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I. INTRODUCTION

In 2001, James O'Neill, an economist and former executive at Goldman Sachs, pointed to Brazil, Russia, India, and China as developing countries that are the most likely to soon take charge as economic powerhouses on the world stage.[1] Coining the term "BRIC,"[2] O'Neill set in motion what would become an alliance of emerging economic powers with the potential to change the economic makeup of the international system.[3] While O'Neill's hypothesis still remains open to question in some respects, he accurately predicted the radical growth in economic prowess and international influence that the BRICS have demonstrated independently.[4]

As the BRICS countries have steadily gained economic momentum, commentators have kept a close watch on what this alliance's next strategic step will be.[5] The most recent, and arguably most tantamount of unified actions taken by the BRICS, is the creation of the New Development Bank ("Bank").[6] This development has come at the same time China has drastically changed its rhetoric on foreign policy. For several decades, China has quietly risen as an economic and military power, and the Chinese government has observed Deng Xiaoping's "24 Character Strategy" of keeping a low profile and never claiming leadership on the world stage.[7] However, within the past year, the recently ap-

1. James O'Neill, *BRICs 12 Years in Review: Which Countries Truly Dominate Emerging Markets?*, 20 BROWN J. WORLD AFF. 303 (2013).

2. South Africa was not included in O'Neill's prediction. *Id.*

3. *Id.*

4. *Id.*

5. *See BRICS Bank Next Step to Dollar Independence*, RT (Mar. 20, 2014, 2:49 PM), http://rt.com/business/brics-set- bank-development-004/.

6. *Id.*

7. *See* Dingding Chen, *The World Needs China's Leadership*, DIPLOMAT (March 21, 2014), http:// thediplomate.com/2014/the-world-needs-chinas-leadership.

pointed paramount leader[8] of the Peoples Republic of China, Xi Jinping, has made speeches on regional diplomacy that emphasize China "'being more active,' 'adjusting to new times,' providing 'more leadership,' and 'contributing to the world.'"[9] The Chinese minister of foreign affairs, Wang Yi, has made similar statements regarding the state taking on "more international responsibilities, ranging from foreign aid, peacekeeping, nuclear non-proliferation, and regional security mechanisms."[10] The Chinese government's change in rhetoric reflects the government's recent move to establish the Bank as a new forum for foreign aid assistance.[11]

Since the Bank's creation, there have been many questions as to what, if any, impact an alternative to the International Monetary Fund ("IMF") and World Bank will have.[12] In particular, many wonder what influence the Bank may have on the status of foreign aid structures, and what the BRICS seek to accomplish in this new realm of economic and geopolitical influence.[13] This note discusses what characteristics and policies will guide the Bank's construction and delivery of foreign aid, with a focus on the disbursement of concessional loans, to developing countries. In order to make this assessment, an overview of the key declaration and agreement that created the Bank is provided, as well as an examination of complaints the BRICS have made against existing multilateral lending institutions, such as the IMF and World Bank.[14] These complaints serve as a guide to what policies the BRICS will not utilize as the Bank begins lending.

Finally, this note discusses with specificity what policies, lending stipulations, and aid disbursement procedures have been applied by each of the BRICS, particularly China. As the economic leader of the Bank and home of the Bank's headquarters, Chinese officials will direct how the Bank operates. Based on a comparison of the Chinese foreign aid program to the rest of the BRICS aid programs, it is likely that the

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8. Xi Jinping holds all three offices of substantial import in China—the President, General Secretary of the CPC, and Chairman of the military.

9. Chen, *supra* note 7.

10. *Id.*

11. Bree Feng, *Deal Set on China-Led Infrastructure Bank*, N.Y. TIMES (Oct. 24, 2014), http://www.nytimes.com/2014/10/25/world/asia/china-signs-agreement-with-20-other-nations-to-establish-international-development-bank.html.

12. *Id.*

13. *Id.*

14. *China Voice: BRICS bank diversifies global finances, not zero-sum game*, XINHUANET (Mioh Song ed., 2014), http://news.xinhuanet.com/english/china/2014-07/16/c_133488184.htm.

BRICS will predominantly disburse concessional loans that do not have political conditions attached. Loans will be given out when they serve a mutual benefit to the Bank members, either by increasing exports or influence in an emerging market.[15] Lastly, BRICS does suffer from varying degrees of corruption. Thus, in order to provide effective aid, the Bank must implement a strong regulatory scheme, governing the disbursement loans and execution of projects that is enforced at every step of the lending process.

This note proceeds as follows. Section II of this note will analyze the Fortaleza Declaration and the Agreement on the New Development Bank. These agreements operate largely as a mission statement, outlining the structure, headquarters, and purpose of the Bank.[16] Yet these agreements provide sparse information that demonstrates how the Bank is distinguishable from other multilateral lending institutions. Next, Section III highlights the criticisms that the BRICS have made against Western multilateral lending institutions such as the IMF and World Bank. The BRICS have criticized Western lending institutions on a number of matters, predominantly blaming the failures of the IMF and World Bank on their policy of disbursing conditional loans.[17] Conditional loans given out by Western lending institutions often require the borrowing state to implement various good governance, austerity, and open market policies before a loan can be financed.[18] The BRICS have argued that these measures led to economic collapse in the states that have agreed to them. Further, the archaic breakdown of the voting shares in the IMF and World Bank, which favors Western states, has been consistently criticized by the BRICS as favoring Western values and interests.[19] These criticisms highlight what motivates the BRICS to start their own Bank and what polices the Bank will not promulgate.

Section IV then focuses on China, the economic leader of the

15. *China's White Paper on Foreign Aid*, XIHNUANET (July 10, 2014), http://news.xinhuanet.com/english/china/2014-07/10/c_133474011_2.htm [hereinafter *White Paper*].

16. Fortaleza Declaration, VI BRICS Summit, MIN. EXTERNAL REL. (BRICS) (July 15, 2014), http://brics6.itamaraty.gov.br/media2/press-releases/214-sixth-brics-summit-fortaleza-declaration [hereinafter Declaration].

17. *The BRICS Bank: An Acronym with Capital*, THE ECONOMIST (July 19, 2014), http://www.economist.com/news/finance-and-economics/21607851-setting-up-rivals-imf-and-world-bank-easier-running-them-acronym.

18. John Manning, *Can the BRICS New Development Bank Compete with the World Bank and the IMF?*, INT'L BANKER, http://internationalbanker.com/banking/can-brics-new-development-bank-compete-world-bank-imf/ (last visited Apr. 9, 2016).

19. *Id.*

BRICS,[20] and its foreign aid regulations and policies as a predictor for what the Bank's lending regulations will look like. China's foreign aid laws and regulations can be characterized in three key ways.[21] First, China administers loans to developing countries with little to no economic or political conditions attached.[22] Chinese lending agreements reflect the Chinese policy of nonintervention, which is present in the Chinese Constitution and laws.[23] Second, China engages in foreign aid as a mutual benefit to the Chinese economy through Chinese export quotas in loan agreements, foreign aid procedures that require the state to review the economic benefit of the loan for China, and natural resource imports in exchange for aid.[24] Third, until 2014, the Chinese government was secretive regarding its foreign aid procedures, accompanied by many accounts of corruption associated with China's foreign aid projects.[25] Yet in the past year, China's Ministry of Commerce released foreign aid administrative measures that outline various anti-corruption laws and transparency provisions.[26] If enforced, these policies could curb the corruption that has come to be associated with Chinese foreign aid programs.

Finally, Section V argues that the BRICS, in the realm of foreign aid, are more similar than different, making the alliance a compatible match for its goal of implementing foreign aid. The strongest thread amongst the BRICS is the lack of conditions attached to concessional loans.[27] Also common amongst some of the BRICS is the inclusion of mutual benefit lending stipulations that require borrowing countries to use the lender's goods and services in order to implement an aid project. Additionally, a region of interest common to all of the BRICS is Africa[28] Perhaps this interest is based on the region's need for aid or moti-

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20. *See World Bank China Review,* WORLD BANK, http://www.worldbank.org/en/country/china/overview (last visited Apr. 9, 2014).

21. *Regulation of Foreign Aid: China,* L. LIB OF CONG. (Sept. 14, 2104), http://www.loc.gov/law/help/foreign-aid/china.php#ftn30 [hereinafter *Regulation of Foreign Aid: China*].

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Chinese Anti-Corruption Laws,* BUS. ANTI-CORRUPTION PORTAL, http://www.business-anti-corruption.com/about/about-corruption/chinese-anti-corruption-laws.aspx (last visited Apr. 9, 2015).

27. *See generally Regulation of Foreign Aid,* L. LIB OF CONG., (Sept. 13, 2015), http://www.loc.gov/law/help/foreign-aid/index.php.

28. *See id.*

vated by the continent's girth of natural resources, but, for whatever reason, all of the BRICS have a history of providing loans to African states. Lastly, another shared diagnostic amongst the BRICS is the presence of corruption in foreign aid projects.[29] Corruption is an issue that may pose great challenges to the BRICS mission in advancing the global economy. Corruption will inhibit the effectiveness of the Bank's loans in eradicating poverty in developing states and also prevent establishing a viable alternative to Western lending institutions.

II. THE NEW DEVELOPMENT BANK AND THE FORTALEZA DECLARATION

On July 15, 2014, Brazil, Russia, India, China, and South Africa met for the sixth annual BRICS Summit in Fortaleza, Brazil.[30] At the summit's conclusion, the long-anticipated New Development Bank was announced.[31] The BRICS made a joint statement referring to their alliance as being one of "the main engines for sustaining the pace of the international economy as it recovers from the recent economic and global financial crisis."[32] The Bank, as described by the BRICS countries, is filling a need for more economic assistance among developing countries, proposing an answer to a loss of legitimacy and effectiveness of international lending institutions such as the IMF and the World Bank.

The Agreement on the New Development Bank ("Agreement") stipulates several key broad provisions as to how the Bank's structure and lending programs will function.[33] The Agreement describes the purpose and the function of the bank as "mobiliz[ing] resources for infrastructure and sustainable development projects in BRICS and other emerging economies and developing countries, complementing the existing efforts of multilateral and regional financial institutions for global growth and development."[34] The Bank will use various financial instruments, including concessional loans, guarantees, equity participation, and technical assistance for development projects funded by the Bank,

29. Sabine Vollmer, *Corruption remains a serious problem in BRICS, study finds,* CGMA MAG. (Dec. 11, 2013), http://www.cgma.org/Magazine/News/Pages/20139215.aspx?TestCookiesEnabled=redirect.

30. Declaration, *supra* note 16.

31. *Id.*

32. *Id.*

33. *Id.; See generally,* Agreement on the New Development Bank—Fortaleza, July 15, VI BRICS Summit MIN. EXTERNAL REL. (BRICS) (July 15, 2014), http://brics6.itamaraty.gov.br/media2/press-releases/219-agreement-on-the-new-development- bank-fortaleza-july-15 [hereinafter Agreement].

34. *Id.*

with an emphasis on job creation and poverty reduction for more sustainable development.[35]

The Bank has opened its membership to any United Nations member state in order to grow the Bank's influence and capital contributions, but the Agreement also requires that all of the founding member countries of the BRICS alliance hold at least 55% of voting power at all times.[36] It can be argued that the Bank functions like any publicly offered corporation in the United States. While other members of the international community may participate, contribute, and potentially benefit from the Bank, the original BRICS countries hold the majority share, and thus maintain leadership and control over Bank decisions and policies.[37]

The power held by the original BRICS countries is also evident in the Bank's capital contribution breakdown. The initial subscribed capital for the Bank totals US$50 billion, with an initial authorized capital of US $100 billion, equally split amongst the Bank's founding members.[38] The proportion of subscribed shares to the Bank will equal each member's voting power.[39] China was willing to contribute additional capital, but India pushed to keep the initial financial contributions evenly distributed since the amount given by each member is directly linked to the voting shares each member will have.[40] Thus each state's financial contribution to the Bank is directly linked to the power over key decisions each state will have.

The Operational Principles of the Bank, as described in Article 21 of the Agreement, focus on general policies the BRICS have agreed upon for granting loans.[41] Section V of Article 21 states: "the Bank shall place no restriction upon the procurement of goods and services from any country member from the proceeds of any loan, investment or other financing undertaken in the ordinary or special operations of the Banks[.]"[42] As is the case with the World Bank, the Bank members will not control how borrowing countries spend proceeds accrued from de-

35. *Id.*

36. *Id.*; Daniel Epstein, *New Development? The BRICS Bank and the International System*, 36(2) HARVARD INTERNATIONAL REVIEW (Fall 2014/Winter 2015).

37. *See generally The rise of the infrastructure giants*, BRETTON WOODS OBSERVER (June 20, 2014), http://www.brettonwoodsproject.org/2014/06/rise-infrastructure-giants/.

38. Agreement, *supra* note 33.

39. *Id.*

40. *An Acronym with Capital*, *supra* note 17.

41. Agreement, *supra* note 33.

42. *Id.*

velopment projects. Further, the Bank will not allow misappropriation of loans to unapproved projects[43] because the Agreement uses general language stating the Bank will "take necessary measures to ensure that the proceeds of any loan made, guaranteed or participated in by the Bank, or any equity investment, are used only for the purposes for which the loan or the equity investment was granted . . . ."[44] The Agreement's Article 21 and Section V provisions are commonly included in the bylaws of any lending institution, the point being to prevent corruption.[45]

Overall, the purpose, function, and general structure of the Bank seek to mirror that of both the IMF and the World Bank combined. As mentioned in the Declaration previously discussed, the point of the Bank is to fill a need for the BRICS by other developing countries in lending and providing infrastructure growth assistance.[46] The language used is careful to reflect the Bank's complimentary role in the international economic system as opposed to what Western interests have characterized as competition to existing Western lending institutions.[47] While the Agreement lays out the general bylaws on how the Bank will give out loans and how the power distribution among the BRICS is allocated, the Agreement makes no specific statements on what types of terms and conditions will be inserted in lending agreements.[48] As a starting point, in order to determine what the Bank's loans will not resemble, the criticisms the BRICS have made of the IMF and World Bank will be discussed.

III. IMF AND THE WORLD BANK: CRITICISMS AND STAGNATION TOWARD CHANGE

China, along with the rest of the BRICS countries, have pushed back on IMF and World Bank policies by arguing for more flexible lending practices and a redistribution in voting power.[49] The main source of criticism stems from what economist, John Williamson, has deemed the Washington Consensus.[50] The Washington Consensus is a

43. *Id.*
44. *Id.*
45. *Id.*
46. Declaration, *supra* note 16.
47. *Id.* at 11.
48. *See generally* Agreement, *supra* note 33.
49. Ross P. Buckley, *The Economic Policies of China and India, and the Washington Consensus: An Enlightening* Comparison, 27 WIS INT'L L. J. 707, 707 (2010).
50. *See Washington Consensus, Global Trade Negotiations Home Page,* CTR. INT'L DEV.

neo-liberal economic policy fostered by the IMF and World Bank.[51] This policy is often implemented through specific conditions attached to receiving concessional loans that are distributed to developing countries.[52] The Washington Consensus generally requires that the borrowing country lower tax rates, institute fiscal discipline, promote interest rate liberalization, privatization, deregulation, deficit reduction, and liberalization of capital flows.[53] The point of these conditions is to keep developing countries current on their debts, so they are able to pay back the loans borrowed from the lending institution.[54] Yet applying such a uniform approach to foreign aid has not always led to economic success for the borrowing country, as many of the BRICS have asserted.[55] The BRICS assert that each country has unique cultural and geopolitical characteristics that are not thoroughly considered by Western lending institutions when providing loans.[56]

Instances where these loan conditions took hold with adverse effects include the Latin American debt crisis of 1982, the Asian crisis of 1997, and Argentina's economic collapse in 2001.[57] In all three circumstances, the IMF offered loans with conditions that supported austerity measures, which were ineffectual in turning around the countries' economic futures.[58] In extreme cases these conditions exacerbated shaky economic situations, leaving countries in economic ruin.[59] The Washington Consensus policies were subjected to their greatest criticisms during the 2008 world economic crisis.[60] Many developing countries faulted these laissez faire loan conditions for leaving many emerging economies without an economic safety net, even as stock markets fell and people in the developing world lost jobs.[61] While it is not fair to say that the IMF was the single contributor to the economic downturns that the organization interacted with, the open-market policies that subjected developing countries to large influxes of capital at least contributed to

HARV. UNIV., (Apr. 2003), http://www.cid.harvard.edu/cidtrade/issues/washington.html.

51. *Id.*

52. *See generally* Buckley, *supra* note 49.

53. *See Washington Consensus, supra* note 50.

54. Buckley, *supra* note 49, at 711.

55. *Id.* at 719.

56. *Id.* at 708.

57. *See generally id.*

58. *Id.*

59. *Id.*

60. *Id.* at 719, 725.

61. POLITICS IN CHINA: AN INTRODUCTION 212 (William A. Joseph ed., 2d 2010).

inflation and unstable markets, common themes in IMF loans.[62]

Perhaps the most striking example of failed Washington Consensus policies took place in Argentina. From 1991 to 2001, Argentina was on an economic honeymoon after it adopted many IMF financial policies that liberalized capital flows.[63] Nevertheless, the Argentinian economy was highly susceptible to unpredictable market forces because Argentina's loan with the IMF required Argentina to disband protective economic policies such as tariffs, privatization, price controls, inflation protection, and limiting national debt growth by cutting public programs.[64] So when Russia and some countries in Asia faced economic downturn in 1998, Argentina's economy quickly went into recession.[65] By 2001, the IMF pulled all loan assistance from Argentina, concluding that the economy was no longer sustainable enough to continue a lending program.[66] Not long after the IMF's withdrawal Argentina's economy drastically shrunk.[67] While the IMF cannot be blamed for world economic events, the main conclusion many critics, including the BRICS, have surmised is that the promotion of economic policies through conditional lending schemes does not stabilize a country's economy.[68]

The BRICS have also grown impatient with the archaic governing structure of the IMF and World Bank and so have pushed for the redistribution of voting shares between Western and BRICS states. The point being to more accurately reflect the importance of each member country's economic influence.[69] The World Bank, in its 2010 reform package, increased the shares and votes of "Part II" which were originally termed "borrower" countries.[70] This grouping includes China, India, and Brazil.[71] China and Brazil were the BRICS countries that most benefited from this 3% increase.[72] Although, the 2010 IMF reform proposal aimed

62. Buckley, *supra* note 49, at 712.

63. *Id.* at 717.

64. *Id.* at 712.

65. *Id.* at 718.

66. *Id.* at 717.

67. *Id.*

68. *Id.* at 719; Simon Robinovitch, *China: A New Way of Lending*, FINANCIAL TIMES (Sept. 23, 2012, 10:44 PM), http://www.ft.com/cms/s/0/02b87cc6-017c-11e2-83bb-00144feabdc0.html#axzz3M1iraTXi.

69. Robert Wade, *Emerging World Order: From Multipolarity to Multilaterialism in the G20, the World Bank, and the IMF*, 39 POL. & SOC'Y 347, 359 (2011).

70. *Id.*

71. *Id.* at 362.

72. *Id.* at 361

at increasing the voting shares of developing countries like the BRICS countries has yet to be ratified.[73] Currently China, the second largest economy in the world,[74] has only a 3.81% voting share in the IMF compared to the United States' 17.89% voting share, the largest by far of all IMF member countries.[75] The BRICS countries have also, during their recent 2014 summit in Fortaleza, urged the IMF to implement the 2010 reforms "so as to better reflect the increasing weight of EMDCs [emerging market economies and developing countries] in the world economy."[76]

However, the Bank is an opportunity for China and the other BRICS to lend larger amounts of aid to developing countries without conditioning loans on austerity measures.[77] While the World Bank has conceded to marginal changes in power sharing, there is still a striking divergence between the amount of power the United States has in voting shares compared to other countries in both the IMF and World Bank.[78] These varying conditions, along with the BRICS' steady economic growth, have created the opportune moment for the BRICS to try their hand at institutional foreign aid on a much larger scale than any of these countries could endeavor separately.

IV. THE CHINESE CONSENSUS

Chinese institutions and laws demonstrate several characteristics that define the Chinese lending model. These characteristics include: (1) the lack of political and economic conditions placed on the borrowing government before the loan will be administered, (2) loans structured around mutual benefit, as opposed to unilateral aid, between China and the borrowing country,[79] and (3) evidence of corruption in the implementation of aid.[80] This final point was initially recognized in an inves-

73. *Id.* at 362.

74. *World Bank China Review, supra* note 20.

75. *The IMF Member's Quotas and Voting Power, and the IMF Board of Governors*, INT'L MONETARY FUND (Nov. 23, 2014), http://www.imf.org/external/np/sec/memdir/members.aspx.

76. Declaration, *supra* note 16.

77. Measures for Administration of Foreign Aid (Draft) (Apr. 18, 2014) (promulgated by the General Office of the General Office of the MOFCOM on Apr. 18, 2014 effective 30 days later), http://china-aid- blog.weebly.com/blog/mofcom-issues-the-draft-measures-for-the-administration-of-foreign-aid (Marina Rudyal trans., 2014) [hereinafter MOFCOM Measures].

78. *See generally The IMF Member's Quotas and Voting Power, and the IMF Board of Governors, supra* note 74.

79. *Regulation of Foreign Aid: China, supra* note 21.

80. *Independent Regulation of Foreign Aid Projects Commerce Department will Issue Administrative Rules*, BEIJING TIMES (June 12, 2014, 1:46 AM),

tigation done by the Chinese government, and the government has taken efforts to address corruption through promulgating new administrative rules on foreign aid.[81] China has provided different forms of development assistance to other countries since the 1950s.[82] In the beginning of China's aid program, China administered aid to neighboring socialist countries, and later extended aid to regional neighboring countries in Asia after the Bandung Conference of 1955.[83] Yet little was known about how much aid China disbursed; which countries aid was given to; and what impact China's foreign aid had until the Chinese government released the White Paper in 2011.[84]

The White Paper described that the significant total outflow of Chinese aid from the 1950s to 2009 was as follows: RMB 256.29 billion (US$41.87 billion), 29% in concessional loans, 41% in grants, and 30% in interest free loans.[85] In 2014, China released its second White Paper on foreign aid that divulged China's recent lending habits.[86] Since 2009, China's lending rate has increased dramatically.[87] The Chinese government delivered more than one quarter of its total lending over a three-year period, compared to delivering three-quarters of its overall lending amount over sixty years.[88] This large increase in China's lending reflects both China's strong economic development and its transition into a state that seeks more international influence. The pattern of aid distributed since the first White paper has changed as well.[89] More than 50% of Chinese aid is now delivered through concessional loans, about 40% in grants, and 10% in interest free loans.[90]

The government bodies that process and put together foreign aid packages are the Export- Import Bank of China ("Exim Bank")[91] and the Ministry of Commerce ("MOFCOM").[92] The Exim Bank raises and

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http://news.sohu.com/20140612/n400725779.shtml.

81. *Id.*

82. *Id.*

83. *Regulation of Foreign Aid: China*, *supra* note 21.

84. *White Paper*, *supra* note 15.

85. *Id.*

86. *Id.*

87. Denghua Zhang, *China's Second White Paper on Foreign Aide: Impressive Growth in 2010-12*, DEVPOLICY BLOG (Aug. 12, 2014), http://devpolicy.org/chinas-second-white-paper-on-foreign-aid-impressive-growth-in-2010-2012-20140812/.

88. *Id.*

89. *Id.*

90. *Id.*

91. *White Paper*, *supra* note 15.

92. MOFCOM Measures, *supra* note 77.

manages funds for concessional loans.[93] Chinese concessional loans are given out with a preferential interest rate, which is markedly lower than China's commercial interest rate.[94] MOFCOM reviews foreign aid applications, develops government aid plans, implements foreign aid policy and projects, and inspects project success.[95] MOFCOM has several sub-agencies that manage each aspect of this process,[96] and the State Council, the highest government entity publicly involved in foreign aid regulation, reviews and approves aid agreements and budgets.[97]

A. The Law of Nonintervention

The foundations of Chinese foreign aid policy are in the Chinese Constitution. The preamble to the Chinese Constitution emphasizes nonintervention and equality among states.[98] The preamble outlines five principles: "[1] mutual respect for sovereignty and territorial integrity, [2] mutual non-aggression, [3] non-interference in each other's internal affairs, [4] equality and mutual benefit, and [5] peaceful coexistence in developing diplomatic relations and economic and cultural exchanges with other countries."[99] These principles are reiterated in China's "Eight Principles of Economic Aid,"[100] which address the forms and standards for foreign aid.[101] The "Eight Principles" include deferrable repayment dates for loans, access to Chinese materials and equipment, assistance for construction projects in borrowing countries, technical assistance and training of local staff, and available Chinese expert assistance.[102] All of these options are available without special political or economic conditions attached to the aid.[103] Most recently, MOFCOM's Measures for the Administration of Foreign Aid reiterated that China provides foreign aid on principle of, "[e]quality in sovereignty and mutual non-interference in domestic affairs."[104]

Western interests often criticize China's stance on nonintervention

93. *White Paper*, *supra* note 15.
94. MOFCOM Measures, *supra* note 77.
95. *Regulation of Foreign Aid: China*, *supra* note 21.
96. *Id.*
97. MINGUO XIANFA [Constitution of the People's Republic of China], art. 89(9) (1947) (China).
98. *Id.*
99. *Id.*
100. *White Paper*, *supra* note 15, at 2.
101. *Id.*
102. *Id.*
103. *Id.*
104. MOFCOM Measures, *supra* note 77, at Art. 5.

as both breeding corruption and stifling development.[105] Unlike the West, which holds to the tenants of democracy and the individual, China traditionally does not support laws that promote political and civil rights, instead favoring laws and policies that focus on society as a whole over the economic and social rights of the individual,[106] standing by the policy that there is no "rogue" state, and thus no justification for Chinese intervention in the domestic affairs of a foreign country.[107] For example, while many Western states place trade embargos on Sudan because of the government's various human rights violations, China has provided aid and services to the Sudanese government in exchange for establishing oil and other natural resource extraction facilities inside Sudan's borders.[108]

Other African states have often preferred to take a loan from China over a Western entity because China is less scrupulous about investigating corruption and human rights issues prior to financing a loan.[109] Additionally, China provides aid for a broader range of projects than Western institutions provide.[110] China has financed infrastructure projects like soccer and conference stadiums as opposed to solely hospitals and roads because of its nonintervention policies.[111] Without these barriers, the entire lending process is easier for African government officials to borrow development assistance funds and to adapt these funds in accordance with the needs officials have determined are the most important for their country.[112]

One of the most controversial examples of China's nonintervention laws functioning in the foreign aid context occurred in Angola.[113] Angola is a country of vast oil wealth.[114] Yet its population lives in poverty.[115] When USS 4.2 billion of oil revenues went missing from Angola's pub-

105. Madison Condon, *China in Africa: What the Policy of Nonintervention adds to the Western Development Dilemma,* 27 FLETCHER J. HUMAN SEC. 5, 6 (2012).

106. Fareed Zakaria, *Culture is Destiny: A Conversation with Lee Kuan Yew,* 73 FOREIGN AFF. 109 (1994).

107. Condon, *supra* note 105, at 9.

108. Helmut Reisen, *Is China Actually Helping Improve Debt Sustainability in Africa?*, G-24 Policy Brief No. 9, http://www.oecd.org/dev/39628269.pdf (last visited Apr. 9, 2016).

109. Patrick Keenan, *Curse or Cure? China, Africa, and the Effects of Unconditioned Wealth*, 27 BERKELEY J. INT'L LAW 84, 96 (2009).

110. *Id.*

111. *Id.* at 96.

112. *Id.* at 95.

113. *Id.* at 98; *see also* Condon, *supra* note 105, at 8-9.

114. Keenan, *supra* note 109, at 98; *see also* Condon, *supra* note 105, at 8-9.

115. Keenan, *supra* note 109, at 98; *see also* Condon, *supra* note 105, at 8.

lic accounts, the IMF required that Angola implement transparency initiatives in order to continue lending Angola funds, but China offered Angola a USS 2 billion credit for development in exchange for 40,000 barrels of oil a day.[116] Of course, Angola took the line of Credit from China.[117] The ruling elite in Angola likely benefitted from the Chinese loan, but the loan also built roads, hospitals, and schools in extremely poor areas, and Angola's Ministry of Finance began to publish a report on Angola's oil revenues and expenditures without being forced to do so.[118] So while the loan may be viewed as breeding corruption to some, it likely brought needed infrastructure to the Angolan people.

B. Mutual Benefit Lending

Chinese foreign aid is provided under the belief of mutual benefit and reciprocity between China and borrowing countries.[119] The Exim Bank's Interim Measure for Foreign Aid Preferential Loans states that the Exim Bank will review projects based on their "economic benefit" for China and the borrowing country.[120] Additionally, the MOFCOM Measures' Article 4 states the aim of foreign aid is to "[strengthen] friendly relations and cooperation between China and recipient countries."[121] The Chinese objective behind these regulations is twofold: to attain natural resources and support China's export driven economic growth by developing relationships with new African markets.[122]

China often includes loan requirements stating that more than half of the loan must be used to buy Chinese goods and services, thus, allowing China to contract out infrastructure projects to Chinese companies.[123] The Chinese firms that most often work in borrowing countries

116. Condon, *supra* note 105, at 8.

117. *Id.*

118. *Id.* at 9.

119. *Regulation of Foreign Aid: China, supra* note 21.

120. *See* Zhongguo Jinchukou Yinhang Duiwai Youhui Daikuan Zanxing Banfa (Jinchu Yin Youdai Fa [2000] No. 26) [Interim Measures of the Export-Import Bank on Concessional Loans to Foreign Countries] (promulgated and implemented by the EIBC on Feb. 14, 2000), art. 6, http://www.gsfzb.gov.cn/FLFG/ShowArticle.asp?ArticleID= 36119 [hereinafter Exim Bank Measures].

121. MOFCOM Measures, *supra* note 77, Art. 4.

122. Condon, *supra* note 105, at 6.

123. Sharon LaFraniere and John Grobler, *China Spreads Aid in Africa, With a Catch,* N.Y. TIMES (Sept. 21, 2009), http://www.nytimes.com/2009/09/22/world/africa/22namibia.html?pagewanted=all&_r=0.; DEBORAH BRAUTIGAM, THE DRAGON'S GIFT, 11 (2009).

specialize in natural resource extraction.[124] An example of this "resource for infrastructure swap"[125] is in the Congo. In exchange for 12 million tons of copper and cobalt over twenty-five years, China packaged a foreign aid loan to finance thousands of miles of roads and railways, hundreds of clinics, schools, hospitals, and a couple universities with the estimated value of 6 billion dollars, which is worth more than half of the Congo's GDP.[126]

Whether this aid has encouraged economic stability in the Congo is still unclear, but it did provide the Congolese people with much needed infrastructure that the war torn, corrupt state would not have otherwise received from the West. Furthermore, China's lending agreements are aligned with its policy to take part in South-South Cooperation (SSC).[127] SSC is a United Nations program that was established in 1974, its goal being to support economic collaboration between developing countries.[128] SSC countries achieve this goal through sharing ideas, technologies, monetary and financial cooperation, and training between respective private and public sectors.[129] The U.N. attributes these policies with promoting cooperation and giving bargaining power and voice to developing economies.[130] China cites SSC as one of the bases for giving aid for mutual benefit, since China is still, despite its economic growth,[131] labeled a developing country.[132]

C. Chinese Good Governance Reforms

While there have been some general regulations on China's foreign aid review and implementation procedures, many details regarding the process have been left open to question. The general procedure for attaining a concessional loan from China, according to applicable regulations, has been as follows: the borrowing government submits an ap-

124. *Regulation of Foreign Aid: China, supra* note 21; *see also* Condon, *supra* note 105, at 6.

125. Condon, *supra* note 105, at 7.

126. *Id.*

127. *What Is South-South Cooperation?*, UNITED NATIONS OFFICE FOR SOUTH-SOUTH COOP., http://ssc.undp.org/content/ssc/about/what_is_ssc.html (last visited Nov. 23, 2014) [hereinafter *South-South Cooperation*].

128. *See generally* Technical Co-operation Among Developing Countries, G.A. Res. 29/2306, U.N. Doc. A/32/51 (Dec. 4, 1974).

129. *South-South Cooperation, supra* note 127.

130. *Id.*

131. *Regulation of Foreign Aid: China, supra* note 21.

132. Yiping Huang, *China Is a Special Developing Country,* THE N.Y. TIMES (July 27, 2015), http://www.nytimes.com/roomfordebate/2015/07/27/can-china-stand-on-its-own/china-is-a-special-developing-country.

plication for a loan, and the Exim Bank collects information to start a "pre-lending investigation."[133] Next, MOFCOM conducts an evaluation of the government and the proposed project, making a report that is submitted to relevant administrations and government entities for review.[134] Once the loan terms are developed and approved, the agreement is presented to the borrowing country and signed by both governments. The loan is then disbursed, and the Exim Bank oversees loan payments.[135]

Article VII of the Interim Measures for the Export-Import Bank of China's foreign preferential loans outlines several prerequisites that must be satisfied in order for a loan to be considered.[136] If a government is to receive a preferential loan, the government must: (1) be politically stable, have an improving economic situation, and be able to repay the loan; (2) the project must be approved by both China and the host government; and (3) the country must have good credit and necessary guarantor capacity.[137] While this process gives a general idea on how loans are disbursed, there is little administrative regulation regarding loan implementation in the borrowing countries, specifically in regard to foreign aid personnel, project surveillance, and project efficiency concerns.[138]

In April 2014, MOFCOM promulgated the "Measures for the Administration of Foreign Aid," which details the previously described process, lists rules for the conduct of Chinese aid personnel, and establishes oversight and surveillance procedures to determine whether the aid was effective.[139] These measures are likely a response to a report by the Central Commission for Discipline Inspection of the Communist Party of China, which discussed apparent corruption in the implementation of foreign aid.[140] The report highlights that the most common problem in implementation is bribery by Chinese personnel.[141] Other issues

133. *Preferential Facilities, Preferential Loan,* THE EXIM BANK OF CHINA, http://english.eximbank.gov.cn/tm/en-TCN/index_640.html (last visited Apr. 9, 2016).

134. MOFCOM Measures, *supra* note 77.

135. *Preferential Facilities, Preferential Loan, supra* note 133.

136. Exim Bank Measures, *supra* note 120.

137. *Id.*

138. LaFranier and Grobler, *supra* note 123.

139. MOFCOM Measures, *supra* note 77.

140. *Independent Regulation of Foreign Aid Projects Commerce Department will Issue Administrative Rules, supra* note 80.

141. *Emerging Economic Giants Show High Levels of Corporate Bribery Overseas,* TRANSPARENCY INT'L, (Dec. 9, 2008), http://www.transparency.org/news_room/latest_news/press_releases/2008/bpi_2008_en.

include the secrecy surrounding project costs, loan terms, and repayment conditions. The complaint is that this secrecy fosters corruption and stifles the efficiency of the loan, especially considering that 82% of MOFCOM's budget goes to foreign aid.[142] The Measures are thus likely in response to both complaints.

Article 45 goes on to state, "[f]oreign aid personnel shall abide by the laws and regulations of China and the recipient, and respect the recipient country's customs and habits."[143] The law holds implementing entities of foreign aid projects subject to a warning, 30,000 RMB fine, and a ban from participation in further government aid projects, if the entity commits any of the following acts: "Not completing a project in accordance with the foreign aid project implementation agreement . . . [n]ot providing basic work and living conditions as well as insurance for foreign aid personnel" and "misappropriation of foreign aid funds."[144] Additionally, Article 49 explicates that MOFCOM employees will be subject to punishment for bribery or abusing power.[145] While China has both criminal and anti-corruption laws that would presumably hold Chinese personnel and government officials culpable for dishonest acts,[146] codifying this law with direct relation to foreign aid shows a renewed commitment on behalf of the Chinese government to stop corruption by Chinese entities regarding foreign aid.

Further, the Measures stipulate greater transparency and surveillance over foreign aid projects.[147] In Article 8, MOFCOM announced it will be establishing "the Chinese government's foreign aid statistics system,"[148] and Articles 38 and 39 provide that MOFCOM will supervise and inspect aid projects along with holding implementing firms accountable for delays.[149] All of these measures will likely foster greater transparency and—depending on whether these enforcement measures are utilized—mitigate corruption.

V. AREAS OF AGREEMENT AMONGST THE BRICS

Western lending institutions and China's leadership in the Bank

142. *Independent Regulation of Foreign Aid Projects Commerce Department will Issue Administrative Rules, supra* note 80.

143. MOFCOM Measures, *supra* note 77, Art. 4.

144. *Id.* at Art. 48.

145. *Id.* at Art. 49.

146. *Chinese Anti-Corruption Laws, supra*, note 26.

147. MOFCOM Measures, *supra* note 77.

148. *Id.* at Art. 8.

149. *Id.* at Art. 38, 39.

are reliable predictors as to what the Bank will and will not incorporate in its lending agreements, but there is still some question as to whether the BRICS can come together on enough common interests to successfully execute the Bank's vision into a reality.[150] Some commentators assert that it is unlikely the BRICS will agree on which countries to distribute loans, let alone what the terms of lending agreements should be.[151] The BRICS have many heterogeneous characteristics that create different, and at times, conflicting interests over trade agreements and geopolitical alliances.[152] The BRICS states are different in size, government structure, domestic economic policy, and the credence each state accords to human rights.[153] While these differences are accurate and vastly influential on policy making decisions, under the narrower scope of financial aid and international lending institutions, the BRICS have far more in common than not. These common interests and policies are what make the BRICS opportune partners in the creation of a new international lending institution.

Commentators assert the disparity in economic influence between China and South Africa as a problematic factor in finding mutual interests for an international lending institution.[154] China's economy is twenty-eight times the size of South Africa's economy, and the "[i]ncome per person in India is one-tenth that in Russia."[155] Also the despotic and autocratic governments of China and Russia versus the democratic systems in Brazil, India, and South Africa may influence what types of conditions each state may demand to include in the Bank's concessional loans.[156] *The Economist* points out, "True, all lack infrastructure but lively democracies (Brazil, India, South Africa) go about erecting it differently to authoritarian regimes (Russia, China)."[157] Additionally, pundits have alluded to other issues, such as border disputes slowing economies and political back-dealings that may threaten a functional agreement for implementing aid in an effective manner.[158] While these concerns are relevant to the success of multilateral agreements general-

150. An Acronym with Capital, *supra* note 17.
151. *Id.*
152. *Id.*
153. Manning, *supra* note 18.
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. Wade, *supra* note 69.

ly,[159] the BRICS have more in common regarding foreign aid than these commentators posit.

A. The End of Conditional Lending

As with any gathering of hegemonic powers, there will doubtlessly be differing approaches as to how each country handles domestic issues. Nevertheless, the BRICS countries have many overlapping points of interest regarding how and under what circumstances to give foreign aid. These points of interest mainly stem from the structure of unilateral lending programs in each BRICS country.[160] Like China, the BRICS countries have lent money to other states, attaching few to no conditions on concessional loans.[161] This trend is apparent across democratic and authoritarian lines, despite economic prowess.[162]

In Brazil, the government does not "impose any conditions or immediate political goals" on borrowing countries, leaving the direction of the borrower's domestic economy up to the government.[163] The justification for this policy is similar to that of China's rationale—supporting "self-determination" for any sovereign state.[164] Brazil's traditional approach to diplomacy further reflects this stance: "Brazil has been developing its own way of cooperating with developing nations and, as previously mentioned, does not impose any conditions or immediate political goals on its international cooperation . . . "[165] Brazil balances respect for sovereignty with its own economic benefit received from a foreign aid project; specifically, Brazil includes the recipient countries in the initial phases of planning for development projects.[166] Brazil's bilateral coordination effort's purpose is to adapt the project to the customs and culture of the locality in which it will be implemented.[167]

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159. *Id.* at 351.

160. Jens F. Laurson and George Pieler, *A BRICS Bank? No Thanks, The IMF and World Bank are Bad Enough,* FORBES (Apr. 22, 2013), http://www.forbes.com/sites/laursonpieler/2013/04/22/a-brics-bank-no-thanks-the-imf- and-world-bank-are-bad-enough/.

161. *Regulation of Foreign Aid: Brazil,* L. LIB OF CONG. 1, 3 (Last visited Feb. 5, 2015), http://www.loc.gov/law/help/foreign-aid/brazil.php [hereinafter *Regulation of Foreign Aid: Brazil*]; *But see,* John Manning, *Can the BRICS New Development Bank Compete with the World Bank and the IMF?*, INT'L BANKER (Last visited Feb. 2, 2015).

162. Laurson & Pieler, *supra* note 160.

163. *Regulation of Foreign Aid: Brazil, supra* note 161.

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 4.

Similarly, India does not impose conditions on its concessional loans.[168] India's aid policy has been noted to "take into account the needs and interests of the aid recipient" by encouraging the recipient country to choose what infrastructure and economic priorities should be addressed first.[169] This is accomplished by attaching "far fewer conditionalities to its grants," which also "gives beneficiaries a greater voice in the process."[170] As described, this approach is utilized by China, with marginal success.[171] Recipient countries are much more willing to receive a loan from a lender that both tailors the loan and the programs to the immediate needs of its differing localities.[172] In contrast to the Bretton Woods Institutions, this approach gives the recipient country more opportunities to be an active participant in the lending process, rather than merely agreeing to apply the conditions set forth in the lending agreement.[173] Perhaps the lack of conditions is because not so long ago the lending countries were the borrowing countries, learning from first-hand experience that a one-size-fits-all approach does not address the economic and governance issues unique to each country.

For similar reasons as the other BRICS countries, South Africa generally does not impose economic conditions on borrowing countries.[174] Yet both of these countries have some record of requiring conditions under specific circumstances before they will lend out large sums of capital.[175] South Africa has been described also as "reluctant" in imposing conditions on its concessional loans.[176] Nevertheless, South Africa has applied some restrictions on the loans it provides while not enforcing the conditions as thoroughly as Western institutions.[177] For example, South Africa agreed to provide Swaziland with a US$4 billion loan.[178] The loan included "confidence building measures" meant to be

168. *Regulation of Foreign Aid: India,* L. LIB OF CONG. 1, 3, http://www.loc.gov/law/help/foreign-aid/india.php (last visited Apr. 9, 2016) [hereinafter *Regulation of Foreign Aid: India*].

169. *Id.*

170. Dweep Chanana, *India as an Emerging Donor,* 44 ECON. & POL. WKLY. 11 (Mar. 21–27, 2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1410508&#.

171. *Id.*

172. *Regulation of Foreign Aid: Brazil, supra* note 161.

173. *The rise of the infrastructure giants, supra* note 37; *see generally, Regulation of Foreign Aid: Brazil, supra* note 161.

174. *See generally, Regulation of Foreign Aid: South Africa,* L. LIB OF CONG., (Last visited Feb. 5, 2015), http://www.loc.gov/law/help/foreign-aid/southafrica.php.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

undertaken by the Swazi government, similar fiscal and technical reforms compared to those that have been applied by the IMF, promises of cooperation for multilateral engagements, and "capacity building support to be provided by South Africa."[179] Importantly, the loan did not include "strict enforcement mechanisms" that would guarantee Swaziland abides by the conditions provided as a part of the concessional loan.[180] At most, South Africa intended to follow up with the restriction by monitoring and carrying out incremental assessments over the use of the loan.[181]

Furthermore, while about 75% of the aid Russia provides is "untied aid,"[182] Russia implements such aid packages to further various policy and economic interests, such as promoting its own domestic trade in support of Russian businesses.[183] In this sense, Russia chooses what country to provide aid to in part by looking at the types of projects the borrowing country seeks to accomplish.[184] Where the country wants to complete a project that requires Russian products or services, Russia is more inclined to accept that aid application over a project that in no way would support the Russian domestic economy.[185] Also, Russia has applied some conditions to its concessional loans to mitigate "corruption, misuse of allocated funds, and conservation of inefficient public administration in the recipient countries."[186] In order to attain these goals, recipients of Russian loans must meet certain requirements, which include "the existence of national poverty reduction and sustainable economic development programs, and anticorruption programs."[187] In some ways these economic requirements are the socialist version of the Western free-market conditions approach.

In sum, the BRICS all seek to provide loans without drastic economic conditions attached to them. What States have done unilaterally likely serve as a predictor for the priorities and goals each country will have when providing aid on a multilateral basis. While South Africa seems to be one of the only BRICS countries to give out a loan with

179. *Id.*
180. *Id.*
181. *Id.*
182. *Regulation of Foreign Aid: Russia,* L. LIB OF CONG., at 4, http://www.loc.gov/law/help/foreign-aid/russia.php (last visited Feb. 3, 2015) [hereinafter *Regulation of Foreign Aid: Russia*].
183. *Id.* at 2.
184. *Id.*
185. *Id.* at 4.
186. *Id.* at 5.
187. *Id.*

conditions that reflect those provided by the Bretton Woods institutions, it is also important to remember the amount of power South Africa has compared to the rest of the BRICS. Many have described South Africa as not properly belonging in the BRICS formulation because its economy is not on the same scale as that of China, India, Brazil, and Russia in terms of size and influence.[188] So, it is probable that the other BRICS countries' votes will outnumber South Africa in determining whether to include economic and governance conditions on the loans the Bank gives out.

B. The BRICS Approach to South-South Cooperation and Mutual-Benefit Lending

Unlike the IMF and World Bank, the BRICS view aid as an avenue for mutual benefit lending in large part because of their status as emerging economies. South-South Cooperation, a United Nations concept, is often cited as the justification for many emerging economies' lending policies, which is quite separate from the traditional distinction of "donor-dictated top-down aid"[189] given out by Western states and multilateral institutions. South-South Cooperation is a proposition supported by the UN; it urges developing countries to act collaboratively to better improve other states' economies and promote the understanding of those states.[190] Like China, Brazil heeds to the South-South Cooperation policy in referencing its foreign aid programs.[191] India also traditionally views its development assistance under South-South Cooperation terms, viewing states that India engages with in development assistance as "partners at an equal level."[192]

By viewing other developing states as equal partners, the BRICS treat loans as a means to enhance soft power by providing geopolitical influence in new regions through exporting goods and services to the recipient countries. This practice in theory benefits both the donor and recipient country.[193] India regards its recipients on an equal level, mean-

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188. J.P.P., *Why is South Africa included in the BRICS?*, THE ECONOMIST (Mar. 29, 2013), http://www.economist.com/blogs/economist-explains/2013/03/economist-explains-why-south-africa-brics.

189. *Brazil's Foreign Aid Programme: Speak Softly and Carry a Blank Check*, THE ECONOMIST 3 (July 15, 2010), http://www.economist.com/node/16592455 [hereinafter *Brazil's Aide Programme*].

190. *South-South Cooperation*, *supra* note 127.

191. *Id.*

192. *Regulation of Foreign Aid: India*, *supra* note 168.

193. *See generally* Boris Bruk, *Abstract and Rule? Lessons of Soft Power form BRICS Coun-*

ing it requires a mutual benefit when engaging in foreign aid: "India seeks to use its foreign aid programs as a tool to further its own economic, political, and strategic interests, while also taking into account the needs of the recipient country."[194] For instance, one of India's flagship development assistance programs, the ITEC programme, is meant to administer technical training to foreign delegates and scholars in exchange for the purchase of goods and services from Indian companies.[195] ITEC is "driven not by pure altruism, but primarily from the domestic and international political and economic benefits that would accrue from it."[196] Similarly, India provides concessional loans with the requirement that Indian exports will be delivered to the country, as was described in the Indian Development Assistance Scheme (IDEAS).[197] IDEAS was "explicitly designed" to increase Indian exports to developing nations; promote economic relations in the developing world; and support India's strategic geopolitical interests abroad.[198]

Russia also ties exports onto aid packages as a means to enhance their economy.[199] Oftentimes, Russia will choose an aid proposal from a recipient country over other candidates that want to use Russian goods and services.[200] Similarly, Russia views contributions made to the World Food Program as a way to promote Russian grain exporters: "[T]ied contributions to the WFP and the International Civil Defense Organization of US$9.3 million and US$10.7 million."[201] Russia emphasized that the contribution "will be used to purchase wheat and flour in Russia and to pay Russian organizations for their delivery."[202] In many respects Russia considers grain as a part of the future in supporting the development of new markets. As these markets develop, the borrowing country's relationship with Russia should lead to profitable trade agreements between Russia and the developing country. As a country that once needed agricultural resources develops, there will eventually be a demand for oil and manufactured products and services that can be imported from a large oil producing country like Russia.

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tries, INST. OF MODERN RUSS. (Apr. 18, 2013), http://imrussia.org/en/politics/439-attract-and-rule-lessons-of-soft-power-from-brics.

194. *Regulation of Foreign Aid: Russia*, *supra* note 182.
195. *Id.* at 2.
196. *Id.*
197. *Id.* at 3.
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*

Brazil similarly gives aid by considering its economic strengths in an effort to guide developing countries in a direction that would benefit its own economy.[203] Brazil is considered one of the most prominent and "efficient ethanol producer[s]."[204] In order to establish a global market in ethanol fuel, Brazil cannot be the only substantial provider.[205] As a result, Brazil has aimed to spread "ethanol technology to poor countries" in order to "create new suppliers" and "boost the chances of a global market," thus generating business for Brazilian firms.[206]

South Africa also administers aid with the aim of its own socioeconomic benefit.[207] The South African government describes the overall purpose of foreign aid as the "promotion of economic cooperation between the Republic and other countries by granting loans and other financial assistance in respect of development projects in such countries."[208] Specifically, the goal of South African foreign aid is to promote cooperation between South Africa and other states, prevent conflict, foster socioeconomic development and integration, provide humanitarian assistance, and support human resources development.[209] South Africa's influence has not only been toward economics. For example, the country helped to fund and administer Sudan's general elections in 2010, establish a medical assistance project in Sierra Leone, and support an economic revitalization project in Zimbabwe.[210]

Like China, the BRICS seek to enhance influence and economic prowess through its lending and foreign aid programs. This goal is evidenced in Russia and India's preference to tie export requirements onto concessional loans and in Brazil and South Africa's ties created with developing countries.[211] These export requirements and relationship building tactics match China's mutual benefit practices on many levels. Both seek to establish relations with developing countries in order to promote domestic production, a prominent economic tool for any emerging economy.[212] Additionally, South Africa chooses to lend in order to promote regional stability, an important way to gain soft power

203. *Regulation of Foreign Aid: Brazil, supra* note 161.
204. *Brazil's Aide Programme, supra* note 189, at 3.
205. *Id.*
206. *Id.*
207. *Regulation of Foreign Aid: South Africa, supra* note 174.
208. *Id.*
209. *Id.*
210. *Id.*
211. *Regulation of Foreign Aid: China, supra* note 21.
212. *Id.*

and influence over important events, such as elections, while also supporting the future development of a potential partner in trade.[213] The Chinese lending model coincides rather comfortably with the interests of each BRICS country, and Chinese leadership seems to promote both Chinese interests but also the interests of the other BRICS countries.[214]

C. Corruption

A glaring concern in delivering effective aid for all of the BRICS countries is corruption, both in their respective governments and in delivering aid to recipient countries. India for example has "very few oversight mechanisms and safeguards against corruption."[215] Vijaya Ramachandran, a senior fellow at the Center for Global Development, notes "[n]o official records of aid disbursements are kept, either by the Ministry of External Affairs or the Ministry of Finance."[216] Such an obvious lack of transparency, as has historically been the case in China, inevitably leads to misuse of funds by both the donor and recipient country, thus, impeding economic growth.

Accounts of corruption in Brazil's foreign aid program have also been identified. Over the past several years Brazil has risen as one of the top emerging aid donors in the world, donating on the same level as Sweden and Canada.[217] Brazil's "exponential increase in aid" has been attributed to causing growing pains that effect the transparency and impact of its aid program and leading to "broken promises, incompetence and corruption."[218] When in a fury to gain soft power through aid, a country like Brazil undercuts its own domestic program funding, Brazil's own population is compromised.[219]

Similar to China's recently proposed anti-corruption regulations, Russia has many institutional procedures that are a part of its foreign aid program and designed to impede corruption while fostering transparency and efficiency in the disbursement of loans. Russia's International Development Assistance policy lists several transparency and good governance provisions and administration procedures once the aid is distributed, similar to those established in China.[220] Yet it is hard to

213. *Regulation of foreign Aid: South Africa, supra* note 174.
214. An Acronym with Capital, *supra* note 18.
215. *Regulation of Foreign Aid: India, supra* note 168.
216. *Id.*
217. *Brazil's Aide Programme, supra* note 189, at 3.
218. *Id.*
219. *Id.*
220. *Regulation of Foreign Aid: Russia, supra* note 182, at 4.

stomach that Russian aid projects are without corruption when the Russian government's own domestic matters are often beguiled in corruption.[221] Accounts of immediate concern are those where Russia has received aid.[222] Aid has not reached its destination and has instead been squandered by the political elites and organized crime.[223]

In order to be effective in attaining the goals of global economic development, the BRICS must set out, to create and implement comprehensive anti-corruption regulations and procedures. The model China has set out in its unilateral aid is a satisfactory starting point, but what may ultimately make the difference in the effectiveness of aid distributed by the Bank is the level of enforcement of transparency and good governance procedures. If the Bank fails in this area, it is likely that the Bank will have little impact in positively influencing economic advancement in the developing world.

X. CONCLUSION

The announcement of the New Development Bank is an opportunity for China and the other BRICS states to exercise influence over developing countries while also supporting their own economic interests. Under Xi Jinping, Chinese foreign policy has moved toward China holding a greater global leadership role.[224] Foreign aid, a common source of soft power, holds great influence, and it does not antagonize Western entities to the same degree as military exercises or trade embargos.[225] As emphasized by the BRICS states in the Fortaleza Declaration and Agreement on the Creation of the New Development Bank, the goal of the Bank is to complement, not antagonize, existing Western lending institutions.[226] Yet aside from this overt inference, there is little information from these agreements that distinguishes the Bank from existing multilateral lending institutions.

With little differentiating the Bank from preexisting lending insti-

221. Louise I. Shelley, *Crime and Corruption: Enduring Problems of Post-Soviet Development*, 11 GEORGE WASH. L. R. 110, (2003), https://www.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya%20archive/11-1_Shelley.PDF.

222. *Id.* at 111.

223. *Id.*

224. *The rise of the infrastructure giants*, *supra* note 37.

225. Timothy Heath, *China Overhauls Diplomacy to Consolidate Regional Leadership, Outline Strategy for Superpower Ascent*, 14 CHINA BRIEF 6 (Dec. 19, 2014), http://www.jamestown.org/single/?tx_ttnews%5Bany_of_the_words%5D=dettmer&tx_ttnews%5Btt_news%5D=43216&tx_ttnews%5BbackPid%5D=7&cHash=f79201604a824a7435505a35e658b7eb#.VgHd9LS4lE5.

226. Declaration, *supra* note 16 at 2-3.

tutions in the founding agreements, the main method of prediction as to the structure of the Bank is found in each BRICS country's unilateral lending program and the criticisms the BRICS countries have leveled against Western lending institutions. China, as host country to the headquarters of the Bank and arguably the most powerful BRICS country, will likely direct many of these policy decisions.[227] Chinese domestic law on its foreign aid program gives great insight into how the New Development Bank will function procedurally and substantively. China's policies and laws on nonintervention and mutual benefit lending will likely be implemented by the Bank because they are such an integral part of the Chinese identity. China's policies and laws also reflect the basis of China's criticism on what is lacking from institutions like the IMF and World Bank. Additionally, the Chinese aid model reflects many of the policies and practices that the rest of the BRICS states have practiced in foreign aid, primarily in the arena of non-conditional loan terms and lending for the purpose of mutual benefit lending between the donor and the recipient countries.[228]

Finally, while corruption seems to be a pressing issue in the BRICS's aid agencies, the Chinese government has recently made steps to curb corruption in favor of efficiency and transparency.[229] Yet whether the MOFCOM Measures will be enforced still remains to be seen. Corruption is a problem in aid generally and is certainly a concern among the other BRICS countries, and it will likely continue to be a concern in a functioning Bank.[230] If corruption is as pervasive as it has been documented in the past in the BRICS countries, the Bank will not likely have a lasting impact on the eradication of poverty and economic development.

The Bank will provide an alternative to the Western lending model that has the potential to influence how the West distributes loans, mainly because developing countries have been keen to receive funds through the Chinese lending model. Even if there is corruption in the Bank, developing countries may still be eager to receive loans from the Bank, which will regardless influence trends of aid distribution. Despite potential problems that the Bank may come across, there is plenty of need for aid in all shapes and sizes in developing countries. For example, the World Bank estimates that the "undersupply of infrastructure"

227. *An Acronym with Capital, supra* note 17.
228. Condon, *supra* note 105, at 10.
229. *Chinese Anti-Corruption Laws, supra*, note 26.
230. LaFranier and Grobler, *supra* note 123.

in developing countries amounts to US$1.2 trillion per year.[231] The creation of the Bank creates an opportunity for new and old lending institutions to learn from each other on how to better understand the optimal means by which to structure foreign aid loans so that they attain their greatest positive impact in the developing world.

231. WORLD BANK, FINANCING FOR DEVELOPMENT POST-2015, 4 (2014).