditions (wages) fail to match military rents. Students at Kansas State University are renting in a housing market driven by Fort Riley. Alternatively, one of our interview subjects in Germany suggested a dual-rate in effect in housing near bases. Landlords effectively had two different prices for rent, one for Americans and one for Germans. Landlords prefer to rent to American GIs to fetch a higher rate, but know that a German renter could not

afford the American price and will rent at a lower price to a local. Tracking rental prices near a base compared to similar-sized cities not near a base would be one way to tackle this process.

Third, some businesses will fail as a result of the base. Due to the inability to keep up with labor costs increase, the base shifts consumptive preferences, the base makes some businesses redundant or obsolete, or government policy rezones what kind of businesses can operate near the base. Additionally, business land costs will shift with the presence of a base, so those who can maintain high activity levels (by catering to US service members or locals who are more common in the areas due to the base) are more likely to survive increasing rent costs. The shift in businesses near bases and what kinds of businesses fail or survive to offer a third look into these processes.

5. **Black Market Activity:** The presence of US service members creates a novel demand for black market activity. Given local laws, this can vary across deployments. Much of the literature, where present, examines infractions, reports, media, and other events-based accounts of activity ([Bryant 1979](#); [Allen and Flynn 2013](#); [Efrat 2021\*b,a\*](#)). Prices correlate with enforcement as a higher risk of being caught increases the costs of trafficking, so disentangling demand and supply will likely prove more tricky. Still, researchers can supplement local arrest rates or incident rates to estimate some cost increases due to enforcement. Tracking black market data on local prices for items such as illicit drugs and guns offers a better view of the demand changes for those services instead of the random process of those who get caught.

## Social

The deployment of hundreds or thousands of troops creates a new set of relations within a community as outsiders pour in and alter the existing social fabric. Naturally, most of the

topics I have covered so far have social components to them and disentangling the social from security, economic, or the environment is both impossible and in error. However, there are several areas of research fully in the domain of social relations that this facet of international relations affects:

1. **Criminal Offending:** Criminal offenses by Americans deployed to bases is a serious topic that requires further examination. Scholars have made several good forays into the topic, but the extant research is far from exhaustive ([Bryant 1979](#); [Allen and Flynn 2013](#); [Efrat 2021b](#)). Notably, due to the very nature of this topic, reports are going to undercount how much criminal offending occurs ([Taylor 2002](#)). Compounding this with the perpetrators being from the US military, the power differential between an offender and a victim, and a belief that reporting will not result in prosecution (due to general police inefficacy combined with local courts deferring offenses to the US military). This makes this problem very hard actually to measure. Survey sampling of host populations gives us half of the equation by asking whether people have experienced crime and what kinds. However, surveying service members about their self-reported offenses can also further close some gaps in this research. I am presently working on this line of inquiry with survey experiments and criminal justice scholars.
2. **Status of Forces Agreements (SOFAs):** SOFAs are the critical legal point of genesis for conflicts between host-state civilian populations and the US military ([Rouse and Baldwin 1957](#); [Jung and Hwang 2002](#)). There has been some effort to collect SOFAs, but systematizing the data and generalizing them requires further work. For example, [Kavanagh \(2014\)](#) does list 351 SOFAs across 5,547 treaties, but the details on those treaties are limited to a few aggregate measures that apply to all treaties. There is a litany of things we can learn from SOFAs: What rules are consistent? What are areas that countries have been able to push back on? What enables countries to gain

more concessions? Domestic Demand? Strategic location? Regime type?

3. **Multinational Corporation (MNC) Interactions:** The role of MNCs in international affairs is sidelined in IR studies of security and power but plays a prominent role in the political economy of states and their international relations. We know that FDI follows troops ([Biglaiser and DeRouen Jr 2009](#)). What we do not know is how the presence of bases advantages or disadvantages MNCs relative to host-states. Are MNCs more powerful in gaining concessions when the US military is in a country? Does the military constrain what the MNCs can demand? Are workers' rights influenced at all by the twin presences of bases and FDI?
  
4. **Civilian Population Overseas:** The military has a long tail of civilians that range from dependents to private contractors. These civilians provide several functions to the military that make it possible for the United States to host people overseas at all ([Enloe 1990](#)). However, we have less good information about their numbers and effects on host-state countries. Altercations between US military personnel and host-state civilians will make the front page national news, but a similar conflict between a dependent is less likely to become nationwide discussion points. This is likely partly due to their status being less visible (the difference between a dependent and a tourist may not be immediate) and the dependents having less official status than personnel. The categories of civilians matter. Dependents represent one set of causal processes, while support staff can mean something else entirely. Finally, private contractors that fulfill combat roles (mercenaries) may overlap with other kinds of civilians (more likely their behavior will go under the radar) and have greater latitude in escalating to violence or engaging in other extra-legal activities. There has been increased attention paid to mercenaries within the literature, and that work obviously should continue ([Voss 2016](#)). Quantitative research on dependents and civilian staff is scant at best.

5. **Ethnic, Religious, and Linguistic Minorities:** Basing often happens in places that have less representation in national governments since a national government can have that community bear the cost of basing without feel the repercussions of bases. Understanding the conditions under which bases get to deployed to marginalized groups would, in itself, be revealing. Beyond this, the long-term issues of basing and whether the government or the United States comes under pressure to address grievances of bases would go to understanding larger questions about how the United States treats minority groups overseas.

## **Environmental**

The numerous ongoing threats to the environment from modern societies are enormous and the military, given its purpose and role, has damaged the environment in several areas while contributing to global climate change. As one of the larger dangers facing humanity, certainly understanding the systematic role between military deployments and environmental change is important. I outline four areas of obvious concern:

1. **Base Size:** As [Gillem \(2007\)](#) points out, it is less the actual behaviors and security implications of bases that host-state civilians object to and often is the physical presence of a military base. We have some glimpses into the changing square-footage of DOD holdings from the annual Base Structure Report ([Office of the Deputy Assistant Secretary of Defense \(OASD\) for Infrastructure 2018](#)); however, the research has not done too much with this data beyond the count of how many “bases” the United States has. There is more to glean from this data. Notably, as the current administration tries to thread the needle between reassuring allies like Germany and South Korea while simultaneously looking at smaller lily pads for capital-intensive power projection via missiles, aircraft, and drones, the meaning and impact of bases overseas will change. Some countries have likely seen reductions in square-footage of bases. Do these re-

ductions correlate with the intended goals of such reductions? Have people noticed? How has this impacted the environment? Does base runoff or fuel dumping change relative to base size? What does cleanup for peripheral decommissioned holdings look like (if at all)? What does the redevelopment plan look like for such land? Are base size reductions correlating with reductions in personnel?

Ultimately, this topic has security implications as well as researchers may be interested in a square-footage of security provision, but I think the environmental implications are more relevant and discoverable.

- 2. Outside of Base Development:** Like with the question of economic growth, there are a few phases of development that occur with the placement of a military base. The construction of a base itself is a massive terraforming project that blankets land with concrete and a radical increase in human and vehicle traffic. This base needs infrastructure to support itself, including roads, electricity, gas, and plumbing, which requires additional development outside of a base itself. Finally, as people move to a basing area to provide goods and services demanded by service members, their dependents, and support civilians, the adjacent area becomes dramatically reshaped as people build or rebuild towns.

Assessing the environmental shifts in a community is easier today than in the past with satellite imagery, but on the ground information still matters. Understanding how ecosystems and biodiversity change or are threatened by dramatic shifts in population and use of the land is something we have a few noted discussions of, but less systemic detail. How do bases vary from region to region? What kind of bases has less impact? What conditions are the most vulnerable? Which branches pose the biggest problems? What bases create the biggest shifts in local communities?

- 3. Greenhouse Gases:** The Department of Defense is the biggest sole-consumer of

energy in the United States and one of the largest in the world. While much of its energy derives from non-Greenhouse Gas (GHG) emitting fuels, much of it still is. By deploying overseas, the United States offloads some of its carbon footprints to other countries. Estimating the costs of overseas deployment must include the environmental impact, and daily energy consumption is just part of that equation. There are, of course, massive GHG emissions from cement and other forms of construction as well.

4. **Base Site Implications:** Bases are notorious for having immediate environmental problems in their vicinity. A direct measure of the impact of basing can come in the form of measuring claims about run-off, fuel discharges, or other chemicals that leave the base and affect surrounding communities. Examining parts-per-million contamination of relevant substances in base towns compared to matched towns of similar activity would likely prove revealing. Water table contamination from extant sources may be a way to compare basing to non-basing sites easily.
5. **Impact on Sensitive Areas:** The United States puts some bases in especially vulnerable areas. One of the more notable examples is the threat to coral reefs and dugong that the relocation of Marine Corps Air Station Futenma base in Japan has. This case is not isolated, and documenting and extrapolating the most vulnerable ecosystems and basing impacts on it would illuminate further implications abroad. Bases, golf courses, and training areas all have long-term implications for the areas they are built on, and the sensitive regions are more at risk than the average base. Fragile ecosystems and a base's role are requisite to understanding the long-term risks of overseas basing.

## **Further Thoughts**

This memo aims to highlight areas of basing and deployments that we need to explore further as a combined interdisciplinary research program. My list is not exhaustive but touches on



areas that could contain several papers. Some of these questions are areas I and others are already exploring to some degree, but a single foray is far from sufficient to cover the domains outlined here. In essence, the research on basing, particularly the quantitative literature, is in its earliest stages and has far more to offer.

Lake's (2009a) volume on *Hierarchy in International Relations* warrants further examination in understanding configurations of power in the international system. Lake uses the number of troops in a country as a component to measuring relative US dominance in maintaining its hierarchical position in various countries and regions. This is of note because it recognizes deployments and bases both as a cause of the structure of the international system and a symptom of it. I have reason to suspect that hierarchy is conditional on interactions with regional hierarchies as they align or diverge from the United States and expect bases both reinforce and reflect that (Lake 2009b; Allen 2018). As social scientists and pundits evaluate the US decline or Chinese rise as we approach the Chinese year of "National Rejuvenation," deployments will likely shift to try to maintain current hierarchies, retreat in response to newly encroaching ones, and overall be an interesting indicator to watch (Cooley and Nexon 2020; Doshi 2021). Given that the US has both international and domestic pressures on issues of redeployment, disentangling the changing shape of international affairs can be something our subfield can uniquely study.

Finally, I focused less on secondary causes. There will be ripe literature on third-ordered effects between bases and other socio-political outcomes. The domain for exploring those areas is near infinite as US bases have real effects that ripple throughout societies. Bases within a country may influence most societal level-dependent variables that social science is interested in studying.

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# **“Exporting Restraint: The Effect of U.S. Military Training on Human Rights Violations by Security Forces”**

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# Exporting Restraint: The Effect of U.S. Military Training on Human Rights Violations by Security Forces \*

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## Abstract

Can military training decrease human rights violations by security forces? The case of foreign military training is a particularly complicated one because often the aim of the training itself is to address said human rights violations. This paper explores whether U.S. military training is indeed effective in promoting respect for human rights in the recipient country by focusing on the security forces' human rights violations. States that receive U.S. military training are more likely to see an improvement in respect for human rights by members of security forces, but because improvement in human rights requires a long-term, active commitment on the part of the U.S. military, only those states of security salience for the United States are likely to see an improvement in their security forces' human rights record. This paper uses global data as well as a more focused Latin America sample, to evaluate this proposal empirically.

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In February of 2019, the United States announced its plan to stop some of its military training to Cameroon because of alleged human rights violations by Cameroon's military. The U.S. had been providing military assistance to Cameroon, including military training, in part to support its efforts to fight Boko Haram in the region. The allegations against Cameroon's government and military, made by human rights NGOs, were that the fight against terrorism was used as a way to repress political opposition and engage in arbitrary arrests and torture<sup>1</sup>. The U.S. State Department justified the decision to cease training as a way to encourage Cameroon to be more transparent in investigating human rights violation allegations against its security forces (Reuters 2019). This was an example of the U.S. actually carrying out a threat to remove its military training, a form of military aid, from a state that failed to improve (and even worsened) its record of respect for human rights by its security forces. Similarly, in 1992, the U.S. also ceased IMET training for Indonesia as a reaction to the Indonesian military's human rights abuses against the East Timorese population, after significant pressure from human rights organization. This happened after the U.S. Congress passed a resolution requiring the cut (Stephan & Chenoweth 2008).

When it comes to U.S. foreign policy, human rights promotion has traditionally taken a secondary role to security concerns such as preventing aggression and countering the expansion of influence by U.S. rivals. At the same time, in recent decades there has been an increased understanding that repression by the state and its security apparatus leads to instability, which in turn can result in negative externalities such as terrorism. Further, recent cases tying foreign military operatives trained by the U.S. military to notorious killings such as the 2021 assassination of Haiti's president by Colombian mercenaries have brought to light questions about the ways in which the knowledge gained from U.S. military training is applied by the recipient forces.

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<sup>1</sup>The relationship between counterterrorism and human rights violations has been studied by, among others, Piazza & Walsh (2009) and Walsh & Piazza (2010)



The Leahy Laws passed by the United States Congress state that U.S. military aid, including training, should not be provided to states that egregiously violate human rights. It is a way in which the U.S. Congress is able to exercise oversight over the military, preventing cases such as those of the infamous School of the Americas, located in the former Canal Zone in Panama, whose Latin American graduates often went on to engage in acts of repression in their home countries (Scharpf 2020, Laurienti 2007a). Removing military aid is intended to be a way to discourage human rights violations by security forces in recipient countries. Yet, the question becomes more complicated when it deals with military training.

The problem with removing military training from a recipient as punishment for the security forces violating human rights is that one of the major purposes of foreign military training provided by the United States is indeed to promote human rights through training and education. Thus, one view holds that rather than remove military training from human rights violators, the training itself should be used to correct the problem (Burchard & Burgess 2019). In fact, both the State Department and Department of Defense versions of the Leahy Laws allow for military training to continue in the case of human rights violations if adequate steps are being taken to address the violations. In addition, the National Defense Authorization Act of 2015 allows the Department of Defense to conduct military training with a specific focus on human rights promotion even in countries that under the Leahy Law would not be eligible to receive foreign military aid (*Leahy Fact Sheet* 2018).

Military training is thus in many cases provided to those states whose militaries have a history of human rights violations specifically as a way to address that problem. Thus it appears to be the case that military training is treated differently from other types of military aid when it comes to oversight, as military training is seen as a way to address the root cause of the problem. Laurienti (2007a) notes, "Similar to the notion of crimi-

nal rehabilitation, as opposed to choosing between simple incarceration and acquittal, today the United States approaches the difficult problem of human rights abuses with something akin to a prescription” (p.45). The question that this project then asks is whether U.S. military training is in fact effective at preventing human rights violations in the recipient countries. In other words, if military training is not removed from human rights violators, but rather altered to address the violations, is the “prescription” actually achieving its goal of decreasing human rights violations?

## The Effects U.S. Military Training

Previous work by Bell, Clay & Martinez Machain (2017) shows that a U.S. military presence (in the form of a non-invasion deployment) is actually correlated with greater respect for physical integrity rights in the host country under certain limited circumstances. Part of the reason for this expectation is that some of the deployments are explicitly sent to train host country troops. In these cases, and particularly in the post-Cold War era, trainees receive explicit human rights training that in some cases combines classroom theoretical learning with role-playing exercises in which trainees simulate being in a situation in which they are expected to follow proper (as defined by United Nations standards) procedure when encountering human rights violations.

Work specific to the effects of *recent* U.S. military training generally seems to find that it has a positive effect on civil-military relations (particularly civilian control of the military) as well as on respect for human rights. Ruby & Gibler (2010) argue that U.S. military training can effectively professionalize the military and lead to better civilian control of the military.<sup>2</sup> In terms of a specific influence of U.S. training on human rights,

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<sup>2</sup>In contrast, Savage & Caverley (2017) suggest that military training is a form of increasing human capital, which shifts the balance of power between the civilian government and the military in favor of the military, though Scharpf (2020) argues that this is a risk some governments are willing to take in order to better counter guerrilla threats and build stronger relations with the US.

Atkinson (2010) finds that military exchange programs are more effective than civilian exchange educational programs in promoting respect for human rights (specifically empowerment rights, but not physical integrity rights) as well as leading to the creation of more democratic institutions in the trainees' home country. Specifically, longer-term commitments that emphasize both political and military strategies, and in which US military personnel interact with host state militaries, are effective at reducing political violence in the state that receives the training (Watts, Jackson, Mann, Dalzell, Johnston, Lane, McNerney & Brooks 2018).

Thus, the U.S. military training can lead to increased respect for human rights both by including actual human rights training in its courses but also by giving the U.S. influence over the recipient state. Bell, Clay & Martinez Machain (2017) argue that U.S. troop deployments can allow the U.S. to demand greater respect for physical integrity rights because the troops represent a form of military aid. The troops are there providing security for the host state, thus freeing up its resources to be spent on other needs (Machain & Morgan 2013). In the case of military training, it not only benefits the host country to have more effective troops (enhanced as human capital) (Scharpf 2020), but it can also save the recipient the cost of actually paying for the training (in the case of some programs, such as IMET). At the same time, when the United States provides military training to a foreign military there are several, often competing, interests at play, and not all of them may align with the preferences of the U.S. public. Thus, the responsibility has often fallen to the U.S. Congress to engage in oversight regarding U.S. military training programs.

## CONGRESSIONAL OVERSIGHT AND MILITARY TRAINING

In the past, the United States was accused of not only training militaries that engaged in human rights violations, but of even training them in how to do so, such as the infa-

mous School of the Americas in which Latin American officers were trained in methods of torture (Scharpf 2020). These outcomes, while often seen as a necessity in achieving the geostrategic aims of various U.S. presidential administrations during the Cold War (such as eradicating Marxist governments from the Western hemisphere), generally did not align with the preferences of the U.S. public, who expressed a distaste for American resources leading to human rights violations(Laurienti 2007a, Tate 2011).

This relationship, following work by Bell, Clay & Martinez Machain (2017) and Burchard & Burgess (2019), can thus be viewed as a principal-agent relationship, in which the public as the principal entrusts the executive branch to carry out foreign policy in a way that represents their interests (which generally involve minimizing human rights violations abroad) and the executive branch is both agent to the U.S. public and principal to the trainees (this second relationship is one discussed at length by Burchard & Burgess (2019) and thus not the focus of this project). Note that while the U.S. executive branch would generally have a preference for foreign security forces to not violate human rights, this interest can be superseded by security interests. Thus, the principal, the public, needs to find a way to monitor the agent.

In this case, the public monitors the agent through the legislative branch of government, the U.S. Congress. Since the end of the Cold War, the approach of the U.S. military has changed significantly, with human rights promotion now being explicitly integrated into the military training of foreign troops. Particularly, Congressional oversight has ensured a consideration of human rights for any type of military aid, including military training (Epstein 2012). Members of Congress, as the more direct representatives of the general population and human rights NGOs, can be actively lobbied by their constituents and pressured to act to reduce human rights violations associated with U.S. military training (Apodaca 2019). Because members of Congress have an interest in addressing their constituents' concerns in order to be reelected, if there is enough

mobilizations against human rights violations by U.S.-trained security forces abroad, members of Congress will engage in oversight (McCubbins & Schwartz 1984).<sup>3</sup>

The first time that the U.S. Congress engaged in oversight through legislation to prevent military aid to human rights violations was in 1973 through Section 32 of the Foreign Assistance Act (FAA). This was motivated in part as a reaction to the discovery that U.S. military aid had allowed the overthrow of Chilean President Salvador Allende through a military coup that led to the establishment of the repressive military regime of Augusto Pinochet. The 1973 legislation directly addressed the Chile case by prohibiting military aid to states that engaged in political imprisonment, as the Pinochet regime had done (Laurienti 2007a). The rest of the 1970s saw continued action by Congress to restrict foreign aid, and specifically military aid, to states that violated human rights.

The Leahy Law of 1997, first passed as an amendment to the Foreign Operations Appropriations Act, prohibits the provision of assistance to foreign security forces that have engaged in violations of human rights, and it applies to assistance provided by both the State Department and the Department of Defense (Tate 2011).<sup>4</sup> The Leahy Law was passed in large part as a reaction to human rights violations carried out by Colombian security forces that had been trained in counternarcotics operations by the U.S. military.

It is important to note, as Laurienti (2007b)(p.74) points out, that simply looking at a correlation between respect for human rights and U.S. military training would show a negative relationship. This is because US military training is not completely driven by high levels of respect for human rights. In fact, it can oftentimes follow the opposite pattern because part of the aim of military training by the US is to actually promote

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<sup>3</sup>There is the possibility of this being a partisan issue, with representatives from more left-leaning districts being more likely to engage in human rights oversight. For the purpose of this paper I simply assume that there exist members of Congress who have a preference for engaging in this type of oversight.

<sup>4</sup>The violations of human rights that are included in the Leahy Laws are physical integrity rights: torture, extrajudicial killing, forced disappearance, and rape under color of law

respect for human rights. Thus, it means that it makes sense for the US to train the militaries of countries that have had problems with human rights violations in the past. For example, IMET training is restricted to developing countries (though developed countries can of course pay for their own military training, which is considered to be part of “Foreign Military Sales”). Developing countries, as opposed to, for example, Western European allies, are more likely to have bad human rights records. If an aim of military training is to teach troops concepts of human rights, it would be self-defeating to exclude these states from training.

Colombia itself is a clear illustration of this dynamic. It is a country that has had a troubled history of human rights violations by its security forces and also has received the largest amount of military aid and training in Latin America from the United States in recent decades. A major aim of the training (besides combating rebel forces and drug traffickers, of course) is to remedy the problem of human rights violations.

At the same time, if there is a consistent lack of improvement in respect for human rights, or if there is actually a worsening in human rights in the recipient country, then the U.S. could see its efforts as not being successful, and in fact may even come under pressure from NGOs who spotlight the human rights violations and question why the US is supporting these regimes. In fact, given the history of human rights violations by U.S.-trained militaries, such as the School of the Americas, there is even the possibility that the US military gets blamed for some of the human rights violations.

There are two avenues through which the human rights record of a recipient state can be improved by U.S. military training. The first follows a training as aid framework, in which military training is seen as a form of military aid that is desirable to the recipient state (Martinez Machain 2020). Military training increases human capital in the recipient state, making the recipient state’s military more effective (Ruby & Gibler 2010). It thus holds utility for the recipient state, giving the U.S. influence over

the recipient state, as the U.S. could threaten to remove the training if the recipient state does not carry out policies that are not desirable to the U.S. In the human rights context, the U.S. could threaten to remove training from states that do not show improvement in respect for human rights by security forces.

The second mechanism through which U.S. military training could lead to improvement in respect for human rights by security forces is through the actual training itself (Bell, Clay & Martinez Machain 2017). U.S. military training involves a large human rights component, both in the classroom and in field exercises. This means that if the U.S. military is explicitly teaching a human rights curriculum, a key component of U.S. military training in the post-Cold War era, we should expect to see an improvement in respect for human rights by security forces in recipient countries as they receive U.S. military training. This thus leads to the following hypothesis:

**Hypothesis 1** *Human rights violations by security forces will decrease in countries that receive U.S. military training*

Beyond these considerations, the U.S. has a clear interest in promoting its interests in areas that are considered to be of high security salience. Training foreign troops is a cost-effective way of providing “local solutions to local problems” and obtaining desired outcomes without incurring the political costs of putting American boots on the ground (Interview with CGSC Coordinator 2019, Burchard & Burgess 2019). Burchard & Burgess (2019) find, when studying a series of case studies in Africa, that those states that are of high security salience to the United States are less likely to be punished (through the removal of military training) by the United States after they violate international norms, particularly if those norms are what they classify to be “low” ones, such as extrajudicial killing (as compared to “high” norm violations like invading a neighboring country). Similarly, Bell, Clay & Martinez Machain (2017) find that states that receive U.S. military deployments in a non-invasion setting are more likely to respect

physical integrity rights, but that this is only the case when these countries are of low security salience to the United States. Their logic is similar to that of Burchard & Burgess (2019); that these are the countries that the U.S. has the least leverage over, as it needs their cooperation in order to achieve its aims in the international system.

Thus, by this logic, we should expect that those states of higher security salience to the United States should be less likely to see improvements in the human rights records of their militaries after receiving training from the United States. In fact, as suggested by Bell, Clay & Martinez Machain (2017), in a most pessimistic scenario we might even expect their human rights records to worsen, as their militaries gain more resources and become more effective at repressing the population, without being held accountable by the United States. At the same time, a competing dynamic may be at play.

Burchard & Burgess (2019) also argue that those training missions that are under the most international scrutiny are also the ones that the U.S. will be more likely to punish for norm violations through the removal of training. If we think about which missions are the ones that are most likely to face scrutiny and be subject to the most oversight, they likely are the ones that are receiving the most attention from the media and from the general public. It is in the interest of legislators to address the problems that their constituents care the most about in order to maintain their political survival (McCubbins & Schwartz 1984). Thus, the cases that will receive the most oversight, and thus the ones that will be least likely to be associated with human rights violations after receiving training, are those that receive media attention, which are also the high-security salience ones.

As an illustration, the murder in 1989 of six Jesuit priests as well as their housekeeper and her daughter by members of El Salvador's military who had received training at the School of the Americas set off an intense backlash against military training being provided to human rights violators. As a reaction to these murders, the group School of the



Americas Watch (SOA Watch) was established. SOA Watch actively lobbied Congress to engage in oversight to prevent future such actions. As investigations into the School of the Americas and the training it was providing to its students progressed, Congress was under constant pressure to intervene, to the point where in 2000, Congress passed legislation that closed the School of the Americas and replaced it with what is now the Western Hemisphere Institute for Security Cooperation located at Fort Benning in Georgia (Laurienti 2007a).

It is of note that the legislation passed by Congress in 2000 did not eliminate professional military training by the U.S. in the Americas, but rather replaced it with education that emphasized democracy and human rights (Laurienti 2007a). The U.S. thus did not step away from exerting influence over Latin American states and their security policy, but rather altered the content of the training in a way that is meant to address concerns about human rights violations. Similarly, the Leahy Law allows for the United States to continue to provide assistance to a military unit that has been accused of human rights violations if it can be determined that the specific unit is taking steps to prosecute those accused of crimes and that the government of the country has taken corrective steps to address the human rights violations. In addition, the National Defense Authorization Act of 2015 allows the Department of Defense to conduct military training with a specific focus on human rights promotion even in countries that under the Leahy Law would not be eligible to receive foreign aid (*Leahy Fact Sheet* 2018).

It is also important to note that much of the motivation for the passing of the original Leahy Law was not so much to take away funding from countries whose militaries violated human rights, but rather to correct those violations and prosecute those guilty of them. The initial objections from the Department of Defense to the Leahy Law were built around the argument that an entire country's military would suffer as a consequence of the actions of "a few bad apples." Thus, human rights activists, such as

Amnesty International, decided to make sure that those “bad apples” were targeted (Tate 2011).

In the case of Colombia, which was the case that motivated the Leahy Law, existing military units faced too many allegations of human rights abuses, and thus became ineligible for military training under the Leahy Law. Rather than remove aid from Colombia, at least until the problem was addressed, the Department of Defense worked directly with the Colombians to create new “clean” military units that would be able to receive aid. <sup>5</sup> Colombia in the 1990s was clearly a case of a high security salience case for the United States: It was a state in the Western Hemisphere facing a threat from a leftist guerrilla and also producing drugs that were being exported to the United States. Note that human rights violations did not cause Colombia to lose its military training, but neither did the U.S. Department of Defense allow them to go unchecked.

In this case, the Colombian military was responding to one principal, which was the Department of Defense, but the Department of Defense was also facing oversight from Congress. While, following the expectations of Burchard & Burgess (2019) and Bell, Clay & Martinez Machain (2017), Colombia did not lose its military training because of human rights violations by the military, the human rights violations were also addressed directly. Congress’ constituents, which included human rights groups such as Amnesty International, were shining light on these human rights violations in a way that motivated Congress to keep the focus on them. The solution was to have the Department of Defense actively work with the Colombian military to address the problem, resulting in an eventual decrease in human rights violations by the military. <sup>6</sup>

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<sup>5</sup>It is of note that many of these “clean” units continued to collaborate with preexisting units that had violated human rights. Given that much of military training involves knowledge that can then be passed on to others, the problem of human rights violations by the military remained in Colombia even during the Plan Colombia years (Tate 2011).

<sup>6</sup>Though it should be noted that in some cases the violations were simply shifted to military units that did not receive training or to paramilitary units (Tate 2011, Kaplan 2017). I explore this substitution dynamic in Table A4 of the Appendix and find some evidence for paramilitary forces’ human rights violations being a substitute for those of the military

Given these expectations, I present the following hypothesis:

**Hypothesis 2** *The effect of U.S. military training on human rights violations by security forces will increase in countries that are strategically important to the U.S.*

## Data and Research Design

To test the hypotheses I use data on foreign military training by the United States, the human rights record of recipient states, and the security salience of the recipient. The sample includes all states that could have been potential partners to send military trainees to the United States in the time period between 1998 and 2017 (the temporal constraint is due to the availability of the military training data). The data is thus cross-sectional time series. The unit of analysis is the country-year and the sample includes 3800 cases once observations with missing data are dropped from the dataset.

### DEPENDENT VARIABLE

The dependent variable is human rights violations by the security forces of the state. In particular, I focus on human rights violations specifically carried out by the military and the change in respect for human rights by the military. As mentioned before, we should not expect only states with near-perfect military human rights records to be receiving military training from the United States. Yet, if part of the aim of military training is to enhance human rights training, then we should expect to see an improvement in the human rights record of the recipient country.

I measure physical integrity rights violations by the military through two different approaches that are intended to make up for each other's weaknesses. The first is by using event data from the Integrated Crisis Early Warning System (ICEWS) dataset (Boschee, Lautenschlager, O'Brien, Shellman, Starz & Ward 2015). The ICEWS dataset

uses news reports to code the actors that engaged in a certain action directed at a different actor. It uses the Conflict and Mediation Event Observations (CAMEO) system to determine the categories of actors and actions involved in an event (Gerner, Schrod, Yilmaz & Abu-Jabr 2002). The ICEWS dataset includes unique event IDs for each event and does not double-count events when they are reported more than once in different news sources. In this case, I restrict the observations to acts of repression (CAMEO code 175) defined as “Actively repress collective actions of dissent by forcing subjugation through crowd control tactics, arrests, etc” (CAMEO codebook p. 82 Schrod 2012). I consider actions by both the military and police forces, and code them separately in order to have a point of comparison of repressive actions taken by non-military security forces (though I note that the analysis presented in this manuscript refers specifically to repression by the military). I note that the CAMEO framework does not include a source sector category for paramilitary forces (they are listed as “unidentified forces”), but I include a measure of actions by paramilitary forces if the name of the source actor (the one carrying out the action) includes the term “paramilitary” in it.

Note that I include only cases in which the military carrying out the repressive act was that of the country in which the repression happened. This keeps the focus on internal uses of repression and human rights violations as opposed to actions such as war crimes, which would fall into potentially different categories of training. I do not distinguish whether the act of repression was carried out against citizens of a country or foreigners within a given country, as both actions would qualify as a repressive internal act by a state’s military (such as targeting refugees within a country).

It is important to note that there are some inherent problems associated with events data (Wang, Kennedy, Lazer & Ramakrishnan 2016, Zeitzoff 2018). One that could be problematic is systematic underreporting of events. This can be due to many factors, including media censorship in more repressive states (which, of course, is likely to bias

results) and areas that are strategically important to the United States receiving more coverage in English-language media, which is where the more commonly-used events datasets are derived from. In addition, there is a time bias, where events are more likely to be reported in recent years, due to both technology and globalization. As an example, the ICEWS data reports 448 incidents of repression by security forces in 1998, whereas 20 years later, in 2018, it reports 1,283. Given existing findings about the general trend of improvement in respect for human rights, it seems unlikely that security forces across the world became three times more repressive in those twenty years (Fariss 2014). Rather, the higher number is likely due to increased reporting.

Given this concern, I use only a dichotomous measure of repression that is coded one if there was at least one repressive act by the military and 0 otherwise. This thus measures whether the military is repressive or not, without making a call as to the amount of repressiveness. While there is certainly information lost by dichotomizing the measure, I believe this to be the safer route when dealing with data that may be unreliable across time and space. Using a cut-off of 1 may seem like it is losing a lot of information, but I note that the mean value of the count variable is 1, and both its mode and median are 0. It is not until the 75th percentile that we see cases with more than 1 repressive act. Police repression is somewhat more common, while paramilitary repression is much less common. The table below shows some summary statistics on these measures.

Table 1: Summary Statistics, Repression Events Data

	count	mean	median	sd	min	max
Military Repression	3861	1.065527	0	7.30612	0	298
Police Repression	3861	5.752914	0	20.1868	0	316
Paramilitary Repression	3861	.003108	0	.0719144	0	3

Given the limitations of events data, I also use an alternate measure of the dependent variable. This is an index that measures the level of physical integrity rights violations

by members of the military. While existing measures, such as the CIRI physical integrity rights index (Cingranelli, Richards & Clay 2014) and the latent variable measure by Fariss (2014), as well as the new HRMI dataset (Clay, Bakker, Brook, Hill & Murdie 2018) measure respect for physical integrity rights, they do not specify which actor carried out each human rights violation. Thus, it would not be possible to specifically measure whether the military is violating human rights or if another actor, such as the police, is the one doing it.

I thus create an index based on the CIRI dataset (Cingranelli, Richards & Clay 2014) that measures whether the military never (0), occasionally (1), or frequently (2) violates physical integrity rights (engages in extrajudicial killings, forced disappearances, torture, or political imprisonment). Each physical integrity right is coded independently by student coders using the original State Department human rights reports for each country-year such that each country can have a value ranging from 0 (no physical integrity rights were violated by the military) to 8 (all 4 physical integrity rights were frequently violated by the military).<sup>7</sup> Though the measure is based on similar criteria to the CIRI Physical Integrity Rights Index, it is not the same. The newly-coded military physical integrity rights violations index and the CIRI index have a correlation coefficient of 0.54 (once I invert the new measure to be in the same direction as the CIRI index).

The figure below shows the necessity for measuring military human rights violations in different ways. The panel on the left shows the case of Colombia. Because the events data measures repression by actively repressing actions of dissent, something that was rare in Colombia in this time period, Colombia shows almost no military repression in this time period. At the same time, we know that the Colombian military did engage in

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<sup>7</sup>I note that while for CIRI scores lower values represent more human rights violations, here higher values represent more violations (Cingranelli & Richards 2014). This is so that this measure will match up with the previous measure that is based on events data, where higher numbers imply more repressive acts.

human rights violations, and when these are measured through the new human rights index based on the CIRI-type format, we do observe the Colombian military having human rights violations. In contrast, other cases, such as the one of the Mexico (shown as the right-hand panel) match up better, likely implying that the military was used to repress dissent and that they also engaged in other human rights violations.

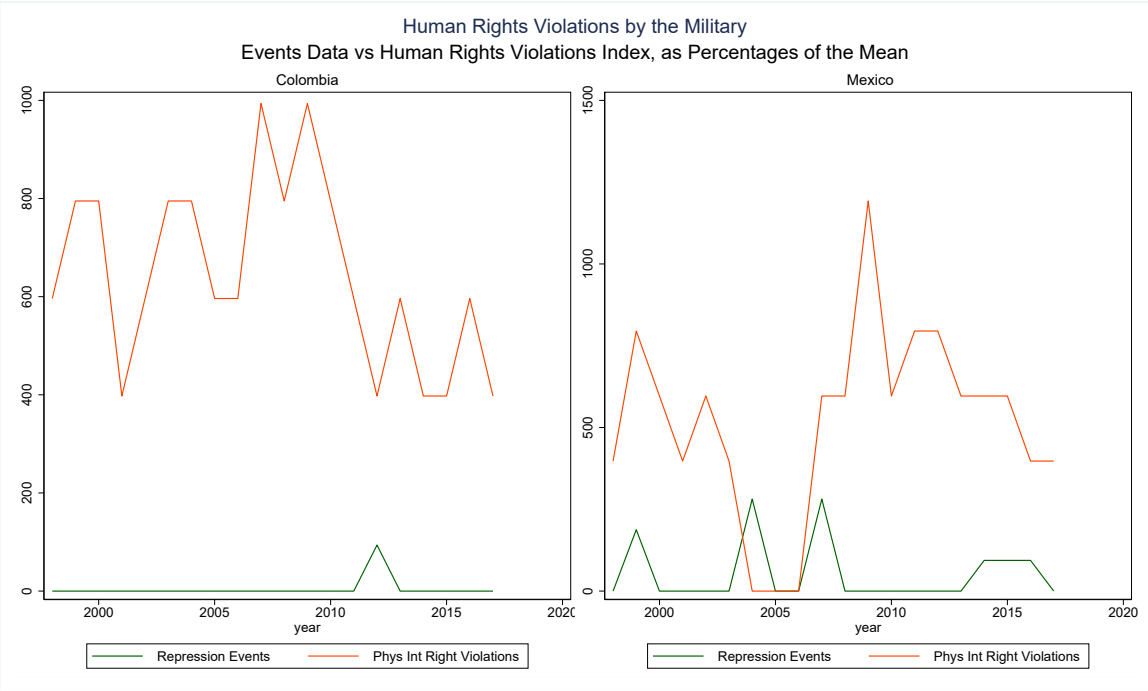


Figure 1: Comparison of Military Human Rights Violations Measures

I restrict the sample to all Latin American states (including the Caribbean), for the same years included in the previous section. Focusing on one region does away with the heterogeneity that comparing cases across regions brings about. Given that Latin America has been the region that has motivated much of the U.S. Congress’ oversight legislation regarding military aid (Chile motivating the 1973 legislation, Colombia being the specific case that motivated the Leahy Law), the region provides a particularly interesting subset of states to study. Latin America is also a region that is mostly democratic (thus allowing for better comparisons across states, given that regime type is a strong predictor of respect for physical integrity rights), but also has wide variation in the num-

ber of troops that are trained by the United States every year (Scharpf 2020). The cases were coded using the U.S. State Department’s annual human rights reports following the codebook and procedure that are included in Appendix B. Again, the codebook is strongly modeled after the CIRI codebook to follow convention on measuring physical integrity rights (Cingranelli & Richards 2014).

Table 2: Summary Statistics, Human Rights Violations by Security Forces in Latin America

	count	mean	sd	min	max
Physical Integrity Rights Violations by Military	640	.503125	1.017833	0	6
Physical Integrity Rights Violations by Police	660	2.154545	1.546564	0	7
Physical Integrity Rights Violations by Paramilitaries	660	.1242424	.7095833	0	6
Military Dichotomous	640	.2546875	.4360262	0	1
Police Dichotomous	660	.8454545	.361745	0	1
Paramilitary Dichotomous	660	.05	.2181102	0	1

INDEPENDENT VARIABLES

The main independent variable is the amount of military training that the U.S. provides for a country in a given year. To measure this I used data from the Security Assistance monitor, which is gathered from the Foreign Military Training and DoD Engagement of Activities of Interest Report (FMTR). This dataset provides information on foreign U.S. military training and does not include police training. Specifically, I measure military training as the total number of individuals who received military training from the US in a given year (students taking several courses in a given year are not double counted and included only once). I then convert it to a proportion of the size of the military as whole. I use data from the Correlates of War National Capabilities dataset to measure the total number of military personnel (Singer 1988, Singer, Bremer & Stuckey 1972). Because the dataset only goes until 2012, I use the 2012 values for the



years 2013-2017. While this is less than ideal, it seems unlikely that the size of many states' militaries will vary dramatically in 5 years time. I use a proportion as a measure because the same number of trainees will have a much larger influence in a country with a smaller military than in one with a large one. This measure ranges from 0 to 54, with the mean being 1.37. The countries with the highest percentages tend to be smaller ones and many of them are in Africa, such as Benin, which averages a U.S. training rate of 15 percent for its military, and are receiving peacekeeping training from the U.S. These numbers include both programs funded by foreign countries (which are listed under Foreign Military Sales, FMS, which involves foreign states directly paying for military education and training), programs funded by the Department of State (such as International Military Education and Training, IMET, and Peacekeeping Operations), programs funded by the Department of Defense (such as the Counterterrorism Partnerships Fund, CTPF), and programs funded by the Department of Homeland Security. Because it can take some time for the effect of military training to take hold in the recipient country, and because a consistent effort is needed to actually produce results from training, I use a five-year moving average, meaning that I average the current value as well as the first four lagged values.

I also consider the security salience of the recipient state to the United States. As suggested by Hypothesis 2, the effect of human rights violations on training may be different in states that are of high strategic importance for the United States. In order to capture this, I use a measure created by Bell, Clay & Martinez Machain (2017) which measures the security salience to the United States of a country. This measure takes into account the proximity of a state to a U.S. rival, to a leftist rebellion, to a Marxist government, and to a conflict that the United States is involved in. The variable thus measures salience as a yearly minimum distance in kilometers. Smaller distances imply greater security salience. Because the Bell, Clay & Martinez Machain (2017) measure is only coded until 2006, I use their same coding rules (and where possible the same

sources) to extend the measure to 2017.

## CONTROL VARIABLES

In terms of control variables, I focus on variables that are likely to affect both whether a state sends its forces to train in the US as well as that state's respect for physical integrity rights (in agreement with the US or not).

I also control for the GDP per capita of the potential partner state, as wealthier states are more likely to have the capacity to enforce laws that protect individual citizens from abuse (*World Development Indicators 2017*). When it comes to the relationship between GDP per capita and U.S. military training, I remain agnostic as to its potential direction. As mentioned earlier developed countries may not be eligible for programs such as IMET which are, at least partly, based on need. This means that we may expect developing countries to have a greater amount of U.S. military training. At the same time, wealthier states also have a more longstanding tradition of educating their military officers abroad and in the U.S. in particular (Interview with CGSC Coordinator 2019). I thus allow this question to be answered empirically without suggesting an expected relationship.

I consider the size of the country, measured as its population, as larger country simply present more opportunities for repression to occur, and may also be more significant players in the international system that the United States will be more willing to train (*World Development Indicators 2017*).

I also consider how democratic the recipient state is, as there is ample evidence that democracies, and in particular the militaries of democracies, are more likely to respect physical integrity rights (Laurienti 2007a). In addition, democratic states are also more likely to have their militaries trained in the United States (though of course there are plenty of non-democratic trainees in the U.S. programs) (Laurienti 2007a, Interview

with CGSC Coordinator 2019). It is important to use a measure of democracy that is not created by measuring respect for physical integrity rights, as that would make the measure circular. To measure the level of democracy of the potential partner state I use Varieties of Democracy (VDEM) Polyarchy measure (Coppedge, Gerring, Knutsen, Lindberg, Skaaning, Teorell, Altman, Bernhard, Cornell, Fish et al. 2018).

I also consider the level of intrastate and interstate conflict in a given year, as countries that are experiencing an interstate or civil war are also more likely to have their militaries violate the physical integrity rights of their citizens. In addition, it is likely that countries that are facing an internal or external conflict will be more likely to receive military training from the United States in order to combat a domestic threat. Colombia being the country in Latin America that receives the highest amount of military training during its civil war is a prime example of this. To measure intrastate conflict I use the PRIO/UCDP conflict data (Gleditsch, Wallensteen, Eriksson, Sollenberg & Strand 2002, Pettersson, Högladh & Öberg 2019).

Another important factor to control for is the general level of respect for human rights in the country, beyond what just the military is doing. A general environment of repression is likely correlated with the military engaging in repression. In addition, countries that have poor human rights records in general are also less likely to receive any type of aid from the United States, all else being equal. To measure general respect for human rights, I use the measure created by Fariss (2014).

Finally, as there have been studies about there being trends of improvement in respect for human rights throughout the world (e.g. Fariss 2014), as well as there being trends in the amount of U.S. military training provided to foreign countries in general, I also include a time measure in the model. All control variables except for the time measure are lagged by one year. I also include a lag of the dependent variable in the model.

As suggested by Laurienti (2007*b*) and Drury, Olson & Van Belle (2005), during the Cold War the United States was more willing to provide aid and other forms of assistance to human rights violators as long as they were willing to fight against communist actors. We thus might expect a less pronounced (or even positive) relationship between U.S. military training and respect for human rights in the Cold War era. Given that all observations in this sample are post-Cold War, this is not something that this analysis takes into account.

## Analysis

The data are in cross-sectional time-series format with the country-year as the unit of analysis. Heterogeneity across states is accounted for with robust standard errors. Because the dependent variable is dichotomous, I use logistic regression (logit) models. Given the somewhat limited time frame, and therefore the limited number of observations per state, as well as the inclusion of a lagged dependent variable, I do not use state-fixed effects.

## RESULTS

Table 3 presents the results of the first set of logit models, which use the events data-based measure of repression as the dependent variable. Models 3.1-3.4 have the level of repression as the dependent variable, while Models 3.5-3.8 present the change in the level of repression as the dependent variable. Model 3.1 is a basic model with the only independent variables being the level of trainees and the lagged dependent variable. Model 3.2 adds the control variables. Models 3.3 and 3.4 are analogous, but include the security salience measure as well as the interaction term between trainees and security salience. Models 3.5-3.8 follow the same pattern, with change in repression

as the dependent variable.

The models show limited support for Hypothesis 1, which predicts a negative relationship between the level of US-trained members of the military and repression. In contrast, there is much stronger support for Hypothesis 2, which states that this relationship will be more likely to hold once we consider the security salience of the trainees' home state to the United States.<sup>8</sup> Given the problems with interpreting the constitutive terms of an interaction term, I present the results graphically in Figure 2 (based on Model 3.8) (Brambor, Clark & Golder 2006). Figure 2 shows the average marginal effect that a one unit change in the percentage of the military that is trained by the U.S. has on the probability of the military engaging in repression, at varying strategic distances.

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<sup>8</sup>Some of the existing literature has distinguished between professional military education (PME) and military training (Ruby & Gibler 2010). Theoretically, this distinction can matter because PME tends to emphasize "civilian control of the military, democratic decision-making, and social responsibility in the military" (p. 343 Ruby & Gibler 2010). If so, PME would place a much greater emphasis on teaching respect for human rights and thus would have a greater effect on respect for human rights in the trainees' home countries. In the appendix I discuss this in more detail and replicate the analysis using only PME trainees. Table X and Figure X in the supplemental appendix present the results of these models, which are generally similar to the ones that include both PME and technical training.

Table 3: The Effect of Military Trainees on Repression by the Military, Logistic Regression Results

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
main	Mil Repress	Mil Repress	Mil Repress	Mil Repress	Change	Change	Change	Change
Trainees	-0.0314* (0.0184)	-0.0109 (0.0196)	-0.126*** (0.0340)	-0.101*** (0.0392)	-0.00325 (0.0115)	0.00951 (0.0152)	-0.145*** (0.0343)	-0.159*** (0.0415)
L.Mil. Repression	2.094*** (0.103)	1.405*** (0.115)	2.032*** (0.105)	1.373*** (0.117)				
LD.Mil. Repression					1.394*** (0.158)	1.287*** (0.158)	1.366*** (0.158)	1.282*** (0.158)
L.Democracy		0.441* (0.256)		0.485* (0.257)		0.0498 (0.239)		0.175 (0.242)
L.Intrastate conflict		0.269* (0.160)		0.251 (0.162)		-0.366** (0.183)		-0.446** (0.186)
L.Interstate conflict		0.247 (0.491)		0.170 (0.484)		-0.0391 (0.536)		-0.0861 (0.532)
L.GDP per capita		0.0000175*** (0.00000413)		0.0000140*** (0.00000431)		0.00000484 (0.00000386)		0.00000244 (0.00000407)
year		0.0655*** (0.0101)		0.0606*** (0.0104)		0.0340*** (0.00954)		0.0315*** (0.00986)
L.Phys. int. rights		-0.669*** (0.0679)		-0.663*** (0.0692)		-0.418*** (0.0617)		-0.431*** (0.0635)
L.Population		7.70e-10** (3.30e-10)		5.85e-10* (3.25e-10)		7.81e-11 (3.37e-10)		-7.85e-11 (3.45e-10)
Strat. dist. x trainees			0.0000384*** (0.0000105)	0.0000301*** (0.0000112)			0.0000503*** (0.00000947)	0.0000507*** (0.0000114)
US strat. dist.			-0.000157*** (0.0000319)	-0.0000923*** (0.0000330)			-0.0000763*** (0.0000277)	-0.0000606** (0.0000303)
Constant	-1.952*** (0.0647)	-134.0*** (20.27)	-1.697*** (0.0789)	-123.9*** (20.87)	-1.549*** (0.0586)	-69.85*** (19.17)	-1.405*** (0.0761)	-64.73*** (19.80)
Observations	3088	2876	3010	2815	2924	2725	2860	2675
r <sup>2</sup>								
ll	-1322.2	-1133.9	-1272.0	-1102.4	-1351.0	-1224.9	-1306.0	-1192.9

Standard errors in parentheses

\* p<.10, \*\* p<.05, \*\*\* p<.01

Figure 2 shows that when the strategic distance to the U.S. is smaller, up to approximately 2,000 kilometers, increasing the proportion of military members trained by the U.S. reduces repression by the trainees' military.<sup>9</sup> Figure 2 also shows that for states with a higher strategic distance to the U.S. (states that are less strategically salient), there is actually a positive correlation between the proportion of trainees and repression. This is an unexpected finding that will be further discussed in the conclusion section.

The control variables generally behave as expected, with repression in the previous period being positively related to repression in the current year. Overall, states that are more likely to respect physical integrity rights in general are less likely to have their militaries engage in repression. Time is positively related to violations, which goes against theoretical findings, but as mentioned, is likely a result of increased reporting in more recent years.

### **An Alternate Measure of Physical Integrity Right Violations in Latin America**

Table 5 presents the summary statistics from the alternate measure of physical integrity right violations. As previously mentioned, the index measure can range from 0 (no physical integrity rights violations) to 8 (the highest level of physical integrity rights violations). Overall, the mean level of rights violations by the military is .57, which is lower than the level for the police, which is 2.44. Paramilitaries, which are relative rare, have a lower level of violations at .21. The dichotomized measures, used in the analysis to be comparable to the results from the repression measure based on the events data, show a similar pattern.

Table 6 presents the results of the set of models which use the physical integrity rights violations by the military as the dependent variable. Similarly to Table 3, Models

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<sup>9</sup>To give some context to the distance, 2,000 kilometers would be the distance if one were to drive from Colombia's Southwestern border with Ecuador to Lima, Peru down the Carretera Panamericana (which would be the most efficient way to drive there). In a U.S. context, 2,000 kilometers is the driving distance between Manhattan, KS, to Manhattan, NY



Figure 2: Marginal Effects Model 3.8

Table 4: Summary Statistics

	count	mean	sd	min	max
Physical Integrity Rights Violations by Military	640	.5703125	1.12089	0	7
Physical Integrity Rights Violations by Police	660	2.443939	1.612228	0	8
Physical Integrity Rights Violations by Paramilitaries	660	.2212121	.9297829	0	6
Military index duymmy	640	.2734375	.4460721	0	1
Police index dummy	660	.9045455	.2940646	0	1
Paramilitary index dummy	660	.0787879	.2696117	0	1



6.1-6.4 have the level of physical integrity rights violations as the dependent variable, while Models 6.5-6.8 present the change in the level of violations as the dependent variable. Model 6.1 is a basic model with the only independent variables being the level of trainees and the lagged dependent variable. Model 6.2 adds the control variables (except for interstate war, which Latin America does not experience in this time period). Models 6.3 and 6.4 are analogous, but include the security salience measure as well as the interaction term between trainees and security salience. Models 6.5-6.8 follow the same pattern, with change in the level of violations as the dependent variable. Figure 4 presents the marginal effect of trainees on human rights violations at varying levels of strategic distance, based on Model 6.4.

In contrast with the models that use levels of repression as the dependent variable, these models show very tenuous evidence for U.S. military training being associated with lower levels of human rights violations.<sup>10</sup> In only two of the models does the number of trainees variable achieve statistical significance, though when it does it is indeed in the expected negative direction.<sup>11</sup> Thus it appears to be the case that, at least in the limited sample of Latin American states between 1998 and 2017, U.S. military training is not associated with higher or lower levels of human rights violations by the military.

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<sup>10</sup>Note that in Table x of the Appendix I replicate the analysis that use levels of repression as the DV using only Latin America. Results are similar to when the full world sample is used.

<sup>11</sup>Replicating the models using only PME trainees does not alter the results.

Table 5: The Effect of Military Trainees on Human Rights Violations by the Military in Latin America, Logit Results

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Mil HR Violate	Mil HR Violate	Mil HR Violate	Mil HR Violate	Change	Change	Change	Change
main								
L.Trainees	-0.0586 (0.0363)	-0.169*** (0.0556)	-0.0413 (0.0440)	-0.213** (0.0899)	0.00292 (0.00640)	0.0243 (0.0342)	-0.0385 (0.0368)	-0.0246 (0.0760)
L.Mil. HR violations	3.344*** (0.265)	2.745*** (0.311)	3.292*** (0.272)	2.685*** (0.318)				
LD.Mil. HR violations					0.576 (0.512)	0.428 (0.478)	0.552 (0.492)	0.425 (0.468)
L.Democracy		2.183** (0.898)		2.387** (0.960)		1.771 (1.101)		1.998* (1.043)
L.Intrastate conflict		-0.254 (0.509)		-0.205 (0.489)		-1.812 (1.328)		-1.719 (1.264)
L.GDP per capita		-0.000160*** (0.0000589)		-0.000162*** (0.0000589)		-0.000163** (0.0000787)		-0.000162** (0.0000735)
year		0.0714*** (0.0276)		0.0739*** (0.0281)		0.0178 (0.0271)		0.0167 (0.0286)
L.Phys. int. rights		-1.844*** (0.315)		-1.992*** (0.390)		-0.373 (0.302)		-0.181 (0.353)
L.Population		-1.57e-08*** (4.85e-09)		-1.68e-08*** (5.02e-09)		-2.28e-09 (5.78e-09)		-2.86e-09 (5.91e-09)
Strat. dist. x trainees			-0.0000324 (0.0000551)	0.0000580 (0.0000899)			0.0000803 (0.0000715)	0.0000729 (0.000101)
US strat. dist.			-0.000458*** (0.000157)	0.0000657 (0.000283)			-0.000484* (0.000263)	-0.000549 (0.000466)
Constant	-1.846*** (0.198)	-145.0*** (55.46)	-1.526*** (0.230)	-150.2*** (56.38)	-1.730*** (0.141)	-37.65 (54.38)	-1.451*** (0.193)	-35.31 (57.35)
Observations	457	416	457	416	434	394	434	394
r <sup>2</sup>								
ll	-187.8	-141.1	-183.7	-140.7	-185.2	-152.2	-182.7	-150.7

Standard errors in parentheses

\* p<.10, \*\* p<.05, \*\*\* p<.01

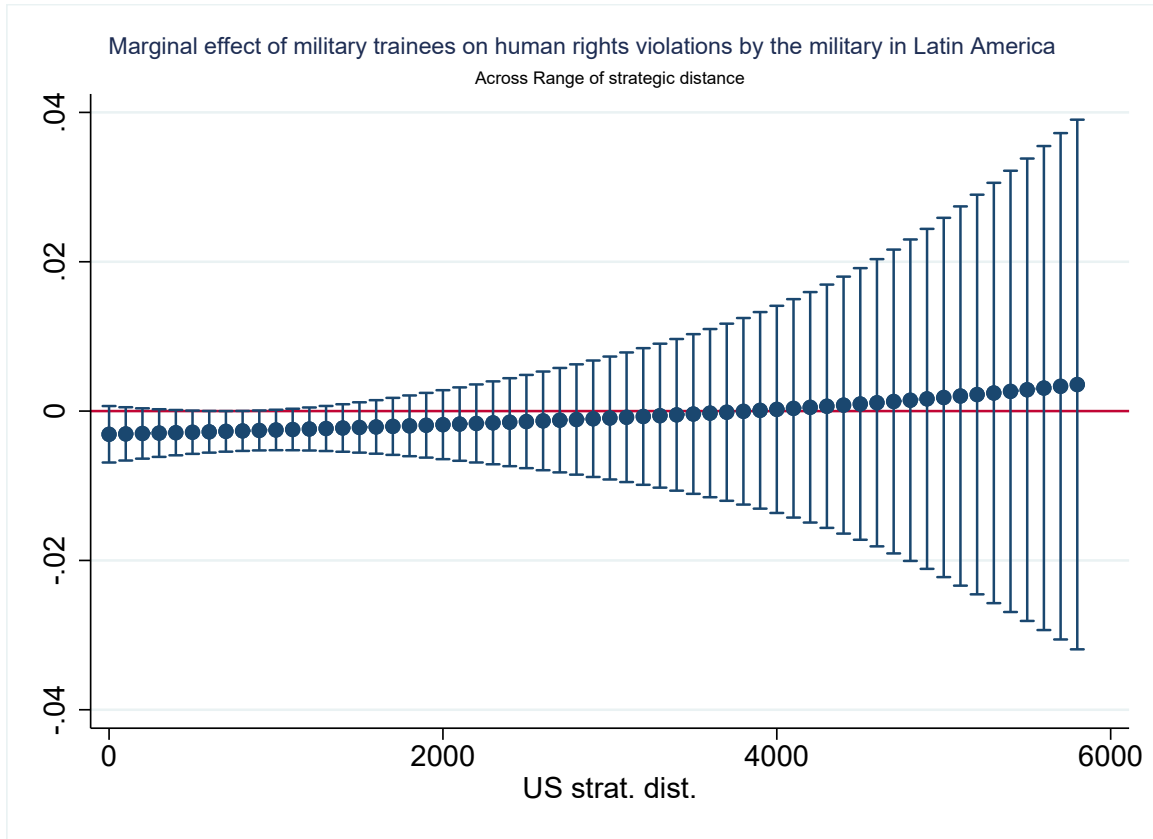


Figure 3: Marginal Effects Model 6.4

## Conclusion

The U.S. Congress has passed various forms of legislation to ensure that states that violate human rights do not benefit from U.S. military aid. At the same time, the case of military aid presents Congress as a principal seeking to engage in oversight over its agents with a conundrum: Military training is itself intended to remedy human rights violations, such that cutting human rights violators off from training would in part defeat the purpose of the training. The question that remains is whether training can indeed help to improve the human rights records of a state's security forces.

This paper found that the answer to this question depends, at least in part, on the

measure of human rights used. When measuring human rights violations as repressing collective actions of dissent, there does appear to be a negative association between the proportion of the military that is trained by the U.S. and repressive acts by the military. This relationship holds only in cases that are of high security salience to the United States, which are likely the ones that are most likely to get attention from the media and therefore from the constituents of the Members of Congress engaging in oversight. When analyzing a more limited sample of Latin America cases, the same relationship holds. These are thus the cases in which the military is most likely to come under pressure from Congress to present observable improvements in the human rights records of their trainees.

In contrast, the set of models that used an alternate measure of human rights violations that is based on reports of physical integrity rights violations presented in the State Department Human Rights reports shows that at least in the case of Latin America, there is no statistically significant relationship between U.S. military trainees and physical integrity rights violations by the military. Thus, under this measure, military training does not appear to be as effective at promoting human rights.

The difference between the two measures may be based on the higher visibility that actions such as actively repressing dissent, such as breaking up protests, as opposed to physical integrity right violations such as disappearances or torture, which can be easier to hide from international observers. In addition, the multivariate probit analysis presented in Appendix table A4, shows some evidence of substitutability between physical integrity rights violations by military and paramilitary forces. This analysis thus shows some support for the possibility that, at least in the case of Latin America, reductions in military repression may be associated with increases in paramilitary repression, thus implying a potential substitution effect. Much like occurred in the case of Colombia, recipient countries under pressure to improve the human rights record of

their militaries may be shifting repression over to other security agents. Future work should continue to explore this dynamic.

The unexpected finding of the positive relationship between U.S. military training and repression in low-salience states (which was not observed in the case of the Latin America sample) is one that should be further explored in future research. It may be the case that this is not necessarily showing that military training is leading to greater human rights violations, but is rather an illustration of the selection bias that occurs when human rights violators are more likely to receive training in the first place. States that are not of high security salience to the U.S. are also less likely to receive as much media attention as the high-salience ones, and thus are less likely to show improvement.

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## Appendix

Table A1: Summary Statistics: Main Models

	(1)				
	count	mean	sd	min	max
Mil. Repression	2815	.2007105	.400603	0	1
Trainees as PME Trainees as Strat. dist. x PME	2815	3342.835	11110.58	0	159416.5
US strat. dist.	2815	1766.852	1934.912	0	7217.452
Electoral democracy index	2815	.5389731	.2603104	.0202817	.9399808
Intrastate conflict	2815	.1243339	.3300207	0	1
Interstate conflict	2815	.0092362	.0956775	0	1
GDP per capita	2668	12225.12	18396.76	218.2835	111968.3
year	2815	2007.906	5.433191	1999	2017
Phys. int. rights	2815	.2204514	1.416381	-3.237351	5.13997
Population	2678	4.10e+07	1.47e+08	82475	1.38e+09

Table A2: PME Programs

	Frequency
Combating Terrorism Fellowship Program	19276
Department of Homeland Security - U.S. Coast Guard Activities	2959
Foreign Military Sales	112
International Military Education and Training	81104
Professional Military Education Exchanges	291
Service Academies	797
Total	104539
Observations	104539

### PME VS TRAINING

It is important to note that some of the existing literature has distinguished between professional military education (PME) and military training. Though definitions of and distinctions between the two can vary, PME tends to refer to education in degree-granting institutions (such as the War Colleges) whereas military training often refers to the teaching of particular technical skills (such as teaching military personnel how

to use a specific weapons system or conduct a particular type of military operation (Ruby & Gibler 2010)). Theoretically, this distinction can matter because PME tends to emphasize “civilian control of the military, democratic decision-making, and social responsibility in the military” (p. 343 Ruby & Gibler 2010). If this is the case, then we can imagine that PME would place a much greater emphasis on teaching respect for human rights and thus would have a greater effect on respect for human rights in the trainees’ home countries.

At the same time, the distinction between professional military education is not always completely clear-cut. For example, the Aviation Leadership Program (ALP), in which foreign military officers attend Undergraduate Pilot Training (UPT) in the United States, would technically count as technical training, as it is not a program offered at a degree-granting institution, and while graduates receive their pilot wings after the completion of the program, they do not receive an actual academic degree, such as an MA. Yet, if we actually observe what the courses look like, we will see that it can in many ways resemble some of the PME programs. ALP lasts for one to two years, and besides teaching students how to fly aircraft, it also teaches them English-language skills and includes “programs to promote increased awareness and understanding of U.S. democratic institutions and society.” (p. II-7 *Foreign Military Training Report* 2017). Military training aimed at both officers and enlisted personnel often includes a human rights component, both in the field and in the classroom. For example, when the United States conducts peacekeeping training in sub-Saharan Africa, one of the exercises the trainees participate in is having civilians in a village simulate a crisis situation in which military personnel are expected to respond and thus implement human rights concepts that they have learned (Bell, Clay & Martinez Machain 2017).

In terms of preventing repression by the militaries of different states, both PME and “practical” military training can be expected to have a positive effect for trainees, as both

emphasize respect for human rights, albeit in different forms and tailored for different audiences. While those high-ranking officers attending the War Colleges can certainly have a very large influence on changing their home countries' military cultures to incorporate respect for human rights into them, it is also the case that training the actual troops on the ground directly may influence their actions and may actually lead to a faster improvement in the respect for physical integrity rights. I thus, from a theoretical point of view, expect both PME and military training to have a positive influence on respect for human rights by the armed forces of the recipient state. I thus let this question resolve itself empirically and replicate the analysis using only PME trainees. I consider any programs run by degree-granting institutions to be PME. Table A2 in the supplemental appendix lists the specific programs included in this list. Table X and Figure X present the results of these models, which are generally similar to the ones that include both PME and technical training.

Table A3: The Effect of PME on Repression by the Military, Logistic Regression Results

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
main	Mil Repress	Mil Repress	Mil Repress	Mil Repress	Change	Change	Change	Change
PME Trainees	-0.562*** (0.159)	-0.191 (0.145)	-0.572*** (0.152)	-0.207 (0.145)	-0.353*** (0.109)	-0.176 (0.122)	-0.438*** (0.115)	-0.231* (0.125)
L.Mil. Repression	2.061*** (0.103)	1.402*** (0.115)	2.014*** (0.104)	1.380*** (0.117)				
LD.Mil. Repression					1.383*** (0.157)	1.288*** (0.158)	1.367*** (0.159)	1.284*** (0.159)
L.Democrdacy		0.463* (0.260)		0.434* (0.259)		0.115 (0.243)		0.0830 (0.243)
L.Intrastate conflict		0.260 (0.160)		0.268* (0.162)		-0.383** (0.183)		-0.409** (0.185)
L.Interstate conflict		0.245 (0.490)		0.200 (0.484)		-0.0518 (0.536)		-0.0418 (0.534)
L.GDP per capita		0.0000165*** (0.00000419)		0.0000142*** (0.00000439)		0.00000245 (0.00000395)		0.00000333 (0.00000409)
year		0.0659*** (0.00998)		0.0605*** (0.0103)		0.0365*** (0.00946)		0.0321*** (0.00981)
L.Phys. int. rights		-0.661*** (0.0678)		-0.646*** (0.0687)		-0.406*** (0.0613)		-0.411*** (0.0627)
L.Population		7.54e-10** (3.28e-10)		6.47e-10** (3.25e-10)		3.41e-11 (3.40e-10)		2.81e-11 (3.42e-10)
Strat. dist. x PME			0.00000906* (0.00000537)	0.00000539 (0.00000520)			0.0000155*** (0.00000444)	0.0000114*** (0.00000434)
US strat. dist.			-0.000130*** (0.0000303)	-0.0000701** (0.0000315)			-0.0000426 (0.0000263)	-0.0000224 (0.0000282)
Constant	-1.886*** (0.0656)	-134.6*** (20.06)	-1.701*** (0.0781)	-123.6*** (20.73)	-1.481*** (0.0600)	-74.89*** (18.99)	-1.449*** (0.0757)	-65.93*** (19.70)
Observations	3088	2876	3010	2815	2924	2725	2860	2675
r <sup>2</sup>								
ll	-1315.4	-1133.2	-1270.0	-1104.1	-1345.6	-1224.2	-1308.5	-1198.2

Standard errors in parentheses

\* p<.10, \*\* p<.05, \*\*\* p<.01

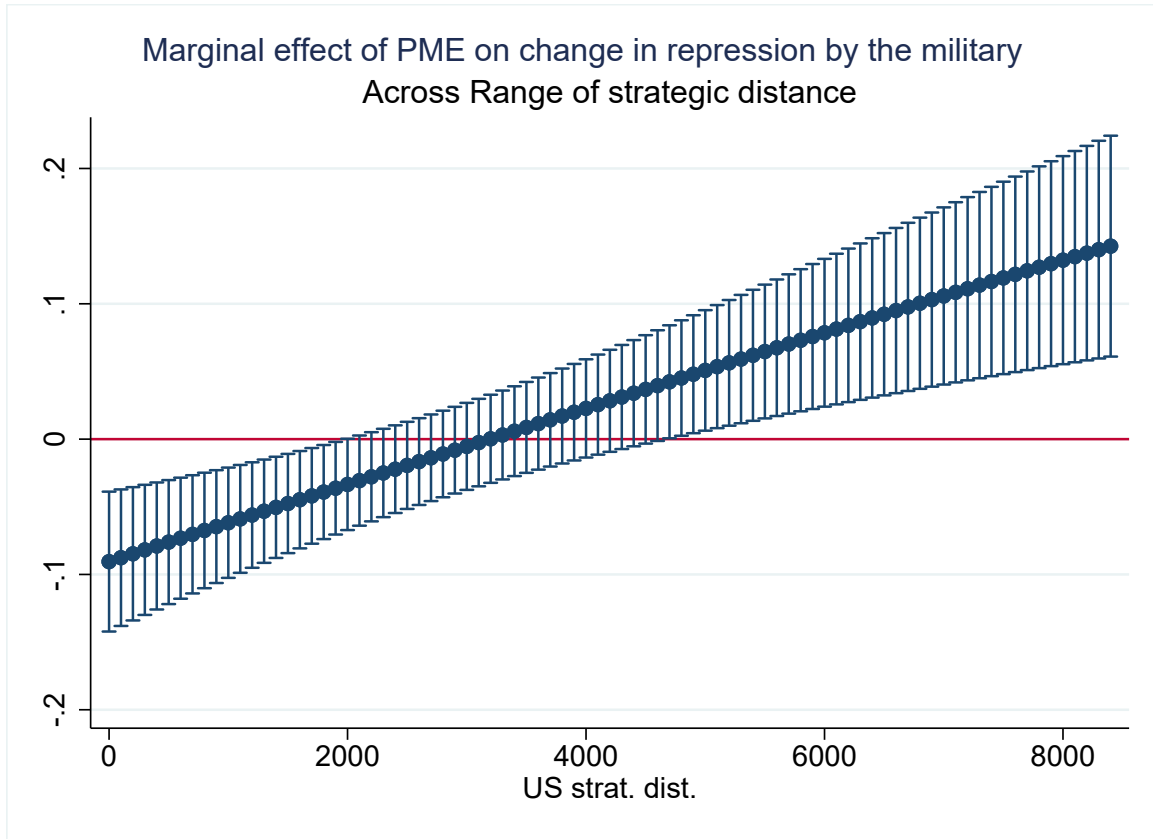


Figure A1: Marginal Effects Model 4.8

## THE POSSIBILITY OF POLICY SUBSTITUTION

A closer look at some of the specific cases under analysis, particularly the success stories, brings up the possibility that while U.S. military training may be associated with a reduction in human rights violations by the military, those violations may just be switched over to other security forces that are under less scrutiny. For example, in the case of Colombia, new, “clean” units were created after the passage of the Leahy Laws to ensure that human rights violators were not receiving U.S. training (Tate 2011). Yet, much of that knowledge continued to be passed on to the units that had been previously accused of violating human rights. In addition, the Colombian military was accused of continuing to collaborate with paramilitary forces that often violated human rights but

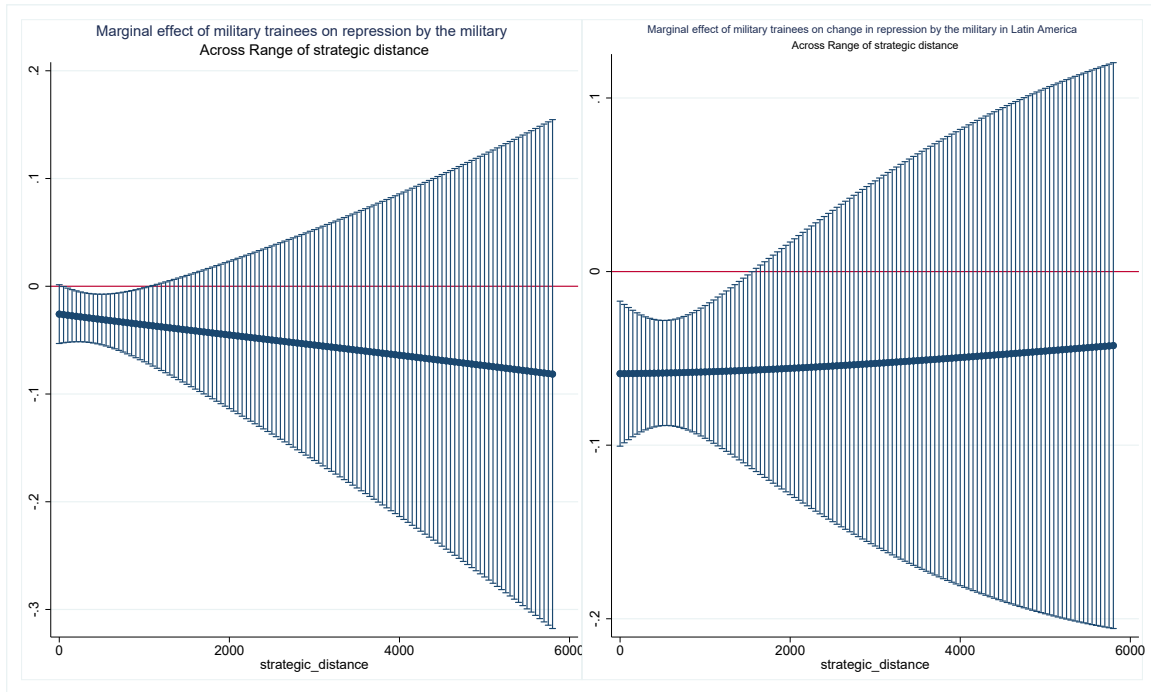


Figure A2: Latin America Only

allowed the Colombian government to distance itself from and disavow them (Laurienti 2007b).

Thus, it is important to consider the possibility that government that receive U.S. military training may be engaging in policy substitution and shifting human rights violations and repression from one branch of the security forces (the military) to another (paramilitary forces).<sup>12</sup> This would allow them to acquiesce to U.S. demands to reduce human rights violations while continuing to have the option to use repressive security forces to address domestic threats to the regime.

In order to consider this possibility I use a multivariate probit model. The first equation has the probability that the military violates physical integrity rights as the dependent variable. Both equations contain the control variables included in previous equa-

<sup>12</sup>I focus on paramilitary forces because police forces often also receive training from the U.S., but this training is not included in the Foreign Assistance Monitor data and therefore cannot be controlled for in this analysis (Schrader 2019)



tions<sup>13</sup>. Table A4 includes two models, with Model 2 including a lagged military human rights violations variable in the paramilitary repression equation to model the endogenous relationship and to test whether the different types of repression are substitutes or complements (Clark & Reed 2005). As shown by Table A4, the negative coefficient on the lagged military repression variable in the paramilitary repression equation implies substitutability between the two. This analysis thus shows some support for the possibility that, at least in the case of Latin America, reductions in military repression may be associated with increases in paramilitary repression, thus implying a potential substitution effect.

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<sup>13</sup>I note that in multivariate probit models there is no requirement that the equations include different variables (Greene 2003)

Table A4: Repression by Different Actors and US Military Training: Multivariate Probit Estimates

	(1)	(2)
	est1	est2
<hr/>		
Mil. Repress		
Trainees	-0.0475** (0.0232)	-0.0457* (0.0233)
Electoral democracy index	1.378*** (0.528)	1.340** (0.542)
Intrastate conflict	0.447 (0.462)	0.487 (0.468)
GDP per capita	-0.0000777*** (0.0000239)	-0.0000823*** (0.0000245)
year	0.0407*** (0.0147)	0.0385** (0.0157)
Phys. int. rights	-1.279*** (0.159)	-1.258*** (0.162)
Population	-1.09e-08*** (2.47e-09)	-1.06e-08*** (2.52e-09)
Constant	-82.27*** (29.46)	-77.85** (31.49)
<hr/>		
Para Repress		
Trainees	-0.529** (0.226)	-0.706** (0.310)
Electoral democracy index	-3.473*** (1.123)	-2.947** (1.262)
Intrastate conflict	-0.303 (0.651)	-0.352 (0.858)
GDP per capita	-0.000229** (0.0000918)	-0.000273*** (0.000101)
year	0.0499 (0.0327)	0.0478 (0.0402)
Phys. int. rights	-2.036*** (0.603)	-3.270*** (0.914)
Population	1.69e-08*** (5.54e-09)	1.14e-08* (6.34e-09)
Mil. Repress, lag		-1.616*** (0.552)
Constant	-99.84 (65.53)	-95.41 (80.61)
<hr/>		
atho21		
Constant	-0.546** (0.223)	-0.145 (0.297)
<hr/>		
Observations	416	394
N_cens		
rho	44	
chi2	109.1	103.6
<hr/>		

Standard errors in parentheses

\* p < .10 \*\* p < .05 \*\*\* p < .01

Table A5: Top 5 U.S. Military Training Programs for Mexico, 1998-2017

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1	Section 1004 Counter-Drug Assistance
2	International Military Education and Training
3	International Narcotics Control and Law Enforcement
4	Combating Terrorism Fellowship Program
5	Regional Centers for Security Studies

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# Racial Discrimination and Jurisdiction in Status of Forces Agreements

**Bianca Freeman**

NOVEMBER 2021

## Racial Discrimination and Jurisdiction in Status of Forces Agreements<sup>1</sup>

Bianca Freeman<sup>2</sup>

Why does the United States share jurisdiction under some Status of Forces Agreements (SOFAs) and not others? As a common framework for military partnerships between countries, SOFAs delegate legal authority over American servicemembers stationed overseas. This article suggests that SOFAs harbor a tension: U.S. interest in safeguarding soldiers' rights and deeply-held beliefs about the inferiority of non-European institutions and courts. Notwithstanding its own prejudice, the United States attempts to ensure impartiality of judgement through the SOFA by limiting exposure of its troops to foreign courts. However, hierarchical conceptions of race are reified and "exported" through the extraterritorial application of American law. Using data on SOFA jurisdiction, I systematically test and find support for this argument. Considering the often-overlooked role of race and racism in status agreements has important theoretical and empirical implications for the study of international politics and security.

**Keywords:** Status of Forces Agreements (SOFAs), jurisdiction, extraterritoriality, racial hierarchy, racism, foreign policy

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Status of Forces Agreements (SOFAs) have long been scrutinized as a form of intervention in world politics. A common framework between the United States and its military partners, SOFAs designate the legal status of U.S. servicemembers in a foreign country.<sup>3</sup> In particular, SOFAs regulate when and how the domestic laws of host governments are applied to American soldiers.<sup>4</sup> While status agreements stop short of immunizing U.S. personnel from criminal sanctions, SOFAs effectively constrain the legal authority that host countries may exercise over U.S. forces within their own territories. Central to these agreements is an attempt to reconcile the extraterritorial application of American law in foreign countries. Although policymakers and legal scholars heed the balance of rights and obligations between sending and receiving states—SOFAs as a shared sovereign prerogative—the division of legal authority remains the most important and frequently contested issue.<sup>5</sup> Since the onset of the Cold War, this question of jurisdiction has proved crucial to the forward-deployment of U.S. troops and other strategic interests around the world.<sup>6</sup>

Despite the ubiquity and salience of SOFAs in defense partnerships, few studies have examined status agreements. Most consider SOFA negotiation within larger patterns of basing politics, military agreements, or other trade-offs between security and sovereignty involving U.S.

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<sup>3</sup> Andrew I. Yeo, “Security, Sovereignty, and Justice in US Overseas Military Presence,” *International Journal of Peace Studies* 19, no. 2 (Winter 2014): 43-67.

<sup>4</sup> Chuck R. Mason, “Status of Forces Agreement (SOFA): What is it, and how has it been utilized?,” LIBRARY OF CONGRESS WASHINGTON DC CONGRESSIONAL RESEARCH SERVICE, (2009): 1-30.

<sup>5</sup> Mark E. Eichelman, “International Criminal Jurisdiction Issues for the United States Military,” *Army Law* (August 2000): 23-32; William J. Norton, “United States Obligations under Status of Forces Agreements: A New Method of Extradition,” *Ga. J. Int'l & Comp. L.* 5, no. 1 (1975): 1-76.

<sup>6</sup> Erik Rosenfeld, “Application of US status of forces agreements to article 98 of the Rome Statute,” *Washington University Global Studies Law Review* 2, no. 1 (January 2003): 273-293; George S. Prugh, “The Soviet Status of Forces Agreements: Legal Limitations or Political Devices,” *Mil. L. Rev.* 20 (1963): 1.

forces overseas.<sup>7</sup> While scholars carefully account for the legal constraint SOFAs place on host governments and populations,<sup>8</sup> the literature has yet to provide a systematic evaluation of SOFAs or a comprehensive test of jurisdiction at the level of the agreement.<sup>9</sup>

At their core, SOFAs attempt to reconcile U.S. interest in safeguarding soldiers' rights with deeply-held beliefs about the inferiority of non-European institutions and courts. I develop this claim by first examining SOFAs as a petition for change in trial venue. Before a SOFA is created, host countries retain primary right to adjudicate violations of host country law. In order to protect American soldiers from foreign courts, the United States proffers a status agreement. In particular, SOFAs allow the United States to select its own jurisdiction as the "venue" in which criminal cases are brought against U.S. soldiers. Similar to the logic of home-court advantage, the United States petitions for a change in jurisdiction in attempt to gain legal leverage over its host partner. However, a transfer in venue also anticipates the likelihood that host jurisdiction will deliver verdicts against American soldiers for reasons other than a conviction of justice.

If SOFAs are a response to factors that render an impartial jury improbable in the original host country venue, then bias on the basis of ethnicity and race could matter for the decision of jurisdiction. Like a defendant that petitions for change in trial venue on the grounds of racial

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<sup>7</sup> Alexander Cooley, *Base Politics: democratic change and the US military overseas* (Ithaca NY: Cornell University Press, 2012); Stephen D. Krasner, "The hole in the whole: Sovereignty, shared sovereignty, and international law." *Mich. J. Int'l L.* 25 (2003): 1075.

<sup>8</sup> Asif Efrat, "Facing US Extraterritorial Pressure: American Troops in Foreign Courts during the Cold War," forthcoming in *Journal of Politics* <https://doi.org/10.1086/715254> (2021); Yeo 2014; Kelly Elizabeth O'Connor, "Couching intervention: norms, interests, and trends in jurisdictional allocation in Status of Forces Agreements (SOFAs)" Massachusetts Institute of Technology (2018).

<sup>9</sup> Herrin makes similar claim in "Understanding status of forces agreements: what shapes jurisdictional control?" Diss. University of Iowa, 2020.

discrimination, I suggest that the United States gauges similar bias when negotiating jurisdiction. Notwithstanding its own prejudice, the United States attempts to ensure impartiality of judgment through the SOFA. Since selecting a jurisdiction is analogous to selecting a trial venue—in essence, a jury—the United States is more likely to see host states that exhibit domestic racism as unable to provide a ‘jury of peers.’ Similar to the well-documented ways that discrimination based on race justifies a change in trial venue, racial discrimination within the host country matters to the United States when negotiating who prosecutes American defendants.

Concerns over the impartiality of host jurisdiction are only one side of the coin however. Status agreements have been studied as race-based colonialism in international law.<sup>10</sup> Some IR scholars make the similar point that foreign basing contracts like SOFAs—a bargained concept of hierarchy—are not beyond prevailing symbols of subordination that reinforce pathologies of colonial legal regimes.<sup>11</sup> The notion that non-Europeans lack “government suited to the white man” has long been embraced as a rationale for asserting extraterritoriality, and in some cases, capitulation.<sup>12</sup> A mainstay of Western foreign policy, extraterritoriality declares the rest of the world to exist in a state of exception, a kind of state of emergency where “normal” rules do not apply.<sup>13</sup> Since immunity relies on the premise of inherent difference between peoples and

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<sup>10</sup> Siba N’Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and self-determination in international law*. Vol. 3. (U of Minnesota Press, 1996); Pär Kristoffer Cassel, *Grounds of Judgment: Extraterritoriality and Imperial Power in Nineteenth-Century China and Japan* (Oxford University Press, 2011).

<sup>11</sup> Alexander Cooley, “Command and Control? Hierarchy and the International Politics of Foreign Military Bases,” in *Hierarchies in World Politics*, ed. Ayse Zarakol (Cambridge Univ. Press, 2017), 154-174; Michael A. Allen, Michael E. Flynn, and Carla Martinez Machain, “Outside the Wire: U.S. Military Deployments and Public Opinion in Host States.” *American Political Science Review* 114, no. 2 (2020): 326-41; Sasha Davis, “The US military base network and contemporary colonialism: Power projection, resistance and the quest for operational unilateralism,” *Political Geography* 30, no. 4 (2011): 215-224.

<sup>12</sup> Grovogui, *Sovereigns, Quasi Sovereigns, and Africans*.

<sup>13</sup> Teemu Ruskola, “Colonialism without Colonies: on the extraterritorial jurisprudence of the US Court for China,” *Law and Contemporary Problems* 71, no. 3 (2008): 217-242.



societies,<sup>14</sup> it “fits” or affirms prevailing beliefs about racial difference. Thus, hierarchical conceptions of race are reified and “exported” through U.S. extraterritorial jurisdiction and its codification into the SOFA.

I argue that the terms of U.S. extraterritorial law are informed by how racial and ethnic minorities are treated within host states, on the one hand, and by racialized “deficiency” tropes about non-European jurisprudence on the other. I test this theory of SOFA jurisdiction by examining the effects of racial discrimination and population distribution by race within host countries on the United States’ decision to delegate legal authority over its soldiers. I find that the United States is less likely to share jurisdiction with host partners that exhibit high discrimination and with host partners of majority non-European descent, controlling for other plausible explanations.

Considering the often-overlooked role of race in international relations (IR) has important theoretical and empirical implications for the study of security and policy. By accounting for race as a constitutive component of interstate interaction, this study implicates the notion that foreign policy within the international liberal order is “race-neutral.”<sup>15</sup> I argue that status agreements illuminate this tension. Although SOFAs solve collective action problems through the regulation of legal authority between states, they are simultaneously conditioned by expectations about race. Thus, this article contributes a positive theory to the growing body of work that is shifting the debate from if race matters to when and how race matters in IR. Scrutinizing the often

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<sup>14</sup> Cassel, *Grounds of Judgment*.

<sup>15</sup> Antony Anghie, “Decolonizing the Concept of Good Governance,” in *Decolonizing International Relations*, ed. GB Jones. pp.109-130, Lanham, MD: Rowman and Littlefield (2006); Zoltan I. Búzás, “Racism and Antiracism in the Liberal International Order” *Int. Organ.* 75 (2021): 440- 463; Errol E. Henderson, “The revolution will not be theorised: Du Bois, Locke, and the Howard School’s challenge to white supremacist IR theory” *Millennium* 45, no. 3 (2017): 492-510.

implicit assumption that the conduct of security is “above” race and racism enhances our understanding of foreign policy and the biases that permeate its study and practice.

### **What Are Status of Forces Agreements?**

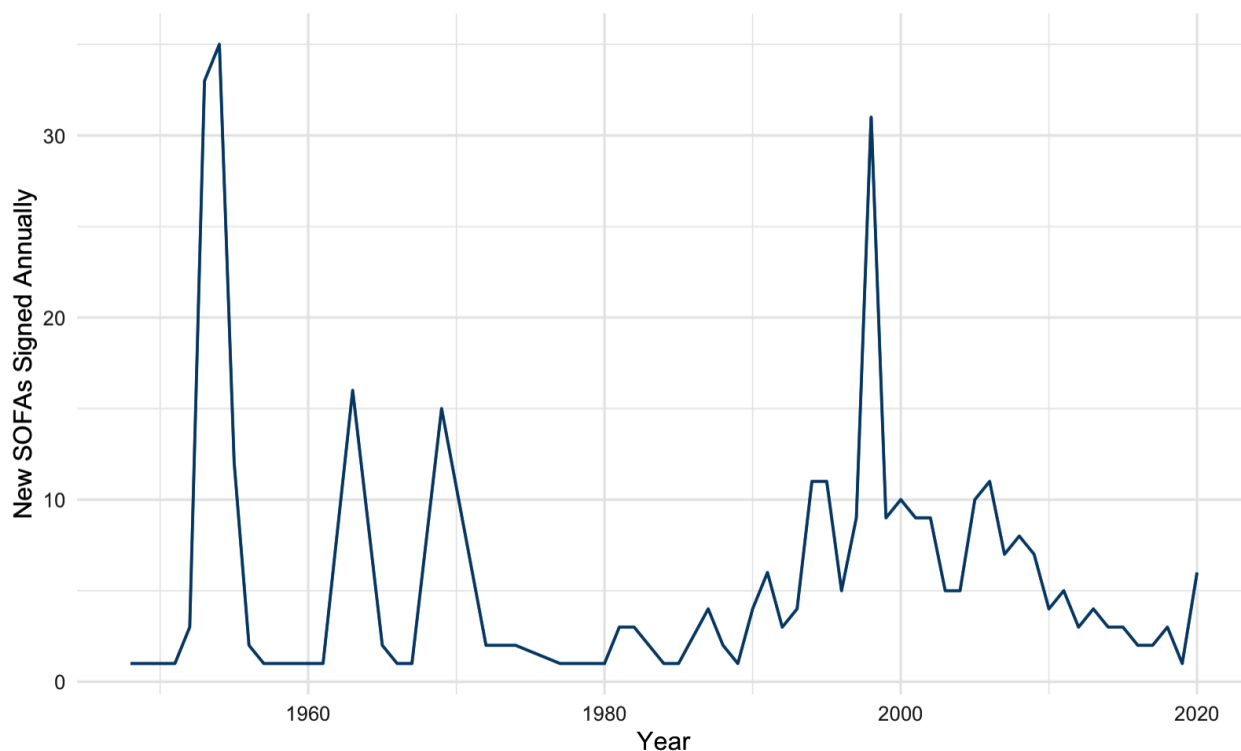
In the aftermath of World War II, the United States entered into Status of Forces Agreements (SOFAs) with nations it envisioned sustaining an indefinite military presence. These agreements have remained an integral feature of U.S. force projection beyond their initial use in containment policy. SOFAs designate the legal status of U.S. servicemembers in a foreign country. They establish when and how the domestic laws of host governments are applied to U.S. personnel.<sup>16</sup> In general, SOFAs constitute a framework of legal protections and privileges for American soldiers deployed to host states. The United States has been party to more than 350 SOFAs with over 46 percent of states in the international system.<sup>17</sup> Figure 1 illustrates the growth of SOFAs since 1951. While the majority of existing status agreements involve the United States as sending state, several other states authorize and maintain similar arrangements with various partners. South Korea, Mozambique, France, Russia, Kyrgyzstan, the United Kingdom, and Germany, among others, have negotiated comparable basing contracts.

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<sup>16</sup> Mason, “Status of Forces Agreement.”

<sup>17</sup> Jennifer Kavanagh, “US Security-Related Agreements in Force Since 1955: Introducing a New Database” RAND PROJECT AIR FORCE SANTA MONICA CA (2014).

**Figure 1. Growth of U.S. Status of Forces Agreements (SOFAs), 1951-2020**



SOFAs are generally broad in scope and cover a range of administrative and operational issues. As a legal framework for the conduct of U.S. military installations overseas, status agreements regulate daily practices like the carrying of weapons, taxation, jurisdiction, the wearing of uniforms, import and export rights, drivers' licenses, supply procurement, and services rendered by sending and receiving states. While SOFAs exhibit common rules and authorizations between the host government and the United States, the agreements vary in substance, length, and title. This quality allows for ultimate flexibility in tailoring the SOFA to specific personnel needs.<sup>18</sup> Moreover, SOFAs vary in who they cover. Members of the U.S. Armed Forces, civilian employees at the U.S. Department of Defense (DoD), and those under

<sup>18</sup> Text of Global SOFA template provided at the end of the International Security Advisory Board (ISAB) external review in 2015. <https://2009-2017.state.gov/t/avc/isab/236234.htm>.

contract to the DoD can be protected by a status agreement when stationed overseas.<sup>19</sup> According to a U.S. Department of State report in 2000, SOFAs help protect the rights of about 246,504 U.S. military personnel, 48,000 American civilians, and approximately 180,770 dependents.<sup>20</sup> Legal coverage, and the substance of SOFAs in general, is largely determined by the nature and duration of U.S. military activity within the host country. The status agreement can be designed for limited objectives or for long-term engagement. Some SOFAs are written as standalone while others are designed within a more comprehensive security arrangement like Defense Cooperation Agreements (DCA).<sup>21</sup> SOFAs may be entered into based on executive order, congressional action, or authority from previous treaties. In addition, the characteristics of status agreements often reflect the quality and maturity of the relationship between the host country and the United States. The politics that emanate from U.S. military presence in host communities further shape the revision of SOFAs in base renegotiation.<sup>22</sup>

As a bargain between states, status agreements involve particular actors and interests. Before SOFAs are signed and entered into force, they are often developed over an exchange of diplomatic notes between the countries' embassies. Within this process, U.S. interests in obtaining and maximizing status protections for its deployed forces are represented by the Office of Negotiations and Agreements (SNA) in the U.S. Department of State's Bureau of Political-

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<sup>19</sup> See U.S.-El Salvador SOFA (2007) for example.

<sup>20</sup> "Backgrounder: Status of Forces Agreements." U.S. Department of State, (2000).

<sup>21</sup> Brandon J. Kinne, "Defense cooperation agreements and the emergence of a global security network" *International Organization* 72, no. 4 (2018): 799-837.

<sup>22</sup> Ankit Panda, "In Sudden Step, Philippines Reverses Course on Ending US Visiting Forces Agreement— For Now" *The Diplomat*, 04 June 2020, <https://thediplomat.com/2020/06/in-sudden-step-philippines-reverses-course-on-ending-us-visiting-forces-agreement-for-now/>

Military Affairs (PM).<sup>23</sup> As the principal link to the DoD, PM/SNA negotiates international agreements to meet U.S. security requirements. Individuals in SNA draft the necessary cables and memos to facilitate SOFA deliberation between foreign governments and the DoD. SNA leads the dialogue and conclusion of SOFAs and other deployment-related status protections in consultation with other State and DoD offices.<sup>24</sup> Once an agreement is reached, the SOFA is signed by an official envoy of each state. It is common for the U.S. ambassador accredited to the host state to sign the agreement. Although a similar delegate authorizes the SOFA for the host state, the offices and actors that facilitate its negotiation at prior stages may vary across host countries.

### ***SOFA Jurisdiction***

The most important and contested issue in SOFAs is jurisdiction. At their core, status agreements attempt to reconcile the application of U.S. law in foreign territories. When a U.S. soldier is accused of breaking host country law, the SOFA in place determines whether the host government or the U.S. government exercises jurisdiction over that soldier. Before the terms of jurisdiction are bargained, the United States and the host country first determine that a SOFA would be beneficial for both parties.<sup>25</sup> Upon mutual consent, the parties enter negotiation from the proposition that jurisdiction is held exclusively by the host country. It retains legal authority over its territory and the persons within it unless a SOFA grants the United States exception to

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<sup>23</sup> <https://www.state.gov/bureau-of-political-military-affairs-office-of-security-negotiations-and-agreements-pm-sna/>

<sup>24</sup> DoD Office of the Under Secretary of Defense for Policy, the Office of the General Counsel, the Joint Staff, Combatant Commands, the Department's regional bureaus and Embassies, and the Office of the Legal Advisor.

<sup>25</sup> Mason, "Status of Forces Agreement."

that authority. Typically, SOFAs are designed to reestablish when and how the domestic laws of the host country are applied to U.S. personnel. Thus, status agreements effectively transfer legal authority to the United States. The particular division of jurisdiction between signatories can vary in two distinct ways that are outlined below.

### *Exclusive Jurisdiction*

SOFA jurisdiction mainly falls under one of two categories: exclusive and concurrent. SOFA jurisdiction is exclusive if the United States has sole legal authority over its personnel in a host country. Under an exclusive arrangement, the host government agrees to surrender its jurisdiction over U.S. forces within its territory for the duration of the SOFA. When an American soldier breaks host country law, the United States gets to decide what, if any, disciplinary action to take. Some legal scholars have noted that exclusive jurisdiction allows discretion for downplaying or dismissing violations in question. As Mason suggests, the right to exert legal control can provide U.S. servicemembers complete immunity from laws of the receiving state. This is the case despite common language across SOFAs obliging U.S. personnel to respect host country sovereignty. The United States still enjoys significant latitude in its exclusive legal rights within the host country. Exclusive jurisdiction is generally bestowed in two ways. First, SOFAs may include a provision that accords U.S. personnel a status equivalent to that of the administrative and technical staff at the U.S. Embassy in the host country. This particular privilege comes from the Vienna Convention on Diplomatic Relations of 1961, an international treaty that grants diplomatic immunity from criminal jurisdiction of the receiving state.<sup>26</sup> Second,

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<sup>26</sup> Vienna Convention on Diplomatic Relations of 1961 [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)

SOFAs may also include a provision that authorizes exclusive control by the United States over its personnel within the host territory. This clause may be provided in addition to or in place of the Vienna provision within the status agreement. Table 1 outlines these features of exclusive jurisdiction.

**Table 1. U.S. SOFA Jurisdiction Types**

<b>Jurisdiction Type:</b>	<b>Definition:</b>	<b>SOFA Clause Example:</b>
<b>Exclusive</b>	United States has exclusive jurisdiction over U.S. personnel in host country	<ol style="list-style-type: none"> <li>1) Host government agrees that U.S. personnel be accorded the privileges, exemptions, and immunities equivalent to those accorded to administrative and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations of 1961</li> <li>2) Host government recognizes the particular importance of disciplinary control by United States armed forces authorities over U.S. personnel, and therefore, authorizes the U.S. government to exercise jurisdiction over U.S. personnel while in the host country.</li> </ol>
<b>Concurrent</b>	United States and host country share jurisdiction over U.S. personnel in host country	<ul style="list-style-type: none"> <li>• If U.S. personnel violate U.S. law, the U.S. has primary right.</li> <li>• If U.S. personnel violate host country law, the host country has primary right.</li> <li>• When U.S. personnel violate both host country law and U.S. law, then U.S. has primary right over U.S. personnel in host country when:               <ol style="list-style-type: none"> <li>1) the violation is committed “inter se” (by Americans against Americans, and</li> <li>2) the offense is carried out by Americans during performance of official duties.</li> </ol> </li> </ul>

*Concurrent Jurisdiction*

When jurisdiction is shared between sending and receiving states, the status agreement is concurrent. Under this type of arrangement, the SOFA divides jurisdiction according to which

nation's laws have been violated: U.S. law, host country law, or both. Violations of U.S. law fall strictly under U.S. jurisdiction. Violations of host country law are subject to host country jurisdiction. However, when the crime in question is in violation of both laws, a formula exists to allocate jurisdiction between states. The host country has primary jurisdiction unless two exceptions are met: 1) when the violation is committed inter se (by Americans against Americans), and 2) when the offense is carried out by Americans during performance of official duties (defined unilaterally by the United States).<sup>27</sup> In these situations, the United States assumes primary jurisdiction. This type of SOFA is intended to ensure a legal framework of checks and balances that guards against excessive claims while also preserving good relations between sending and receiving states.

Under concurrent jurisdiction, U.S. personnel are protected by fair trial guarantees that are comparable to those provided by the U.S. justice system. However, in cases that violate both countries' laws, the right to prosecute can be ambiguous and often conditional on the details of the alleged crime committed. For these cases, the United States often seeks its own jurisdiction pursuant to its request of the host country, which is typically granted. Concurrent SOFAs can become problematic when the United States chooses to assert its legal authority in cases that are dubious or that clearly fall under host jurisdiction.<sup>28</sup> Ambivalence by the United States toward the primary right of host countries can undermine the cooperative nature of SOFAs. Host countries have criticized the terms of jurisdiction as "unequal" or "colonial."<sup>29</sup> Subsequent

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<sup>27</sup> Eichelman, "International Criminal Jurisdiction Issues for the United States Military."

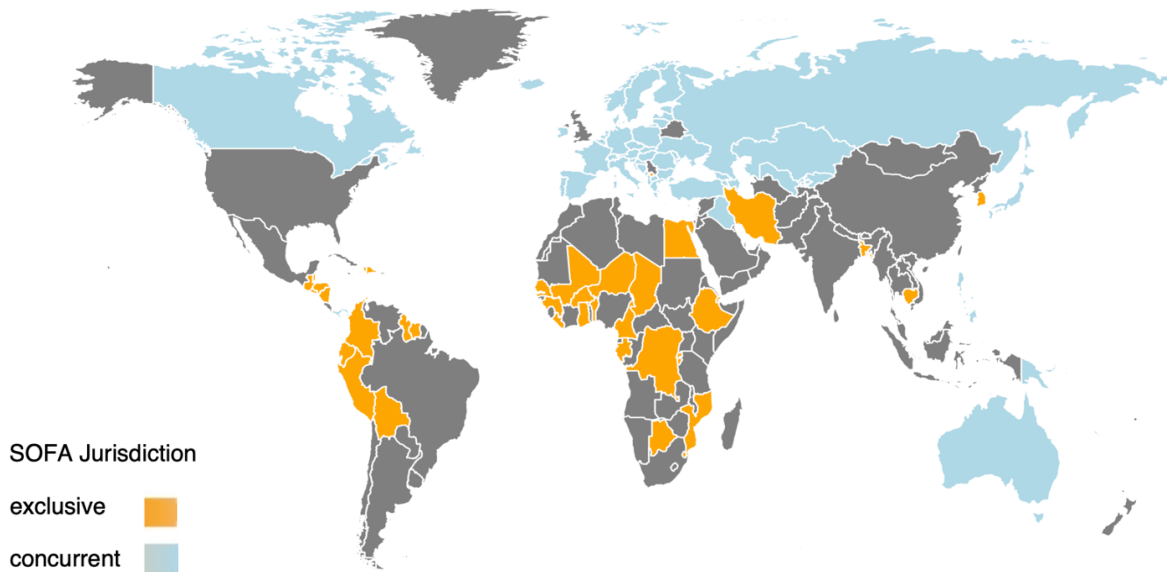
<sup>28</sup> Norton, "United States Obligations under Status of Forces Agreements."

<sup>29</sup> Rijke Ernie Gao, "Between a Rock and a Hard Place: Tensions Between the US-ROK Status of Forces Agreement and the Duty to Ensure Individual Rights Under the ICCPR" *Fordham Int'l LJ* 33 (2009): 585.



renegotiations of SOFAs have involved concerns over a diminution of host sovereignty. SOFA jurisdiction type by country is illustrated in Figure 2.

**Figure 2. World Map of U.S. SOFA Jurisdiction**



### **The Strategic Use of Racial Discrimination in Status of Forces Agreements**

SOFAs are often a strategic response to asymmetric jurisdiction between sending and receiving states. Prior to a SOFA, the host country as a receiver of foreign military personnel retains the exclusive right to adjudicate violations of host country law. Thus, without a SOFA in place, American soldiers are subject to the jurisdiction of the receiving state. In order to minimize this prospect, the United States as sending partner proffers a SOFA to limit legal exposure of its forces to host country courts. Specifically, SOFAs grant the United States either exclusive right or shared right over U.S. troops stationed overseas. In doing so, the agreement transfers legal authority from the host country to the United States, legitimating its enforcement

options against the host country when an American soldier breaks the law. Under the SOFA, U.S. interests in intervening through status protections are vindicated.

The United States does not always pursue unilateral concessions on jurisdiction however. Competition over SOFA jurisdiction as a disputed good between the United States and host countries bears certain costs. Though the United States would prefer to secure sole jurisdiction over its servicemembers whenever and wherever they are deployed, it designs the SOFA to simultaneously constrain its own extraterritorial reach. Concurrent, or shared jurisdiction reflects this decision. To an extent, the trade-off of exclusive jurisdiction signals U.S. commitment to international norms of territorial sovereignty.<sup>30</sup> Such a concession incentivizes host partners to adopt more favorable policies toward its American counterparts.

Not surprisingly, shared jurisdiction is also associated with greater demands for authority by host states. As Yeo suggests, the salience and scrutiny of sovereignty in basing relationships are closely linked to norms of decolonization.<sup>31</sup> By implication, the terms of SOFA jurisdiction confront and amplify similar ideas of statehood and territorial integrity. Concurrent jurisdiction, considered a form of reciprocity between sender and receiver, is sometimes proposed to help assuage host government concerns about incursions on sovereignty.<sup>32</sup> Increased media coverage

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<sup>30</sup> Colonel Richard J. Erickson, Status of Forces Agreements: A Sharing of Sovereign Prerogative, *37 A.F. L. REV.* 137, (1994).

<sup>31</sup> Yeo 2014; Sasha Davis, “The US military base network and contemporary colonialism: Power projection, resistance and the quest for operational unilateralism,” *Political Geography* 30, no. 4 (2011): 215-224.

<sup>32</sup> International Security Advisory Board (ISAB), “Report on Status of Forces Agreements.” 2015.

and better reporting of tragic incidents or crimes committed by foreign soldiers in receiving states also compound assertions of sovereignty by host governments.<sup>33</sup>

At their core, SOFAs reflect the United States' assumptions about potential bias within the legal system of the host country. The agreement anticipates the likelihood that host jurisdiction will render verdicts against American soldiers for reasons other than a conviction of justice. According to the International Security Advisory Board (ISAB), a Federal Advisory Committee tasked with reviewing U.S. negotiation of SOFAs, the United States' key interest in jurisdiction is preventing exposure of its personnel to "an inherently unfair system... that departs fundamentally from U.S. concepts of basic procedural fairness."<sup>34</sup> Some agreements are explicit about prejudicial judgment by publicity, demographic factors, or the content of host country law itself. In a 1998 revised supplementary agreement to the NATO SOFA,<sup>35</sup> authorities of the Federal Republic of Germany (receiving state) consented to refrain from enactments that, by application, would cause injustice or inequality toward visiting forces from NATO member states. In particular, the SOFA prohibits the German judiciary and police from discriminating against any person by reason of her race or nationality, among other attributes.

Concerns over racial discrimination have also surfaced in highly contested cases of foreign custody. In a 2020 report on the detention of American military contractors in Kuwait, a

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<sup>33</sup> Allen, Flynn, and Machain, "Outside the Wire"; Charmaine Willis, "The Right Frame of Mind? An Analysis of Global Anti-US-Military Protests," (September 1, 2019). Available at SSRN: <https://ssrn.com/abstract=3679003>; Jimmy H. Koo, "The uncomfortable SOFA: Anti-American sentiments in South Korea and the US-South Korea status of forces agreement," *Nat'l Sec. L. Brief* 1 (2010): 103; Sue-Je L. Gage, "'We're Never Off Duty': Empire and the Economies of Race and Gender in the US Military Camp towns of Korea," *Cross-Currents: East Asian History and Culture Review* 1, no. 6 (2013): 121-153.

<sup>34</sup> International Security Advisory Board (ISAB), "Report on Status of Forces Agreements." 2015.

<sup>35</sup> Revised Supplementary Agreement (RSA) To Amend the Agreement of 3 August 1959, as Amended by the Agreements of 21 October 1971 and 18 May 1981, to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign forces stationed in the Federal Republic of Germany. <https://www.state.gov/nato-sofa-germany-1993-amendment>.

U.S. official suggested that negative stereotypes of Africans and African Americans in Kuwaiti society played a role in the frequency of Black contractors' arrest and prolonged detention compared to that of their white counterparts.<sup>36</sup> While fewer SOFAs cover U.S. contractors, this case helps to illustrate how interactions between host legal systems and American personnel are implicated by racial biases in exceedingly nuanced ways.<sup>37</sup>

### ***A Theory of SOFA Jurisdiction***

#### *A Petition for Change in Trial Venue*

This argument implies that the terms of U.S. extraterritorial jurisdiction are informed by how racial and ethnic groups are treated within host states. Such reasoning is developed by examining SOFAs as a petition for change in trial venue. At their core, SOFAs are a contract designed to settle disputes over jurisdiction between sending and receiving states. The agreement rendered sets the “venue” in which violations of host country law will be adjudicated. In the way that clients petition for a change in trial venue to increase their “home-court” advantage, the United States drafts the SOFA as a petition for change in jurisdiction in order to maximize its advantage over the host state when allegations are brought against an American soldier. Recall that before a SOFA is created, host countries retain primary right to make and enforce decisions that are legally binding, including over U.S. servicemembers within their territory. To prevent foreign custody and prosecution of its forces, the United States writes the SOFA as a motion to

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<sup>36</sup> Doug Bock Clark, “Arrested, Tortured, Imprisoned: The U.S. Contractors Abandoned in Kuwait,” *The New York Times*, (28 Oct. 2020), [www.nytimes.com/2020/10/28/magazine/american-prisoners-kuwait.html](http://www.nytimes.com/2020/10/28/magazine/american-prisoners-kuwait.html).

<sup>37</sup> Those familiar with the Kuwaiti case intimated that the twenty-eight Black contractors would have likely received comparatively light sentences if covered by a SOFA. However, these contractors found no recourse in their American citizenship. According to the NYT report, under the “give-and-take” of diplomacy, U.S. efforts to effectively address systemic Kuwaiti mistreatment of Black Americans were severely inefficient compared to the lengths taken for white Americans imprisoned overseas.

change the venue that such cases are decided. In doing so, the United States selects its own jurisdiction to adjudicate crimes committed by its soldiers in host countries, effectively shifting legal authority towards itself.

Just as petitions for change in venue are filed by counsel to protect their clients from potential bias, the United States proffers a SOFA to constrain the terms of jurisdiction in ways that protect its interests from foreign courts. This transfer of legal authority through the SOFA endows the United States with key benefits. For example, U.S. military and civilian courts offer American soldiers and counsel the advantage of familiarity with the law, the judges, and the norms of particular circuits of jurisdiction. Venue clauses grant similar leverage.<sup>38</sup> When a party petitions to choose the court where its legal case will be decided, that party typically selects the jurisdiction where its counsel are located.<sup>39</sup> This choice reflects its incentives to reduce potential litigation costs and to obtain advantages over the opposing team that resides outside of the proposed court's jurisdiction.<sup>40</sup>

Like venue transfers, SOFAs are employed in response to factors that render an impartial jury improbable in the original host country venue. When an American soldier is under indictment overseas, she is not necessarily entitled to due process or guaranteed trial by a fair cross section of the community. Further, even if jurors are impaneled in accord with common law practice (*voir dire*), their composite may nonetheless fail to constitute a jury of the defendant's peers. In particular, American soldiers that are accused of violating host country law are subject

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<sup>38</sup> "Choosing a Venue in State Court." *Findlaw*, 21 June 2016, [www.findlaw.com/litigation/legal-system/choosing-a-venue-in-state-court.html](http://www.findlaw.com/litigation/legal-system/choosing-a-venue-in-state-court.html).

<sup>39</sup> Mary LeVine, "What Is a Contract Venue Clause and Why Is It Important to Me?" *Blalock Walters, P.A.* (28 July 2015) [blalockwalters.com/what-is-a-contract-venue-clause-and-why-is-it-important-to-me/](http://blalockwalters.com/what-is-a-contract-venue-clause-and-why-is-it-important-to-me/).

<sup>40</sup> Sophie Nettleton, "Asymmetric Jurisdiction Clauses and Multiple Related Agreements" Allen & Overy LLP, *JD Supra* (2020), [www.jdsupra.com/legalnews/asymmetric-jurisdiction-clauses-and-53779/](http://www.jdsupra.com/legalnews/asymmetric-jurisdiction-clauses-and-53779/).

to the collective judgment of a community in which they lack membership.<sup>41</sup> Perceiving the limits of representative jurisdiction within the host country, the United States considers additional factors to determine if impartiality is compromised. Implicit in this assessment is the abstraction of ‘a jury of peers.’ Since a fair cross section—“peers”—depends on the status or attributes of the defendant and community in question, the United States relies on the characteristics of the host venue to evaluate the potential for bias against its soldiers. Building on the criminal defense literature, if the analogy of a change in trial venue holds, then grounds for a SOFA may also confront the problem of discrimination on the basis of race.

This argument suggests that the terms of SOFA jurisdiction vary by how racial and ethnic minorities are treated within the host country. Just as venue transfers anticipate discrimination on the basis of race in the community of the precedent court,<sup>42</sup> the United States may gauge similar bias when selecting a jurisdiction. Despite its own prejudice, the United States seeks to ensure impartiality of judgment through the SOFA.

This decision is made behind the equivalent of Rawls’ veil of ignorance.<sup>43</sup> Drafted before any individual case is brought against a U.S. servicemember, the SOFA de jure covers white as well as Black, Indigenous, Latino, Asian American, and other historically marginalized groups in the service deployed to host countries. This “original position” from which the terms of SOFA jurisdiction are established deprives signatory states of all knowledge about the personal

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<sup>41</sup> Kim Forde-Mazrui, “Jural districting: Selecting impartial juries through community representation.” *Vand. L. Rev.* 52 (1999): 351.

<sup>42</sup> Darryl K. Brown, “The role of race in jury impartiality and venue transfers,” *Md. L. Rev.*, 53 (1994): 107; Jere W. Morehead, “When a peremptory challenge is no longer peremptory: Batson’s unfortunate failure to eradicate invidious discrimination from jury selection.” *DePaul L. Rev.* 43 (1993): 625; Jessica L. West, “12 Racist Men: Post-Verdict Evidence of Juror Bias.” *Harv. J. Racial & Ethnic Just.* 27 (2011): 165.

<sup>43</sup> John Rawls, “A Theory of Justice” (1971); Rawls, John, and Barbara Herman. *Lectures on the history of moral philosophy*, Harvard University Press (2009).

characteristics of a soldier charged with a crime. It is behind this “veil” that the United States attempts to ensure impartiality of judgment through the terms of the status agreement. Since the United States is itself a racial hierarchy, its concern is orthogonal to its internal racial inequalities. Rather, it is responding to uncertainty about racial and other social hierarchies within host countries and the potential consequences for U.S. servicemembers. As a result, the United States projects its own self-image onto hosts and negotiates at the level of domestic concern from behind the veil. Thus, in order to protect American soldiers from prosecution by foreign courts, I argue that the United States attempts to limit exposure of its racially heterogeneous forces in host countries that exhibit higher levels of racial discrimination. I hypothesize the following:

H1: The United States shares jurisdiction in host countries with lower discrimination towards racial and ethnic groups.

### *Racism and U.S. Extraterritoriality*

Interest in impartiality animates an underlying tension in status agreements, however. While U.S. SOFAs attempt to preserve soldiers’ legal rights, they also reconcile deeply-held beliefs about the inferiority of non-European institutions and courts. This point, I argue, is illustrated by the principle and application of U.S. extraterritoriality. Status agreements legitimate the extraterritorial application of U.S. law. When applied to individuals, it describes a foreigner’s state of exemption from local jurisdiction, typically as a result of diplomatic

negotiation. Although extraterritorial jurisdiction is aptly deemed a tool of U.S. foreign policy, IR has overlooked its imperial application under international legal frameworks.

Racism is constitutive of U.S. extraterritorial law. A key technology of colonial and neocolonial administration, the extraterritorial powers asserted by Western states require the denial of non-European capacity to govern.<sup>44</sup> According to Grovogui, extraterritoriality and native capitulation were reconciled by the belief that Indigenous peoples possessed inferior social habits, moral sentiments, and political structures.<sup>45</sup> Since native populations were assumed to lack appropriate civil institutions and notions of rights, their conquest was deemed justifiable. During the nineteenth and early twentieth centuries, U.S. jurisprudence overseas was explicitly governed by this rationale.<sup>46</sup> U.S. extraterritorial courts imposed rules to regulate interactions among themselves and Europeans and between themselves and Indigenous populations. Western extraterritoriality—what Ruskola calls a “colonialism without colonies”<sup>47</sup>—not only projected racist tropes onto non-European host societies, but it also featured prominently in the diminution of local legal systems and customs. This principle and its uneven application along constructed racial difference is important for understanding the modern American extraterritorial regime, and by implication, status agreements.

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<sup>44</sup> While its origins extend back to Roman and Greek antiquity, extraterritoriality is a prominent feature in classical colonial projects; see Cassel, *Grounds of Judgment*.

<sup>45</sup> Grovogui, *Sovereigns, Quasi Sovereigns, and Africans*.

<sup>46</sup> The legal history of the U.S. Court in China helps illustrate this point. The “unequal treaties” imposed on Qing dynasty China up until the twentieth century institutionalized differential legal treatment of Western merchants and local Chinese populations based on ethnic identity. Though the United States never formally colonized China and received formal consent for its extraterritorial legal presence— “even if only at gunpoint”— the practice of Western extraterritoriality emerged as a key technology of non-territorial imperialism.

<sup>47</sup> Ruskola, “Colonialism without Colonies.”



I argue that hierarchical conceptions of race are reified and “exported” through U.S. extraterritorial jurisdiction and its codification into the SOFA. I develop this claim by examining SOFAs as an interaction of mutually constituted hierarchies. As a legal contract, SOFAs are the product and site of political struggle between sending and receiving states.<sup>48</sup> Both actors contest at the margins the rights and duties in their basing relationship. In this narrow conception of hierarchy, status agreements legitimate power by solving collective action problems and enhancing human welfare. However, I suggest that U.S. SOFAs are simultaneously conditioned by broad orders like American racial hierarchy.<sup>49</sup>

U.S. racism has direct implications for SOFA jurisdiction. Despite the legalization of racial equality in the UN Charter—an apparent disassociation of international law from its colonial legacy—domestic racism persists under the cover of sovereignty and inhabits the conduct of foreign policy.<sup>50</sup> U.S. SOFAs are not an exception. It is from this intersubjectively defined constraint that status agreements are negotiated. SOFAs code “hosts” by constructing eligibility for jurisdiction (shared or exclusive) over American servicemembers within foreign territories. In essence, SOFAs produce both the actors and their repertoires for action within the jurisdictional arrangement. Implicit in the criteria for SOFA jurisdiction are assumptions about

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<sup>48</sup> David A. Lake, Laws and Norms in the Making of International Hierarchies in *Hierarchies in World Politics*, ed. A Zarakol, pp. 17-42, Cambridge, UK: Cambridge Univ. Press (2017).

<sup>49</sup> Aye Zarakol, Theorizing Hierarchies. An Introduction. In *Hierarchies in World Politics*, ed. A Zarakol, pp. 1-14, Cambridge, UK: Cambridge Univ. Press (2017).

<sup>50</sup> Zoltan I. Búzás, Racism and Antiracism in the Liberal International Order, *Int. Organ.* 75: (2021) 440- 463; Richard W. Maass, *The Picky Eagle: How Democracy and Xenophobia Limited U.S. Territorial Expansion*, Ithaca, NY: Cornell Univ. Press (2020); Duncan Bell, “Before the Democratic Peace: Racial Utopianism, Empire, and the Abolition of War,” *Eur J. Int. Relat* 20, no.3 (2014): 647-670; Steven Ward, “Race, Status, and Japanese Revisionism in the Early 1930s,” *Secur. Stud.*, 22, no.4 (2013): 607-639; Srdjan Vucetic, *The Anglosphere: A Genealogy of a Racialized Identity in International Relations*, Stanford, CA: Stanford Univ. Press (2011).

host state capacity to govern.<sup>51</sup> Attempts to attribute legal status and rights to host countries are thus conditioned by notions of “deficiency” that implicate and project U.S. racial order.

The interior principle of extraterritoriality helps illustrate this point. SOFA jurisdiction embraces the assumption that (certain) people are “immune” from the laws of another territory once they enter that territory. Since extraterritoriality relies on the notion of inherent difference between peoples, it “fits” or reinforces prevailing beliefs about racial difference. Though status agreements lack overt, socially objectionable distinctions of race, U.S. racial hierarchy is “silently” translated and reproduced through the principle of extraterritoriality and its codification into the SOFA. The United States ultimately reserves shared jurisdiction for its (white) coequals and denies the rest of the world legal authority over U.S. troops within its borders. Drawing from this theory of racism and extraterritoriality, I hypothesize the following:

H2: The United States withholds jurisdiction from host countries with non-European majority populations.

### **Data and Research Design**

I utilize the Department of State online archive of SOFA transcripts.<sup>52</sup> I also refer to the department’s *Treaties in Force: A List of Treaties and Other International Agreements of the*

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<sup>51</sup> The ISAB notes concerns over the implication that host government judicial systems are not fair; see 2015 report.

<sup>52</sup> <https://www.state.gov/subjects/status-of-forces-agreement/>

United States in Force<sup>53</sup> and the RAND Dataset of U.S. Security Treaties and Agreements,<sup>54</sup> both of which record the universe of SOFAs among other treaties. I estimate the determinants of SOFA jurisdiction using logistic regressions. Standard errors are clustered on the host country to account for possible autocorrelation. Since some SOFAs are written to update or override a previous SOFA, but are signed and implemented as standalone agreements, they are not isolated and thus occur within the context of a coherent, established relationship between sending and receiving state. Analysis is conducted at the country-year unit.

### ***Dependent Variable***

The dependent variable, *Jurisdiction*, measures the division of legal authority over American soldiers stationed in host countries. I code the jurisdiction clause of 254 SOFAs between 1951-2020 as a dichotomous indicator which records concurrent jurisdiction, coded “1” if legal authority is shared between the host country and the United States, and exclusive jurisdiction, coded “0” if legal authority is held exclusively by the United States. When coding this variable, I make a set of important assumptions. Although the RAND dataset counts over 350 SOFAs in existence, I code 254 status agreements based on the public availability of the transcript and additional archival sources that suggest the status of jurisdiction. The data for *Jurisdiction* are coded at the level of national jurisdiction since SOFA terms, including the delegation of legal authority, are bargained and specified at the country level.

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<sup>53</sup> United States. Department of State. Treaty Affairs Staff, and United States. Department of State. Office of the Legal Adviser. *Treaties in Force: A List of Treaties and Other International Acts of the United States in Force on*. Vol. 6346. US Government Printing Office, 1982.

<sup>54</sup> Jennifer Kavanagh, “US Security-Related Agreements in Force Since 1955: Introducing a New Database” RAND PROJECT AIR FORCE SANTA MONICA CA (2014).

## ***Independent Variables***

*Ethnic Civil Liberty Equality*: I proxy for racial discrimination by including the indicator Ethnic Civil Liberty Equality from the Varieties of Democracy (V-Dem).<sup>55</sup> This variable comes from the civil society participation index (v2clsocgrp\_ord) and records the extent to which social groups are able to enjoy access to justice, property rights, freedom of movement, and freedom from forced labor.<sup>56</sup> The measure relates to the question, “Do all social groups, as distinguished by language, ethnicity, religion, race, region, or caste, enjoy the same level of civil liberties, or are some groups generally in a more favorable position?” V-Dem’s measure ranges from 0-4, where “0” corresponds to low ethnic civil liberty equality while “4” relays the converse. Data coverage extends from 1789 to 2019, and I include observations from the 1951-2019 time period. This proxy is intended to capture the extent to which discrimination on the basis of race and ethnicity permeates societies within host countries.

*Non-European Majority*: I use the Ethnic Dimensions (EPR-ED) dataset and the Ethnic Power Relations (EPR) dataset to create a dichotomous indicator which records Non-European Majority, coded “1” if the largest racial/ethnic group within a host country is of non-European descent, and “0” for the converse. The data cover 1946-2017. I use data from the 1951-2017 time period.

*Sharia and Judicial Corruption*: Several potential confounders may also explain SOFA jurisdiction. First, I include *Sharia* and *Judicial Corruption* to proxy for host country legal

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<sup>55</sup> Michael Coppedge, et al, “V-Dem [Country–Year/Country–Date] Dataset v11.1” Varieties of Democracy Project (2021). <https://doi.org/10.23696/vdems21>

<sup>56</sup> Kaitlyn Webster, et al., “Ethnic and Gender Hierarchies in the Crucible of War.” *International Studies Quarterly* 64.3 (2020): 710-722.

systems. The delegation of jurisdiction could be driven by the quality of law within the host state. Due process, individual liberties, and protection from state interference likely matter to the United States when selecting the level of potential exposure American soldiers will have to foreign courts. *Sharia* is coded “1” for host countries that exhibit Islamic legal traditions and “0” for host countries that exhibit no Sharia.<sup>57</sup> As a majority-common law country, the United States may be less inclined to surrender its political authority to host countries that diverge in legal dimension and possibly legal protections. *Judicial Corruption* from V-Dem relates the question, “How often do individuals or businesses make undocumented extra payments or bribes in order to speed up or delay the process or to obtain a favorable judicial decision?” This indicator ranges from 0-4, where “0” corresponds with “always” while “4” relays the converse. *Judicial Corruption* covers 1789 to 2020. I include observations from the 1951-2020 time period. When a host country indicates high levels of judicial corruption, the United States may be less likely to share jurisdiction.

*National Capability Index*: SOFA jurisdiction may depend on the capabilities of host countries. In particular, the degree of legal control a host country cedes to the United States may reflect the bargaining power of that host country, as indicated by their level of international power. I use the Composite Index of National Capabilities (CINC) from the Correlates of War (COW) project,<sup>58</sup> which contains six dimensions of international power: military spending and personnel, total and urban population, iron/steel production, and energy consumption. These data

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<sup>57</sup> Data. World Legal Systems. JuriGlobe Research Group. University of Ottawa.

<sup>58</sup> Greig, M., & Enerline, A. J. (2017). Correlates of War Project, National Material Capabilities (NMC) Data Documentation (Version 5.0) period covered: 1815-2012. *Department of Political Science, University of North Texas*.

have been used widely and cover 1816-2000. I use the CINC score for each state's capabilities for the 1951-2000 time period.

*U.S. Troops Deployed:* SOFA jurisdiction may reflect the size of U.S. troop deployment to host countries. I include a control from R package {troopdata} for the 1951-2020 time period.<sup>59</sup>

*Defense Pact:* It is reasonable to expect alliances to affect the United States' decision to share legal authority over its servicemembers in host countries. As a particularly strong defense pact, I use NATO membership as a control. I include observations from the 1951-2020 time period.

*GDP per capita:* The United States may select more industrialized states for shared SOFA jurisdiction. I include a measure for GDP per capita from V-DEM for the 1951-2018 period.

*U.N. Voting Similarity Index:* Delegation of jurisdiction could depend on how aligned the host country is with the United States. I use the voting similarity index (*agree2un*) in the United Nations General Assembly Voting dataset, which records the total number of votes where both states agree on an issue divided by the total number of joint votes. *U.N. Voting Similarity Index* covers 1946-2011 and ranges from "0" to "1," where "1" represents total affinity between the United States and the host country.

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<sup>59</sup> Allen, Michael A., Michael E. Flynn, and Carla Martinez Machain. 2021. "Global U.S. military deployment data: 1950-2020." *Working Paper*; Kane, Tim. 2005. "Global U.S. troop deployment, 1950-2003." Technical Report. Heritage Foundation, Washington, D.C.; Vine, David. 2015. "Base nation: How U.S. military bases abroad harm America and the World." Metropolitan Books, Washington, D.C.; Allen, Flynn, and Machain, "Outside the Wire."

To address missing observations in some of the independent variables, I use a multiple imputation method.<sup>60</sup> Descriptive statistics, a correlation matrix, and additional supporting information are provided in the appendix.

## Results

Table 2 reports estimates of the determinants of SOFA jurisdiction. Taking into account the imbalance of exclusive SOFA jurisdiction in the sample (exclusive = 64, concurrent = 190), I implement a logit model that accommodates rare events.<sup>61</sup> Standard errors are clustered on the host country to account for possible autocorrelation. The results show that equality on the basis of race and ethnicity within the host country has a strong effect on SOFA jurisdiction. The United States is more likely to share jurisdiction with host countries that exhibit higher levels of equality. When considered to proxy for the level of racial discrimination, this result suggests that the delegation of legal authority over U.S. soldiers stationed overseas is determined, in part, by how the host country treats racial and ethnic minorities. The estimates on the *Ethnic Civil Liberty Equality* indicator are positive, statistically significant, and robust across five imputations (see Appendix). The direction and significance also hold in other model specifications and when coding jurisdiction only by country instead of country-year (Model 2).

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<sup>60</sup> Multiple imputation has been shown to reduce bias and increase efficiency compared to other remedies like list wise deletion and mean imputation. I perform five imputations for each missing cell in the data matrix, creating five “completed” data sets in which the observed values are the same, but the missing values are filled in with a distribution of imputations that reflect uncertainty about the missing data. See Honaker, J., King, G., & Blackwell, M. (2011). Amelia II: A program for missing data. *Journal of statistical software*, 45(7), 1-47.

<sup>61</sup> MLEs such as logit with very rare events can yield biased coefficient estimates if one or more covariates come close to perfectly separating positive and negative cases. See Andrew Gelman et al., “A Weakly Informative Default Prior Distribution for Logistic and Other Regression Models,” *Annals of Applied Statistics* 2, no. 4 (2008): 1360–83; and Gartzke and Lindsay 2020.

**Table 2. Racial Discrimination and Ethnic Majority on SOFA Jurisdiction (ReLogit)**

	SOFA Jurisdiction:	
	Model 1	Model 2
Ethnic Civil Liberty Equality	0.906*** (0.233)	1.480*** (0.301)
Non-European Majority	-2.040*** (0.505)	-1.530*** (0.594)
Judicial Corruption	0.357 (0.372)	0.683 (0.455)
Sharia	-2.650*** (0.812)	-2.200*** (0.833)
National Capability Index	0.710** (0.345)	1.280*** (0.297)
U.S. Troops Deployed	0.0001*** (0.00002)	0.0001*** (0.00002)
Defense Pact	1.720** (0.687)	1.100*** (0.422)
GDP per capita	0.00000 (0.00003)	-0.00003 (0.00004)
U.N. Voting Similarity Index	8.920*** (1.450)	7.130*** (1.450)
Constant	-2.800** (1.340)	-2.580** (1.220)
Observations	254	105

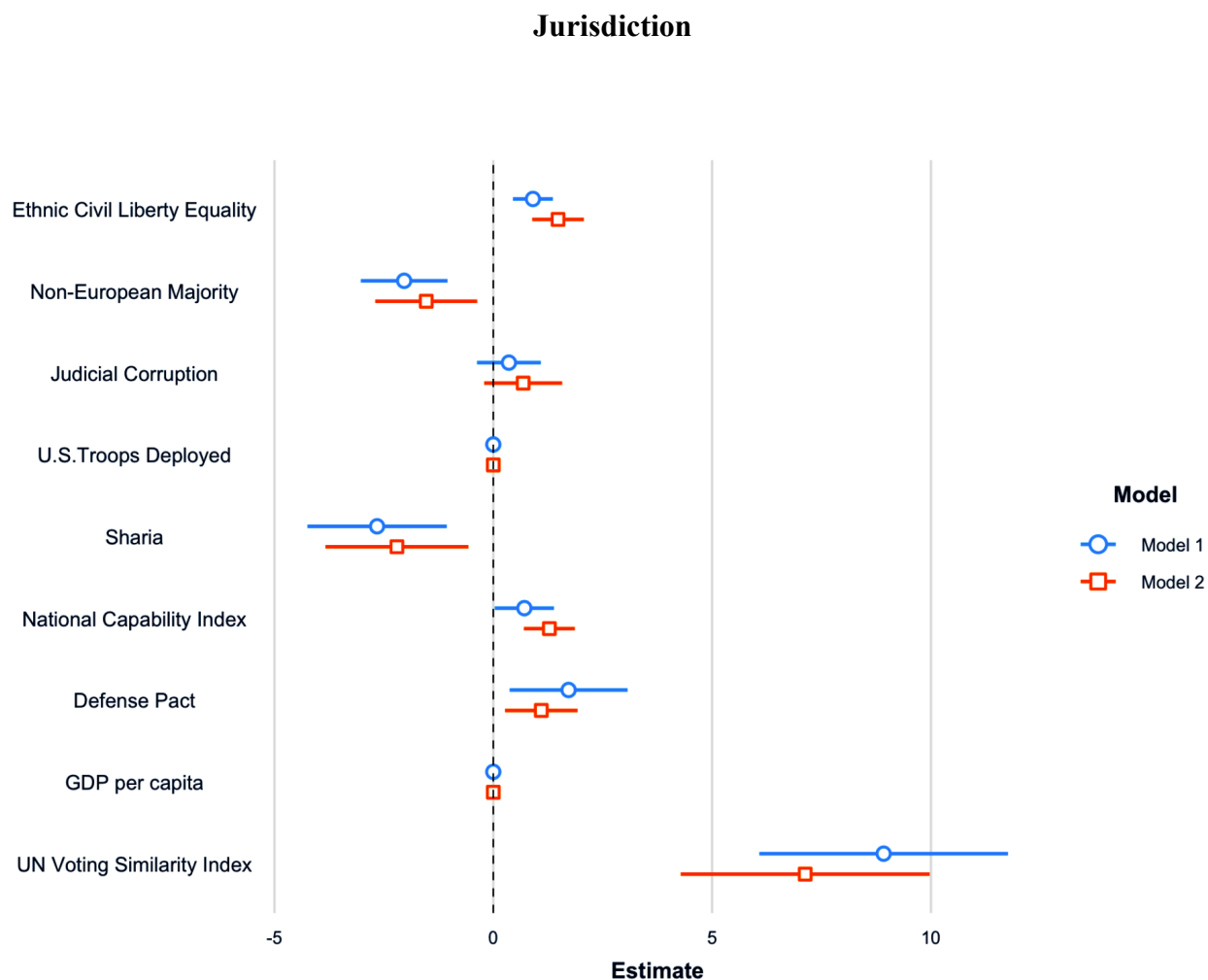
*Note:* \*p<0.1; \*\*p<0.05; \*\*\*p<0.01



The results reported in Table 2 also suggest that the United States is more likely to withhold shared jurisdiction from host partners that have non-European majority populations. The estimates on the *Non-European Majority* indicator are negative and statistically significant. Controlling for other likely explanations, the results show that shared jurisdiction is reserved for countries that are co-ethnic to the United States' white majority. The significance of these findings is consistent across imputations for SOFA jurisdiction over time and hold for three of the five imputed models for jurisdiction by country.

Figure 3 illustrates the marginal effect of racial/ethnic equality and non-European majorities on SOFA jurisdiction. When examined against the control variables, it is clear that racial/ethnic equality and non-European majorities are associated with jurisdiction, though to a lesser extent than UN voting similarity and defense pact. This is not surprising. The United States is more likely to share legal authority with host partners that share strong defense pacts and align on important international issues. Though national capability also matters, it does so to a lesser extent than both racial equality and non-European majorities. Controlling for these alternative explanations, the results indicate that discrimination on the basis of race and having a non-European majority matter for the extraterritorial application of American law.

**Figure 3. Marginal Effects of Racial Discrimination and Non-European Majority on SOFA**



This test of SOFA jurisdiction illuminates certain measurement challenges. Though I use *Ethnic Civil Liberty Equality* as an available measure to proxy for the level of racial discrimination within host states, the operationalization likely captures other forms of bias. Since the concept of race and its associated categories are socially constructed, its operationalization, especially across societies, is particularly difficult. Racial discrimination also correlates with other observable and hidden biases that are immediately and theoretically relevant for understanding the SOFA relationship between the United States and host partners. These may

include anti-American sentiments, xenophobia, and sexism among other covariates.<sup>62</sup> Some correlates undoubtedly proceed from extensive histories of embedded racism that make isolating the construct of race an important and challenging inquiry.<sup>63</sup> In addition, questions that account for race and racism in status agreements likely matter for understanding non-U.S. SOFAs, as well as the decisions of non-U.S. host states.

### **The Paradox of U.S. SOFA Jurisdiction**

This study examines U.S. SOFA jurisdiction as a tension between safeguarding soldiers' rights and deeply-held beliefs about the inferiority of non-European institutions and courts. The United States' concern for impartiality,<sup>64</sup> however, obscures an additional paradox in U.S. military law. Court martial or other disciplinary actions are faced by Black soldiers at disproportionately higher rates than their white counterparts.<sup>65</sup> Systemic racism permeates the U.S. military generally, with some reports finding "egregious" record-keeping of punishments and other instances of noncompliance with DoD policy against racial discrimination.<sup>66</sup> Despite integration of the armed forces, a 1948 landmark policy of Truman's civil rights program, racism remains a constitutive component of U.S. military jurisprudence. Scholars have suggested that

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<sup>62</sup> Cynthia Enloe, *Bananas, beaches and bases*. University of California Press, 2014; Koo 2010.

<sup>63</sup> Bianca Freeman, D.G. Kim and David Lake, "Race in International Relations: Beyond the 'Norm Against Noticing.'" Forthcoming in the *Annual Review of Political Science*.

<sup>64</sup> ISAB, "Report on Status of Forces Agreements."

<sup>65</sup> Kat Stafford, James LaPorta, Aaron Morrison and Helen Wieffering, "Deep-rooted racism, discrimination permeate US military" (2021) <https://apnews.com/article/us-military-racism-discrimination-4e840e0acc7ef07fd635a312d9375413>

<sup>66</sup> Greg Price, "Is the Military Racist? Black Troops Punished Far More Than White Service Members, Study Finds" *Newsweek* (2017) <https://www.newsweek.com/black-troops-study-punishment-622334>; Don M. Christensen and Yelena Tsilker, "Racial disparities in military justice: Findings of substantial and persistent racial disparities within the United States military justice system" *Protect Our Defenders* (2017).

the decision to integrate, alongside other proposals like anti-lynching and anti-poll tax laws, was made under political pressure and resistance, a tension that escalated on the heels of World War II.<sup>67</sup> This advance in civil rights proved crucial to a consolidated U.S. military presence abroad, though the executive order encountered considerable opposition from members of the military.<sup>68</sup> A policy of formal racial equality in the armed forces was strategic for U.S. security. It reflected a vested interest in minimizing disincentives to collective action among deployed servicemembers—a barrier that was profoundly implicated by racism.

U.S. SOFAs bare a similar orientation toward impartiality. Cooperation between sending and receiving states is sustained, in part, by the legal protection of foreign soldiers from indictment by the host authority, especially in cases where such authority is likely to exercise bias. This is not to suggest that U.S. extraterritorial law is any less racialized. American personnel overseas still encounter disproportionate treatment based on race, whether under host jurisdiction or at home.<sup>69</sup> The United States' demand for fairer treatment from host partners than it gives its own citizens internally reflects a type of American exceptionalism that projects racialized notions of deficiency onto host partners through the status agreement and similar interventions.<sup>70</sup>

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<sup>67</sup> John Sibley Butler and Charles C. Moskos, "All that we can be: Black leadership and racial integration the Army way," *New York, NY: Perseus Book Group* (1996).; Executive Order 9981, July 26, 1948; General Records of the United States Government; Record Group 11; National Archives.

<sup>68</sup> Integration would not be realized until the end of the Korean conflict.

<sup>69</sup> Clark, "Arrested, Tortured, Imprisoned."

<sup>70</sup> Harold Hongju Koh, "On American Exceptionalism." *Stanford Law Review* (2003): 1479-1527; Meghana V. Nayak and Christopher Malone, "American orientalism and American exceptionalism: A critical rethinking of US hegemony." *International Studies Review* 11, no. 2 (2009): 253-276; Stephen M. Walt, "The myth of American exceptionalism." *Foreign Policy* 189 (2011): 72.

## Conclusion

This article raises important implications for our understanding of the legal terms that govern American servicemembers overseas. First, this study elucidates an overlooked pattern in the extraterritorial application of U.S. law. At their core, SOFAs mirror venue selection. They anticipate factors that render an impartial jury improbable in the original host country venue.<sup>71</sup> The United States projects assumptions about potential bias onto its host partner, bringing concern over racial discrimination—a particularly salient bias in American law—to bear in selecting a venue. Despite its own prejudices and structural racisms, the United States seeks to guard its strategic interests by “immunizing” American personnel from foreign jurisdictions that exhibit biases. Other accounts examine the assertion of U.S. extraterritoriality at the level of individual crimes committed, typically once a SOFA is in place.<sup>72</sup> This article provides a theory and systematic test of SOFA jurisdiction (exclusive and concurrent) and shows that venue selection responds to racial and ethnic discrimination within the host state.

This study also extends our understanding of extraterritoriality, an active and contested norm in U.S. basing politics, by accounting for its colonial and neocolonial legacies. This approach shifts focus from the extraterritorial application of American law to the principle itself. Since extraterritoriality relies on the premise of inherent difference between peoples and societies, it subtly translates and further normalizes prevailing beliefs about racial difference. Hierarchical conceptions of race are thus reified and “exported” through U.S. extraterritorial

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<sup>71</sup> ISAB, “Report on Status of Forces Agreements.”

<sup>72</sup> Efrat, “Facing US Extraterritorial Pressure”; Cooley, *Base Politics*.

jurisdiction and its codification into the SOFA. I show how the United States imposes concurrent jurisdiction to govern its interactions with predominantly European host partners—allowing these peer countries to try U.S. personnel—while withholding this same right from most non-European states, *ceteris paribus*. These findings complement the literature on basing politics between host governments and the United States, a relationship that is implicated by ongoing debates about sovereignty and empire.<sup>73</sup>

By accounting for race as a constitutive component of interstate interaction, this study implicates the notion that foreign policy within the international liberal order is “race-neutral.” This article contributes a positive theory to the growing body of work that is shifting the debate from if race matters to when and how race matters in IR. Scrutinizing the often implicit assumption that the conduct of security is “above” the “domestic” politics of race and racism enhances our understanding of foreign policy and the biases that permeate its study and practice.

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<sup>73</sup> Allen, Flynn, and Machain, “Outside the Wire”; Willis, “The Right Frame of Mind?”; Gage, “‘We’re Never Off Duty.’”

Table A.1: Descriptive Statistics

Variable	N	Mean	St. Dev.	Min	Max
Jurisdiction	254	0.748	0.435	0	1
Ethnic Civil Liberty Equality	228	2.960	0.863	0.644	3.910
Non-European Majority	254	0.291	0.455	0	1
Judicial Corruption	227	2.720	0.910	0.540	3.920
Sharia	254	0.039	0.195	0	1
National Capability Index	208	0.008	0.011	0.00000	0.057
U.S. Troops Deployed	247	5,071.000	13,637.000	0.000	83,462.000
Defense Pact	241	0.432	0.496	0.000	1.000
GDP per capita	213	13,168.000	11,000.000	579.000	48,957.000
U.N. Voting Similarity Index	189	0.565	0.290	0.000	1.000

Table A.2: Correlation Matrix

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Jurisdiction (1)	1.00	0.30	-0.65	0.53	-0.33	0.26	0.19	0.51	0.43	0.62
Ethnic Civil Liberty Equality (2)	0.30	1.00	-0.40	0.52	-0.27	0.08	0.04	0.20	0.47	0.22
Non-European Majority (3)	-0.65	-0.40	1.00	-0.52	0.34	-0.14	0.01	-0.42	-0.46	-0.50
Judicial Corruption (4)	0.53	0.52	-0.52	1.00	-0.17	0.31	0.22	0.60	0.63	0.59
Sharia (5)	-0.33	-0.27	0.34	-0.17	1.00	-0.04	0.08	-0.21	-0.17	-0.19
National Capability Index (6)	0.26	0.08	-0.14	0.31	-0.04	1.00	0.71	0.35	0.21	0.30
U.S. Troops Deployed (7)	0.19	0.04	0.01	0.22	0.08	0.71	1.00	0.18	0.07	0.21
Defense Pact (8)	0.51	0.20	-0.42	0.60	-0.21	0.35	0.18	1.00	0.40	0.71
GDP per capita (9)	0.43	0.47	-0.46	0.63	-0.17	0.21	0.07	0.40	1.00	0.18
U.N. Voting Similarity Index (10)	0.62	0.22	-0.50	0.59	-0.19	0.30	0.21	0.71	0.18	1.00

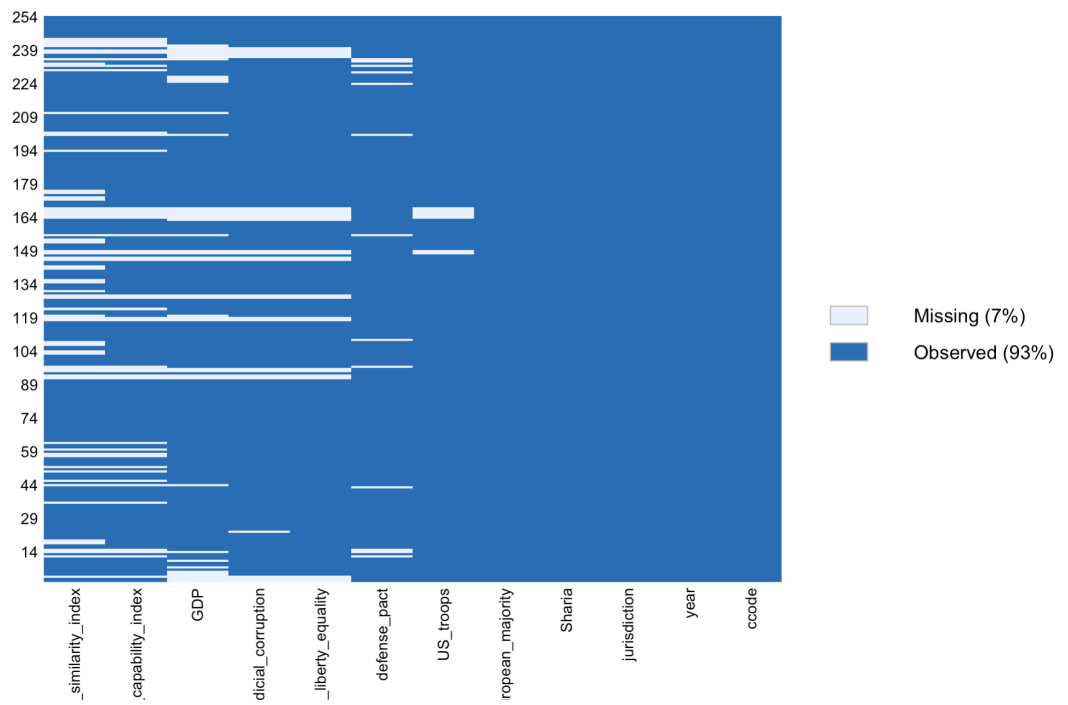


Figure A.1: Missing vs. Observed Values



Table A.3: Racial Discrimination & Ethnic Majority on SOFA Jurisdiction Over Time (ReLogit)

	SOFA Jurisdiction:				
	Model 1	Model 2	Model 3	Model 4	Model 5
Ethnic Civil Liberty Equality	0.902*** (0.228)	0.906*** (0.233)	0.842*** (0.221)	0.845*** (0.229)	0.810*** (0.238)
Non-European Majority	-2.340*** (0.527)	-2.040*** (0.505)	-2.250*** (0.533)	-1.820*** (0.526)	-2.030*** (0.508)
Judicial Corruption	0.560 (0.413)	0.357 (0.372)	0.389 (0.350)	0.220 (0.453)	0.341 (0.388)
Sharia	-2.610*** (0.691)	-2.650*** (0.812)	-2.400*** (0.728)	-3.090*** (0.771)	-2.530*** (0.761)
National Capability Index	0.766** (0.337)	0.710** (0.345)	0.666* (0.371)	0.912*** (0.339)	0.798** (0.347)
U.S. Troops Deployed	0.0001*** (0.00001)	0.0001*** (0.00002)	0.0001*** (0.00001)	0.0001*** (0.00002)	0.0001*** (0.00001)
Defense Pact	1.950** (0.810)	1.720** (0.687)	1.180 (0.891)	0.865 (0.738)	1.830*** (0.655)
GDP per capita	-0.00001 (0.00003)	0.00000 (0.00003)	0.00001 (0.00003)	0.00002 (0.00003)	0.00000 (0.00003)
U.N. Voting Similarity Index	7.280*** (1.190)	8.920*** (1.450)	7.250*** (1.650)	8.930*** (1.500)	7.340*** (1.550)
Constant	-2.190* (1.120)	-2.800** (1.340)	-2.280* (1.270)	-1.980 (1.230)	-1.790 (1.260)
Observations	254	254	254	254	254

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Table A.4: Racial Discrimination &amp; Ethnic Majority on SOFA Jurisdiction (ReLogit)

	SOFA Jurisdiction:				
	Model 6	Model 7	Model 8	Model 9	Model 10
Ethnic Civil Liberty Equality	1.310*** (0.286)	1.480*** (0.301)	1.130*** (0.329)	1.390*** (0.261)	1.120*** (0.289)
Non-European Majority	-0.980 (0.641)	-1.530*** (0.594)	-0.904 (0.629)	-1.220** (0.584)	-1.200** (0.609)
Judicial Corruption	0.062 (0.410)	0.683 (0.455)	-0.061 (0.324)	-0.117 (0.348)	-0.001 (0.358)
Sharia	-2.140*** (0.736)	-2.200*** (0.833)	-1.630** (0.669)	-1.850** (0.755)	-1.860*** (0.638)
National Capability Index	1.020*** (0.338)	1.280*** (0.297)	0.862** (0.341)	1.120*** (0.361)	0.774** (0.308)
U.S. Troops Deployed	0.0001*** (0.00002)	0.0001*** (0.00002)	0.0001*** (0.00002)	0.0001*** (0.00002)	0.0001*** (0.00001)
Defense Pact	0.572 (0.438)	1.100*** (0.422)	1.510* (0.912)	3.250** (1.310)	1.070 (0.789)
GDP per capita	0.0001 (0.0001)	-0.00003 (0.00004)	0.0001** (0.00005)	0.0001* (0.00004)	0.0001 (0.0001)
U.N. Voting Similarity Index	7.120*** (1.480)	7.130*** (1.450)	5.310*** (1.460)	7.000*** (1.640)	5.760*** (1.380)
Constant	-2.830* (1.480)	-2.580** (1.220)	-2.490* (1.320)	-2.380* (1.340)	-2.330* (1.260)
Observations	105	105	105	105	105

*Note:*

\*p&lt;0.1; \*\*p&lt;0.05; \*\*\*p&lt;0.01

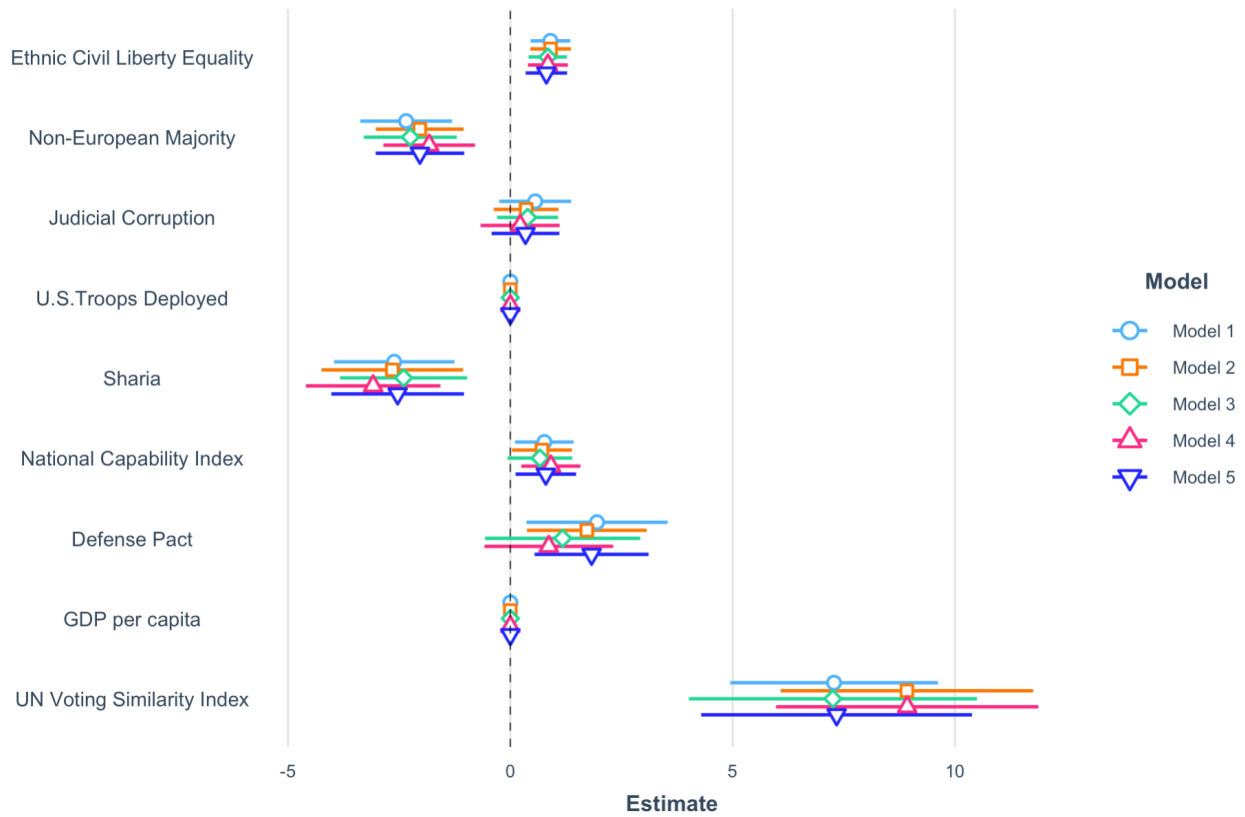


Figure A.2: Marginal Effects of Racial Discrimination and Non-European Majority on SOFA Jurisdiction Over Time (5 Imputations: Models 1-5).

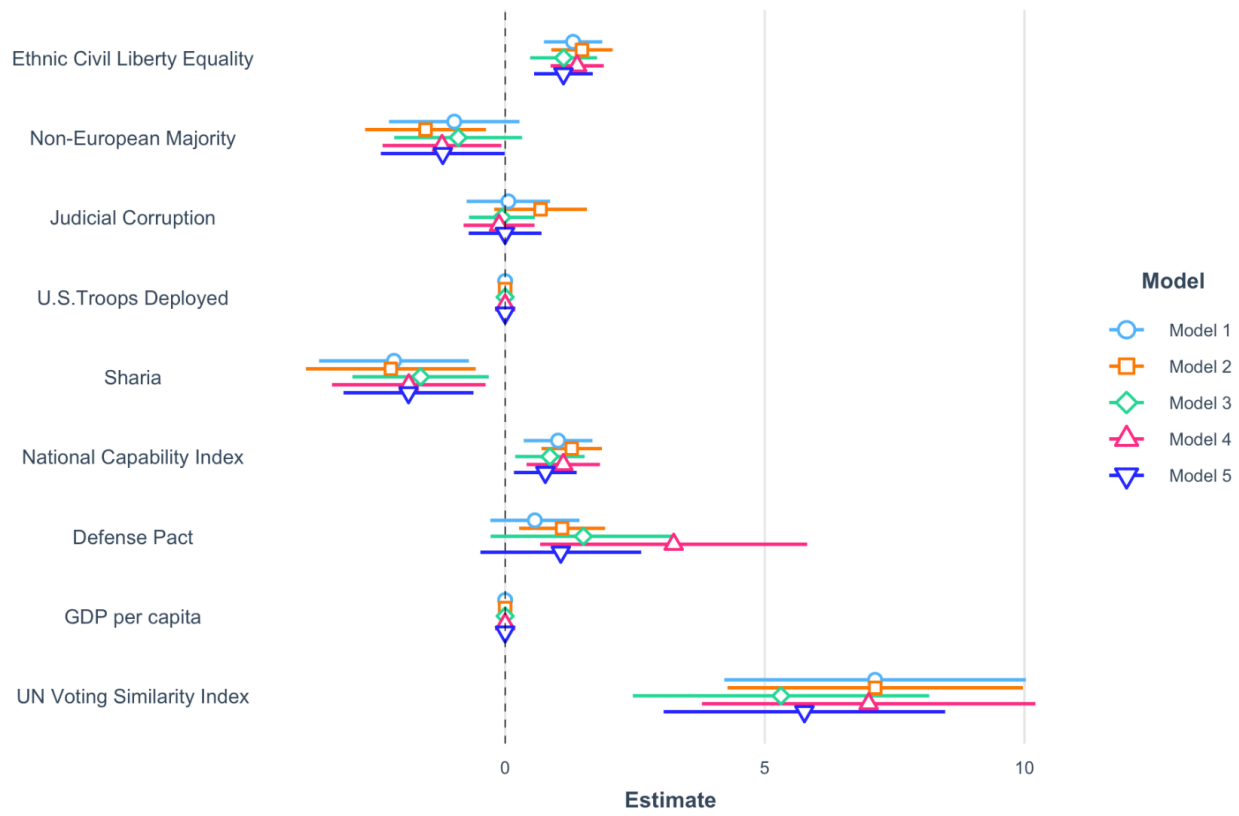


Figure A.3: Marginal Effects of Racial Discrimination and Non-European Majority on SOFA Jurisdiction (5 Imputations: Models 6-10).

Table A.5: Racial Discrimination &amp; Ethnic Majority on SOFA Jurisdiction Over Time (Logit)

	SOFA Jurisdiction:				
	Model 11	Model 12	Model 13	Model 14	Model 15
Ethnic Civil Liberty Equality	1.260*** (0.397)	1.250*** (0.392)	1.350*** (0.436)	1.270*** (0.419)	1.110*** (0.366)
Non-European Majority	-2.770*** (0.734)	-2.370*** (0.691)	-2.760*** (0.768)	-2.180*** (0.784)	-2.300*** (0.634)
Judicial Corruption	0.831 (0.773)	0.519 (0.744)	0.255 (0.630)	0.085 (0.908)	0.470 (0.782)
Sharia	-10.400 (14.300)	-5.850*** (1.660)	-17.500*** (1.270)	-18.400*** (1.210)	-8.680* (4.760)
National Capability Index	1.000* (0.525)	0.946 (0.578)	0.758 (0.475)	1.100** (0.493)	0.998* (0.536)
U.S. Troops Deployed	0.0003 (0.0004)	0.0002*** (0.00003)	0.002* (0.001)	0.001** (0.0004)	0.0002** (0.0001)
Defense Pact	2.620 (1.980)	2.570** (1.270)	0.023 (1.480)	0.341 (1.090)	2.420* (1.340)
GDP per capita	-0.00004 (0.0001)	-0.00002 (0.0001)	0.00001 (0.00005)	0.00002 (0.0001)	-0.00001 (0.0001)
U.N. Voting Similarity Index	8.200*** (1.790)	10.500*** (2.400)	8.470*** (2.810)	10.300*** (2.570)	8.410*** (2.380)
Constant	-2.780* (1.510)	-3.460* (1.790)	-3.400* (1.760)	-2.620 (1.730)	-2.290 (1.550)
Observations	254	254	254	254	254

*Note:*

\*p&lt;0.1; \*\*p&lt;0.05; \*\*\*p&lt;0.01

Table A.6: Racial Discrimination &amp; Ethnic Majority on SOFA Jurisdiction (Logit)

	SOFA Jurisdiction:				
	Model 16	Model 17	Model 18	Model 19	Model 20
Ethnic Civil Liberty Equality	1.850*** (0.493)	2.010*** (0.609)	1.570** (0.621)	2.080*** (0.547)	1.410*** (0.409)
Non-European Majority	-0.789 (1.000)	-1.860* (0.957)	-0.747 (0.883)	-1.110 (0.829)	-1.170 (0.838)
Judicial Corruption	0.131 (0.809)	1.260 (0.868)	-0.192 (0.512)	-0.321 (0.657)	-0.066 (0.660)
Sharia	-8.090*** (2.420)	-5.640*** (1.780)	-4.090** (1.890)	-18.400*** (1.550)	-17.300*** (1.180)
National Capability Index	1.710** (0.712)	1.950*** (0.644)	1.280* (0.667)	1.870** (0.852)	1.010** (0.481)
U.S. Troops Deployed	0.0002*** (0.0001)	0.0002*** (0.00004)	0.0001*** (0.00004)	0.001 (0.001)	0.001 (0.001)
Defense Pact	-0.021 (1.550)	6.860 (12.800)	4.000 (8.110)	11.600*** (3.620)	1.320 (2.490)
GDP per capita	0.0001 (0.0001)	-0.0001 (0.0001)	0.0002** (0.0001)	0.0001** (0.0001)	0.0001 (0.0001)
U.N. Voting Similarity Index	9.280*** (2.770)	9.570*** (2.740)	6.280*** (2.160)	9.160*** (3.000)	6.750*** (1.980)
Constant	-3.170 (1.950)	-3.070* (1.820)	-2.840 (2.000)	-2.770 (1.960)	-2.660* (1.610)
Observations	105	105	105	105	105

*Note:*

\*p&lt;0.1; \*\*p&lt;0.05; \*\*\*p&lt;0.01

# "Overseas US Deployments, International Ordering and Great Power Competition: Lessons from Central Asia"

Alexander Cooley

NOVEMBER 2021

"Overseas US Deployments, International Ordering and Great Power Competition:  
Lessons from Central Asia"

Alexander Cooley  
Director, Harriman Institute, Columbia University  
Claire Tow Professor of Political Science, Barnard College

Prepared for US Deployments Workshop  
“Democratic and Rule-of-law Implications of Military Deployments Abroad”

Organized by Asif Efrat

October 6, 2021

DRAFT: Comments are welcomed and can be sent to the author via email at:  
ac210@columbia.edu. An earlier version of this paper was presented to the Workshop on  
Comparative Basing, US Naval War College.

WordCount 10,353



## **Introduction: Foreign Military Bases and International Orders**

How do the dynamics of international order and its transformation impact the standing of U.S. bases abroad, especially as we enter an era of renewed “great power competition”? What are the mechanisms through which US deployments might be impacted by the rise of revisionist powers like China and Russia? This paper argues that all overseas basing agreements and their underlying bargains—including those of the United States and its strategic competitors—are embedded in a broader ecology of “international orders” and emerging counterorders. Orders are dynamic- they evolve and respond to shifts in prevailing power balances, the allocation and distribution of goods across the system, the salience of prevailing political norms, and the perceived status and prestige of major states in the international system. Accordingly, changes in international and regional ordering dynamics also have the potential to profoundly impact basing politics, either by offering favorable conditions for initially establishing an overseas military base, eroding the purpose or legitimacy surrounding an existing facility and the sending country; or providing new sources of ordering to establish bases by strategic competitors.

Three dimensions of international order—common security communities, goods provision and regime affinities—appear important in determining the legitimacy of the overseas basing. I explore how revisionist competitors may take advantage of each of these and offer some hypotheses. The second section of the paper provides some illustrative examples of both successful and unsuccessful ordering disruptions from the theater of Central Asia, by tracing the evolution of the US, Russian, and Chinese military basing presence across post-Soviet Central Asia from the collapse of the Soviet Union, to the onset of the Global War on Terror (GWOT) in 2001 when US and coalition troops entered the region, to the recent withdrawal of US troops from Afghanistan in 2021.

## Foreign Military Basing and International Orders: Three Dimensions

### *What do we Mean by International order?*

Drawing on my work with Dan Nexon, the international orders led by hegemons or other great powers are comprised of both architectures and infrastructures.<sup>1</sup> The architecture of an order is built from the norms, rules, and values (political liberalism, dynastic rule, or colonialism) that characterize international life and pattern interactions among states and other political entities.<sup>2</sup> An ordering infrastructure refers to the “ongoing, often everyday relations, flows, arrangements, and practices that serve as the sinews of international orders.”<sup>3</sup> The US-led liberal international order (LIO) has been premised on the political principle of political liberalism, the practice of multilateral intergovernmentalism, and economic liberalism, which came to include unfettered financial mobility during the 1990s in addition to free trade. The overseas US basing network has been an important part of the infrastructure of American hegemony under the LIO, facilitating the forward deployment of US forces in peacetime, while allowing US officials to retain public commitment to important systemic norms of political liberalism, alliance obligations and consultation mechanisms, routinized exchanges and military exercises, host country consent, and

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<sup>1</sup> Alexander Cooley and Daniel H. Nexon, *Exit From Hegemony: The Unraveling of the American Global Order*, (New York: Oxford University Press, 2020).

<sup>2</sup> As John Ikenberry notes, “international order is manifest in the settled rules and arrangements between states that define and guide their interaction” in John G. Ikenberry, *Liberal Leviathan*, (Princeton: Princeton University Press, 2011), 14-15.

<sup>3</sup> Cooley and Nexon, *Exit from Hegemony*, 35. In this formulation, international organizations and international institutions serve both as embodiments of these rules and norms, but also as active sites of contestations where hegemons and challengers seek to shape and transform international practices to conform with their interests and purposes.

sovereign equality.<sup>4</sup> Scholars and activists who label the US basing network an “empire” usually emphasize the coerced impositions, made under wartime occupation or colonial rule, that established the basing facilities without local consent or legal validity.<sup>5</sup>

Further, international orders can usefully be thought of as ecologies. Orders can be usefully distinguished depending upon whether they are dense or sparse in terms of the presence of ordering institutions and networks, as well as whether they are monopolized by a single hegemon or contested by multiple powers. These ecological characteristics have important implications for the potential of a regional order to become contested or otherwise rapidly transform. For example, a sparse order that is monopolized has the characteristics of what we regard as hegemony, but it is prone to an emerging competitor rapidly establishing alternative rules, norms, and institutions to challenge this prevailing primary power. This has important implications when we envision how new basing powers such as Russia, China, and other emerging powers, might both emulate prevailing ordering practices that are associated in sovereign basing, especially with the United States. Over time, they might even use their own bases and related ordering practices to crowd out, substitute for, or otherwise attempt to delegitimize the pillars of liberal international order on which US bases rest.

### *The Ordering Dimensions of Foreign Basing Agreements*

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<sup>4</sup> On the global basing network, see Christopher T. Sandars, *America's Overseas Garrisons: The Leasehold Empire*, (New York: Oxford University Press on Demand, 2000). See also: Robert E. Harkavy, *Bases Abroad: The Global Foreign Military Presence*, (New York: Oxford University Press, 1989).

<sup>5</sup> See some analyses of the establishment of US bases on the Japanese island prefecture of Okinawa or the US acquisition of Diego Garcia in the Indian Ocean that displaced the Chagosian islander population. See: Chalmers Johnson, ed. *Okinawa: Cold War Island*, (Oakland: Japan Policy Research Institute, 1999); and David Vine, *Island of Shame*, (Princeton: Princeton University Press, 2011).

What then are the ordering dimensions of contemporary basing arrangements? We can think of three ways in which base hosts are integrated into broader international and regional ordering architectures and infrastructures: common security institutions and communities; base-related goods and goods substitution; and the normative principles that bind the regimes of base hosts and senders.

### *Security Institutions and Communities*

In some cases, basing agreements themselves might be embedded within a greater overall security framework, such as an alliance (NATO), a common defense treaty (US-Japan Mutual Security Treaty) or a security community. How basing agreements are presented and legally justified domestically in the host is often critical for maintaining domestic legitimacy and its enduring commitment. Invoking a common security threat and the need for a joint territorial defense of the host is common, but often insufficient to guarantee basing access, while legitimatizing practices have varied within the same region and time period. For example, US bases in Italy during the Cold War and post-Cold War eras have routinely been referred to almost exclusively as NATO facilities, whereas the basing agreements in Greece and Spain in the 1980s, renewed under fiery socialist prime ministers who publicly opposed membership in NATO, were designated as Greek and Spanish facilities, respectively.<sup>6</sup> In Greece, elites openly dismissed the direct Soviet threat, but saw maintaining US bases as critical for ensuring that Washington keep a check on rival Turkey's military ambitions.<sup>7</sup> The Turkish government has always distinguished

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<sup>6</sup> On the different legitimation strategies employed in US bases in Southern Europe, see Alexander Cooley, *Base Politics: Democratic Change and the US Military Overseas*, (Ithaca and London: Cornell University Press, 2008).

<sup>7</sup> Eirini Karamouzi, "Negotiating the American Presence in Greece: Bases, Security and National Sovereignty," *The International History Review*, (May 2021), DOI: [10.1080/07075332.2021.1925327](https://doi.org/10.1080/07075332.2021.1925327).

between US bases serving US or bilateral purposes, which it has periodically halted, and the NATO or multilateral function of the US presence in Incirlik. As Yeo has explored, a common security purpose that is publicly articulated by elites in both the host and sending state can be critical for maintaining public support for the facility amidst vocal social protests.<sup>8</sup>

The management of base-related crises and incidents can also feed and intensify contending narratives surrounding the exact security purposes and mission of the US presence abroad. Of special importance are base-related accidents and crimes involving US service personnel that have been proven especially politically contentious and damaging to security relations in Japan and Korea. Perhaps the most infamous post-Cold War incident occurred in 1995 when three US servicemen sexually assaulted a 12-year-old Okinawan girl on the island prefecture. The attack plunged bilateral US-Japanese relations into a crisis and mobilized anti-base activists and local politicians on the island.<sup>9</sup> In order to smooth relations Tokyo and Washington agreed to a number of measures, including relocating the Futenma Marine Corps Air Station near the crowded city of Ginowan to a more remote location on the island. The US presence remains contentious for many Okinawans, not least because of the legacy of both the brutal Battle of Okinawa and the period of “colonial” administration by the US Navy until the island’s reversion to Japan in 1975.

Tellingly, not all base-related accidents produce damaging domestic reactions. One of the most tragic and gruesome US-base related accidents in the post-Cold War era—when a Marine aircraft that was flying below a regulation height in the Italian Alps severed a cable of a ski lift,

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<sup>8</sup> Andrew Yeo, *Activists, Alliances, and Anti-US Base Protests*, (Cambridge: Cambridge University Press, 2011).

<sup>9</sup> On the episode, its handling and significance for US-Japan alliance management, see Miyume Tanji, *Myth, Protest and Struggle in Okinawa*, (London and New York: Routledge Press, 2007); and H.D.P. Envall and Kerri Ng, "The Okinawa ‘Effect’ in US-Japan Alliance Politics," *Asian Security* 11, no. 3 (Winter 2015): 225-241.

sending 18 to their deaths—did not inflict long term damage to US-Italian relations or jeopardize the legal standing of the base at Aviano. Rather, as Carla Monteleone has explained, the exoneration of the pilot by a US military tribunal gave new impetus to the two sides to adopt new cooperative operational procedures and initiatives to improve community relations.<sup>10</sup>

It follows that revisionist competitors, in an effort to delegitimize the US presence, could employ either “brokering” or “wedging” strategies.<sup>11</sup> Brokering would involve trying to embed the target country in a new framework of bilateral or regional security cooperation. For example, Russia’s Collective Security Treaty Organization (CSTO) present itself as a NATO-style body guarding against transnational and territorial threats in Eurasia, but the treaty also includes a clause— which the Russians are keen to remind members— that member states are prohibited from agreeing to the stationing of foreign military troops without the consent of the other treaty members. Wedging is the inverse- attempting to break down public support for the US-affiliated security community, by either supporting anti-US political factions or a base-related disinformation campaign. For example, both Russia (especially in the Black Sea bases hosted by Romania and Bulgaria) and China (attempting to play on Okinawan divisions with mainland Japan)— have used social media to disseminate anti-US and anti-US basing messages.

### *Bases and Goods Substitution*

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<sup>10</sup> Carla Monteleone, "The Evolution of the Euro-Atlantic Pluralistic Security Community: Impact and Perspectives of the Presence of American bases in Italy," *Journal of Transatlantic Studies* 5, no. 1 (2007): 63-85.

<sup>11</sup> On brokering and wedging, see Alexander Cooley and Daniel Nexon, “‘The Empire Will Compensate you’: The Structural Dynamics of the U.S. Overseas Basing Network,” *Perspectives on Politics* 11, no. 4 (2013): 1034-50.

A second area where basing relations are implicated in international ordering is in the array of goods associated with agreements. As David Lake explores in his account of the underlying dynamics of US global hierarchy, the underlying bargain between the US and its security clients was one of providing security—as measured and substantiated by US troops abroad—in exchange for concessions over elements of their sovereignty and political autonomy.<sup>12</sup> Indeed, major security clients, especially major base hosts such as Germany, Korea, and Japan, subsidize the presence of US forces by paying substantial amounts of Host Nation Support—a fact framed by former US President Trump as an example of allies “taking advantage” of the United States.<sup>13</sup>

However, with other categories of base hosts, the sending country has had to offer other types of goods and assets—including club goods or private payoffs to regimes—as partial quid pro quo for establishing and maintaining basing rights. In the US case, a number of allies that initially provided basing facilities for minimal quid pro quo in the 1950s and 1960s (including Greece, Spain, Turkey, and the Philippines), in the 1970s and 1980s demanded escalating packages of rents and other aid for ceding basing rights.<sup>14</sup> Base-related goods included security assistance (Military Assistance Programs) and weapons sales on concessionary terms (Foreign Military Financing), as well as more direct forms of economic payments.<sup>15</sup> In some cases, the United States used its hegemonic leadership position in international financial institutions (IFIs) to push for the disbursement of goods such as development assistance and financial packages as more

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<sup>12</sup> David A. Lake, *Hierarchy in International Relations*, (Ithaca and London: Cornell University Press, 2011).

<sup>13</sup> Jeffrey W. Hornung and Scott W. Harold, “Amid COVID-19, the US needs to Host Nation Support Talks,” *The Diplomat*, 12 June 2020, <https://thediplomat.com/2020/06/amid-covid-19-the-us-needs-to-rethink-its-approach-to-host-nation-support-talks/>.

<sup>14</sup> J. McDonald and D. Bendahmane eds., *US Bases Overseas: Negotiations with Spain, Greece, and the Philippines*, (Ann Arbor: Westview Press, 1990).

<sup>15</sup> Robert E. Harkavy, *Bases Abroad*, (Oxford: Oxford University Press, 1989 and Stockholm: SIPRI, 1989), 340-56.

indirect forms of quid pro quo. For example, in the Philippines, as part of its support for anti-communist Ferdinand Marcos, the United States both provided large rental packages for its military bases, but also supported IFIs such as the World Bank and IMF to continue to lend to Manila.<sup>16</sup> Similarly, when the French secured basing rights from its African colonies in 1960s, they insisted on keeping the newly independent regimes in the Franc Zone, and therefore retained control over large portions of their monetary policy.<sup>17</sup>

Providing public, club, and private goods is an important way in which base hosts can take advantage of ordering mechanisms to establish and sustain basing deals. It also then follows that competing great powers can use the counterordering mechanism of “goods substitution”<sup>18</sup>—and the offer of rival or competing goods of comparable quality and/or less intrusive political conditions to undermine the status of the existing basing deal or offer new incentives for their own bases. Here, the records of Russia and China are mixed and their capabilities quite different. Moscow has periodically used economic crises as an opportunity to try and obtain access from small states on the margins of the US security community, though most of these efforts have been unsuccessful. For example, following the 2008 financial crisis Russia approached the government of Iceland with the prospect of extending an emergency loan to the cash-strapped country in exchange for being granted access to the old US basing facility at Keflavik airport.<sup>19</sup> However, given China seems poised to have more success given the significantly larger overseas

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<sup>16</sup> Raymond Bonner, *Waltzing with a Dictator: The Marcoses and the Making of American Policy*, (New York: Crown Publishing, 1988).

<sup>17</sup> Rawi Abdelal, *National Purpose in the World Economy*, (Ithaca and London: Cornell University Press, 2001), 150-202.

<sup>18</sup> See Morten Skumsrud Andersen, Alexander Cooley, and Daniel H. Nexon, eds. *Undermining American Hegemony: Goods Substitution in World Politics*, (Cambridge: Cambridge University Press, 2021).

<sup>19</sup> Rebecca Adler-Niden, Benjamin Decarvalho, and Halvard Leira, “Goods Substitution at High Latitude: Undermining Hegemony from below in the North Atlantic,” in *Undermining American Hegemony: Goods Substitution in World Politics*, ed. Morten Skumsrud, Alexander Cooley, and Daniel H. Nexon, (Cambridge: Cambridge University Press, 2021).



investments and development assistance that it is providing, especially under its signature Belt and Road Initiative (BRI). Obtaining exact data is difficult, but countries that have confirmed (or are strongly rumored to be considering) hosting Chinese security facilities include Djibouti, Cambodia, Tajikistan, and Pakistan- all appear to have turned away from multilateral lenders and relied more heavily on Chinese lending. It also stands to reason that basing hosts may explore the prospect of obtaining additional economic goods from Beijing as a means of rejecting existing US basing arrangements or ratcheting up their demands for base-linked goods from Washington. Again, not all such attempts are successful, but the fact that competing powers do attempt to link counterorder “goods substitution” with base-related access is instructive.

### *Ordering Principles and Regime Types*

Third, basing deals advance prevailing norms about what constitutes legitimate forms of political governance and social practices between the sending and hosting regime. In the case of the American-led hegemonic system, political liberalism has been a major– but not exclusively so– political ordering principle, establishing the idea that governments should protect a minimal set of rights among citizens. Of course, US policy in practice has often not reflected these values— especially in supporting right-wing dictatorships.<sup>20</sup> But Cold War basing relations were deeply enmeshed in global ideological competition: US-allied regimes and security clients received US assistance and goods by burnishing their anti-communist commitments, just as the Soviet Union tried to advance socialism in the Third World by aiding the rise of self-identifying Marxist-Leninist regimes and integrating these allies and clients into a networks of communist military

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<sup>20</sup> David F. Schmitz, *The United States and Right-wing Dictatorships, 1965-1989*, (Cambridge: Cambridge University Press, 2006).

assistance, development, and technical expertise.<sup>21</sup> US officials supported the authoritarian practices of certain base hosts such as Franco's Spain and South Korea under military rule, making the US military itself susceptible to political backlash during democratization and demands for renegotiations of politically sensitive elements of these deals.<sup>22</sup> But Conservatives in the United States during the Cold War claimed that maintaining relations with right-wing authoritarian regimes was practically necessary. Jean Kirkpatrick's famous essay argued that by aggressively pushing US allies and security clients to improve their human rights practices, the Carter Administration had allowed more unfriendly ideological forces—communism and Islamic militants—to seize power in Chile and Iran.<sup>23</sup>

Still, some political practices and agreements with base hosts have proven unacceptable as prevailing social norms change. Ingimundarson has revealed how in 1951 the US initially went along with the Icelandic government's secret demand to ban the stationing of African-American soldiers on its territory, a practice that was publicly denied by both sides until it was lifted in the 1970s in response to US Presidential pressure.<sup>24</sup> Even in the classic authoritarian case of Marcos in the mid-1980s, most US officials saw a tipping point internally after which base access was likely to be jeopardized by continuing to side with Marcos over his main political opponent Cori Aquino. To a large extent, this drove US officials to facilitate the 1986 exit and exile of the Philippine autocrat.

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<sup>21</sup> See Yordanov's account of Cold War relations in the Horn of Africa: Radoslav A. Yordanov, *The Soviet Union and the Horn of Africa during the Cold War: Between Ideology and Pragmatism*, (Lanham: Lexington Books, 2016).

<sup>22</sup> See discussions in Cooley, *Base Politics* and Kent E. Calder, *Embattled Garrisons*, (Princeton: Princeton University Press, 2007).

<sup>23</sup> Jean Kirkpatrick, "Dictatorships and Double Standards," *Commentary* 68, no. 5 (1979): 34.

<sup>24</sup> Valur Ingimundarson, "Immunizing Against the American Other: Racism, Nationalism, and Gender in US-Icelandic Military Relations during the Cold War," *Journal of Cold War Studies* 6, no. 4 (2004): 65-88.

In the post-Cold War era, we can think of two distinct trends and periods in terms of regime values. Initially, the end of the Cold War initially elevated the importance of political liberalism and liberal values as the main basis for security partnership and basing relationships. Throughout the 1990s, liberalism was ascendant in a unipolar moment and US-dominated international order. The era saw the unprecedented post-communist transitions (economic and political), the expansion of transatlantic institutions along liberal principles, and US-led military interventions in the Balkan Wars. NATO completed its greatest enlargement in 2004 by adding ten new members, mostly post-communist states, all having undertaken a number of liberal reforms that included ensuring civilian control over the military, guaranteeing minority rights and media freedoms, and transparency in legislative bodies.<sup>25</sup>

But the events of 9/11 and the onset of the Global War on Terror had transformative effects on the global salience of political liberalism. As Kim Lane Scheppele observed, the 2000s saw a range of anti-constitution measures adopted around the world by governments that included increasing surveillance over their citizens, empowering security services, and creating a parallel set of legal processes outside of the criminal code.<sup>26</sup> Moreover, governments used this new political framework to brand political opponents and sometimes entire classes of citizens as terrorists or extremists. For example, Roberts has shown how the Chinese government used the GWOT to brand ethnic Uyghurs residing in Xinjiang as extremists and emphasize their affiliation or even invent non-existent connections with Al-Qaeda.<sup>27</sup> This emerging tension between political liberalism and counterterrorism practices also directly implicated US bases, as

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<sup>25</sup> Rachel A. Epstein, *In Pursuit of Liberalism: International Institutions in Postcommunist Europe*, (Baltimore: John Hopkins University Press, 2008).

<sup>26</sup> Kim Lane Scheppele, "Law in a Time of Emergency: States of Exception and the Temptations of 9/11," *University of Pennsylvania Journal of Constitutional Law* 6, no. 5 (2004): 1001.

<sup>27</sup> Sean Roberts, *The War on the Uyghurs*, (Princeton: Princeton University Press, 2020).

a number of European governments collaborated with US authorities in allowing their territory to be used as actual locations of “black sites” for detentions of terrorist suspects or as transit hubs for so-called extraordinary renditions.<sup>28</sup> More broadly, the protection of regime security and anti-terrorism have been widely promoted, among other illiberal norms, within new regional security arrangements led by both Russia and China like the Shanghai Cooperation Organization (SCO)<sup>29</sup>, in addition to the counternorms of “civilizational diversity,” associated with China, and the importance of traditional values, often pushed by Russia.<sup>30</sup> Finally, the so-called Color Revolutions (2003-2005) in Eurasia and Arab Spring (2011-2013) in the Middle East—where authoritarian governments were toppled following democratic protests, while viewed in the West as democratic protests and uprisings—were framed by Moscow, Beijing, and other regional actors as illegitimate regime changes instigated by the West.

In sum, foreign military basing relations are implicated in important aspects of international orders that include security communities, goods substitution, and political norms of regime types. The particular configuration of a prevailing order may enable certain basing agreements to be established and maintained in some eras, and challenged in others, especially when confronted with counterordering challenges of great power competitors to US hegemony and influence. Table 1 displays some of these ordering pathways.

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<sup>28</sup> Parliamentary Assembly Council of Europe (PACE) Explanatory Memorandum, Dick Marty, “Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report,” 7 June, 2007, [http://assembly.coe.int/committeedocs/2007/emarty\\_20070608\\_noembargo.pdf](http://assembly.coe.int/committeedocs/2007/emarty_20070608_noembargo.pdf).

<sup>29</sup> Stephen Aris, “The Shanghai Cooperation Organisation: ‘Tackling the three evils’. A regional response to non-traditional security challenges or an anti-Western bloc?” *Europe-Asia Studies* 61, no. 3 (2009): 457-482; and Roy Allison, “Regionalism, regional structures and security management in Central Asia,” *International Affairs* 80, no. 3 (2004): 463-483.

<sup>30</sup> Alexander Cooley, “Authoritarianism Goes Global: Countering Democratic Norms,” *Journal of Democracy* 26, no. 3 (2015): 49-63.

Table 1: International Ordering and Pathways that Might Affect Basing Deals

International Ordering Feature	Revisionist State Action	Example
Security Community	Brokering: Offer an alternative new regional security community	Russian-led Collective Security Treaty Organization
Security Community	Wedging: Erode support for existing US affiliation	Conduct disinformation campaign about US base-related activities; foment autonomy or independence in regional or island hosts
Public and Club Goods	Goods Substitution: offer alternative sources of security and economic goods than US; offer comparable goods with fewer conditions	Russian offers to Iceland, Vietnam or Cyprus for emergency loans in exchange change for access rights
Regime Political Values	Criticize destabilizing consequences of political liberalism + US push for democratization	SCO declaration about sovereign non-interference and support for member country designation of “terrorists”

### International Orders and Foreign Military Bases in Post-Cold War Central Asia

We can see illustrations of these international ordering dynamics and revisionist challenges in the evolving base politics of post-Cold War Central Asia—the region comprised of the five former Soviet republics, turned independent states of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. Central Asia is an instructive region for observing changing regional ordering dynamics and basing practices. After a decade of relative calm following the collapse of the Soviet Union, the events of 9/11 propelled the United States and its NATO allies to establish a network of overseas bases whose political standing evolved dramatically over three phases: 1. US hegemony and broad acceptance (2001-2004); 2. Contestation of liberal ordering and counterordering projects (2004-2014); 3. Ascendant revisionism by Russia and China, intensification of regional engagement, and vetoes on a potential US return (2014-2021).

*The 1990s: Managing Post-Soviet Extrication and Basing Legacies*

Until the events of September 11, 2001, the post-Soviet Central Asian states were relatively removed from major conflicts or geopolitical turmoil. Throughout the 1990s the Central Asian states had to manage the practical challenges brought by the onset of independence and extrication from Soviet-era structures and legacies.<sup>31</sup> Domestically, the five states were regarded as part of the post-communist region, but—with the partial exception of Kyrgyzstan—languished in the speed and depth of their political and economic transitions, especially compared to their East Central European counterparts. In terms of their foreign policies, all of the states attempted to strengthen their sovereignty and independence by developing a range of external ties to both Western and Asian partners, while still remaining deferential to Russia on security-related matters.<sup>32</sup> Regional cooperation and integration were limited, constrained by patrimonial politics and concerns about regime security.<sup>33</sup> In terms of basing posture, Russia initially retained a monopoly on the region's Soviet-era legacy bases, then most significant of which was in Tajikistan's capital of Dushanbe, where Moscow maintained 5,000 troops of the 201<sup>st</sup> Motorized division, its largest military base outside of the territory of the Russian Federation, which had intervened decisively on behalf of the nascent Tajik government during the Tajik Civil War in

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<sup>31</sup> Alexander Cooley, *Logics of Hierarchy*, (Ithaca and London: Cornell University Press, 2005).

<sup>32</sup> Rajan Menon, "In the Shadow of the Bear: Security in Post-Soviet Central Asia," *International Security* 20, no. 1 (1995): 149-181; and Martha Brill Olcott, *Central Asia's Second Chance*, (Washington, DC: Brookings Institution Press, 2010).

<sup>33</sup> Roy Allison, "Virtual regionalism, regional structures and regime security in Central Asia," *Central Asian Survey* 27, no. 2 (2008): 185-202; and Kathleen Collins, "Economic and security regionalism among patrimonial authoritarian regimes: The case of Central Asia," *Europe-Asia Studies* 61, no. 2 (2009): 249-281.

1992.<sup>34</sup> Russia also maintained a network of missile testing facilities at Kasputin Yar in northern Kazakhstan and operated the space-launch facility at Baikonur in Kazakhstan via an initial twenty-year lease that was agreed upon in 1994. The Russian bases generated little political attention or controversy during the 1990s.

This relative tranquility would change overnight following the events of 9/11. From sleepy backwater, Central Asia quickly came to be viewed as the frontline of the Global War on Terror and a logistical key to Operation Enduring Freedom in Afghanistan.<sup>35</sup> US planners entered into almost immediate negotiations with the government of Uzbekistan to use a Soviet-era airbase near the city of Khanabad in the south of the country, close to the Afghan border. Uzbekistan's President Islam Karimov approved the facility known as Karshi-Khanabad (K2) for support operations, but not active combat missions. Soon after US planners were looking for a second major hub and after considering the use of Tajikistan, decided on using a part of the civilian international airport of Manas in Kyrgyzstan, near the capital of Bishkek beginning in December 2001. Interestingly, throughout 2002, Manas hosted about 1,900 military personnel and flight crews, half of which came from nearly a dozen coalition countries—including Australia, Denmark, France, Italy, Spain, Norway, and South Korea.<sup>36</sup> In addition, two other NATO powers concluded their own enduring bilateral basing arrangements with Central Asian hosts: Germany also contracted with the government of Uzbekistan to use a facility at Termez on the Afghan border (the first time Germany had established an overseas military base since World

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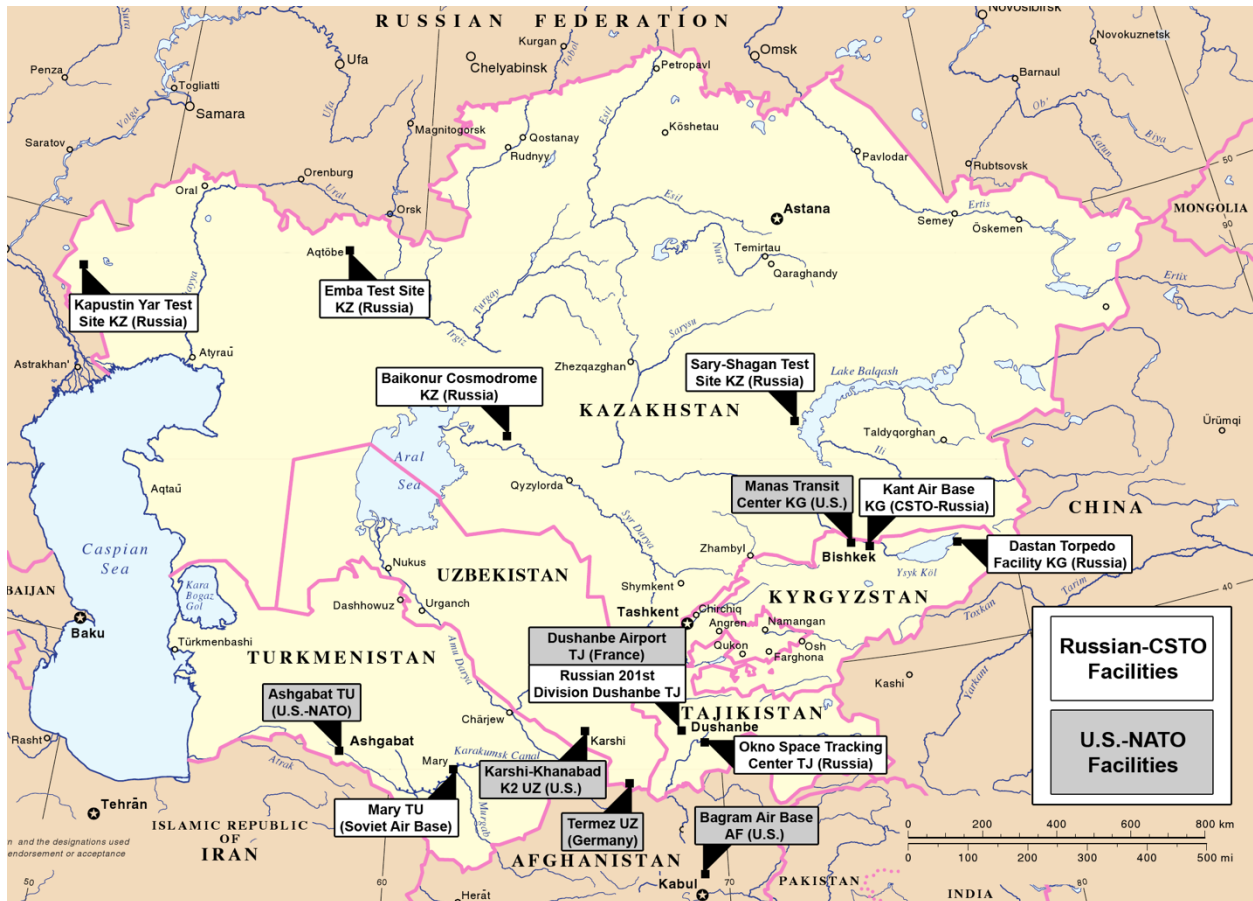
<sup>34</sup> Jesse Driscoll, *Warlords and Coalition Politics in Post-Soviet States*. (Cambridge: Cambridge University Press, 2015), 1-46.

<sup>35</sup> Alexander Cooley, *Great Games, Local Rules: The New Power Contest in Central Asia*, (Oxford: Oxford University Press, 2012), 30-51.

<sup>36</sup> Alexander Cooley, "Depoliticizing Manas: the Domestic Consequences of the US Military Presence in Kyrgyzstan," PONARS Eurasia Memo #362, February 2005, [https://www.ponarseurasia.org/wp-content/uploads/attachments/pm\\_0362.pdf](https://www.ponarseurasia.org/wp-content/uploads/attachments/pm_0362.pdf).

War II), while France agreed with the government of Tajikistan to use a portion of the international airport of the capital Dushanbe.<sup>37</sup> international airport of the capital Dushanbe.<sup>37</sup>

Figure 1: Map of Major NATO and Russian Military Bases and Facilities in Central Asia, c. 2003



In addition to the two high-profile bases at K2 and Manas, the US signed a number of agreements with all of the Central Asian states securing overflight rights, emergency landing,

<sup>37</sup> On the differences in US and German interactions with the Uzbek government and its impact on basing-related matters, see: Teles Fazendeiro and Bernardo da Silva Relva, “Keeping Face in the Public Sphere: Recognition, Discretion and Uzbekistan’s Relations with the United States and Germany, 1991-2006,” *Central Asian Survey* 34, no. 3 (2015): 341-356.



and refueling agreements, though many of these were kept secret. For example, it was only 2009 when an investigative report confirmed that the US Pentagon had stationed a small contingent of personnel at the Ashgabat airport, Turkmenistan's capital, to provide refueling operations to US and NATO aircraft.<sup>38</sup> The United States also increased its security assistance to all of the Central Asian states in the wake of 9/11, with the largest share going to Uzbekistan in what appeared to be a partial quid pro quo for extending basing access, despite prevailing concerns in the human rights community about the authoritarian excesses of the Uzbekistan's internal security services.<sup>39</sup>

### Russian Support for a Common Civilizational Struggle

Initially, Russian President Vladimir Putin supported the US-led military campaign in Afghanistan and the accompanying US basing presence in Central Asia. Following the 9/11 attacks, Putin was the first world leader to call President George W. Bush and offer his assistance for what he termed a "common civilizational struggle." Tellingly, at a November 13, 2001 press conference alongside President George W. Bush in the East Room of the White House, President Putin emphasized this seeming new era of security cooperation and common purpose between Moscow and Washington. Responding to a question about a possible looming geopolitical clash of spheres of influence in Central Asia, Putin explained:

With regard to the possible redrawing of the spheres of influence and the enhanced American influence in Central Asia I would like to say the following: I am more

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<sup>38</sup> Deirdre Tynan, "Turkmenistan: American Military Personnel Set Up Shop in Ashgabat," *Eurasianet*, 12 July 2009, <https://eurasianet.org/turkmenistan-american-military-personnel-set-up-shop-in-ashgabat>.

<sup>39</sup> Joshua Kucera, "US military aid to Central Asia: who benefits?" Open Society Foundations, 25 September 2012, <https://www.opensocietyfoundations.org/publications/us-military-aid-central-asia-who-benefits>.

concerned with the presence of the terrorist training camps in Northern Afghanistan who send guerillas to the Caucasus—who have been sending in the recent years....<sup>40</sup>

The Russian president continued, “If we look at the relationship between the Russian Federation and the United States from the old standpoint, distrust and enmity, that’s one thing. If we are looking through the prism of partnership and alliance, we have nothing to be afraid of.” He also appeared to affirm the sovereign right of the Central Asian states to grant basing rights to other powers, observing that, “One shouldn’t forget that both Uzbekistan and Tajikistan are independent states and decide, therefore, in policies independently, who to cooperate with and at which level.”<sup>41</sup>

The Russian President’s comments are striking, not only for accepting the common security purpose behind the US basing presence and coalition effort in Central Asia, but also in acknowledging the independent sovereign choices of these proposed Central Asian base hosts—a statement more consistent with the sovereignty norm of the LIO rather than Putin’s own later framing of the post-Soviet states as firmly within Russia’s “sphere of influence.” However, from the Russian perspective, the military defeat of the Taliban in Afghanistan was not followed by plans for a regional drawdown. Within 18 months, Russian analysts and security officials began to publicly speculate that the United States was now interested in projecting regional influence, thereby contributing to a regional security dilemma.<sup>42</sup> Indeed, Moscow established its own

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<sup>40</sup> “President Announces Reduction in Nuclear Arsenal,” The White House website archived by the George W. Bush Presidential Archive, 13 November 2001, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/11/20011113-3.html>.

<sup>41</sup> “President Announces Reduction in Nuclear Arsenal.”

<sup>42</sup> See the content analysis executed by Jason Lyall of Russian leaders’ speeches that charts a transformation from emphasizing common civilizational mission to that of concern about the United States projecting regional influence and a regional security dilemma: Jason Lyall, “Great Games: Russia and the Emerging Security Dilemma in Central Asia” (paper delivered to the 100th Annual Meeting of the American Political Science Association, Washington, DC, September 2004).

airbase in Kant, Kyrgyzstan in October 2003, just a few kilometers away from Manas. The base was opened under the auspices of the Collective Security Treaty Organization (CSTO), a regional security organization comprised of post-Soviet states that President Putin pushed develop as a counterpart to NATO.<sup>43</sup> Further, the unilateralism adopted by the Bush Administration, including defying the United Nations in the run-up to its March 2003 military intervention in Iraq, revived concerns about US hegemony, as did US broader calls for democratization and regime change.<sup>44</sup>

*2005-2014: Contested Regional Orders- Diverging Security Communities and Counterordering Efforts*

A few years after the initial intervention to oust the Taliban, local and regional suspicions about US ambitions in the region began to grow. The tensions inherent in the liberal ordering associated with the US basing presence—especially between tacitly condoning the authoritarian actions of Central Asian base hosting governments and maintaining a commitment to promoting democratization as part of the GWOT—undermined the political and legal status of the US presence. It also afforded geopolitical openings to external powers, especially Russia, to curry favor with the Central Asian regimes by denouncing liberal political norms and offering cooperation under new non-Western counterordering institutions and illiberal principles that emphasized sovereignty and regime security in a bid to weaken US regional influence.

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<sup>43</sup> See Elena Kropatcheva, “Russia and the Collective Security Treaty Organisation: Multilateral Policy or Unilateral Ambitions?” *Europe-Asia Studies* 68, no. 9 (2016): 1526-1552; and Stephen Aris, “Collective Security Treaty Organization,” in *Handbook of Governance and Security*, (Cheltenham and Northampton, MA: Edward Elgar Publishing, 2014).

<sup>44</sup> See especially Jeffrey Mankoff, *Russian Foreign Policy: The Return of Great Power Politics*, (Lanham, Boulder, New York, Toronto, Plymouth: Rowman & Littlefield Publishers, 2009).

The brief period of international unity behind the US-led GWOT had given way to a more contested view of American hegemony, especially following its decision to intervene in Iraq in 2003 without UN authorization. Concerns about US unilateralism were magnified by the adoption by the Bush Administration of the so-called “freedom agenda,” and the belief that enacting regime change and pushing for political democratization, especially in the Middle East and Islamic world, would be an effective strategy to erode the political influence of Islamic militancy. All of a sudden, the United States appeared to assume the hallmarks of a “revisionist power,” seeking to spread democratization in the name of counterterrorism, by force if necessary, and disregarding international legal restraints and multilateral fora. In Eurasia, the onset of the Color Revolutions—which brought street protests following flawed national elections—toppled corrupt governments in Georgia (2003), Ukraine (2004) and Kyrgyzstan (2005), replacing them with self-styled reformers who publicly expressed the wish to orient more towards the West and away from Russia.<sup>45</sup>

#### Massacre at Andijon, Contradictions of Liberal Ordering and Geopolitical Fallout

But for US military planners and diplomats, the core contradiction in the application of liberal ordering was in its relationship with Uzbekistan, especially as President Karimov’s rule grew increasingly repressive. US uneasiness over Uzbekistan’s abysmal human rights record had already been growing since 2004 as a result of mounting criticism by human rights organizations and documented in the State Department’s own report (which made Uzbekistan ineligible for some promised military assistance), as well as an exposé of an extraordinary rendition program

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<sup>45</sup> Mark R. Beissinger, “Structure and Example in Modular Political Phenomena: The Diffusion of Bulldozer/Rose/Orange/Tulip Revolutions,” in *Perspectives on Politics* 5, no. 2 (2007): 259-276; and Lincoln A. Mitchell, *The Color Revolutions*, (Philadelphia: University of Pennsylvania Press, 2012).

run by United State in coordination with Uzbek security services.<sup>46</sup> Then in May 2005, the Uzbek government fired upon a protesting crowd that had assembled in the eastern city of Andijon, killing hundreds in what became known as the “Andijon massacre.” The Uzbek government insisted that the victims were members of a militant Islamic group, while international human rights organizations insisted that these protestors were ordinary citizens demonstrating against government policies.<sup>47</sup> The aftermath of Andijon soon took a geopolitical turn as well, as Russia and China both strongly supported Karimov’s actions, whereas the European Union and the United States imposed sanctions on Uzbek government officials and called for an international investigation into the events.<sup>48</sup> Within the US government attitudes also appeared divided: while US Secretary of State Condoleezza Rice strongly condemned Uzbekistan’s human rights practices post-Andijon, the Pentagon balked at publicly criticizing Tashkent, fearing, as it turns out correctly, that it might jeopardize its basing rights, even while US support of autocratic governments such as Uzbekistan’s Karimov came under increasing scrutiny.<sup>49</sup> Indeed, one influential neo-conservative commentator made the point that it was increasingly difficult to reconcile the American “democratization agenda” in Iraq, in the midst of dealing with an insurgency, with US support for Karimov.<sup>50</sup>

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<sup>46</sup> Don van Natta, Jr. “U.S. Recruits a Tough Ally to be a Jailer,” *The New York Times*, 1 May 2005, <https://www.nytimes.com/2005/05/01/world/us-recruits-a-rough-ally-to-be-a-jailer.html>.

<sup>47</sup> “Bullets were Flying Like Rann: The Andijon Massacre May 13, 2005,” Human Rights Watch, June 2005, <https://www.hrw.org/reports/2005/uzbekistan0605/uzbekistan0605.pdf>.

<sup>48</sup> See Claire Bigg, “Karimov, Putin said Andijon Violence was Planned Abroad,” *Radio Free Europe/Radio Liberty*, 29 June 2005, <https://www.rferl.org/a/1059583.html>.

<sup>49</sup> See, for example, Rice’s comments at the OSCE in July 2005: “Rice Criticizes Uzbekistan on Human Rights,” *Radio Free Europe/Radio Liberty*, 2 July 2005, <https://www.rferl.org/a/1059643.html>. On Rumsfeld’s own memoirs and recollections of policy towards Uzbekistan, see Joshua Kucera, “Rumsfeld Misremembers on Central Asia in new Memoir,” *Eurasianet*, 11 February 2011, <https://eurasianet.org/uzbekistan-rumsfeld-misremembers-on-central-asia-in-new-memoir>.

<sup>50</sup> William Kristol and Stephen Schwartz, “Our Uzbek Problem,” *Weekly Standard*, 30 May 2005. On the inability of the United States to contain “hypocrisy costs” across its basing network, see: Alexander Cooley and Daniel H. Nexon. “‘The Empire will Compensate You’: The Structural Dynamics of the US Overseas Basing Network,” *Perspectives on Politics* 11, no. 4 (2013): 1034-1050.

But as relations between the United States and Uzbekistan rapidly deteriorated in the wake of Andijon, Beijing and Moscow pushed back against the US regional basing presence via the agenda of the Shanghai Cooperation Organization. The SCO had formally come into effect in June 2001, just a few months before the monumental events of 9/11, and grouped together China, Russia, Kazakhstan, Kyrgyzstan, Uzbekistan, and Tajikistan. The regional organization with a permanent staff and secretariat based in Beijing—was the direct successor to the Shanghai Five grouping, a dialogue established in the 1990s to conclude negotiations on the final delimitation of the disputed Sino-Soviet border. In effect however, the SCO was inaugurated with great fanfare as a non-Western security organization that appeared to grow more critical about the US regional security role, norms, and liberal assumptions about conflict management.<sup>51</sup>

Though not a formal anti-Western military alliance, the organization has conducted biennial “peace mission” military exercises in Central Asia, adopted China’s security agenda of combatting the “three evils” of terrorism, separatism, and extremism, and established a Regional Anti-Terror Center (RATS) in Tashkent that coordinates activity and information sharing among member state ministries of interior.<sup>52</sup> The latter has been codified in an Anti-Terror Treaty (2009) that allows for extraterritorial initiatives like the conduct of criminal investigations by the security services of one member state on the territory of another, as well as creates a framework for the apprehension and expedited transfer of wanted suspects without granting asylum hearings.<sup>53</sup> Rhetorically, the organization, usually at Russia’s prompting, has issued critical statements about US-led security policy such as in the conflict in Syria and the deployment of

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<sup>51</sup> See Stephen Aris, *Eurasian Regionalism: The Shanghai Cooperation Organisation*, (London: Springer, 2011).

<sup>52</sup> On the SCO’s security agenda, see Aris, “The Shanghai Cooperation Organisation: ‘Tackling the Three Evils’.”

<sup>53</sup> Alexander Cooley, “League of Authoritarian Gentlemen,” *Foreign Policy*, 30 January 2013, <https://foreignpolicy.com/2013/01/30/the-league-of-authoritarian-gentlemen/>.

missile defense, while normatively the group rejects the hegemony of Western universal values, calls for civilizational diversity, and the respect for sovereignty (“Shanghai Spirit”).<sup>54</sup>

As relations between the United States and Uzbekistan deteriorated, and Tashkent imposed more restrictions on the activities of K2,<sup>55</sup> China and Russia used the SCO to affirm support for Karimov and denounce the sanctions imposed by the United States on the Central Asian country.<sup>56</sup> Then, at the annual summit—held in Kazakhstan’s capital of Astana—in July 2005, the SCO issued a now infamous communique that noted that the situation in Afghanistan had been stabilized and that the foreign [i.e., “American”] military bases stationed in member states should be put on a timetable for withdrawal.<sup>57</sup> Just days later, after the United States backed a UN plan to not repatriate some Uzbek refugees from Andijon that had fled to neighboring Kyrgyzstan, a messenger delivered a notice to the US Embassy in Tashkent that the government of Uzbekistan was activating the 6-month termination clause and effectively evicting US forces from K2.

US defense officials, including Secretary of Defense Donald Rumsfeld, claimed that the US forces were being “run out” from the region by China and Russia, via the SCO. But regardless of who prompted the eviction, the end result was that the US base in Uzbekistan appeared to be a casualty of geopolitical trends—especially Beijing and Moscow’s pushback

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<sup>54</sup> Thomas Ambrosio, “Catching the ‘Shanghai spirit’: How the Shanghai Cooperation Organization Promotes Authoritarian Norms in Central Asia,” *Europe-Asia Studies* 60, no. 8 (2008): 1321-1344.

<sup>55</sup> John C. Daly, “Anatomy of a Crisis: US-Uzbekistan Relations 2001-2005” (Silk Road paper, Washington, DC, February 2006),

[https://www.files.ethz.ch/isn/30292/09\\_Anotomy\\_Crisis\\_US\\_Uzbekistan.pdf](https://www.files.ethz.ch/isn/30292/09_Anotomy_Crisis_US_Uzbekistan.pdf)

<sup>56</sup> Robert Parsons, “China-Russia Bloc Challenges US in the Region,” *Radio Free Europe/Radio Liberty*, 25 October 2005, <https://www.rferl.org/a/1062378.html>.

<sup>57</sup> The relevant text article read: “Given the completion of the active military phase of the antiterrorist operation in Afghanistan, the member states of the Shanghai Cooperation Organization deem it necessary for the relevant participating states of the antiterrorist coalition to set a deadline for the temporary use of said infrastructure and presence of their military contingents in the territory of the SCO member states,” from “Declaration by the Heads of the Member States of the Shanghai Cooperation Organization,” 5 July 2005, <http://eng.sectsco.org/load/197543/>.

against US unilateralism—as well as Western criticism of Uzbekistan’s human rights practices and political repression. As if to signal the completion of this shift, a few months later Karimov formally joined the Russian-led Collective Security Treaty Organization.<sup>58</sup>

### Manas and the Bargaining Politics of Compensation and Public Goods

As the base in Uzbekistan became a lightning rod of tensions over diverging political norms and regional alignments, Manas in Kyrgyzstan was implicated in the domestic politics of two street-led revolutions and demands for quid pro quo by successive Kyrgyz governments. Here the politics of goods substitution associated with the base became the most important to its maintained.

Following the Tulip Revolution and collapse of the regime of Kyrgyz President Askar Akayev (a self-styled democratic reformer who had nonetheless been in power since 1993), interim Acting President Bakiyev ran on a foreign policy platform reasserting Kyrgyz national sovereignty. Bakiyev turned the status of base-related compensation into a campaign issue in the run-up to the July 2005 election and openly demanded that the United States increase its rental payment for the use of Manas one-hundred-fold—from \$2 million to \$200 million annually. After his victory, Bakiyev continued to publicly call for a hard line on base-related compensation, but US officials were wary of publicly admitting to or accepting an overtly transactional basing deal and sought to delink base-related payments from its aid and assistance packages.<sup>59</sup> In the end the two sides signed a renewed deal in July 2006 to extend the lease until

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<sup>58</sup> Matteo Fumagalli, “Alignments and Realignments in Central Asia: The Rationale and Implications of Uzbekistan's Rapprochement with Russia,” *International Political Science Review* 28, no. 3 (2007): 253-271.

<sup>59</sup> Alexander Cooley, “Manas Matters: The Changing Politics of the US Military Base in Kyrgyzstan,” PONARS Policy Conference Memo #423, December 2006, [https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy\\_files/files/media/csis/pubs/pm\\_0423.pdf](https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/media/csis/pubs/pm_0423.pdf).



2010, that was consciously narrated differently by each side. Formal base-related compensation increased from \$2 million to \$17 million annually, however, the US side also committed to provide a total of annual \$150 million in aid and assistance to Kyrgyzstan. This was done in parallel to avoid appearing as an official quid pro quo, even though the Kyrgyz side understood the \$150 million figure as base-related compensation formula. But no sooner had the deal been struck than the Kyrgyz side began grumbling that the value of programs such as Peace Corps and technical assistance were being included in the \$150 million annual sum.

But perhaps the most acute case of basing contestation was the dramatic base bidding war— sparked by a Russia attempt to bribe the Kyrgyz President to close the base by offering an emergency economic relief package— over the status of Manas that was initiated by President Kurmanbek Bakiyev in February of 2009. At a joint press conference with then Russian President Dmitry Medvedev, Bakiyev announced that he would be closing Manas due to its unpopular standing just minutes before he also announced that the Russian Federation would provide a \$2 billion emergency economic package consisting of financing and loans to development the hydroelectric stations at Kambarata.<sup>60</sup> Although both countries denied the link between the announcements of the economic package and the closure of Manas, analysts and commentators worldwide interpreted the announcement as a clear indication that Moscow had attempted to buy the closure of Manas by offering an emergency financial and development package during an economic crisis.

The announcement set off a frenzied response by US policymakers as they attempted to reach out to Kyrgyz officials behind the scenes, even after the Kyrgyz parliament rubber-

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<sup>60</sup> Ellen Barry and Michael Schwartz, “Kyrgyzstan says it will Close US Base,” *The New York Times*, 3 February 2009, <https://www.nytimes.com/2009/02/04/world/europe/04kyrgyz.html>.

stamped Bakiyev's announcement of the base closure.<sup>61</sup> The Kyrgyz side was receptive and the two sides would negotiate a renewed deal, valid until 2014, under which Manas would be referred to as a "transit center," as opposed to a military base, and the annual rent would be raised from \$17 to \$63 million. In April 2010, Bakiyev's regime collapsed following yet another round of street demonstrations over the government's announced plans to abandon certain energy subsidies. Acting Premier Roza Otunbayeva honored the details of the basing agreement, though the popular sentiment among the government was that the base had served to line the pockets of the Bakiyev family. On this point, former US Secretary of Defense Robert Gates in his memoir would refer to the government of Bakiyev as "amazingly corrupt" and Manas as a site of "grand extortion."<sup>62</sup> Analytically, Bakiyev had aggressively engaged in a high-stakes good substitutions between the competing basing powers. The Kyrgyz government would honor the end of the basing term until 2014, however US officials were unsuccessful in their attempts to extend the lease for an additional year. By July 2014, the US military has exited from its bases in Central Asia.

#### *2014-2021: Greater Eurasia and Counter Liberal Order*

The last US forces departed Manas well in advance of the July 2014 deadline, marking the end of the American basing presence. 2014 also marked a significant shift in the geopolitical orientation of the region, with Russia and China intensifying their engagement. From the period of being a critical part of the US-led GWOT associated with the liberal international order, the

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<sup>61</sup> On the behind-the-scenes negotiations, see John F. Tierney, "Mystery at Manas: Strategic Blind Spots in the Department of Defense's Fuel Contracts in Kyrgyzstan" (House of Representatives, Committee on Oversight and Government Reform, report of the Majority staff, Washington, DC, December 2010).

<sup>62</sup> Robert Gates, *Duty: Memoirs of a Secretary at War*, (New York: Vintage, 2015), 194-5.

region has been incorporated into various spheres of Russian and Chinese influence, even in the face of a renewed Taliban resurgence in Afghanistan itself.

### Russia's Crimean Ripple Effects

The 2014 Crimea crisis—during which Russia had used troops stationed in the Sevastopol military base to execute the takeover of Crimea's key institutions before its formal annexation and war in eastern Ukraine—sent ripples throughout the Central Asian states. After all, if Russia could activate “little green men” from its leased naval base at Sevastopol, it could potentially do the same from other military installations scattered across the post-Soviet space. At the same time, polling after the crisis indicated high levels of support in Central Asia for Russian regional leadership at the time—the highest among the post-communist states—suggesting that the Central Asian publics still viewed Russia as a guarantor of security and political stability.<sup>63</sup>

Whatever fears Central Asian publics had of Russian aggression, the fear of the chaos brought by Maidan-style street protest, Russian media and soft power, and the prospects of joining the Eurasian Economic Union (viewed as potentially legalizing the status of hundreds of thousands of Kyrgyz migrant workers in Russia) all ensured a high level of support for Russia's foreign policy. Tellingly, the Central Asian cases dealt with the politically tricky UN General Assembly vote affirming Ukraine's sovereignty over Crimea in March 2014 (Resolution 68/262) by either formally abstaining (Kazakhstan, Uzbekistan) or by not voting at all (Kyrgyzstan, Tajikistan, and Turkmenistan).<sup>64</sup>

### China and the BRI

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<sup>63</sup> “Rating Russian Leadership,” *Radio Free Europe/Radio Liberty*, 22 July 2015, <https://www.rferl.org/a/data-visualization-russian-leadership/27144725.html>.

<sup>64</sup> “Territorial integrity of Ukraine: resolution / adopted by the General Assembly,” United Nations Digital Library, 2014, <https://digitallibrary.un.org/record/767565?ln=en>.

As it turns out, Russia's reasserted regional security hegemony and basing monopoly would soon be broken by yet another external power: China. China's interest in Central Asia had grown throughout the 2000s, both in terms of exponential growth in trade and through the security activities of the SCO. Central Asia's strategic significance to China's future international ordering activities was underscored in September 2013 when President Xi Jinping announced the One Belt, One Road (later to be named simply the Belt and Road Initiative or BRI) at Nazarbayev University in Astana, Kazakhstan.<sup>65</sup> Though initially presented as an ambitious plan to provide about \$1 trillion to investments for upgrading infrastructure in partner countries, the Belt and Road goes well beyond just the construction of railways, roads, energy grids, and logistics facilities. The diffusion of new technologies and standards (including the 5G network opposed by Washington), the accumulation of partner country debt to Chinese state creditors, and the linkage of unrelated foreign policy matters important to Beijing all give the "China-friendly" community important counterordering dimensions.<sup>66</sup> Within the BRI, three of the six main routes pass through Central Asia, while Beijing has elevated relations with each Central Asian state to that of a strategic partnership.

Efforts to provide for security for the BRI in Central Asia have intensified many different dimensions of the Chinese regional footprint. The influx of Chinese private security firms as

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<sup>65</sup> "President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries," Ministry of Foreign Affairs of the People's Republic of China, 7 September 2013, [https://www.fmprc.gov.cn/mfa\\_eng/topics\\_665678/xjpfwzysiesgjtfhshzzfh\\_665686/t1076334.shtml](https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesgjtfhshzzfh_665686/t1076334.shtml).

<sup>66</sup> Filippo Costa Buranelli, "One Belt, One Road and Central Asia: Challenges and Opportunities," in *The Belt & Road Initiative in the Global Arena*, Cheng Yu, Song Lilei, and Lihe Huang, eds. (Singapore: Palgrave Macmillan, 2018), 207-230; Bhavna Dave and Yuka Kobayashi, "China's Silk Road Economic Belt Initiative in Central Asia: Economic and Security Implications," *Asia Europe Journal* 16, no. 3 (2018): 267-281; and Aijan Sharshenova and Gordon Crawford, "Undermining Western democracy promotion in Central Asia: China's countervailing influences, powers and impact," *Central Asian Survey* 36, no. 4 (2017): 453-472.

security providers for Chinese firms implementing major BRI projects is notable,<sup>67</sup> as is the import of Chinese smart-city surveillance technologies in Kyrgyzstan and Tajikistan.<sup>68</sup> Most dramatically, however, it appears that in 2016, China also established a foreign military base in a remote part of Tajikistan, near the border of Afghanistan's Wakhan corridor. According to a pair of investigative stories, the government of Tajikistan has, since 2016, allowed China to maintain a small group of Chinese troops at the facility.<sup>69</sup> Under the terms of the agreement, China is not only allowed to station personnel at the facility, but is also permitted to patrol broad swaths of the Tajik-Afghan border in Chinese military vehicles.<sup>70</sup> Along with Chinese upgrades of Tajik border posts, these Chinese paramilitary units appear to be focused on controlling border crossings and possible infiltration into China. Although we do not know if the agreement provides for quid pro quo, the agreement was concluded in a period of increased Chinese economic engagement in Tajikistan, with 80% of the Central Asian country's new debt from 2007 to 2018 originating from Chinese state creditors and its overall debt-to GDP ratio reaching 56.8% in 2018, up from 33.4% in 2015.<sup>71</sup>

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<sup>67</sup> Niva Yau and Dirk van der Kley, "The Growth, Adaptation and Limitations of Chinese Private Security Companies in Central Asia," *Oxus Society for Central Asian Affairs*, October 2020, <https://oxussociety.org/wp-content/uploads/2020/10/the-growth-adaptation-and-limitations-of-chinese-private-security-companies-in-central-asia.pdf>.

<sup>68</sup> See Erica Marat and Deborah Sutton, "Technological Solutions for Complex Problems: Emerging Electronic Surveillance Regimes in Eurasian Cities," *Europe-Asia Studies* 73, no. 1 (2021): 243-267.

<sup>69</sup> Gerry Shih, "In Central Asia's Forbidding Highlands, a Quiet Newcomer: Chinese Troops," *The Washington Post*, 18 February 2019, [https://www.washingtonpost.com/world/asia\\_pacific/in-central-asias-forbidding-highlands-a-quiet-newcomer-chinese-troops/2019/02/18/78d4a8d0-1e62-11e9-a759-2b8541bbbe20\\_story.html](https://www.washingtonpost.com/world/asia_pacific/in-central-asias-forbidding-highlands-a-quiet-newcomer-chinese-troops/2019/02/18/78d4a8d0-1e62-11e9-a759-2b8541bbbe20_story.html); and Craig Nelson and Thomas Grove, "Russia, China Vie for Influence in Central Asia as U.S. Plans Afghan Exit," *The Wall Street Journal*, 18 June 2019, <https://www.wsj.com/articles/russia-china-vie-for-influence-in-central-asia-as-u-s-plans-afghan-exit-11560850203>.

<sup>70</sup> Nelson and Grove, "Russia, China Vie for Influence in Central Asia."

<sup>71</sup> "Belt and Road Initiative Increases Sovereign Debt Risks in Tajikistan," *Global Risk Insights*, 23 July 2018, <https://globalriskinsights.com/2018/07/belt-and-road-initiative-increases-sovereign-debt-risks-in-tajikistan/>.

Around the same time, China established a new regional security forum known as the Quadrilateral Cooperation and Coordination Mechanism (QCCM), that includes itself, Tajikistan, Afghanistan, and Pakistan. According to first public statements, the purpose of the QCCM is to enhance regional security cooperation on counterterrorism, joint training, and border management issues.<sup>72</sup> Given that, contemporaneous to the Tajikistan base stories, other reports surfaced of a Chinese basing deals with QCCM member Afghanistan and continued speculation about Chinese access to Gwadar port in Pakistan, it is possible that the QCCM provides the legal and regional framework for a Chinese presence in each of these member countries. Regardless of its exact legal role, the regional grouping cuts across traditional geographical distinctions among Central Asia, Afghanistan, and South Asia, adding yet another regional framework led by China onto an area already integrated into several new Chinese institutions.

Interestingly enough, Russian policymakers and security analysts were not given prior notification, and were informed only about the facility in 2018. Russia's non-reaction to the Chinese base undercuts predictions, often made on realist premises, that Central Asia is likely to become a site of possible contention that causes friction in Moscow and Beijing's so-called "axis of convenience."<sup>73</sup> Instead, it is more broadly consistent with the dynamic of Russia increasingly accommodating itself to China's regional security agenda under the framework of promoting a "Great Eurasia," continental integration driven by China or Russia, that excludes the West and is opposed to the US-led international order.<sup>74</sup> In fact, it is this joint revisionism against the LIO

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<sup>72</sup> Joshua Kucera, "Afghanistan, China Pakistan, and Tajikistan Deepen 'Anti-Terror' Ties, *Eurasianet*, 4 August 2016, <https://eurasianet.org/afghanistan-china-pakistan-tajikistan-deepen-anti-terror-ties>.

<sup>73</sup> See Bobo Lo, *Axis of Convenience: Moscow, Beijing, and the New Geopolitics*, (Washington, DC: Brookings Institution Press, 2009).

<sup>74</sup> See David G. Lewis, "Geopolitical imaginaries in Russian foreign policy: The evolution of 'Greater Eurasia'," *Europe-Asia Studies* 70, no. 10 (2018): 1612-1637; and Andrej Krickovic and Igor Pellicciari, "From 'Greater Europe' to 'Greater Eurasia': Status concerns and the evolution of Russia's approach to alignment and regional integration," *Journal of Eurasian Studies* 12, no. 1 (2021): 86-99.

that allows Moscow to discount Beijing's increasing encroachment of Russia's sphere of interest in Central Asia and now allows Russian and Chinese military facilities to even co-exist in the same country as part of a common regional counterordering fabric.<sup>75</sup>

#### "No" to US Requests for Bases for Withdrawal

Finally, the integration of the Central Asian space into Chinese and Russian-led counterorders also prevented the United States from acquiring contingency basing rights from the Central Asian states in support of the Biden Administration's complete withdrawal of US of forces from Afghanistan. In April 2021, General Kenneth McKenzie—head of US Central Command—publicly announced that the United States was exploring securing basing in Central Asia as part of its preparation to reposition troops and plan for contingencies.<sup>76</sup> A subsequent report noted that US defense officials were eager to secure bases for “troops, drones, bombers and artillery,” with administration officials preferring to negotiate a deal with the Uzbekistan or Tajikistan.<sup>77</sup> A *Wall Street Journal* newspaper story later reported that at his first summit with US President Biden in June 2021, Putin had rejected any role for US military forces in Central Asia, undercutting the U.S. military's options to base drones and counterterrorism forces to support the withdrawal, while the Russian president also reportedly stated that “China would reject it as

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<sup>75</sup> On Russian-Chinese cooperation as a function of the two countries' revisionism against the US-led liberal international order, see Alexander Lukin, *China and Russia: The New Rapprochement* (Cambridge: Polity Press and Wiley, 2018).

<sup>76</sup> Eric Schmitt, “General Warns of Challenges to Tracking Terrorist Threat in Afghanistan After U.S. Exists,” *The New York Times*, 20 April 2021, <https://www.nytimes.com/2021/04/20/us/politics/biden-afghanistan-withdrawal-terrorism.html?searchResultPosition=1>.

<sup>77</sup> Vivian Salama and Gordon Lubold, “Afghan Pullout Leaves U.S. Looking for Other Places to Station Its Troops,” *The Wall Street Journal*, 8 May 2021, [https://www.wsj.com/articles/afghan-pullout-leaves-u-s-looking-for-other-places-to-station-its-troops-11620482659?mod=searchresults\\_pos3&page=1](https://www.wsj.com/articles/afghan-pullout-leaves-u-s-looking-for-other-places-to-station-its-troops-11620482659?mod=searchresults_pos3&page=1).

well.”<sup>78</sup> Indeed, as the US withdrawal accelerated, both China and Russia increased their consultations with the Taliban in an attempt to coordinate and manage border instability caused by the disintegrating Afghan National Army which had resulted in hundreds of Afghan troops fleeing across the border into Tajikistan and Uzbekistan. Whatever the real security contingencies or instability that might arise in the region as a result of the Taliban’s renewed takeover of Afghanistan, the region is no longer hospitable to a US or NATO basing presence, which undermines itself under the contradictions of the architecture of liberal ordering and was further undermined by Russia and China, which have vastly upgraded their security presence as the US has declined. I summarize the relative efficacy and success of Russian and Chinese counteropening efforts in Table 2.

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<sup>78</sup> Michael R. Gordon, “Putin Rejected Role for U.S. Forces Near Afghanistan at Summit with Biden,” *The Wall Street Journal*, 19 August 2021, <https://www.wsj.com/articles/putin-rebuffed-u-s-plans-for-bases-near-afghanistan-at-summit-with-biden-11629398848>



Table 2: Scorecard of Select Counterordering Efforts and Status of US Bases in Central Asia

International Ordering Feature	Revisionist State Action	Assessment
Security Community	<p>Brokering: Offer an alternative new regional security community</p> <p><i>Rise of CSTO, SCO and QCCM</i></p>	<p>Co-existence with US bases 2003-2014; Exclusivity in 2014-2021 and successful denial of US contingency basing requests in 2021</p> <p>Russian bases in Kyrgyzstan (2003-) and Tajikistan; Chinese base in Tajikistan (2016-)</p>
Security Community	<p>Wedging: Erode support for existing US affiliation</p> <p><i>Russian disinformation efforts in Manas</i></p>	<p>Mixed: Kyrgyz public support for bases shaped by coverage of negative basing stories (accidents, corruption scandals), but public opinion not determining of Kyrgyz govt policy</p>
Public and Club Goods	<p>Goods Substitution: offer alternative sources of security and economic goods than US; offer comparable goods with fewer conditions</p> <p><i>Russia's Attempt to Bribe Bakiyev to Close Manas in 2009 with Emergency Assistance Package</i></p>	<p>Mixed:</p> <p>2009 Russia -&gt; Unsuccessful: Kyrgyzstan Renegotiates with US for more rent and name change;</p> <p>2014 Russia -&gt; Successful- pushes for termination of lease, conditions debt write-off and investments</p>
Regime Political Values	<p>Criticize destabilizing consequences of political liberalism + US push for democratization</p> <p><i>Russia and China back Karimov's Andijan crackdown</i></p>	<p>Successful: Uzbekistan evicts US forces from K2; joins CSTO in 2006 (until 2012)</p>

## **Some Conclusions**

The rise and decline of the US basing presence in Central Asia—and the expansion of the Russian and Chinese security footprint—offers some insights into the broader question of how Great Power competition might impact regions in which the US once exerted considerable leverage, in part because of its forward deployments. Central Asia lies firmly within the regional proximity of Russia and China and their sphere of regional ordering- this makes its “de-Americanization” a priority for both of Washington’s main revisionist competitors and offers them the tools with which to leverage the Central Asian states. Simply put, Russia and China now wield more levers of influence over the Central Asian states than the United States.

More broadly, understanding how international ordering dynamics impact foreign basing relations can provide important signposts about the likely future basing partners of Russia and China. For example, Moscow has explored with Sudan a possible deal for a naval base on the Red Sea. The African country appears a natural target because it has been sanctioned and marginalized from many of the Western-controlled financial systems. Similarly, countries in which China has increased economic investment and has displaced Western sources of investment and credit—such as Cambodia, Pakistan, and Tanzania—might be the most susceptible to Chinese demands for foreign bases or the upgrading of dual-use facilities. And both China and Russia’s advantage in courting autocracies is significant, not because of any Cold War 2.0 ideological affinity, but because the principles of civilizational diversity or sovereign non-interference that they publicly espouse are more supportive of host country regime security than the political liberalism that still informs US relations with allies and security partners.

Finally, this analysis of ordering dynamics and the Central Asian case suggests that the United States will find it increasingly difficult to compete or outbid competitors for basing

access as the importance of the liberal international order diminishes compared with regional alternatives. Even small and relatively weak countries will be empowered to drive harder bargains—whether in the form of demanding more goods and side payments or less criticism for illiberal regime practices—by leveraging their position within these counterordering networks and institutions. Therefore, pursuing a blanket strategy of denying China and Russia overseas basing partners without a clear sense of which regions or subregions are core to US security interests is not only practically unrealistic, it is likely to prove prohibitively expensive and render any agreements themselves politically tenuous.

# How to Handle Offending Troops Overseas: The U.S. Military's Legal Strategy during the Cold War

Asif Efrat

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# **How to Handle Offending Troops Overseas: The U.S. Military's Legal Strategy during the Cold War**

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## **Abstract**

The peacetime deployment of U.S. forces in foreign countries goes against traditional notions of sovereignty. How did such deployment become legitimate and acceptable following World War II? This article sheds light on the legal strategy that the U.S. military employed to make American troop presence more palatable to foreign publics and to critics at home. As part of this strategy, the military supported granting certain legal authority over offending troops to host countries, while trying to shield troops from trials in host-country courts. The military also used local, informal ties with hosts to guarantee fair legal treatment for troops and worked to convince skeptics that U.S. troops faced no legal threat. The mitigating of legal tensions helped the military create conducive political conditions for its presence abroad and likely contributed to the durability of U.S. deployments. The analysis enhances our understanding of the origins of U.S.-host country relations, and it contrasts sharply with the contemporary desire of the United States to maintain complete jurisdiction over its troops abroad.

**Keywords:** Europe, law, political science, international relations

## Introduction

The American military presence worldwide defines the global security environment since World War II. By stationing hundreds of thousands of troops in Western Europe, East Asia, and other regions, the United States has sought to deter aggression, reinforce alliances, and facilitate smooth resource flows. More surprising perhaps is the willingness of host countries to allow U.S. troops to deploy in their midst, since foreign military presence entails a significant sacrifice of local sovereignty: The U.S. military may use its power to wield authority over the host or to take action inconsistent with the host's policies. Furthermore, large concentrations of foreign troops might also create negative by-products for adjacent communities, including noise and environmental pollution and degradation, damage to roads and fields during maneuvers, crime and prostitution (Calder, 2007; Kawana & Takahashi, 2021). These negative effects have occasionally fueled domestic mobilization and civil-society opposition against U.S. bases (Yeo 2011; Kawato 2015). Yet host-country governments have allowed the United States to establish military bases on their territory and remain there for decades, with at least some level of domestic consent (Allen et al. 2020). How did the long-term, peacetime hosting of U.S. troops become a viable policy for host countries?

Scholars of international relations have rarely tackled this fundamental question directly (Schmidt, 2020), but possible answers come to mind. The most obvious one is security: U.S. forces protected hosts against external threats and allowed them to reduce their own defense efforts (Martinez Machain & Morgan, 2013). Furthermore, through economic assistance, and the prestige that comes from an association with the United States, U.S. deployments helped host governments consolidate their domestic support and foster political stability (Cooley, 2008; Braithwaite & Kucik, 2017). This study shines a light on an overlooked *legal* aspect of U.S. troop deployments that facilitated their acceptance by hosts: the sharing of criminal jurisdiction over troops between the U.S. military and local authorities. Indeed, while a military force would

be expected to seek immunity from local jurisdiction, the U.S. military granted hosts certain authority to try offending troops. Such authority, the military believed, was necessary for the establishment of security cooperation. At the same time, the military sought to ensure that troops got fair treatment from foreign courts or, preferably, received a waiver from those courts' jurisdiction. To achieve such protection for troops, the military established local, informal ties with hosts' legal authorities and sought to resolve controversies cooperatively rather than through pressure. Furthermore, the U.S. military worked to mitigate tensions at home. The notion of U.S. troops' being prosecuted and punished by foreign courts faced criticism within the United States. To assuage critics' concerns, the military strived to demonstrate that the legal arrangements with hosts were working well to the benefit of American forces.

This article lays out the military's four-pronged legal strategy: granting certain legal authority over troops to host countries; shielding troops from local criminal responsibility or guaranteeing adequate legal treatment by hosts; using informal ties with hosts in pursuit of the latter goal; and reassuring skeptics at home. Existing literature typically focuses on one of those elements: the military's attempt to protect troops from local trial and punishment (Gao 2009; Koo 2011). The following analysis demonstrates that the protection of troops from foreign justice was only one element in a broader legal strategy aimed at legitimizing U.S. deployments in the eyes of foreign publics as well as the American public. This legal strategy assumed particular importance during the 1950s and 1960s – the period examined here – when both the foreign and American publics had to get used to the idea of a permanent U.S. military presence abroad. Furthermore, this period saw significant involvement of U.S. troops in crimes against host-country citizens, ranging from assault to rape and homicide (Efrat 2021). This extensive criminality made the military's strategy for resolving legal tensions even more critical.

The following analysis is primarily based on the annual reporting of the military and the Department of Defense (DoD) to a Senate subcommittee that monitored the jurisdictional

arrangements with foreign countries: Subcommittee to Review Operation of Article VII of the NATO Status of Forces Treaty, established in 1955 by the Senate Committee on Armed Services. In hearings before the subcommittee, the military explained how it performed the delicate dance: protecting U.S. troops from foreign justice – and convincing U.S. critics of that – while showing respect for hosts' legal authority. Mitigating the tensions arising from troop crime allowed the military to create conducive conditions for its presence abroad and obtain public support at home. While security interests have stood at the heart of U.S.-host relations, the military's legal strategy helped to grease the wheels of these relations. These insights contribute to an emerging scholarly interest in how foreign populations perceive the U.S. military (Allen et al. 2020), and they yield implications for contemporary practices concerning jurisdiction over troops abroad.

### **Foreign Criminal Jurisdiction over Military Personnel**

During war and in times of peace, the military forces of one country may find themselves in the territory of another. While sovereigns are typically responsible for punishing offenses committed on their national territory, including offenses committed by foreigners, international law traditionally excluded foreign military forces from the criminal jurisdiction of the countries hosting them. This exclusion is often traced to the ruling of the U.S. Supreme Court in *The Schooner Exchange v. McFaddon* (11 U.S. (7 Cranch) 116 (1812)). It came to be known as "law of the flag" principle and was soon embraced by the U.S. government and other governments with forces outside their borders. During World War II, the United States and Britain put this principle into effect and obtained exclusive jurisdiction over their forces on friendly foreign soil (U.S. Senate, 1953a, pp. 42-43). To this day, the principle of immunity from local criminal jurisdiction governs the deployment of troops in peacekeeping missions (Odello & Burke, 2016).



The notion of immunity for foreign military forces derives from the principles of state sovereignty and equality of states, which mean that one state should not exercise its legal authority over another (Fleck, 2013, p. 616). Such immunity also aims to ensure effective performance of military forces, free from the interference of the host's legal institutions (Lepper, 1994, p. 171) and to support unit morale. Furthermore, government willingness to deploy forces abroad – and public support for such deployments – might diminish if troops are at risk of being tried by a foreign legal system that seems unfair by one's standards (International Security Advisory Board, 2015).

Yet, following World War II, the United States decided to break with law-of-the-flag doctrine. The NATO Status of Forces Agreement (SOFA), signed in 1951 by the United States and its NATO allies, marked the revolutionary American recognition of the need to relinquish some jurisdictional authority over U.S. troops. At the same time, the NATO SOFA, and SOFAs signed with other countries, sought to minimize the exposure of U.S. troops to foreign jurisdiction and to prevent U.S. troops from facing potentially unfair criminal-justice systems. The NATO SOFA enshrines this logic in its key provision – Article VII – which divides criminal jurisdiction over U.S. personnel between the United States (referred to as the "sending state" in the agreement) and the host country (referred to as the "receiving state" in the agreement). Article VII grants the United States exclusive jurisdiction over offenses that violate U.S. law, but not the law of the host country. For example, if an American servicemember abroad deserts the military, they come under exclusive U.S. jurisdiction. Conversely, the host country holds exclusive jurisdiction over offenses that break its laws, but not those of the United States. Yet most offenses committed by troops typically fall under the "concurrent jurisdiction" of the United States and the host country. In such cases, either the United States or the host hold the primary right to exercise jurisdiction – that is, the right to prosecute first – depending on the character of the alleged offense. The United States has primary jurisdiction over offenses solely

against its property or security or where the offender and victim are both Americans (e.g., an offense committed by a U.S. servicemember against another servicemember). The United States also holds primary jurisdiction over acts or omissions performed as part of official duty. In all other cases, the host country gets the primary right to exercise jurisdiction and try offending troops. Practically speaking, these are offenses of civilian nature committed while off-duty, ranging from traffic offenses to robbery and rape (Egan, 2006, pp. 299-301).

Yet not all troops perpetrating such crimes actually face trial before host-country courts, since Article VII establishes the option of *waiving* the primary right to exercise jurisdiction in concurrent cases. The state holding the primary right in a specific case is required to give "sympathetic consideration" to a request from the other state for a waiver of its right if the other state considers such waiver as particularly important. Below, we examine why the military supported the notion of foreign jurisdiction over troops – and how it worked to limit that jurisdiction through waivers.

### **The U.S. Military's Legal Strategy**

#### **The Surprising Support for Foreign Jurisdiction over Troops**

When the NATO SOFA was brought before the Senate for ratification in 1953, it met with heavy criticism. For the senatorial critics, led by Senator John Bricker (R-OH), the SOFA "reflects a callous disregard of the rights of American armed forces personnel" based on a misguided internationalist sentiment (U.S. Senate, 1953a, p. 3). They forcefully argued that troops should remain under exclusive U.S. jurisdiction and not be tried in foreign courts that, in their view, failed to offer due process (U.S. Senate, 1953a, p. 7; U.S. Senate, 1953b, pp. 19-20). According to the critics, in American courts troops enjoyed protections such as a prohibition on cruel and inhuman punishment, but they might not enjoy such guarantees before foreign courts, as "Americans insist on a higher standard of civil and political rights than their neighbors" (U.S.

Senate, 1953a, p. 7). Furthermore, critics asserted that foreign courts would be biased and prejudiced against U.S. troops (U.S. Senate, 1953a, p. 82).

One might have expected the military to join the critics in support of maintaining exclusive American jurisdiction over troops. Yet, throughout the Senate debate over the NATO SOFA ratification – and in a later debate on a possible revision of the SOFA – representatives of the military and the Department of Defense expressed the *opposite* view: rather than criticizing the agreement, they strongly endorsed it as essential to the functioning of the alliance. According to Adm. Lynde McCormick, Supreme Allied Commander Atlantic, the SOFA was “urgently needed if the North Atlantic Treaty Organization is to operate other than haltingly; if harmonious relations are to be fostered among treaty nations” (U.S. Senate, 1953b, p. 35). Secretary of Defense Charles Wilson argued that the exclusive jurisdiction demanded by SOFA critics fitted colonial times, but the United States was now dealing with sovereign nations and equal partners in a cooperative effort to defend the free world (U.S. Senate, 1953b, p. 22). Senior officers similarly emphasized the need to respect allies’ sovereignty by placing U.S. troops under their jurisdiction. According to General Alfred Gruenther, Supreme Allied Commander Europe,

While all the other NATO countries are agreed that their soldiers will receive fair hearings in the courts of the others, the United States would be alone in maintaining that its people can only be tried by United States courts. We would thus seem to place ourselves in a unique category. I can assure you no alliance can efficiently and successfully function if one of the partners thus sets itself apart from the others. Our troops are not in wartime occupied countries. They are on the territory of sovereign friends ... (U.S. House of Representatives, 1957, p. 14).

General Lauris Norstad, who succeeded Gruenther as Supreme Allied Commander Europe, expressed a similar view, suggesting that the NATO SOFA:

...was worked out in recognition of the fact that host nations are sovereign states. Regardless of their size, their sovereignty is just as important to these nations as our sovereignty is to the

American people. It is something that is sacred to all people. ... I think it is absolutely preposterous for us to think we can tell these people that their sovereignty is not important and the rights that we insist we have in our own country we are not willing for them to have and exercise in their own. (U.S. House of Representatives, 1957, pp. 15-16).

Such statements expressed the military's view of NATO allies not as countries under U.S. subjugation, but as sovereign partners whose legal authority over their territory should be respected. Furthermore, whereas critics suggested that foreign legal systems might treat troops unfairly and even cruelly, military representatives downplayed differences between American and foreign justice. For example, senators critical of the SOFA argued that in NATO countries there was no presumption of innocence (U.S. Senate, 1953a, pp. 19-20). General Norstad forcefully denied that:

Now there are many misconceptions and much misinformation going around about how these foreign courts work. For example, some time ago I heard the objection that French law was unfair to our people because it contained no presumption of innocence. That is absolutely and incredibly wrong. The presumption of innocence does exist in French law, under the Napoleonic Code, just as in English law (House of Representatives, 1957, p. 16).

Statements such as this convey the military's ability to rise above the ethnocentric views of SOFA opponents. Whereas the senatorial critics saw foreign justice as inferior to U.S. justice, the military saw no necessary contradiction between foreign courts and due process. Indeed, while the NATO SOFA entailed some compromise, the military saw it as "the best arrangement we can make with our allies when you consider the important issues of sovereignty which are involved" (General Omar Bradley, chairman of the Joint Chiefs of Staff, in Congressional Record 1953, pp. 8770). Furthermore, the military warned lawmakers about the ominous consequences of a failure to ratify the NATO SOFA due to the jurisdictional concerns: A

rejection of the agreement would cripple NATO, which builds on a spirit of mutual trust and confidence; and it would harm the U.S. military position and U.S. military personnel in Europe (U.S. Senate, 1953b, pp. 11, 36).

The willingness to subject U.S. troops to foreign criminal jurisdiction constituted the fundamental premise of the military's legal policy. By treating hosts as sovereign countries whose legal authority should be respected, rather than dismissed, the military sought to diffuse tensions that might arise from troop criminality, avoid antagonizing host countries' civilian populations, and create a more welcoming environment for U.S. presence.

### **Obtaining Maximum Legal Protection for Troops**

While the military and DoD agreed to grant hosts jurisdiction over troops, they also sought to provide troops with the strongest legal protection possible, "at all costs and in every instance" (Brig. Gen. George Hickman, Assistant Judge Advocate General of the Army, in U.S. Senate, 1956, p. 32). This effectively translated into three interrelated goals: first and foremost, shield troops from trials before host-country courts; second, if troops did end up in local courts, ensure the fairness of trials; third, for those troops that were convicted and sentenced to confinement, verify the appropriateness of prison conditions.

The first goal – shielding troops from trial – seems to contradict the first tenet of the military's legal policy. If the military supported the exercise of foreign jurisdiction over troops, why work to effectively limit the exposure of troops to foreign justice? This apparent inconsistency reflects the military's balancing act: on the one hand, a need to show respect for hosts' sovereignty and legal authority to facilitate security cooperation; and, on the other hand, a belief that troops were better protected under U.S. jurisdiction and should remain, whenever possible, "within the military conclave" (Brig. Gen. Hickman in U.S. Senate, 1955, p. 19). The waiver option in the NATO SOFA's Article VII served as the primary channel of protecting

troops from criminal accountability before local courts, and U.S. authorities employed it extensively. The policy of the DoD and military authorities in the field was to seek waivers *in every case of concurrent jurisdiction* (U.S. Senate, 1957, p. 30). Since host-country authorities agreed to waive their jurisdiction in a significant percentage of cases, waivers considerably reduced the chances of a servicemember's being tried by a foreign court (U.S. Senate, 1956, p. 15).

DoD, however, considered the NATO SOFA's arrangements only as an acceptable minimum and encouraged U.S. authorities, wherever possible, to ensure that more waivers were granted through bilateral agreements or understandings. For example, in a supplementary agreement with Germany, the Federal Republic agreed to an *automatic* waiver of its primary right to exercise jurisdiction under Article VII, but retained the right to terminate the waiver where a major interest of German administration of justice made it necessary to exercise German jurisdiction (U.S. Senate, 1964, p. 16).

When American troops did stand trial in foreign courts, the U.S. military sought to ensure they enjoyed the fair-trial guarantees enshrined in subsection 9 of Article VII of the NATO SOFA (e.g., right to a speedy trial, to legal representation, and to an interpreter). The monitoring of trial fairness included country-law studies: in each host country, U.S. military authorities conducted a study of the local substantive and procedural criminal law, including a comparison to the procedural safeguards of a fair trial in U.S. courts (U.S. Senate, 1956, p. 6). In addition, the military sent an observer to attend every trial of a U.S. servicemember. The observers – required to be lawyers, except in minor cases – followed the progress of trials and submitted a report examining whether the proceedings complied with the procedural safeguards secured by a pertinent SOFA and whether the accused received a fair trial (U.S. Senate, 1956, p. 7; U.S. Senate, 1958, p. 2).

The third element in the protection of troop rights concerned prison conditions. DoD required that troops confined in foreign penal institutions be visited at least every thirty days, at which time the conditions of confinement be observed, and that action be taken in case of mistreatment or substandard prison conditions (U.S. Senate, 1956, p. 8). DoD sought to assure that troops held in foreign prisons received all the rights and protections of personnel confined in U.S. military facilities (U.S. Senate, 1965, p. 26).

In summary, DoD and the U.S. military made significant efforts to protect the welfare and rights of U.S. personnel and to ensure that they were not harmed by the exercise of foreign jurisdiction (U.S. Senate, 1957, p. 32). Protecting troops from foreign justice was crucial for the individual troops themselves, but it was also essential for the successful operation and morale of U.S. forces, for assuring troops that the military had their back, and for maintaining U.S. public support for overseas deployments, as we discuss below.

### **Building Local, Informal Relations with Hosts**

To provide maximum legal protection for troops, the military's legal strategy included a third tenet: a preference for informal contacts with host countries' legal authorities. The aversion to formal channels was manifested through the infrequent use of the official complaint mechanisms prescribed by the Senate resolution accompanying the 1953 ratification of the NATO SOFA (4 U.S.T. 1928-29). The resolution instructed that if U.S. military authorities believed that a servicemember might be denied a fair trial, and the host rejected the request for a waiver, then the military should request the State Department to press such a request through diplomatic channels, with notification given to Congress. The resolution also instructed that trials that failed to comply with Article VII safeguards shall be reported by U.S. military authorities to the State Department who will act to protect the rights of the accused. These formal procedures were implemented through a DoD Directive and regulations of the different services (reprinted in

U.S. Senate, 1956, p. 7; U.S. Senate 1967, p. 19), but seem to have been invoked rarely. In 1953-1954, the formal procedure called for by the Senate resolution was invoked only once (U.S. Senate, 1955, pp. 11, 21). In 1955, the Senate resolution was not invoked in a single case (U.S. Senate, 1956, pp. 5, 18).

Rather than rely on formal mechanisms of complaint, the U.S. military sought to build local ties with host-country authorities to elicit their cooperation in the legal protection of servicemembers (U.S. Senate, 1956, p. 32). The task of developing local-level arrangements and establishing effective liaison with host-country officials fell primarily to the judge advocates of the three services, who forged ties with ministry of justice officials, procurators and prosecutors (U.S. Senate, 1966, p. 18; U.S. Senate, 1957, p. 41). As Brig. Gen. Charles Decker, Assistant Judge Advocate General of the Army, described to the Senate subcommittee: "We have worked well with the lawyers and judicial officials of other countries; we have come to know and understand them" (U.S. Senate, 1958, p. 60). For example, in 1956 the military reported that the principal Army judge advocate in France had been holding a weekly conference with representatives of the French Ministry of Justice at which all pending cases were discussed and means devised to solve potential problems; that same year, judge advocates, State Department personnel, and Italian officials met for a series of conferences in Rome to develop operating procedures under the agreement (U.S. Senate, 1956, p. 32). According to Maj. Gen. George Hickman, Judge Advocate General of the Army, "A great deal has been accomplished through effective liaison and working arrangements at the local level. The results achieved to date through tact and intelligence in the handling of our relations with local civilian authorities have been outstanding" (U.S. Senate, 1957, p. 31-32). What exactly did such local-level ties achieve?

First and foremost, the cooperative working relations with host-country authorities contributed to the high percentage of waivers (U.S. Senate, 1957, p. 3). Waivers were the outcome of greatest interest to the military, and they were achieved through "excellent local



liaison" (U.S. Senate, 1966, p. 4). Second, prison authorities in host countries exhibited a "conscientious attitude toward the welfare of confined United States personnel" and took action to correct problems identified by U.S. representatives in prison visits (U.S. Senate, 1957, pp. 25, 30; U.S. Senate, 1965, p. 28). Consider the following examples from Italy. When local procurators refused to recognize the determination of American military authorities that offenses occurred in the performance of official duty and were thus subject to U.S. jurisdiction, American military representatives pleaded with the Italian executive branch which exerted its influence on the judiciary accordingly, leading to the resolution of the cases to the military's satisfaction (U.S. Senate, 1958, pp. 51-52). The work of U.S. representatives also led Italian authorities to "become very sympathetic toward our problems" and to grant more waivers than before (U.S. Senate, 1959, p. 12). The contacts with local Italian officials further helped to guarantee a fair trial and light sentences to U.S. servicemembers. One case involved a drunk U.S. servicemember whose car struck and killed three girls on their way to school. Given the public uproar, Italian authorities postponed the trial to allow for a cooling-off period. When the trial was held, the punishment was merely a suspended sentence to confinement (U.S. Senate, 1959, p. 23) This case represents a broader Italian trend of imposing minimum sentences on U.S. troops: "exemplary" cooperation, according to the military's annual report to the Senate (U.S. Senate, 1957, p. 36).

Even with the cooperative attitude of host-country authorities, the U.S. military did hold certain concerns about the legal treatment of troops. Some countries – notably Turkey – were reluctant to waive their jurisdiction over troops (U.S. Senate, 1959, p. 2); in several countries – such as Turkey, France, and Japan – the legal process often suffered delays (U.S. Senate, 1958, pp. 49-50; U.S. Senate, 1957, p. 17; U.S. Senate, 1963, p. 2); and in some cases, the foreign court procedure was seen as very different from the American one and hence unjust (U.S. Senate, 1956, pp. 25, 42-43). But even in these problematic cases, the U.S. military showed sensitivity

toward the practices and constraints of hosts. Before the Senate subcommittee, military and DoD representatives recognized that hosts may be reluctant to waive a case because they "have their own position to maintain, and their own public to satisfy ... when they have refused a request for a waiver, they have felt that it was more important to them in the local scene to have the man tried in their courts" (Brig Gen. Alan Todd, Assistant Judge Advocate General of the Army, in U.S. Senate, 1961, p. 10; U.S. Senate, 1966, p. 20). For example, in addressing a case where U.S. servicemembers tore down the Turkish flag, DoD's Assistant General Counsel Benjamin Forman remarked: "You can't expect a waiver in that kind of a case" that inflames public opinion (U.S. Senate, 1961, p. 29). Occasionally, military representatives excused delays in the legal process, suggesting these were inherent to the local procedure or perhaps indicated the care that local courts used in bringing a case to a conclusion (U.S. Senate, 1958, pp. 49-50; U.S. Senate, 1960, p. 20; U.S. Senate, 1965, p. 17).

Of course, the local, informal ties with hosts' legal authorities were not the only reason for the latter's cooperativeness. The primary reason was that host countries enjoyed U.S.-provided security. Yet, hosts could not just bow before American authorities, since they also needed to satisfy their domestic public – a public that wished to see offending troops held accountable (Angst 2001; Kirk 2002). Given these conflicting pressures on hosts, an informal U.S. approach – focused on effective local liaison, coupled with sensitivity toward hosts' constraints – struck the right balance. It likely yielded greater cooperation from hosts and, ultimately, stronger protections for troops compared with what a heavy-handed approach would have produced.

### **Assuaging Critics**

The idea of subjecting U.S. troops to foreign jurisdiction faced resistance in Congress even after the 1953 ratification of the NATO SOFA. Critics persisted in their campaign against

this agreement and similar jurisdictional arrangements with foreign countries: “[W]hy should we force our men into foreign courts to be tried in a hostile atmosphere, before hostile courts, without the humane rules of procedure set forth in our Constitution and laws?” (Rep. Frank Bow (R-OH), U.S. House of Representatives, 1955, p. 10). In 1957, the House Committee on Foreign Affairs approved a resolution calling for a revision of the NATO SOFA and similar arrangements, or the withdrawal of the United States from them, so that foreign courts would have no jurisdiction over U.S. servicemembers (U.S. House of Representatives, 1957).

In this climate of skepticism from some lawmakers, the military had to ensure political support for the jurisdictional arrangements with host countries and prevent their subversion by Congress. For the military, a major revision of the NATO SOFA would have devastated the alliance “with the gravest consequences to the essential security of our country” (General Gruenther in U.S. House of Representatives, 1957, p. 13). The military thus strived to defend the NATO SOFA and similar arrangements in its presentations to the Senate subcommittee that monitored these arrangements. In the data they submitted, and in annual hearings before the subcommittee, military and DoD representatives repeated the same positive message, year after year: the jurisdictional arrangements were generally working well; any problems were limited in number and significance. DoD’s Assistant General Counsel Monroe Leigh acknowledged as much in the first hearing before the subcommittee: “We hope to convince the members of the subcommittee ... that on the whole the [NATO SOFA] treaty has been working out very satisfactorily. ... there is no reason whatsoever to be alarmed about the practical working of this treaty” (U.S. Senate, 1955, pp. 6-7). This assessment relied, first and foremost, on the rates of waivers. Before the subcommittee, the military annually presented – and took pride in – the high waiver rate granted by foreign legal authorities, indicating the significant efforts of the military to shield troops from foreign courts and the cooperativeness of hosts in giving up their jurisdiction (U.S. Senate, 1958, p. 2). Importantly for SOFA critics, a high waiver rate meant that

in the majority of cases subject to foreign jurisdiction, troops did *not* stand trial before foreign courts. For instance, the military reported that in 1966 host countries waived their primary right to exercise jurisdiction in 83% of relevant cases (U.S. Senate, 1967, p. 36).

A second piece of evidence to reassure skeptics was the very low rate of troops sentenced by foreign courts to serve time in prison. For example, the 1966 data showed that of the 10,385 U.S. personnel tried by foreign courts, only 105 individuals – 1% – received an unsuspended prison sentence.

Third, the military annually asked commanders in the field for their assessment of the impact of the local jurisdictional arrangements (U.S. Senate, 1962, p. 16). Before the subcommittee, the military and DoD annually delivered the same upbeat message: “our commanders report that the morale and discipline of our forces have not been adversely affected nor has there been a detrimental effect on the accomplishment of our military missions in the various countries” (DoD’s Assistant General Counsel Benjamin Forman in U.S. Senate, 1960, p. 1).

Occasionally, the military did report that the jurisdictional arrangements exerted an adverse effect on force mission or morale in specific countries. For example, the delays in legal processes in Turkey and French Morocco hurt troop morale (U.S. Senate, 1955, p. 28; U.S. Senate, 1956, p. 32). Yet, despite individual difficulties, the military argued, the NATO SOFA and similar arrangements provided a workable, satisfactory, fair, and equitable jurisdictional framework, which reduced the frictions with hosts (U.S. Senate, 1957, p. 3; U.S. Senate, 1959, p. 24; U.S. Senate, 1961, p. 7).

The military and DoD also sought to dispel rumors and refute false information that circulated among the public and in the press: “As the public better understands the NATO Status of Forces Treaty and similar agreements and becomes aware of our experience in operating under them, we believe certain popular misconceptions and misunderstandings may be corrected,

and the administration of these agreements made easier” (DoD’s Assistant General Counsel Leigh in U.S. Senate, 1957, p. 2). Recognizing the importance of U.S. public support for the agreements, DoD resolved to foster broad public knowledge through the dissemination of information on the operation of the jurisdictional arrangements (U.S. Senate, 1956, p. 2; U.S. Senate, 1957, p. 2). The hearings before the Senate subcommittee served as an important channel for educating the public and setting the record straight (U.S. Senate, 1957, p. 12; U.S. Senate, 1965, p. 26). The military and DoD denied allegations that U.S. troops had been subjected to unfair trials, maintaining that “foreign courts are dealing fairly and indeed generously with our servicemen” with no indication of retaliation against troops, discrimination or prejudice (Secretary of Defense Wilson in U.S. House of Representatives, 1957, pp. 13-14; U.S. Senate, 1958, p. 32). Similarly, the military and DoD sought to dispel rumors that troops “are being imprisoned under conditions so primitive or medieval as to shock the sensibilities.” Rather, the military argued, foreign prisons compared favorably with most U.S. prisons, and imprisoned troops received the same privileges they were entitled to in American prisons (General Gruenther in U.S. House of Representatives, 1957, p. 14). Furthermore, whereas critics charged that thousands of U.S. troops were languishing in foreign jails, the actual number was several dozen (U.S. Senate, 1955, p. 25).

To reassure critics, the military and DoD often praised hosts’ cooperativeness: hosts “lean far over backward to be fair and cooperate” (General Norstad in U.S. House of Representatives, 1957, p. 15; U.S. Senate, 1966, p. 2). In particular, the high waiver rate was an “excellent showing of the cooperation our representatives in the field have been able to obtain from foreign authorities” (DoD’s Assistant General Counsel Leigh in U.S. Senate, 1956, p. 5). Furthermore, DoD and military representatives confirmed that troops received lighter punishments from foreign courts than they would have received from U.S. military or civilian courts for similar offenses (U.S. House of Representatives, 1957, p. 15; U.S. Senate, 1964, p. 4;

U.S. Senate, 1965, p. 22). Specifically, “the foreign countries are leaning farther over toward not putting our people in jail than would be the case if they were tried by courts-martial” (Maj. Gen. Hickman in U.S. Senate, 1958, p. 32). As a result, troops much preferred to be tried by host-country courts than by courts martial! (U.S. Senate, 1958, p. 45).

In summary, DoD and the military were well aware of the mistrust that many in the United States harbored toward foreign justice. They recognized the importance of diffusing the skeptics’ suspicions in order to preserve the jurisdictional arrangements underlying U.S. deployments. Their success is demonstrated in the disbanding of the Senate subcommittee that monitored these arrangements in the early 1970s. The military apparently convinced lawmakers that the arrangements were working well, making further monitoring unnecessary.

### **Broader Implications of This Study**

#### **Toward a Refined Understanding of U.S.-Host Relations**

Basing arrangements – agreements between U.S. authorities and hosts that govern American military presence on the hosts’ territory – have traditionally received little scholarly attention. As Cooley and Spruyt (2009, 102-103) explain, Realists considered these arrangements merely as the products of alliances, external threats, and the pressures of the international environment. Critics of U.S. foreign policy focused on the asymmetries of power between the United States and host countries, viewing the United States as an imperialist power that violated hosts’ sovereignty and coerced them to accept its demands (Johnson 2000).

Yet a recent body of literature on basing arrangements has altered our understanding of the political dynamic underlying U.S. overseas bases. This literature deemphasizes the role of coercion and power differentials in U.S.-host relations; it suggests that hosts did maintain their sovereignty and did *not* come under U.S. control (Cooley and Nexon 2013, 1038). While the Soviet Union penetrated the domestic authority structures of its Eastern European clients, U.S.

authorities were excluded from host-country institutions and decision-making processes. As Schmidt (2004, 827) argues, the practices of U.S. overseas basing “emerged through processes of deliberation between sending and hosts states, not imposition and coercion. ... deliberations between the U.S. and its allies took place among actors who saw themselves as equals.” Given the overwhelming American power, one would expect basing arrangements to be heavily biased in the U.S. favor, but during the Cold War the U.S. power advantage did not guarantee favorable basing rights terms. Instead, host countries obtained ever-increasing compensation packages from the United States and limited the U.S. military’s use rights over the facilities (Cooley and Spruyt 2009, 104).

*By shining a light on an understudied aspect of U.S. basing, this study further enhances our understanding of the origins of U.S.-host relations as less coercive than one might expect.*

By ceding certain criminal-jurisdiction authority, the United States treated its NATO allies as partners whose sovereignty deserves some respect, rather than countries under U.S. domination. The arrangements and understandings with local authorities similarly indicate cooperation among sovereigns rather than American control. While U.S.-host relations involved power asymmetry and American pressure, the United States did not dictate its desired legal outcomes.

Going beyond the existing literature, this study examines an overlooked dimension of U.S. overseas basing: how it played out domestically with the American public. The subjection of troops to hosts’ jurisdiction did not sit well with parts of the American public and many members of Congress. The military thus engaged in a two-level game: fostering the relations with hosts abroad while endeavoring at home to win public support for overseas deployments.

### **Changing U.S. Practice: Toward Exclusive Jurisdiction over Troops**

This article has focused on the NATO SOFA and its model of shared jurisdiction over U.S. troops. Over half of U.S. SOFA agreements use this model. Yet, since the 1970s, the United

States has increasingly sought to secure *exclusive* criminal jurisdiction over its troops abroad and shield them completely from trials before host-country courts. The clearest expression of this shift came with the 2003 adoption of the Global SOFA Template (GST) as a standard text to allow the United States to conclude SOFAs faster with broader protections for troops (Filippucci 2018). The GST asks the host country to grant U.S. troops "the privileges, exemptions, and immunities equivalent to those accorded to the administrative and technical staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations." This "equivalent A&T status" (for "administrative and technical") is just a step below full diplomatic immunity, and it completely exempts troops from local criminal jurisdiction. Such a broad protection is the "ideal outcome from the U.S. point of view" (International Security Advisory Board 2015, 36). To reinforce that outcome, the GST also asks the host to declare that it "recognizes the particular importance of disciplinary control by United States Armed Forces authorities over United States personnel and, therefore, authorizes the Government of the United States to exercise criminal jurisdiction over United States military personnel while in [host country]."

As one would expect, host countries have often resisted a GST-based SOFA due to the breadth of its protections and absence of reciprocity (International Security Advisory Board 2015, 37), but recent SOFAs often build on the GST or otherwise secure complete U.S. jurisdiction over troops.<sup>1</sup>

The U.S. goal of maximizing jurisdiction over troops – ideally, obtaining exclusive jurisdiction – shows less respect for the hosts' sovereignty than the shared-jurisdiction formula examined in this article. At the height of the Cold War, the United States was mindful of hosts' sensitivities and of the norms of self-determination and colonial delegitimation. In today's environment, the United States feels greater confidence to deprive hosts of jurisdiction over crimes that troops commit on their territory. But this study demonstrates that it is indeed possible



for the United States to show greater cooperativeness and share jurisdiction with hosts, while still providing adequate legal protection for troops and reassuring skeptics in the United States.

### **Jurisdiction over Peacekeepers**

Our analysis carries implications for the controversy surrounding peacekeepers' accountability – sparked by allegations of peacekeeper involvement in sexual abuse since the early 2000s (Moncrief 2017). A major obstacle to the prosecution and punishment of peacekeepers is their immunities from the jurisdiction of host countries. These immunities are enshrined in the 1990 Model Status of Forces Agreement for Peace-keeping Operations (UN Model SOFA) and have been incorporated into the following mission-specific SOFAs. The Model SOFA subjects troops – the largest component of peacekeeping missions – to the exclusive jurisdiction of the troop-contributing countries, which means complete immunity from host-country jurisdiction. Civilian members of peacekeeping missions – including UN staff and UN police – enjoy a more limited immunity from host-country jurisdiction. Yet efforts to increase peacekeepers' accountability by curtailing their immunities have met little success. In discussions at the UN, the idea of trying troops in host-country courts was never seriously entertained. As for civilian members, in 2006 a UN Group of Legal Experts recommended that they should preferably be tried by the host country, possibly after making ad-hoc arrangements to ensure the rights of the alleged offender (A/60/980, 16 August 2006). Various Member States, however, remained skeptical of hosts' ability to guarantee fair trials (A/63/54, 15 April 2008, p. 5).

When will peacekeeper-sending states be willing to submit civilian or even military peacekeepers to the jurisdiction of host countries? Based on the U.S. experience, this study offers several lessons. First, sending states must believe that it is *in their own interest* to accept foreign jurisdiction over their citizens. The United States accepted hosts' jurisdiction on the belief that this was essential for the success of NATO and hence for U.S. national security. Second,

jurisdiction over peacekeepers must be shared between sending and host countries. Giving priority to the exercise of jurisdiction by hosts, as the Group of Legal Experts proposed, is unlikely to be accepted by sending countries. Third, mechanisms must be devised to provide extensive protections and guarantee fair legal treatment for peacekeepers in host-country courts. Fourth, key domestic actors and the public in the sending states must be reassured that peacekeepers under hosts' jurisdiction will indeed receive fair treatment. Fulfilling these conditions – especially the first one – presents a real challenge.

### **Conclusion**

Crimes committed by troops threatened to be a thorn in U.S.-host country relations. We explained how the U.S. military tackled this challenge, showing attentiveness to host-countries' sensitivities and constraints. Early on, the military and the DoD realized that security cooperation with hosts would require some accommodation of their concerns over criminal jurisdiction. Therefore, they *supported and defended* the granting of a certain degree of jurisdiction over troops to hosts. Furthermore, U.S. military authorities worked to ensure legal protection for troops through local, informal contacts rather than through official channels. By so doing, the military mitigated potential frictions, fostered constructive engagement, and likely made it easier for host governments to accept long-term U.S. presence. Granted, such an acceptance also owed much to the security and economic benefits that host countries received from the United States (Cooley, 2008). But by easing legal tensions and showing respect for hosts' sovereignty, the military avoided unnecessary controversy and antagonism. As Allen et al. (2020, 328) argue, "U.S. security guarantees, and any accompanying policy concessions, typically require some level of domestic consent. ... Where public opposition to a foreign military presence increases, the cost to host state political elites for maintaining these relationships also increases." Through its legal strategy, the military lowered the public opposition to U.S. presence.

The military realized, however, that U.S. deployments required public support not just abroad, but also from the U.S. public and from servicemembers themselves. The military thus strived to maintain troops' morale by shielding them from foreign jurisdiction to the greatest extent possible. Protecting U.S. personnel from foreign criminal justice was also important for reassuring the American public and satisfying SOFA skeptics. This insight, indeed, speaks to a gap in the literature, since we know little about how the U.S. public perceives peacetime deployments that involve little actual fighting (e.g., Smeltz et al., 2020). Future research may empirically test the military's assumption, namely, that the protection of troops from foreign justice enhances the American public's support for overseas deployments.

But the larger scholarly gap this article addresses concerns the origins of U.S. overseas basing. As Schmidt (2020) explains, peacetime foreign military presence, which goes against traditional notions of sovereignty, presents a real puzzle – one that scholars have taken for granted. While many studies examine the dynamics and effects of U.S. bases, they typically overlook the underlying fundamental questions: How did the permanent presence of foreign military forces become a viable policy option? Why did host countries consent to such presence? This article advances our understanding of how the military created a hospitable climate for the permanent stationing of U.S. troops abroad. Hosts' exercise of criminal jurisdiction over troops made it easier for foreign audiences to accept American troops in their midst; the limited exposure to foreign justice and the ensuring of fair treatment made it easier for the American public to accept overseas troop deployment. By dialing down legal tensions and showing sensitivity to the concerns of multiple audiences, the military lowered the threat that troop criminality posed to U.S. deployments. While activists, the media, and the public in host countries occasionally expressed outrage over offenses committed by troops (Kirk 2002; Curtin 2012), the military's strategy helped limit the damage that legal frictions might have caused to the relations with hosts and to the American public's crucial support for overseas deployments.

*Note the importance of these insights beyond the American experience.* Major powers – including Russia, China, the UK, and France – deploy troops in overseas bases, and encounter similar legal dilemmas vis-à-vis hosts (Melvin 2019; Cabestan 2020; Buchholz 2021).

The U.S. willingness to submit its troops to the jurisdiction of host countries constitutes a sharp departure with past practice in the legal relations between powerful and weaker nations. Consider the system of extraterritoriality in the 19<sup>th</sup> and 20<sup>th</sup> centuries in China, Japan, and Turkey. Under extraterritoriality, citizens of the major powers were not subject to local laws and courts; they were tried, instead, by their consular officials under their country's laws (Kayaoglu 2010). In contrast, more than 100,000 American troops faced trial in host-country courts in the 1950s and 1960s (Efrat 2021). Yet the pendulum has already moved in the opposite direction: As the United States increasingly seeks exclusive jurisdiction over its troops, and as sending countries persist in their refusal to accept hosts' jurisdiction over peacekeepers, powerful countries have returned to their old disrespect for other countries' legal sovereignty. The American willingness to share jurisdiction with weaker nations after WWII seems like a short-lived exception.

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## Notes

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<sup>1</sup> See for example, the U.S.-Guatemala SOFA, effected by exchange of notes November 25 and December 1, 2020; U.S. Rwanda-SOFA, signed May 28, 2020.