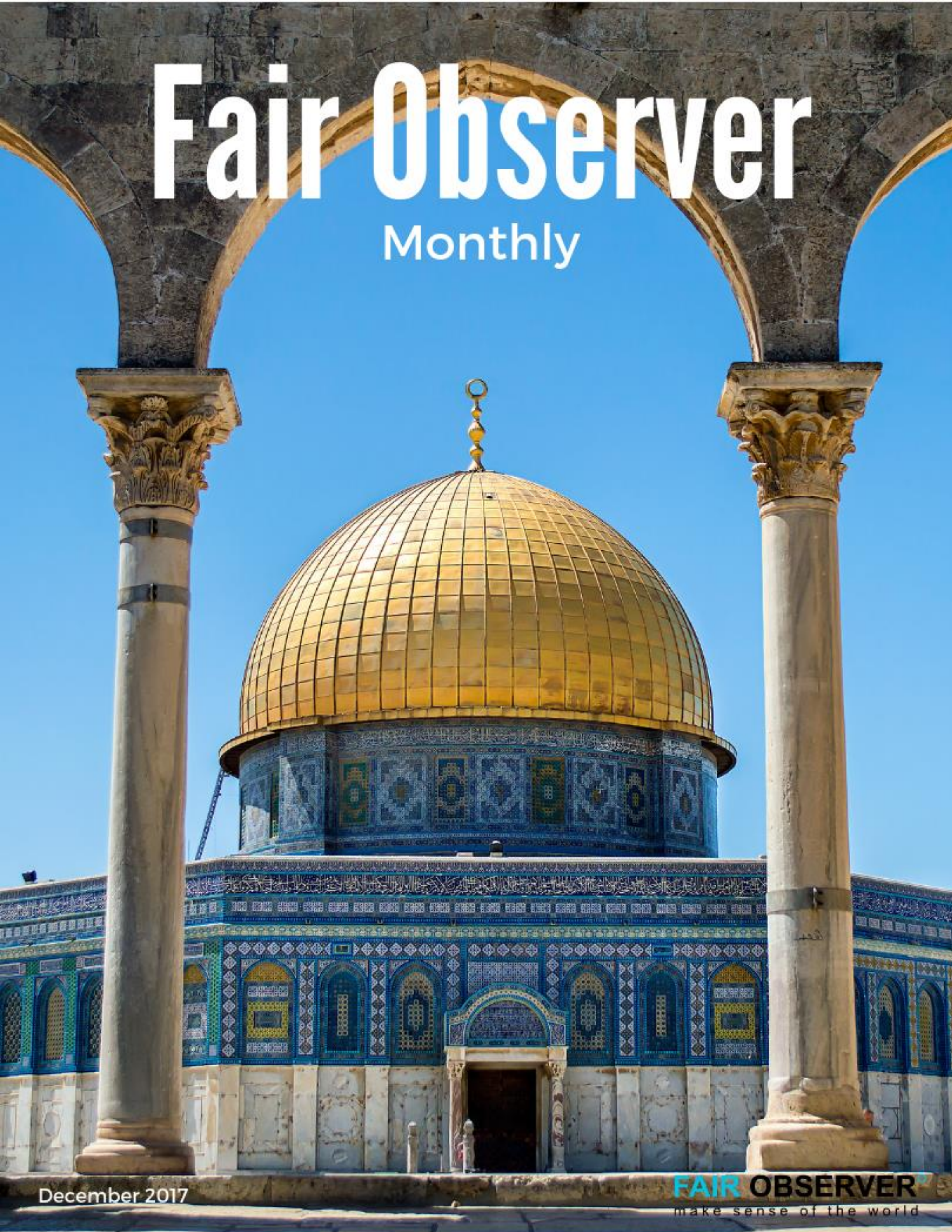
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make sense of the world

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CONTENTS

About Fair Observer 5

Share Your Perspective 6

When Business Meets Human Rights 7
Mara Tignino and Antonella Angelini

IOC Turns Russia into Pariah of World Sport 12
Ellis Cashmore

Could California Go All Electric? 15
Steve Westly

Trump Botches Jerusalem Opportunity 17
Gary Grappo

Why Roy Moore May Win in Alabama 20
Charles Hoskinson

Europe Feels the Trump Effect 21
Britt Bolin

Can Cryptocurrency Help Alleviate Poverty? 23
Tasnim Nazeer

How Obama Won at the Diplomacy Game with Iran 25
Peter Jenkins

How Are Sovereign Wealth Fund Decisions Made? 27
Adam Ereli & Theodore Karasik

From New Orleans to Palestine: Whose House Is This? 34
Hasheemah Afaneh

ABOUT FAIR OBSERVER

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When Business Meets Human Rights

Mara Tignino and Antonella Angelini
December 5, 2017

Most companies are still coming to grips with what their corporate responsibilities mean in practice when it comes to human rights.

As November drew to a close, the Palais des Nations, the UN headquarters in Geneva, prepared to shake off the seasonal gloom by welcoming once again the UN Forum on Business and Human Rights.

Since its establishment in 2012, the forum has been a bubbling platform for experience sharing in the implementation of the UN Guiding Principles on Business and Human Rights (GPs), the global standard for preventing and addressing adverse impacts on human rights connected to business activity. In 2016 alone, more than 2,000 participants from 140 countries flocked to Geneva, confirming the forum's appeal to civil society representatives but also an increasing interest from the private sector — accounting, respectively, for the 30% and 24% of the participating stakeholders.

This year's edition (the sixth) focused on the theme of "Realizing Access to Effective Remedy," a topic that has received less sustained attention than the role of states and corporations in protecting and respecting human rights. No later than in 2015, a report from the Economist Intelligence Unit attested that most of the surveyed companies were still coming to grips with what their responsibilities mean in practice. Much has been done in this respect. One example concerns human rights due diligence in supply chains. In this respect, international institutions and companies alike have sought to understand the challenges and develop new good practices. For instance, following allegations of forced labor in Thai fishing industry, Nestlé has adopted an action plan aiming to ensure better monitoring of its Thai suppliers.

Underpinning the emergence of this evolving normative framework is the recognition that companies can cause adverse impacts on a wide set of rights, including civil, political and socioeconomic ones. International law, however, is not the only discourse that has cast its reach to the responsibilities of corporations.

CHOOSE YOUR LANGUAGE

Attempts to regulate and tame corporate power are as old as the emergence of the "modern" corporation and the antitrust movements of the late 19th century. Also longstanding is the recognition in international circles that business operations may result in harmful human rights impacts. Already in the 1970s, UN bodies and other international institutions ventured at steering efforts to regulate the activities of national and multinational corporations with respect to human rights.

In many ways, however, the current debate perceives and represents itself as being a novelty of the post-Washington Consensus era, when the US and Western Europe went awash with allegations of corporate malfeasance. Financial scandals and human rights abuses came into public scrutiny through the reports and campaigns by nongovernmental organizations, prompting many companies to embrace social and environmental concerns in an effort to recoup credibility.

This in turn resulted in the standards, codes of conduct and accountability mechanisms that are often associated with the Corporate Social Responsibility (CSR) movement. Individual companies, industry associations, standard setting and certification bodies, nongovernmental organizations and international financial institutions all adopted their own standards and procedures.

The United Nations was quick to pick up the new trend. By the end of the 1990s, it launched several initiatives, notably, the Kimberley Process and the United Nations Global Compact, featuring the typical CSR blend of voluntarism, peer-review and inclusiveness to non-state actors. These initiatives, however, have come to host negative practices, such as company free riding in the context of the Global Compact. Another negative trend has to do with reporting. According to the website of this institution, more than 7,000 out of about 12,000 signatory companies have incurred delisting due to their failure to abide by the reporting policy under the initiative.

Further involvement in the CSR wave came with the work of John Ruggie as the special representative of the secretary general. His seminal report, Protect, Respect and Remedy: A Framework for Business and Human Rights, stood on the premise that “the root cause of the business and human rights predicament today lies in the governance gaps created by globalization — between the scope and impact of economic forces and actors, and the capacity of societies to manage their adverse consequences.” These governance gaps provide the “permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation.” It was also clear that, in line with the CSR discourse, business would have a voice in setting the normative agenda affecting itself. As Ruggie put it, “There is no single silver bullet solution to the institutional misalignments in the business and human rights domain. Instead, all social actors — States, businesses, and civil society — must learn to do many things differently.” By 2011, the Protect, Respect and Remedy Framework translated into the GPs.

The framework and the GPs are addressed to both states and enterprises and are divided into the following three pillars: state’s duty to protect human rights against abuses committed by third parties; corporate responsibility to respect human rights; and the need to ensure access to

remedies, judicial or non-judicial, for affected stakeholders. The aim to reconcile competing stakeholder claims underpinned the process, beginning with the multi-stakeholder consultations stage and all the way to implementation of the GPs.

But pragmatism was also a primary aim. Further and beyond their quality as normative outcomes, the framework and GPs seek uptake from the actors other than states that affect human rights and are expected to take responsibility for their actions. This is why, along with a common understanding of existing standards, the GPs define independent but complementary responsibilities for non-state actors that may affect or be affected by the GPs.

Thus, under Pillar II, the GPs require not only that business enterprises avoid infringing the human rights of others, but also that they show how they do this. Monitoring and reporting, particularly with respect to supply chain management, have therefore come to the forefront for companies, which have just started facing the many challenges in this respect. Among them, the recent Economist Intelligence Unit's No More Excuses study cites the complexity of supply chains, the frequently changing supplier-base and the distance between the company and its suppliers.

In many ways then, the genius of the GPs was that they fit into the CSR movement well enough to tap into its momentum and its key publics, while at the same time leaving room for the notion of business responsibility to evolve in a normative framework different from that of the classical CSR instruments. Not coincidentally, the GPs have become the cradle of a business and human rights (BHR) agenda that is building its own self-representation as a drift away from the CSR movement.

The juncture between the two discourses would be in a focus on responsibility as accountability. According to Anita Ramasastry, a member of the United Nations Working Group on Business and Human Rights, it would be something of a newcomer's mistake to take BHR and CSR as being the same discourse. BHR is a distinct field interested in "measuring company actions in light of key universal human rights concepts not simply voluntary codes or principles." The reason, carries on Ramasastry, is that "BHR focuses on victims or impacted communities and articulates their concerns in terms of a broad swathe of treaty-based rights in an effort to provide a clear basis for remedies and justice."

So, as it turned six, this year's forum seemed indeed to be hitting the nail on the head. It does not mean that the time is indeed ripe for unpacking Pillar III. Doing so, however, is not only a matter of principle rather than strategy, but also a priority for BHR to claim its yet-nascent status as the key discourse of the current attempts of harnessing corporate power.

THE REMEDY RESERVOIR

Talking about governance gaps, access to remedies is surely where there is no shortage of them. Seeking remedy through judicial recourse has been a proverbial source of frustration for affected people, activists and academics alike. Holding companies to account is often hard in host states, while bringing claims in a corporation's home state is at best legally and logistically difficult with the "j-word" (jurisdiction) always in the way. Recently, this feeling of frustration has yet again emerged with the United States' Supreme Court decision of June 19, 2017, to prevent Ecuadorian villagers from trying to collect on an $8.65 billion pollution judgment issued against the oil company by a court in Ecuador.

In this judicial remedy-deficient landscape, the GPs made again a proof of stolid pragmatism. While judicial mechanisms should be at the core of ensuring access to remedy, the GPs emphasize the role of non-judicial mechanisms in complementing and supplementing these judicial mechanisms.

In fact, non-judicial grievance mechanisms (NJGMs) are a universe of its own, and one that is in rapid expansion. They include the accountability mechanisms of international financial institutions (IFIs); intergovernmental mechanisms attached to human rights treaty bodies; Organization for Economic Co-operation and Development (OECD) national contact points; regional bodies; national human rights institutions; multi-stakeholder initiatives; and company level or operational grievance mechanisms. No doubt, one of the major tasks ahead for the BHR movement is mapping and comparing these mechanisms.

The Office of the High Commissioner of Human Rights (OHCHR), for instance, in the context of the Accountability and Remedy Project (ARP) launched in 2014, has recently completed the second phase of its study focused on state-based non-judicial mechanisms (NJGMs). The just released paper of November 2017 found that NJGMs were used in 113 out of 431 business and human rights cases reported to the Business and Human Rights Resource Centre between January 2014 and mid-2017.

One point to bring back home is that comparative analysis of different remedy mechanisms is a tool of much untapped potential. A comparison of the surveyed mechanisms suggested a certain amount of replication and peer learning from jurisdiction to jurisdiction in terms of the design of mechanisms that are active in specific regulatory fields, such as labor law, environmental law and consumer law. These mechanisms were also those that seemed to provide relatively strong remedies.

Comparative analysis is relevant in other ways as well. One is the further unpacking of the GPs. In this sense, experiences collected on the ground have proved useful to complete the effectiveness criteria that the GPs

establish for non-judicial grievance mechanisms. For instance, it has been stressed that effectiveness of the mechanism (rather than its outcomes, which is still another issue) depends on such factors as mechanism leverage; strategic relationship management; approaches to power imbalances; processes for gathering and verifying evidence; mechanism resources; and local-level engagement.

Comparative analysis has also a role to play in spotting emerging trends in the universe of NJGMs. For instance, company-created mechanisms are typically viewed as early-warning, prevention-oriented and dialogue-based complaint and resolution processes for a wide range of (often low-level) adverse impacts. Recent studies, however, have pointed out the emergence of a very different kind of mechanism, which would provide a largely fixed remedy for a specific set of serious human rights violations and which would be more adjudicative than dialogue-based.

When considering the one thousand flowers approach to remedies of the GPs, it is also important to place on each specific mechanism the expectations that it can actually bear. For instance, many non-judicial grievance mechanisms — such as the OECD national contact points, industry-wide complaints processes and the compliance and ombudsman procedures of international financial institutions — often lack adequate investigation, determination or enforcement powers or are inaccessible or simply unknown to rights-holders. They might therefore not be the appropriate avenue for addressing human rights abuses in remote zones of weak governance.

The 2017 Report of the Compliance Advisory Ombudsman of the International Financial Corporation offers some interesting insights on this point. According to the published data, the period 2016-2017 witnessed a drop off in new complaint cases, as opposed to the spike in new cases that reached the mechanism in 2015. Assessing what to expect from a given mechanism in actual practice is therefore a crucial component toward a better grasp of access to remedies for business-related harm.

BE MINDFUL OF REPETITION

Only four years into the post GPs era, a new chapter opened up in the business and human rights agenda with the launch of negotiations to develop a treaty on business and human rights. The process, which is under the lead of the UN Human Rights Council's Open-Ended Intergovernmental Working Group, represents a significant moment in understanding potential common elements shared by states in the definition of the responsibilities on corporations.

At the same time, it is not redundant to raise a warning flag about fragmentation. This is not a new risk, to be sure, but it might be a fatal one for the value added of the treaty,

particularly with respect to the issue of access to effective remedy. As Surya Deva, the Chairperson of the United Nations Working Group on Business and Human Rights, has recently stressed, it is important that "the proposed binding instrument builds on the guidance provided by the Office of the United Nations High Commissioner for Human Rights to improve accountability and access to remedy for victims of business-related human rights abuses."

With this caveat in mind, there is room to believe that a future treaty on business and human rights may bring progress with respect to access to effective remedy by removing barriers to justice. In the meantime, law firms are becoming increasingly eager to offer their services to business with respect to the issue of remedies. This suggests that business (lawyering being not the least one) may start seeing the pastures of access to remedies as green enough for them to get interest and eventually ripe new benefits.

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IOC Turns Russia into Pariah of World Sport

Ellis Cashmore
December 7, 2017

Winter Olympics without Russia will be like a Terminator movie without Arnold Schwarzenegger.

The International Olympic Committee's (IOC) decision to ban Russia from the 2018 Winter Olympics in Pyeongchang for its "unprecedented attack on the integrity of the Olympic Games and sport" proves that you can't keep politics out of sport. This is arguably the most overt expression of political intervention in sport in history — and the history of political involvement in sport is as long as the history of organized sports itself.

Despite the flat denials of IOC President Thomas Bach, it is not possible to disentangle the decision to ban Russia

from the other issues that have turned the nation into the world's pariah.

Russia has been accused of interfering with the 2016 American presidential election, which US intelligence has determined was conducted to help Trump. Allegations that the Kremlin was involved in the UK's 2016 Brexit referendum campaign are being taken serious by almost everyone in Britain, including its prime minister. It's been reported that a hacking team known as Fancy Bears — with links to Russia's secret service — broke into the World Anti-Doping Agency's (WADA) database and published medical records of numerous high-profile athletes — including Australians, Americans and Brits.

Cumulatively, these unsupported claims have made it possible for us to believe that Russians are capable of deeds that would make the Borgias envious.

The IOC ban represents a perversion of natural justice, penalizing athletes, many of whom, as far as we know, have not used illegal doping and have not recorded positive tests. If the makeshift "Olympic Athlete from Russia" (OAR) designation is designed to placate observers who think the ban unjustifiable, it will not work. The exemption offered to athletes who can somehow prove they are clean and wish to compete, not as Russians, but as neutral participants, is inadequate; they will be under intolerable pressure not to compete without the imprimatur of Russia. This is rough justice.

SINGLED OUT

Russia's "state-sponsored doping" program was identified by Canadian law professor Richard McLaren, who said that he had found "a cover-up that operated on an unprecedented scale" in Russia. Much of McLaren's evidence emerged from the testimony of Grigory Rodchenkov, a former Moscow anti-doping laboratory director who turned whistleblower and defected to North America (hardly an objective source).

McLaren also said that he had also been able to confirm that urine samples, which had been taken from Russian athletes at the 2014 Winter Olympics in Sochi and at other major championships, had been exchanged for clean urine by using small metal rods to break open the supposedly tamper-proof bottles. They were carried out by Russia's state security service, it was alleged.

There's been an unquestioning acceptance of McLaren's finding without much probing. Apart from Rodchenkov's statements, the other evidence appears inferential and largely uncorroborated. In another social climate in a different era, McLaren's report would have met with skepticism or, at very least, a demand for proof. Not today.

Let me provide further context to the doping allegations. Russia is far from being the only place in the world where athletes use doping, of course. In fact, the challenge is to find anywhere where performance-enhancing drugs are not

habitually used by athletes from across the whole spectrum of sports. Unsurprisingly, with a population of nearly 145 million, Russia was the biggest offender in 2016. Russian athletes generated 148 anti-doping rule violations, followed by Italy with 123, India with 96, then Belgium and France, both 91. Turkey, Australia and China are also in the top 10 offenders.

Five countries, including distance-running powerhouses Kenya and Ethiopia, have been placed on a doping watch list, meaning they are being closely watched because of evidence that has surfaced about less-than-robust anti-doping procedures in those countries. Jamaica has also been under increased scrutiny by the International Association of Athletics Federations.

BIG BUSINESS

So why has Russia been singled out? Obviously, the global political atmosphere has made it easier to make even the wildest accusations sound plausible. But then again, why does sport wish to make such a colossal spectacle of laundering its own dirty linen? This is where the political intrigue takes on a commercial character.

Sport today is, as everyone realizes, not simply business, but a globally gigantic business. The media have ensured that every major sports event in the world is broadcast extensively. Advertisers realize the enormous potential of sport for drawing consumers to their television sets, smartphones and iPads. So do sponsors, such as Coca-Cola, Toyota, Samsung, McDonalds and Visa, who with other “partners” (as sport prefers to call its benefactors) pay handsomely to have their brand publicly associated with sport. The suspicion grew that sport in general, and the Olympics in particular, had become inured to doping and had made peace with the reality that it would never be extirpated.

In recent decades, the millions have mounted up. For example, Panasonic last year paid $350 million for an eight-year, four-Olympic Games sponsorship. But the companies have grown uneasy with the doping violations. After all, what brand wants its products associated with a subject as unwholesome as drugs?

Sport needed to show good intent to its sponsors. It wanted a sacrifice. Russia didn’t actually bare its throat, but, when Das Erste, a German television channel, screened a documentary in 2014 that claimed as many as 99% of Russian athletes are guilty of doping, it started an investigative trail that led to McLaren’s research and, ultimately, to the ban. I write “ultimately,” though there is no way of knowing when this case will end. On December 6, the Court of Arbitration for Sport said it had registered appeals by 22 Russian athletes against their disqualifications from the 2014 Sochi Olympics for doping. It’s conceivable — though probably not likely — that the court will, during its deliberations, solicit so far undisclosed evidence from McLaren. The geopolitical climate militates against this solicitation, of course.

More likely is that the court will turn down the appeals; from there is no further right of appeal. The games begin in February 2018 and Russia, one of the world's forces in winter sports, will not be there. It will be like a Terminator movie without Arnold Schwarzenegger.

It doesn't require cynicism to detect a miscarriage of justice: Just an analytical perspective on a case that is surely the most glaring example of the intrusion of politics into sport. Russia, to use a phrase of today, has been thrown under the bus.

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Could California Go All Electric?

Steve Westly
December 7, 2017

California needs to set a date for barring the sale of gas and diesel vehicles.

California has been a global leader in renewable energy for two decades. In 2003, we mandated that 20% of our electricity would come from renewable energy by 2010. Critics scoffed, but we did that, and more. In 2011, California again passed legislation to raise the requirement to 33% by 2020. In 2015, we passed SB 350 raising the bar to 50% renewable energy by 2030. Each time we acted, critics said the goals were too ambitious and could not be met. Yet, each time, Californians met and exceeded them. California's economy has not faltered; it has grown, and we are about to pass France to become the world's 5th largest economy, with 40% fewer people. It's time to think even more boldly.

Recently, Governor Jerry Brown has expressed interest in barring the sale of internal combustion vehicles, and last week Assembly member Phil Ting (D-San Francisco) introduced legislation banning such vehicles by 2040. California would be the first US state to take such a step, but the world is moving quickly toward electric vehicles. India, France, Norway and the UK have all passed legislation prohibiting the sale of cars with internal combustion engines in the future. It is time for California to do the same.

Why move to all-electric vehicles? According to the American Lung Association, the six most polluted cities in the United States are in California: Fresno, Bakersfield, Visalia, Modesto, Los Angeles and San Jose. More than four in 10 Americans live in counties where the air is unhealthy to breathe due to ozone or particle pollution. A recent MIT study showed that air pollution causes 200,000 premature deaths a year in the United States, with

a disproportionately high number of those in Southern California due to its legendary traffic.

Could California really go all electric? In short, yes. Today, every major car company in the world is making electric vehicles — and they are moving quickly. This year, both General Motors and Tesla began selling the first moderately priced, extended-range electric vehicles. Elon Musk expects that Tesla will ship over 500,000 electric vehicles over the next two years. Volkswagen, Nissan, BMW, Toyota, Ford, Daimler and Chinese automakers BYD and SAIC are also moving fast. As the home to 500,000 clean tech jobs and Tesla Motors, California is well-positioned to take the lead in speeding up the adoption of electric vehicles.

A ban on the sale of new internal combustion engines would be phased in over time, and internal combustion cars already on the road would not be banned. The cost of electric vehicles is coming down quickly and they will soon be cheaper than gas-powered cars. As production of electric vehicles is ramping up, the cost of lithium ion batteries is coming down. The cost of those batteries has dropped from $1,200 a kilowatt hour a decade ago to less than $200 today. Electric vehicles also cost roughly 75% less to operate and service than internal combustion vehicles. On top of all of this, the United States has now built out over 40,000 charging stations, making long trips convenient and more economical than ever.

Other countries have decided to get ahead of the curve. Norway has introduced a transportation plan with a target of selling only zero-emission passenger cars and vans by 2025. India has set an "aspirational target" of ending the sale of gas and diesel vehicles by 2026. The United Kingdom and France have both announced plans to ban the sales of gas and diesel vehicles by 2040.

Why aren't these countries afraid that punitive laws like this will burden their citizens? While they understand there may be costs to the transition, policymakers around the world increasingly realize we are in the middle of a renewable energy revolution that is creating higher-paying jobs for the future. California has led the clean technology revolution for decades. We have created new industries and hundreds of thousands of jobs in the process. Now that we are producing more clean energy than ever, and it is time to lead the way again. California needs to set a date for barring the sale of gas and diesel vehicles. If Norway, India, the UK and France can do this, so can we. California, what are we waiting for?

Steve Westly is the founder of The Westly Group, a large sustainability venture capital firm, and previously served as the controller and chief fiscal officer of the State of California from 2003 to 2007.

Trump Botches Jerusalem Opportunity

Gary Grappo
December 8, 2017

America's self-styled master dealmaker didn't leverage recognition of Jerusalem as Israel's capital to advance the peace process. Instead, he set it back.

There is a good deal less than meets the eye in President Donald Trump's decision to recognize Jerusalem as Israel's capital and move the US embassy there — albeit at some unannounced later date. To anyone familiar with the issue or who has visited Israel, West Jerusalem long ago became the effective capital of the Jewish state. It has proclaimed Jerusalem as its eternal capital since 1948.

The Knesset, Israeli Supreme Court, Israeli prime minister's and the president's residences and offices, and almost all government ministries are based there. They're permanent and not going anywhere, regardless of the outcome of any future Israeli-Palestinian negotiations.

So, America's acknowledgement of the reality, as the president put it, does not change Israel's calculus one iota. For Israel, therefore, as delighted as it may be to have recognition from its closest ally, it marks no real significant progress or even victory. Israel is no more secure and certainly no closer to resolving its conflict with the Palestinians. Life in Jerusalem is unchanged, save for some New Year-style revelry the day after. Not surprisingly, the Israeli government did very little campaigning to move the administration in this direction; not that much was needed.

For the US, the decision addresses none of the myriad challenges it and its allies in the region — Israeli and Arab — face in the region.

Iran continues its march toward apparent regional hegemony. Conflicts in Yemen and Libya rage on, both racking up horrific humanitarian tolls. Syria's civil war may conclude on terms very unfavorable to the US, Israel, Jordan and, most especially, the millions of Syrians hoping for something better than Syrian dictator Bashar al-Assad's renewed lease on life and brutal governance. The Arab Gulf states remain in disarray in the wake of a foolhardy diplomatic blockade of Qatar, marching toward an effective breakdown of what had been the region's most effective alliance, the Gulf Cooperation Council. Al-Qaida, a diminished Islamic State, Hezbollah and other extremist groups still threaten the region and the West.

ISRAEL GETS A FREE PASS

Washington becomes even less popular with the very moderate Arab and Muslim friends it so desperately needs to help address these imposing problems. The decision advances no overriding American national security or foreign policy interest. In effect, then, America's dealmaker-in-chief defaults to his now

predictable role of disrupter-in-chief. Overturn the Middle East chess table and see what happens.

Arab governments will undoubtedly fulminate, somewhat justifiably, over the announcement. However, over the last five-six years they already had begun to distance themselves from the Palestinian question.

Plagued by political and social problems stemming from the Arab Spring, declining oil prices and the concomitant poor economies and rising budget deficits, the Iranian challenge and terrorism, the Palestinian cause no longer commanded the attention it once did. There was also fatigue from, inter alia, the endemic corruption of the Palestinian Authority, the ongoing saga of the Fatah-Hamas feud and a highly unpopular and ineffectual PA President Mahmoud Abbas.

In the blood sport known as Middle East peace negotiations, all sides know that there is never a free lunch. A party must always give in order to get. But Israel got a free pass from the bungling, inexperienced and ill-informed Trump administration — recognition of its capital — and one it really didn't need.

Failing to secure something in return from the Israelis — for example, a pledge to suspend even temporarily West Bank settlement expansion, or a promise to negotiate a border between the contending sides of the city at a future time, or some other meager bone to assuage the Palestinians — sticks out as a major blunder.

This becomes all the more apparent as the president's hapless and ill-equipped son-in-law, Jared Kushner, plows ahead in some unknown direction to resolve the region's longest running conflict. In an administration in which tweets pass for policy and bluster for strategy, one can't be really surprised. It becomes just so much more disruption. But such a pledge might have served to jump start Kushner's negotiations with the Arabs, and perhaps even the Palestinians, and salvage some slight appearance of an honest broker.

Instead, the decision poses significant risks. It will spark unrest and anti-American and anti-Israeli demonstrations, with the likelihood of violence in several places with particular risks for American diplomats and military personnel in the region. The region's terrorist organizations from ISIS and Hamas to al-Qaida and Hezbollah will doubtlessly serve this up in their propaganda to inflame anti-American and anti-Israeli furor. State sponsors of terrorism like Iran and Syria will follow suit.

Even in Israel, the decision may likely embolden right-wing groups and settlers to pick up the pace of settlement expansion in the West Bank. "America is with us!" may be their banner.

NEGOTIATE NOW OR MAYBE NEVER

For the Palestinians, there can be nothing but dark days ahead. The nuanced language of the president's announcement — calling for negotiations by the two sides to determine the actual future borders of the city — will be lost in the larger message that this administration has thrown in its lot entirely with Israel with no possibility of playing even the quasi-honest broker it had attempted in the past. Previous patrons, like Saudi Arabia and Egypt in their own versions of "America First" will readily sacrifice the Palestinian cause for American support against Iran, terrorism, Hezbollah and the Muslim Brotherhood.

The biggest loser may be Abu Mazen himself, weak and widely disliked already. There will be little faith in his ability to deliver via negotiations on the promises — on a Palestinian state, right of return and a Jerusalem capital — made over the last 70 years to Palestinians.

It also will likely erode the last vestiges of the Palestinian pro-negotiation camp, igniting increased calls for violence against Israel and Israeli citizens, and throwing more support toward Hamas. The latter, itself reeling from its criminal mismanagement of an impoverished and disaster-ridden Gaza, may have gained a negotiating advantage in the ongoing Fatah-Hamas reconciliation.

For Abu Mazen in particular and Palestinians more generally, the window is closing. Interest in their cause is declining in the US, Europe and within the region. And for the avowedly pro-Israeli US administration, this may be only its first step. Possible recognition of Israeli settlements in the West Bank, already all but a formality for most of those along the Green Line, and even formally calling for a permanent Israeli security force inside a future Palestinian state may be in the offing down the road.

As counter-intuitive as it may sound, Abbas and his team must begin to look in earnest at restarting a genuine negotiation process with Israel while they still have something left to negotiate. Further delay only ensures, as all previous delays have, that the embattled Palestinians will have less to negotiate over and ultimately end up with less.

Gary Grappo is a former US ambassador and a distinguished fellow at the Center for Middle East Studies at the Korbel School for International Studies, University of Denver. He possesses nearly 40 years of diplomatic and public policy experience in a variety of public, private and nonprofit endeavors. As a career member of the Senior Foreign Service of the US Department of State, he served as Envoy and Head of Mission of the Office of the Quartet Representative, the Honorable Mr. Tony Blair, in Jerusalem. Grappo is chairman of the Board of Directors at Fair Observer.

Why Roy Moore May Win in Alabama

Charles Hoskinson
December 11, 2017

Sexual harassment scandals that have forced major figures in entertainment, media and politics from their jobs have strengthened Roy Moore's position.

If you want to understand why scandal-plagued Republican candidate Roy Moore may win the special US Senate election in Alabama, you have to stop thinking about sex.

Moore is holding a slim but surprising lead in polls going into the vote on December 12, in spite of mounting evidence of disturbing sexual encounters with underage girls, including allegations reported in reputable news sources that he molested some of them. Many of his supporters simply refuse to believe the allegations, and others plan to vote for him in spite of this rather than switching support to Democrat Doug Jones as some prominent Republicans have done.

Why? The answer lies in what propelled Moore into position to contest the race: his status as a culture warrior. Moore is the result of what happens when a cultural divide becomes so wide the two sides no longer listen to each other.

Moore is not among the conservatives who form the backbone of the modern Republican Party. He's a theocratic Christian populist who believes the Judeo-Christian God is "the sovereign source of our law" and Muslims should be barred from holding public office. And his political record would, under normal circumstances, be one of disgrace: He was twice elected chief justice of Alabama's Supreme Court, the second time after having been removed from office in 2003 for refusing a federal court order to remove a monument of the Ten Commandments from the Alabama Supreme Court building.

After being re-elected to the post, he was suspended in 2016 for ordering state officials not to issue marriage licenses to gay and lesbian couples after the US Supreme Court ruled that it was unconstitutional to bar gay marriage. He resigned in April to run for the Senate after losing an appeal.

As a result of his battles with federal courts, Moore has become the champion of Americans who feel that the dominant political culture is determined to destroy them. And he has stoked the flames of that passion and risen on its fumes.

The accusations against him have come at a time when trust in the news media is low and the partisan divide in attitudes very deep, creating an atmosphere where supporters can simply dismiss the allegations. The sexual harassment scandals that have forced major figures in entertainment, media and politics, such as Harvey Weinstein, Matt Lauer and Representative John Conyers, from their jobs have also paradoxically strengthened Moore's position. Their

behavior toward the women around them has alienated them from their liberal, pro-feminist allies and branded them as hypocrites.

Conservative columnist John Podhoretz, writing in the New York Post, also noted that Democrats' ongoing support for former President Bill Clinton in the face of numerous allegations of harassment by women have strengthened Moore, by setting the precedent that his politics were more important than the details of the accusations against him.

"Moore is saying exactly the same thing to conservatives: Allow yourselves to believe in the truth of these claims and you are going to surrender this country to godlessness and transgenderism," Podhoretz wrote.

Indeed, this was one of the key arguments for supporting Moore that were made in a focus group of conservative Alabama voters organized by Republican pollster Frank Luntz for VICE News. "Policy is everything," said Ann Eubank, a retired accounting assistant, to applause from the rest of the group.

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Europe Feels the Trump Effect

Britt Bolin
December 13, 2017

Trump's election has had the unexpected effect of fostering greater initiative from the EU, forcing Europe into taking on a bigger role on the global stage.

The day after Donald Trump's election as US president, a shocked Frank-Walter Steinmeier, then Germany's foreign minister and now president, said of the transatlantic relationship: "I don't want to sugarcoat it: Nothing will be easier and much will be more difficult." Uncertainty still reigns, as evidenced by the consternation following Trump's refusal to state his commitment to Article 5, NATO's collective defense clause, and his declaration that the United States would withdraw from the Paris Climate Agreement. Yet Trump's election has had the unexpected effect of fostering greater initiative from the European Union and forcing Europe into taking on a bigger role on the global stage.

German Chancellor Angela Merkel clearly articulated this new reality when she stated that, "We Europeans have to take our destiny into our own hands." Over the past year, particularly in the six months since Emmanuel Macron's election as president of France, European countries have come together to affect change and take on leadership in three key areas: defense, climate and trade.

The idea of a European army has a long history, but until recently found little support among EU member states. The combination of Trump's skepticism toward NATO and the impending exit of United Kingdom, one of Europe's most important military forces, has galvanized the European Union to come together on defense and security policy.

On November 13, the EU took a first official step toward a joint military force when 23 member countries signed a pact to collectively invest in military equipment, research and development, and the deployment of armed forces. The goal is to "help reinforce the EU's strategic autonomy to act alone when necessary and with partners whenever possible" and foster greater cooperation against Europe-wide threats such as cyberattacks or hybrid warfare.

Although the combined European force will not be able to match the capabilities of larger armies such as that of the United States, the defense pact marks a new phase in pan-European security cooperation and military integration. Enhanced operational cooperation will, for example, allow European armies to conduct their missions in locations such as Mali and Niger without relying on NATO support, something that is currently not possible.

The second area in which the European Union has taken a lead over the past year is on climate policy. After President Trump announced US withdrawal from the Paris Climate Agreement in June, the recent UN Climate Change Conference in Bonn provided a glimmer of hope for climate policy as European countries took the lead in reviving and implementing the 2015 Paris accords. In one notable example, 10 EU states joined the Powering Past Coal Alliance, which aims to phase out coal use in highly developed countries by 2030.

The European Union also agreed to reform the Emissions Trading System, the EU's pioneering scheme for reducing emissions, by limiting the number of certificates to push up the price of carbon. Emmanuel Macron has high hopes for European climate policy, proposing that "Europe replaces America" as the global leader. At a time when the United States is moving backwards on climate policy, Europe seems determined to back its rhetoric with concrete actions.

The final area of renewed European focus is trade policy. After Trump's election and polling in several EU states throughout 2017, negotiations on the controversial Transatlantic Trade and Investment Partnership (TTIP) have been paused and the treaty's future, at least under the Trump administration, looks grim. Yet that has not stopped the European Union from stepping into the position of global trade leadership vacated by Trump. Trump's abandonment of the Trans-Pacific Partnership (TPP) and his proposed renegotiation of NAFTA all opened the door for the European Union to dictate the new terms of global trade. The EU is aiming to shortly conclude deals with Japan, Mexico, the Mercosur bloc,

Australia, New Zealand and several Asian countries, which, combined with existing trade deals, would link 2 billion people and almost half of global economic output.

In particular, America's absence from the TPP has pushed countries such as Japan closer to Europe. The EU-Japanese trade treaty established Europe's power in setting global standards, with Japan even agreeing to make its automobile production standards compatible EU regulations.

With the United States publicly retreating from trade and the global structures that facilitate it, the European Union is taking advantage of the opportunity to increase its number of trade pacts, link its markets with dynamic regions such as Asia and South America and become the regulatory standard-setter across a range of global industries.

Despite these developments, Europe faces several obstacles to truly taking a global leadership role, especially as major differences between Trump and the European Union on the Iran nuclear deal and Russian electoral meddling persist. Europe will continue to remain dependent on the United States for security guarantees despite the new European defense pact. The greatest hindrances to European global leadership lie within the union itself, however, as the growing power of Euroskeptics makes it difficult for governments to commit to further integration. Fundamental disagreements about the future of the EU prevent the union from moving forward to a more effective and efficient model, which is necessary for decisive European global leadership. Nevertheless, the danger posed by Trump's election has finally given the European Union the impetus to overcome its challenges and bring about real European leadership.

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Can Cryptocurrency Help Alleviate Poverty?

Tasnim Nazeer
December 19, 2017

The cryptocurrency sector is booming, with more and more initiatives being created to help the developing world.

Cryptocurrency, or blockchain, is rapidly evolving around the world to cater for virtual peer-to-peer transactions using digital currency. This enables people to send money directly to a recipient without an intermediary. Virtual money has made the daily business of life much easier for many of us, but can it help alleviate poverty in the developing world?

One way to think about cryptocurrency is as a digital record of a transaction, without the need for a bank or third party services. Cryptocurrency is different from payment providers such as PayPal. It is a virtual currency that can be transferred into a virtual account. It is essentially a digital asset set up by the cryptocurrency provider that allows people to open an account and send and receive payments electronically, without going through a bank or a money transfer center, which often charge transaction fees.

Many people in the developing world who want to trade find themselves limited by not being able to afford a bank account. For example, across Africa opening a business account can imply an unaffordable deposit, often more than what an average person would earn in a year. Cryptocurrency could also help those who want to buy their homes but can't afford to. The founder of Habibi Coin, Com Mirza, started an ethical cryptocurrency to help those wishing to buy property in a way that doesn't involve interest payments.

"There is no escaping paying interest in many first world countries and, if the homeowner defaults, the bank forecloses the property, and the homeowner loses everything," says Mirza. "During the subprime mortgage crisis of 2008-2009, 6 million people lost their homes. … Many of them were hard-working families who relied on interest bearing mortgages to finance their homes. With the Habibi Coin system, interest is completely removed from the equation allowing homeowners to make direct payments to principal debt, and this speeds up the path to sole home ownership. It significantly reduces the economic burdens on a family."

The $217-trillion global real estate industry is set to flourish, with more investments in the cryptocurrency sector seen to be advancing due to initiatives such as Habibi Coin that cater to diversifying the market. Mirza has secured $3-million investment for his start-up and is on track to raise an additional $14 million in the next months from over 500 investors. Mirza is confident the venture is on course to raise over 100 million in its initial coin offering in the beginning of 2018.

Aid agencies can also see unprecedented benefits by using blockchain technology that can improve humanitarian assistance worldwide. It can significantly help with mismanagement of money intended to alleviate poverty and improve education. In early 2017, the UN World Food Programme launched the blockchain crypto assistance, Building Blocks, which aims to help poor families in Pakistan's Sindh province by providing food and cash handouts. An internet-connected smartphone was used to record payments from the UN agency to food vendors, ensuring that those in need received aid, merchants got paid, and everything was tracked and recorded. By using an electronic device to send money virtually, aid agencies were able to reach people quickly and

efficiently without relying on banks and other financial third party sources. By using cryptocurrency, humanitarian agencies can send aid to remote areas where ATMs may not even exist.

The cryptocurrency sector is booming and, with more and more initiatives being created to help those in need, we can see a more prosperous and inclusive system where those in the developing world can join the global economy and improve their lives.

Tasnim Nazeer is an award-winning journalist and author who has written for a variety of print and online media outlets, including Al Jazeera English, The Huffington Post, BBC, CNN, Forbes, Middle East Eye and many more. She was awarded The Muslim News Award for Excellence in Media 2013 and is a Universal Peace Federation ambassador for peace.

How Obama Won at the Diplomacy Game with Iran

Peter Jenkins
December 20, 2017

US withdrawal from the Iran nuclear deal might be welcome to Iran's supreme leader and conservatives in government.

Losing an Enemy: Obama, Iran and the Triumph of Diplomacy, by Trita Parsi, is an account of how a long-running fear that Iran was intent on acquiring nuclear weapons was resolved by diplomatic means. President Barack Obama, and his view of Iran, so very different from that of President Donald Trump, is at the center of the story.

Obama entered the White House intending to negotiate with Iran. By the end of 2009, the violent consequences of a disputed Iranian presidential election and Tehran's hesitant reaction to Obama's opening gambit had undermined his resolve. He switched to a policy of coercion, "ratcheting up the pressure" through a range of sanctions.

But, during 2012, it became apparent to him that sanctions were a losing and dangerous tactic. Iran had responded by expanding the nuclear capability that caused most concern: enriching uranium for reactor fuel but, also, potentially for nuclear weapons. The Israeli government had threatened to bomb Iranian facilities, hoping that this would bring about a US military intervention.

So, after his re-election, Obama switched back to diplomacy. He was able to take advantage of an top secret channel to Iran's Supreme Leader Ayatollah Khamenei, created by the Sultan of Oman in 2012. He could also count on the wholehearted support of John Kerry, his new secretary of state. Kerry shared Obama's aversion to war and, as a senator, had encouraged the sultan's initiative.

At a secret meeting in Oman in March 2013, the Iranians heard what they had wanted to hear for 10 years: The United States could tolerate an Iranian enrichment capability, subject to stringent international monitoring and restrictions, to be agreed. The odds on a deal had shortened.

They shortened further when Hassan Rouhani won Iran's 2013 presidential election and appointed Javad Zarif foreign minister. Both were highly able realists. Both had a thorough understanding of the nuclear problem from their roles in negotiating with Britain, France and Germany a decade earlier. (A "no" to Iranian retention of enrichment technology had caused that process to fail.) Obama still faced opposition to a compromise solution from the governments of Israel and Saudi Arabia, and from their many friends in Congress.

Parsi, the president of the National Iranian American Council, sets out evidence that these governments were less worried about nuclear advances in Iran than their public statements implied. What they really feared was an end to the policy of containing Iranian power and influence.

They saw portraying Iran as a nuclear proliferator and a threat to their existence as a means to an end of minimizing Iran's ability to compete regionally. In 2010 Robert Gates, then secretary of defense, had said of the Saudis that they were always eager to "fight the Iranians to the last American."

Israeli and Saudi goals put them at odds with Obama. Obama believed that "Iran will be, and should be a regional power." These differences came to a head in the weeks that followed a final agreement with Iran on July 14, 2015. Congress had demanded and obtained an opportunity to pass judgement on the deal, despite it being a political agreement, not a treaty.

That congressional battle resulted in defeat for Israel and Saudi Arabia. Obama, who, at one point, said to an ally in the Senate, "I think you over-estimate the rationality of the body in which you serve," was able to limit the number of senators wanting him to repudiate what his negotiators had achieved.

Obama won by framing the deal as the only alternative to war, by exploiting the American public's disillusionment with war as an instrument of policy and by mobilizing the pressure of pro-diplomacy activists on members of Congress. This success could have been followed by an attempt to alter how the average American views Iran. Parsi only alludes to this and does not explain why Obama let that opportunity pass.

Instead, the author explores whether the deal can survive without a broader improvement in US-Iran relations. He concludes it cannot. President Trump's Iran policy will test this thesis by eliminating all possibility of an improvement for the foreseeable future. An alternative view would be that the deal can survive a worsening of

relations and even US withdrawal from the agreement, as long as US allies resist US pressure to follow suit.

Provided Iran remains in compliance with its nuclear non-proliferation obligations, and provided international inspectors find no evidence of undeclared nuclear activities or material in Iran, allied resistance is likely. Europe and Asia have much to gain from the agreement and a strong interest in encouraging Iran to prize it. US participation was essential to the birth of the deal; its rearing can be entrusted to the rest of the world.

US withdrawal might even be welcome to Iran's supreme leader and Iranian conservatives, who fear an improvement in US-Iran relations as a potential threat to the survival of Iran as an Islamic Republic. They make political use of US hostility.

Losing an Enemy can please and enlighten the general reader, and serve as a reliable quarry for students of international and US politics. It does admirable justice to one of the few major diplomatic achievements of the last 16 years.

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How Are Sovereign Wealth Fund Decisions Made?

Adam Ereli & Theodore Karasik
December 22, 2017

Over the last eight years, considerations of politics and national security have come to play an influential role in the decision-making of Gulf sovereign wealth funds.

In 2015, the Qatar Investment Authority (QIA) — Qatar's sovereign wealth fund (SWF) — declared its intention to invest $35 billion in the United States over the coming five years. In making the announcement, a senior Qatari official noted that the state was taking this step not because of politics, but because it "made good business sense."

He was half right. While it was certainly true that the US market offered strong rates of return, it stretched credulity to argue that political considerations did not factor into Qatar's investment decision. For the past decade or so, disagreements between Qatar and the United States over a host of issues, from terror financing to regional power dynamics, had soured the bilateral relationship. Qatar's former ruler, Emir Hamad bin Khalifa al-Thani, had transferred power to his son, Sheikh Tamim bin Hamad al-Thani, a little over a year earlier, and the new emir was keen to turn a page in his nation's relationship with arguably its most important ally. The opening of a QIA office in New York City in December of 2014 was accompanied by great fanfare

and served to demonstrate Qatar's seriousness of purpose.

Qatar is not alone in using its national wealth to advance national interests. In at least four ways, changing regional power dynamics have injected geopolitics into the strategic decision-making of the Saudi, Emirati and Kuwaiti sovereign funds to an unprecedented degree.

First, regional conflict and political instability: Governing structures and national authorities are under assault as never before. The Arab Spring, the potency of ISIS and other extremist jihadist movements and the attendant conflicts in Syria, Iraq, Yemen and Libya have upended the region's political order. While always a concern, the issues of regime stability and internal security have taken on new saliency and have compelled rulers to take enhanced measures to protect themselves.

Second, great power rivalry: Since independence, the nations of the Gulf have regarded the United States as their security bulwark. The policies of the Obama administration fundamentally altered this calculus. Rightly or wrongly, regional leaders interpreted the nuclear agreement with Iran, the US drawdown in Iraq, the US handling of Egyptian President Hosni Mubarak's transfer of power and its failure to assert power in the Syrian conflict as evidence of a weakening of America's commitment to the region. Russia's growing military and diplomatic role in regional affairs, combined with persistent and more potent Iranian influence, have transformed the Gulf Cooperation Council (GCC) into a new front in great power competition, which regional leaders must take into account.

Third, a new generation of leadership: Millennials now rule Qatar and Saudi Arabia. The UAE has been governed by an exceptionally forward-looking and interventionist leadership for over 10 years. With this generational change has come a new approach to national power. These leaders are not content to let others fight their battles for them and are resolutely developing indigenous force projection capabilities. They are both adept at and inclined to use all elements of national power — economic, political and military — in an integrated and mutually reinforcing way to protect their interests.

Fourth, the GCC rift and zero-sum thinking: The ongoing dispute between Qatar and the "quartet" (Saudi Arabia, the UAE, Bahrain and Egypt) will have a spillover effect on the region's relations with external actors. Hard as it may be for outsiders to fathom, each of the parties to this dispute believes the other presents a credible threat to its national survival.

As a result, all are taking steps to protect their sovereignty, and this includes where they invest their national wealth. Moreover, gain for one side is necessarily regarded as a loss for the other, which injects a level of acrimony and intransigence that will persist for a considerable time to come.

IMPACT ON INVESTMENT

Two areas in particular are indicative of this accelerating trend in GCC strategic investment: Russia and Islamic Asia. Even if allowances are made for sectorial and geographic diversification, the level of allocations to these markets is out of proportion to their size and viability.

In the case of Russia, the Gulf states are using their investments as leverage to advance their respective interests with regard to Iran, Syria, Yemen and Libya; as a hedge against great power competition in the region; and as a political tool in the context of their intra-GCC rivalries.

As the world's largest Muslim nation, Indonesia, along with Malaysia and Thailand, hold special interest for Saudi Arabia — which is perennially concerned with asserting its primacy as leader of Sunni Islam — as well as for the UAE, which seeks to make common cause with like-minded leaders sympathetic to its policies of limiting the role of political Islam and countering radical extremism.

In 2011, Russia established the Russian Direct Investment Fund (RDIF), with seed capital of $10 billion. Since then, Gulf sovereign wealth funds have earmarked at least $20 billion for investment in Russia, according to RDIF's CEO Kirill Demetriev. These placements include: a 2015 commitment of $10 billion by Saudi Arabia's Public Investment Fund (PIF) in a partnership with RDIF to invest in Russian infrastructure and agricultural projects; $5 billion in 2013 from the Abu Dhabi Investment Fund for infrastructure projects; allocation of $2 billion by QIA to a joint investment fund with RDIF; the contribution of $1 billion by the UAE's Mubadala Development Company to a co-investment fund with RDIF; and allocations of $500 million in 2012 and 2015 by the Kuwait Investment Authority (KIA) to an automatic co-investment mechanism with RDIF. In addition to a $2-billion commitment to RDIF, QIA has taken a 9.75 stake in Rosneft valued at $6.83 billion, a 24.9% stake in St. Petersburg's Pulkovo Airport and a $500-million stake in VTB, a Russian bank currently under international sanctions.

In February 2016, the governments of Russia, the UAE and Egypt announced the creation of joint investment fund to finance large-scale infrastructure projects in Egypt and seeded the fund with $500 million in July of the same year.

As a signal of Indonesia and Malaysia's importance, King Salman of Saudi Arabia included them, along with China and Japan, on his tour of Asia in March of this year. Indonesia's ambassador to the UAE stated in October that his country was aiming to increase the level of Emirati investment from its current level of $2 billion to $10 billion. Qatar has invested $15 billion in Malaysia. In 2011, Malaysia and Qatar announced a $2-billion joint investment fund. Two years later, Qatar began investing $5

billion in the Pengerang Integrated Petroleum Complex development in Johor and another $5 billion in Malaysia's tourism, real estate, banking and other sectors.

Qatar and Indonesia created a similar fund in 2008, now worth roughly $1 billion. The Qataris are investors in Indonesia's energy, infrastructure, banking, telecommunications and mining sectors. Such investments have included $350 million in a gas power plant in North Sumatra, as well as an agreement between QIA and PT Saran Multi Infrastructure worth $1 billion.

DOWNSIDE RISK

Money and politics make a combustible mix: If you don't get the formula right, it can blow up in your face. Foreign governments, corporate leaderships and the investment community face serious issues of financial risk and legal liability in the current investment climate. The UAE's experience with 1MDB and IPIC is a case in point. In April, 1MDB agreed to pay IPIC $1.2 billion to settle a complaint that it reneged on the terms of a bailout IPIC provided in 2015. The two companies also agreed to enter into good-faith discussions about other disputed payments, which may total as much as $3.5 billion.

Last July, investigators at US Justice Department alleged that former officials from both IPIC and 1MDB had benefited from fraudulent financial transactions related to the investment.

Due diligence on SWFs has always posed a challenge. As the Gulf states come into their own as strategic investors on the international scene, the need for greater transparency and accountability becomes more salient. What are the political risk factors? Who are the sovereign and corporate co-investors? What are their track records and governance structures? Who really controls them and what could change? How willing are they to open their books for review and analysis? Will they accept and be bound by internationally recognized dispute resolution mechanisms and authorities?

Such questions are all the more timely, given the scope and complexity of today's deals. Take the NEOM project for example. In October, Saudi Arabia's SWF, the Public Investment Fund (PIF), hosted the Future Investment Initiative, at which Crown Prince Mohamed bin Salman unveiled his country's plans to build a 10,230-square-mile business and industrial zone that links with Jordan and Egypt and focuses energy and water, biotechnology, food, advanced manufacturing and entertainment industries.

The project will be backed by more than $500 billion from the Saudi government, PIF and local and international investors. RDIF CEO Demetriev immediately pledged "several billion dollars" to the project. NEOM is ambitious, transformative and potentially lucrative. When considered in the context of multi-party investments, sovereign participation, oversight,

regulatory and political constraints and geopolitical tensions, however, NEOM poses a potentially tangled web of risk and possible conflicts of interest.

UNDERSTANDING SWFS

In weighing the viability of such projects, international investors would do well to investigate thoroughly the interconnective tissue between Arab sovereign wealth funds and Middle East states undergoing rapid transformation.

Every sovereign wealth fund is different, requiring each to be understood individually in the context of the particular transaction being entered into. It is critical to conduct proper due diligence and have comprehensive and accurate information about the SWF and how it operates.

This information is often not disclosed publicly or, if disclosed, does not tell the whole story, as SWFs are generally highly protective of their confidential information and typically do not reveal information that could cause embarrassment or political problems.

The differences among SWFs can be quite dramatic. For example, there are some very sophisticated and well-established SWFs that generally make investments solely on the merits and have excellent internal analysts and deal-making teams to vet and complete deals. They can make decisions quickly and are not subject to the slow decision-making process that stems from lack of familiarity or experience. This makes them ideal partners for private equity funds, co-investors or debt providers.

Others are newly formed and relatively unsophisticated and therefore rely primarily on third parties to analyze and bring them investments. In some cases, governments or ruling families may exert undue influence on the decision-making process, leading to expensive purchases of “trophy” assets and other questionable economic decisions. SWFs can also be excessively bureaucratic, leading to delays and unpredictable decision-making, in which no one accepts responsibility for a decision and everyone plays the blame game. Therefore, depending on the circumstances, a particular SWF’s commitment to a transaction may be of greater or less probative value in accessing the merits of the deal.

Some SWFs have been formed with potentially conflicting incentives, not only to make profitable investments, but also to further political and social objectives. Others can be used for political purposes even though that is not their mandate. This can cause a fundamental divergence between the interests of the SWF and the other purely economic investors. This analysis becomes more complicated because the investment of a local or regional SWF in project finance in some contexts can constitute a stamp of approval and protection against governmental risks.

For example, if the investment is in an infrastructure project that relies on governmental cooperation and support,

the commitment by local SWFs may provide insurance against unfriendly government actions. However, this alignment of interests is far from perfect and not automatic in all cases. Even if the SWF is a principal investor, if the local government needs money, it may decide to impose taxes or other impositions on the project. This could be because different factions within the government have competing priorities or the government could earn more from the increased tax revenues/assessments than the SWF would make from its investment.

There is also the risk of bribery or corruption. SWFs are improving internal controls, but several recent events have shown that the protections in place have not always been adequate. A SWF investment may create the perception of legitimacy, while the real reasons for the investment may be hidden and much more nefarious. In addition to the 1MDB and IPIC scenarios, the poor investments by the Libyan Investment Authority (LIA) during the financial crisis are cases in point. A third party would be wise to study this aspect carefully as there are the possibilities of economic loss, legal liability and the loss of reputation.

With good reason, SWFs are generally viewed as stable long-term investors with deep pockets. However, this depends on history, geography and other factors. Politics can change very quickly in countries that rely primarily on mineral resources for their wealth and do not have long histories of stable governance. In the Middle East, this is true more now than ever, with myriad potential threats amid the current upheaval. A new regime often has little use for the projects sponsored by the prior government, and the consequences on third party investors can be devastating.

The policy and financial communities would benefit greatly from enhanced research and analysis by academia and think tanks of the issue relating to the geopolitics of SWF investments. There already exists a nascent community of observers in this field, but current trends make clear that a deeper understanding of SWF activity and its implications for a wide variety of stakeholders is needed.

RISK MITIGATION STRATEGIES

Bearing in mind that sovereign investment decision-making is increasingly influenced by considerations of national security and recognizing that each SWF and each transaction is unique, what can actions can concerned parties (e.g., debt or equity investors, SWF counterparties or service/technology providers) take to mitigate risk?

First, local political due diligence: A sophisticated knowledge of the political risks at the local level needs to be factored into any business decision. This should include an understanding of geospatial conditions such as family ties, social status and previous and existing business relationships. The geopolitics of sovereign investing also

requires scrutiny. Arab states are using their SWFs as political tools, often in tandem with Russia's efforts at regional power projection. What are the respective political and economic interests of the SWFs or other national institutions involved in a project, and what potential conflicts do these relationships entail if circumstances change?

Second, global political due diligence: Any investor would do well to understand the position of and consult with US and European governmental entities before the commitment of resources in a deal involving a SWF. In most scenarios involving significant levels of investment, the US government will have an interest and could present obstacles. Ventures with connections, however tangential, to Russia, Iran or entities related to those countries will come under increasing scrutiny.

The ever-expanding reach of US sanctions policies, which include not only named entities but any outside entity doing business with them, can ensnare even the most well-intentioned investor.

For these reasons, it is advisable to seek the view of concerned agencies (State Department, Treasury, Congress) on transactions in potentially sensitive countries and/or sectors. Officials in Brussels need to be also contacted to guarantee a safe and secure way forward in the transaction, especially if EU and US policy are not in sync on sanctions.

Third, economic forensics: For those who analyze the financial aspects of sovereign activity, capturing the relevant data requires the peeling away of many layers of opaqueness. Given that each SWF is structured differently, there is a strong requirement to focus on their individual operations and especially joint ventures. Who are the beneficial owners? What is the amount of commitment and who are the owners of the fund? What are the sources of their assets, and are you confident in your compliance with know your customer requirements? The issue here is that if there are funds involved that are directly or indirectly derived from illegal activities, it can have a devastating impact on the investment and result in the seizure of assets.

Fourth, comparative advantage: Investors considering joint ventures or other forms of partnerships that involve the building or establishment of local facilities (infrastructure, manufacturing, research and development, re-export, etc.) should comparison shop among the various jurisdictions seeking foreign investment and technology.

What are the comparative advantages/disadvantages of respective countries and regulatory regimes for the outside investor, even if the deal is being done in conjunction with a sovereign partner? Beyond apparent factors such as tax incentives, availability of skilled labor, energy costs, repatriation of profits, dispute resolution mechanisms, labor markets, legal and

intellectual property rights protections, etc., what are the “unknowns,” and how does all of this compare with regional competitors?

A thorough study of these and related issues is one of the best ways to avoid buyer’s remorse.

Fifth, legal safeguards: The transaction should be structured in such a way as to provide the maximum legal and economic safeguards possible. Among other requirements, an investor is wise to attempt to negotiate tight and comprehensive contracts, effective dispute resolution mechanisms and access to substantial assets in the event of a default. Treaty protections and the support of the home government of the investor can also be quite helpful.

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Theodore Karasik is a research fellow. For the past 30 years, Karasik worked for a number of US agencies examining religious-political issues across the Middle East, North Africa and Eurasia, including the evolution of violent extremism and its financing. He lived in the United Arab Emirates from 2006 until 2016, where he worked on Gulf Cooperation Council (GCC) foreign policy and security issues.

From New Orleans to Palestine: Whose House Is This?

Hasheemah Afaneh
December 30, 2017

Palestinians have asked for decades “Whose house is this?” Trump has given the green light for the occupation to take whatever of the “house” is left.

“Whose house is this?” A man in a black sweater and dark jeans stood at the podium, raised both arms in the air and asked the question again. He spoke of Community Benefits Agreements in the city of New Orleans, Louisiana, whilst reiterating the rhetorical-in-nature question, “Whose house is this?” to the city council members. New Orleans, the man informed the council members, was his city, and he had as much of a say in it as did the policymakers before him.

It was my first time in the City Council Chambers of New Orleans. I was sitting on teal-colored seats, which seemed to have been worn out over the past decade or so, alongside members from and supporters of the New Orleans Palestinian Solidarity Committee (NOPSC).

On December 6, US President Donald Trump recognized Jerusalem as Israel's capital, sparking outrage among the Palestinian communities in Palestine and abroad, including in the city of New Orleans.

To Palestinians, Trump's decision confirms the fact that Washington was never a just deal-broker between Palestine and Israel, the failure of the international community to hold certain powers accountable, and the disappointment (yet again) in the Arab as well as the Palestinian leadership. It also reaffirms that the 1993 Oslo Accords, and the "peace process" that was presumed to come with it, can never be resurrected, as Palestinians never held a seat at the negotiating table to begin with.

On December 12, six days after Trump's recognition, the NOPSC called on a press conference outside of New Orleans City Hall not only to condemn the president's announcement, but also to present a Human Rights Ordinance to the city council members. The three-page ordinance, titled "Resolution Calling for City-Wide Divestment from Companies that Profit from Human Rights Abuses and War Crimes," requests the city of New Orleans to present social concerns and values, such as environmental, health, and human rights concerns, as "principles for consideration in the city's direct investment in corporate securities and in the companies with whom the city contracts."

The NOPSC had presented such a request earlier in the year, but as Mayor-elect LaToya Cantrell's chief of staff admits, not as much follow-up ensued as should have.

In mid-2016, the NOPSC drafted a letter to the city's council members, demanding that the city "say no" to Israeli products, such as those from Sabra Dipping Company, which contribute financially to the Israeli occupation that violates human rights on a daily basis.

Palestinians know too well the hypocrisy lying between the lines when talks about the poor education, housing, health care and prison systems due to budget cuts and lack of funds in America emerge, as billions of US dollars are poured into aid for the Israeli military and the sustainability of a military occupation that imprisons, abuses, murders and denies basic human rights to an entire people.

The NOPSC hopes that the ordinance presented to city council members will initiate the start of a Boycott, Divestment and Sanctions (BDS) campaign in New Orleans.

On our way inside City Hall, a woman who was there to speak about fair housing from the Louisiana Socialist Network asked if we were also there to speak.

"Well, if it's not related to the issues the committee hearing is covering today, just phrase the beginning in a way that is and then dive into your topic," she advised us.

Tabitha Mustafa, an NOPSC organizer, stood at the podium. As she was explaining why the NOPSC was there and what the ordinance included, a council member interrupted her, saying that if what she was about to say isn't related to the topic of discussion, the council would have to hear it at another committee hearing.

Mustafa assured him it was related.

It *is* related. What the council member, and many of our co-workers, colleagues, friends and neighbors, may not understand is that for many Palestinians in the diaspora, our — the Palestinian — struggle for basic human rights is related to all that we do, say and learn wherever we tend to be. It is related to all the struggles for justice around the world, including those in communities, such as Flint, Michigan and Standing Rock.

Palestinians have asked for decades now "Whose house is this?" The announcement by President Trump only leaves the green light on for the occupation to take whatever of the "house" is left.

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