


September 2021

Securing Secrets: The Need for a Treaty Addressing State-Sponsored Economic Espionage

Jaylin Johnson
West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

 Part of the [Intellectual Property Law Commons](#), [International Law Commons](#), and the [Law and Economics Commons](#)

Recommended Citation

Jaylin Johnson, *Securing Secrets: The Need for a Treaty Addressing State-Sponsored Economic Espionage*, 124 W. Va. L. Rev. 327 (2021).

Available at: <https://researchrepository.wvu.edu/wvlr/vol124/iss1/11>

This Student Note is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact researchrepository@mail.wvu.edu.

SECURING SECRETS: THE NEED FOR A TREATY ADDRESSING STATE-SPONSORED ECONOMIC ESPIONAGE

I.	INTRODUCTION.....	328
II.	DOMESTIC DEFICIENCIES: WHY DOMESTIC LAW IS NOT AN EFFECTIVE SOLUTION TO THE ECONOMIC ESPIONAGE DILEMMA	331
III.	INTERNATIONAL INADEQUACIES: HOW CURRENT INTERNATIONAL LAW MECHANISMS FAIL TO ALLOW COUNTRIES TO BE HELD ACCOUNTABLE FOR SPONSORING ECONOMIC ESPIONAGE	333
	<i>A. Article 10bis of the Paris Convention for the Protection of Property</i>	333
	<i>B. The World Trade Organization.....</i>	334
	<i>C. The China Cyber Agreement.....</i>	335
IV.	HISTORICAL HARMONY: HOW TREATIES HAVE HISTORICALLY BEEN USED TO ERADICATE THREATS BETWEEN STATES.....	336
	<i>A. The Issue Addressed Is One of Mutual Concern to the Countries Involved.....</i>	339
	<i>B. The Widespread Consent of Countries to the Agreements Makes the Provisions Reflect a Norm of Behavior Within the International Community.....</i>	340
	<i>C. The Oversight Provided for Within the Agreement Allows for Enforcement of Provisions.....</i>	341
V.	OPTIMISTIC OPTION: HOW THE THEMES OF RECIPROCITY, CONSENT, AND OVERSIGHT CAN SOLVE THE PROBLEM OF STATE-SPONSORED ECONOMIC ESPIONAGE	341
VI.	TURNING OUT TREATIES: HOW TREATIES ARE MADE	345
VII.	CONCLUSION: AN INTERNATIONAL TREATY AS THE BEST OPTION	346

I. INTRODUCTION

In April 2019, Xiaoqing Zheng was indicted on charges of economic espionage and conspiracy to steal trade secrets.¹ Zheng was employed at a General Electric (“GE”) location in New York as an engineer.² His work focused on turbine sealing technology.³ In late 2017, GE discovered multiple encrypted files on Zheng’s computer.⁴ The encryption was achieved via a program not offered by GE to its employees.⁵ GE then began monitoring Zheng’s activities on its systems in an effort to discern what he was encrypting and what he was doing with the encrypted information.⁶ Through this monitoring, GE discovered that Zheng stole roughly 40 files with encrypted information relating to turbine technology.⁷ Zheng then sent these files to a business partner in China who, together with Zheng, used the research to develop and produce parts for turbines.⁸ The two exchanged messages discussing the funding they could receive from the Thousand Talents Program, a program launched by the Chinese government with the stated goal of bringing Chinese citizens who have achieved success in research and academia overseas back to China.⁹

Only a few months later, in July 2019, a federal jury in Washington, D.C., convicted Shan Shi of conspiracy to commit theft of trade secrets.¹⁰ Shi worked for a Houston, Texas-based company that researches and develops syntactic foam, a material essential for deep-sea oil drilling.¹¹ Shi was also

¹ Press Release, Department of Justice Office of Public Affairs, Former GE Engineer and Chinese Businessman Charged with Economic Espionage and Theft of GE’s Trade Secrets (Apr. 23, 2019), <https://www.justice.gov/opa/pr/former-ge-engineer-and-chinese-businessman-charged-economic-espionage-and-theft-ge-s-trade> [hereinafter Former GE Engineer].

² *Id.*

³ *Id.*

⁴ Indictment at 7, United States v. Xiaoqing Zheng, No. 1:19-CR-156(MAD), 2019 WL 2290758 (N.D.N.Y. Apr. 18, 2019).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Former GE Engineer, *supra* note 1.

⁹ Jim Stronski, *China’s Economic Aggression Through the Acquisition (or Theft) of Foreign IP and DOJ’s China Initiative*, FORDHAM IP INST. 3 (2019), <http://fordhamipinstitute.com/wp-content/uploads/2019/04/Stronski-Jim-China%E2%80%99s-Economic-Aggression-Through-the-Acquisition-or-Theft-of-Foreign-IP-and-DOJ%E2%80%99s-China-Initiative-1.pdf>.

¹⁰ Press Release, Department of Justice Office of Public Affairs, Texas Man Convicted of Conspiracy to Commit Theft of Trade Secrets (July 29, 2019), <https://www.justice.gov/opa/pr/texas-man-convicted-conspiracy-commit-theft-trade-secrets>.

¹¹ *Id.*

involved with the Thousand Talents Program.¹² Shi opened his own business in which he recruited ex-employees of the Houston company.¹³ These ex-employees had access to trade secrets from the Houston company, which they shared with Shi.¹⁴ Shi then used that information to create the same syntactic foam in China. “The defendant knew or intended that the offense would benefit the People’s Republic of China.”¹⁵

These cases are two very recent examples of economic espionage perpetuated by the Chinese government, a practice FBI Director Christopher Wray characterizes as a threat to the United States’ national security.¹⁶ However, this threat not only exists for the United States; Australia and Canada also see the effects of the Thousand Talents Program. In August, the Canadian Security Intelligence Service released a warning to universities and their researchers against the Chinese government’s attempts to use research programs to entice academics, scientists, and researchers to bring economic and military advantages to China.¹⁷ One Australian reporter noted a number of connections between Australian recruits and the Thousand Talents Program, including one who opened a laboratory and an artificial intelligence company in China that was later funded by a Thousand Talents connection and a number of senior scientists who participated in the Program.¹⁸

Further, while the state-sponsored economic espionage concerns posed by the Chinese government through the Thousand Talents Program are one major concern, these efforts are not perpetrated exclusively by China. At least two recent cases have involved similar efforts sponsored by the Russian government. The first case involved a team of hackers who stole trade secrets and other information pertaining to the “accounts of Russian journalists; Russian and U.S. government officials; employees of a prominent Russian cybersecurity company;

¹² Press Release, Department of Justice Office of Public Affairs, *The Threat Posed by the Chinese Government and the Chinese Communist Party to the Economic and National Security of the United States* (July 7, 2020), <https://www.fbi.gov/news/speeches/the-threat-posed-by-the-chinese-government-and-the-chinese-communist-party-to-the-economic-and-national-security-of-the-united-states> [hereinafter *Threat Posed*].

¹³ Press Release, Department of Justice Office of Public Affairs, *American Businessman Who Ran Houston-Based Subsidiary of Chinese Company Sentenced to Prison for Theft of Trade Secrets* (Feb. 11, 2020), <https://www.justice.gov/opa/pr/american-businessman-who-ran-houston-based-subsidiary-chinese-company-sentenced-prison-theft>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Threat Posed*, *supra* note 12.

¹⁷ True North Wire, *China Luring Canadian Scientists for Economic, Military Advantage: CSIS*, TRUE NORTH (Aug. 8, 2020), <https://tnc.news/2020/08/08/china-luring-canadian-scientists-for-economic-military-advantage-csis/>.

¹⁸ Alex Joske, *Hunting the Phoenix: The Chinese Communist Party’s Global Search for Technology and Talent*, AUSTRALIAN STRATEGIC POL’Y INST. (Aug. 20, 2020), <https://www.aspi.org.au/report/hunting-phoenix>.

and numerous” others from Yahoo.¹⁹ In a second case, a defense contractor working on commercial and military satellites stole trade secrets pertaining to military satellites.²⁰ He believed he was providing the information to an “agent of the Russian government, when in fact that person was an undercover employee of the Federal Bureau of Investigation.”²¹

Considering that situations like those discussed above continue to occur and mount a growing concern for national security in the United States, it is necessary to define economic espionage and the threat it poses. The FBI defines economic espionage as “foreign power-sponsored or coordinated intelligence activity directed at the U.S. government or U.S. corporations, establishments, or persons, designed to unlawfully or clandestinely influence sensitive economic policy decisions or to unlawfully obtain sensitive financial, trade, or economic policy information; proprietary economic information; or critical technologies.”²² The Economic Espionage Act criminalizes the taking, copying, or receiving of a trade secret.²³ While merely taking, copying, or receiving a trade secret for one’s own economic benefit comprises the crime of theft of trade secrets,²⁴ to do so for the benefit of a foreign government can result in an indictment and subsequent criminal conviction of economic espionage.²⁵

The threat of state-sponsored economic espionage is a far-reaching one, affecting individuals, corporations, and the nation as a whole. The FBI has included the threat posed by economic espionage efforts “as one of the seven National Security Threat List issues on which limited counterintelligence assets will be focused” because of the threat to national security it poses.²⁶ One of the goals of foreign entities engaging in economic espionage efforts is to become more competitive in the global market.²⁷ By gaining access to trade secrets held by United States businesses and using those secrets to develop their own materials and technologies, foreign entities make massive gains in the market without spending large amounts of time and money on research expenditures.²⁸

¹⁹ Indictment at 2, *United States v. Dokuchaev*, No. CR-17-103 (N.D. Cal. Feb. 28, 2017).

²⁰ Criminal Complaint at 7, *United States v. Justice*, No. 16-1357M (C.D. Cal. Jul. 1, 2016).

²¹ *Id.*

²² FEDERAL BUREAU OF INVESTIGATION, *What Is Economic Espionage?* <https://www.fbi.gov/about/faqs/what-is-economic-espionage> (last visited Sept. 3, 2021).

²³ 18 U.S.C.A. § 1831 (West 2021).

²⁴ *Id.* § 1832.

²⁵ *Id.* § 1831; CHARLES DOYLE, STEALING TRADE SECRETS AND ECONOMIC ESPIONAGE: AN OVERVIEW OF THE ECONOMIC ESPIONAGE ACT 10 (Aug. 19, 2016), <https://fas.org/sgp/crs/secretcy/R42681.pdf>.

²⁶ OPERATIONS SECURITY INTELLIGENCE THREAT HANDBOOK, ECONOMIC INTELLIGENCE COLLECTION DIRECTED AGAINST THE UNITED STATES (2016), <https://fas.org/irp/nsa/iOSS/threat96/part05.htm>.

²⁷ *Id.*

²⁸ *Id.*

This takes the competitive edge away from United States developers and manufacturers, effectively lowering the market value of these productions and affecting the economic security of the United States.²⁹ Perhaps an even greater danger is posed when the stolen research and information relates to military technologies. Often, information stolen has both civilian and military uses.³⁰ Take, for example, the syntactic foam in Shan Shi's case; while the foam was primarily used for deep-sea drilling, it also had uses in military submarines.³¹ Thus, through theft of this information, not only was the economic security of the United States compromised but the national security as well.

While the problems surrounding state-sponsored economic espionage efforts are numerous, perhaps the greatest challenge is in the lack of laws pertaining to the subject on the international stage. The best avenue for righting the wrong of state-sponsored economic espionage is through the use of an international treaty that binds its member countries to a commitment to cease economic espionage efforts. This Note will first consider, in Section II, domestic laws pertaining to state-sponsored economic espionage. However, because state actors are often involved, attempts at recourse stemming from domestic sources frequently fail to adequately curtail economic espionage behavior. Then, in Section III, this Note will consider the attempts—and the shortcomings thereof—that have been made on the international stage to regulate and prevent the practice of state-sponsored economic espionage. In Section IV, this Note will provide historical evidence of the use of treaties to solve international problems, including the shortcomings of such an approach. Finally, this Note will establish that, despite the shortcomings that the use of a treaty may present, an international treaty is still the best way to address the problem of economic espionage.

II. DOMESTIC DEFICIENCIES: WHY DOMESTIC LAW IS NOT AN EFFECTIVE SOLUTION TO THE ECONOMIC ESPIONAGE DILEMMA

The most prevalent domestic law aimed at economic espionage is the Economic Espionage Act of 1996.³² It was enacted by Congress “recognizing the importance of the protection of intellectual property and trade secrets to the economic health and security of the United States.”³³ The Act sets out the elements for two separate crimes. The theft of trade secrets is the more complicated of the two offenses, requiring that the perpetrator act with “the intent

²⁹ *Id.*

³⁰ *Id.*

³¹ Threat Posed, *supra* note 12.

³² 18 U.S.C.A. § 1831 (West 2021).

³³ DEPARTMENT OF JUSTICE, *Introduction to the Economic Espionage Act*, CRIM. RES. MANUAL (Jun. 2015), <https://www.justice.gov/archives/jm/criminal-resource-manual-1122-introduction-economic-espionage-act>.

to benefit someone other than the owner,” the “intent to injure the owner,” and the stolen trade secret must be “related to or included in a product that is produced for or placed in interstate or foreign commerce.”³⁴ Conversely, economic espionage requires only that the perpetrator steals a trade secret intending or knowing that the trade secret will benefit a foreign entity.³⁵ Additionally, economic espionage applies to all theft of trade secrets, not just those in interstate commerce.³⁶

Because United States law traditionally only applies within the country’s borders, Congress included provisions in the Economic Espionage Act to extend the Act’s reach. Regardless of where the offense occurs, if a perpetrator of economic espionage is “a citizen or permanent resident alien of the United States, or an organization organized under the laws of the United States or a State of political subdivision thereof” that perpetrator can be prosecuted under the Economic Espionage Act.³⁷ Additionally, even if the perpetrator does not have a relationship to the United States that falls into one of these listed categories, if the perpetrator commits “an act in furtherance of the offense” in the United States, he or she may still be prosecuted under the Economic Espionage Act.³⁸

However, even with these somewhat expansive extraterritoriality provisions, the Economic Espionage Act is still limited in its reach. For instance, if a perpetrator is not a United States citizen and conducts all trade secret theft from outside the United States, a situation all too prevalent in the current age of cyber capabilities, the Economic Espionage Act likely will not apply.³⁹ Additionally, the Economic Espionage Act almost exclusively only allows for the prosecution of individuals; where the acts are sponsored by the government of another country, domestic laws such as the Economic Espionage Act are unable to be applied.⁴⁰

Even if the language of the Act itself did not preclude the United States from prosecuting economic espionage in certain situations, the concepts of state sovereignty and non-intervention likely would. Essentially, the concept of state sovereignty means that countries all stand on equal footing and are their own sovereigns.⁴¹ The principle of non-intervention provides that, because countries are their own sovereigns, they are not subject to the laws or interferences of any

³⁴ DOYLE, *supra* note 25, at 9; *see generally*, 18 U.S.C.A. § 1832.

³⁵ 18 U.S.C.A. § 1831; DOYLE, *supra* note 25, at 9.

³⁶ DOYLE, *supra* note 25, at 9.

³⁷ 18 U.S.C.A. § 1837.

³⁸ *Id.*

³⁹ DOYLE, *supra* note 25, at 12.

⁴⁰ *Id.*

⁴¹ E. De. Vattel, *The Law of Nations*, in INTERNATIONAL LAW CASES AND COMMENTARY 551, 552 (West Publishing Co. 2014).

other country except for where the first country consents.⁴² Therefore, based on these principles, a country, such as China or Russia, cannot be hauled into court and charged with the crime of economic espionage simply because the United States has evidence that such a crime has been committed. When dealing with state actors on the international scale, there must be an international law that prohibits the conduct and provides an avenue to right the wrong of state-sponsored economic espionage.

III. INTERNATIONAL INADEQUACIES: HOW CURRENT INTERNATIONAL LAW MECHANISMS FAIL TO ALLOW COUNTRIES TO BE HELD ACCOUNTABLE FOR SPONSORING ECONOMIC ESPIONAGE

This section will discuss the flaws in various methods for dealing with state-sponsored economic espionage. This section will first discuss three questions that must be answered in order to determine whether state-sponsored espionage falls under Article 10bis of the Paris Convention for industrial property. After examining these steps, this section will discuss other avenues for countries who have fallen victim to state-sponsored espionage, such as the World Trade Organization and the China Cyber Agreement.

A. *Article 10bis of the Paris Convention for the Protection of Property*

One potential international mechanism to combat state-sponsored economic espionage practices is through the invocation of unfair competition provisions. One such provision is Article 10bis of the Paris Convention for the Protection of Industrial Property (“the Article”), which states that “the countries of the Union are “bound to assure to nationals of such countries effective protection against unfair competition.”⁴³ Under the Article, any act that comprises a dishonest practice in industrial or commercial practices is an act of unfair competition.⁴⁴

In determining whether state-sponsored economic espionage falls under the Article, however, Senior Lecturer in International Law Russell Buchan sets out three questions that must be answered. First, it is necessary to determine whether state-sponsored economic espionage is an act of competition within the Article.⁴⁵ In answering this question, Buchan invokes the purpose of the Paris

⁴² *Id.*

⁴³ Paris Convention for the Protection of Industrial Property, art. 10bis Sept. 28, 1979, 21 U.S.T. 483, 828 U.N.T.S. 305, 21 U.S.T. 1583w; Russell Buchan, *Economic Espionage under International Law*, EJIL:TALK! (Jan. 16, 2019), <https://www.ejiltalk.org/economic-espionage-under-international-law/>.

⁴⁴ Buchan, *supra* note 43.

⁴⁵ *Id.*

Convention as a whole, “which is to prevent unfair competition . . . generally.”⁴⁶ Thus, state-sponsored economic espionage is an act of competition because it disadvantages the owner of the trade secrets whose information has been stolen.⁴⁷ The second question Buchan raises is whether this act of competition is an unfair one.⁴⁸ Because the Article proscribes dishonest practices, and theft is nothing if not a dishonest practice, state-sponsored economic espionage is patently an unfair act.⁴⁹ Having reached the conclusion that state-sponsored economic espionage is an unfair act of competition, Buchan raises the question of whether the Article obliges extraterritorial implementation.⁵⁰ Buchan argues that because States are required to “assure to nationals of [countries party to the Convention] effective protection against unfair competition,” the Article’s application is based on the nationality of the victim, not the geographic location.⁵¹ However, it would be too cumbersome to require countries to positively protect all nationals of countries party to the Convention from unfair competition; instead, countries are likely merely required only to refrain from engaging in economic espionage that would constitute unfair competition themselves.⁵² This means that countries are not required to, and remembering the principles of state sovereignty and non-intervention are likely not allowed to, intercede in the economic espionage attempts of other countries.

B. *The World Trade Organization*

Another avenue countries that have been victims of state-sponsored economic espionage may explore involves World Trade Organization (“WTO”) rules developed in the 1990s. Members of Congress argue that this is a viable mechanism to impose civil consequences on China and other countries that engage in economic espionage.⁵³ A first issue that arises here, however, is that WTO remedies are generally futuristic, meaning that the remedy is compensation for ongoing harm once a case has succeeded, not harm that arose previously.⁵⁴ This remedy often involves bringing the erring country into compliance with the rules.⁵⁵ This approach can be useful where a country has shown a historical

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Jamie Strawbridge, *The Big Bluff: Obama, Cyber Economic Espionage, and the Threat of WTO Litigation*, 47 GEO. J. INT’L L. 833, 837 (2016).

⁵⁴ *Id.* at 839.

⁵⁵ *Id.* at 840.

pattern of behavior that warrants correction; however, where the victim country seeks punitive results to curtail future behavior, or where the victim country can only prove a few isolated incidents of state-sponsored economic espionage, this option proves futile in meeting those goals.

The victim country could frame the state-sponsored economic espionage as a pattern of behavior, encompassing both past incidents and future anticipated ones and establishing a practice contrary to WTO rules.⁵⁶ The difficulty here, however, is that one WTO panel has opined that such a claim would not rise to the level of a “measure” or a challengeable offense within WTO jurisprudence.⁵⁷ Another panel, on the other hand, has posited that such a claim would be a viable measure that could be challenged on an “as such” basis, a term used by the WTO to describe laws, regulations, or other instruments that establish norms that have general reach.⁵⁸ An issue that arises with this approach, however, is that it requires the victim country to identify and collect evidence of enough economic espionage attempts, all sponsored by the country in question, to show a pattern of behavior established enough to constitute a practice.⁵⁹

C. *The China Cyber Agreement*

A final option commonly pointed to in this field is the United States-China Cyber Agreement reached by Presidents Obama and Jinping in 2015. The agreement obligates the two countries to provide timely access to information regarding malicious cyber activities and abstain from performing or supporting cyber-enabled intellectual property theft, among other things.⁶⁰ While this was undoubtedly a step in the right direction in reducing the impact of state-sponsored economic espionage between the United States and China, there are two major areas the agreement does not cover. First, the agreement exists only between the United States and China and thus obligates no other countries to disengage in economic espionage efforts. While one of the greatest concerns to economic and national security in the United States currently is the Chinese government, other concurrent and future concerns still exist. The second issue here is that the agreement only relates to cyber economic espionage. It does not proscribe old-fashioned economic espionage like that described in the two cases at the beginning of this Note, where the perpetrators were physically present for the theft.

Given that all three of these options for curtailing state-sponsored economic espionage on the international scale leave large holes in which the

⁵⁶ *Id.* at 843.

⁵⁷ *Id.*

⁵⁸ *Id.* at 841.

⁵⁹ *Id.* at 842.

⁶⁰ JOHN W. ROLLINS, SUSAN V. LAWRENCE, DIANNE E. RENNACK, & CATHERINE A. THEOHARY, U.S.–CHINA CYBER AGREEMENT (2015) <https://fas.org/sgp/crs/row/IN10376.pdf>.

practice can continue, it is necessary to address other ways in which state-sponsored economic espionage can be dealt with legally. Historically, where domestic law fails to adequately address an issue on the global stage, countries have worked to enact treaties and other agreements that directly attack the problem while still respecting the principle of state sovereignty by requiring the consent of the countries party to the agreement. Such an agreement is what is called for here. The remainder of this Note will address why historical evidence leads to the conclusion that a treaty is the best option for addressing the issue of state-sponsored economic espionage, what that treaty could entail, and how that treaty would allow victim countries recourse against state-sponsored economic espionage efforts.

IV. HISTORICAL HARMONY: HOW TREATIES HAVE HISTORICALLY BEEN USED TO ERADICATE THREATS BETWEEN STATES

Historically, international agreements have been used to create pacts between countries that pose dangers to each other. Examples exist in the Treaty on the Non-Proliferation of Nuclear Weapons (“the Nuclear Weapons Treaty”), the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destruction (“the Chemical Weapons Convention”), and the International Convention for the Suppression of the Financing of Terrorism (“the Terrorist Financing Convention”). Each of these agreements arose out of an international recognition of a threat that a significant number of countries were committed to decreasing and, eventually, eradicating.

Amidst the unrest of the Cold War, where fear of nuclear weapons development and use was at its height, predictions existed of over 25 nuclear-weapon States—those countries who possess nuclear weapons—in the next few decades.⁶¹ The knowledge of how to create nuclear weapons was already in the hands of a number of countries.⁶² If a wide range of countries had capitalized on this knowledge and began creating nuclear weapons, they inevitably would have ended up in the hands of terrorist organizations, rogue states, and other radical groups.⁶³ With this fear in mind, the Nuclear Weapons Treaty entered into force in 1970, eventually binding 186 non-nuclear-weapon States in an agreement to not transfer, manufacture, or receive nuclear weapons.⁶⁴ The five nuclear-weapon States in existence at the time agreed to not transfer existing nuclear weapons and to not assist non-nuclear-weapon States in the development or

⁶¹ Thomas Graham Jr., *Avoiding the Tipping Point*, ARMS CONTROL ASS'N, https://www.armscontrol.org/act/2004_11/BookReview (last visited Sept. 3, 2021).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

acquisition of such weapons.⁶⁵ All 191 countries agreed to submit to reviews by the International Atomic Energy Agency (“IAEA”).⁶⁶ These reviews serve the purpose of ensuring that countries are honoring their obligations under the Treaty.⁶⁷

Initially, there was skepticism aimed at the Nuclear Weapons Treaty, with some of the countries involved believing that others would not honor their agreements under the Treaty.⁶⁸ However, these fears did not come to fruition; very little production of nuclear weapons has occurred since the entry of the Nuclear Weapons Treaty into force.⁶⁹ The massive success of the Treaty has caused the non-proliferation of nuclear weapons to develop from a mere agreement between countries into an international norm.⁷⁰

Similar to the Nuclear Weapons Treaty, the Chemical Weapons Convention was created with the goal of decreasing the use and possession of chemical weapons by various countries.⁷¹ The Chemical Weapons Convention entered into force in 1997.⁷² Acknowledging that the use of chemical weaponry had, for thousands of years, been associated with cruelty and unfair play, international countries came together to ban the use of chemical weapons in battle.⁷³ The wars of the twentieth century exacerbated the concerns surrounding the use of chemical weapons; this culminated in negotiations on the Chemical Weapons Convention.⁷⁴

The Convention required that countries owning chemical weapons create a plan for the destruction of those weapons within 30 days of the Convention’s entry into force.⁷⁵ Pursuant to the Convention, the Organization for the Prohibition of Chemical Weapons (“OPCW”) inspects chemical weapons facilities and activities in order to ensure that signatory countries are in compliance with the Convention.⁷⁶ If countries are found to not be in compliance,

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ GRAHAM, *supra* note 61.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Looking Back Helps Us Look Forward*, ORG. FOR THE PROHIBITION OF CHEM. WEAPONS <https://www.opcw.org/about/history> (last visited Oct. 16, 2021).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Sept. 3, 1992, S. TREATY DOC. NO. 103-21, 1974 U.N.T.S. 317.

⁷⁶ Daryl G. Kimball, *The Chemical Weapons Convention at a Glance*, ARMS CONTROL ASS’N (Apr. 2020) <https://www.armscontrol.org/factsheets/cwcglance>.

the OPCW may recommend that other countries party to the Convention take punitive action.⁷⁷ In other instances, the OPCW may bring the infraction before the U.N. Security Council⁷⁸ and the General Assembly.⁷⁹ With 193 signatories,⁸⁰ the Convention is considered one of the most successful weapons disarmament agreements in history, largely because of the oversight the OPCW maintains over signatory countries.⁸¹

Countries have also come together to establish treaties aimed at the economic aspects of threatening activities. In 1999, the Financing Terrorism Convention was adopted.⁸² With the goals of “maintenance of international peace and security and the promotion of good-neighborliness and friendly relations and cooperation among States,”⁸³ and “ensuring that there is a comprehensive legal framework covering all aspects of the matter,”⁸⁴ the countries party to the Financing Terrorism Convention agreed that it was necessary to establish the Convention to address the formerly unaddressed issue of the financing of terrorism.⁸⁵ The countries party to the Convention noted that there were no existing multilateral agreements focused on the financing of terrorism and recognized the “urgent need to enhance international cooperation among States in devising and adopting effective measures for the prevention of the financing of terrorism, as well as for its suppression through the prosecution and punishment of its perpetrators.”⁸⁶ To date, there are 189 parties to the Convention.⁸⁷

⁷⁷ *Id.*

⁷⁸ The U.N. Security Council has four main purposes: maintaining international peace and security, developing friendly relations among nations, cooperating in solving international problems and in promoting respect for human rights, and being a center for harmonizing the actions of nations. See United Nations Security Council, *What is the Security Council?*, UNITED NATIONS, <https://www.un.org/securitycouncil/content/what-security-council> (last visited Sept. 3, 2021).

⁷⁹ The United Nations General Assembly serves as a forum for negotiation between countries. It makes recommendations to countries on international issues and initiates political, economic, humanitarian, social, and legal actions to correct these issues. See General Assembly of the United Nations, *Functions and Powers of the General Assembly*, UNITED NATIONS <https://www.un.org/en/ga/about/background.shtml> (last visited Sept. 3, 2021).

⁸⁰ Kimball, *supra* note 76.

⁸¹ David P. Fidler, *The Chemical Weapons Convention After Ten Years: Successes and Future Challenges*, 11 ASIL INSIGHTS 12 (2007).

⁸² International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 2178 U.N.T.S. 197.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *International Convention for the Suppression of the Financing of Terrorism*, UNITED NATIONS TREATY COLLECTION,

The Nuclear Weapons Treaty, the Chemical Weapons Convention, and the Financing Terrorism Convention all provide examples of international agreements successfully addressing issues that pose a danger to countries on an international scale. Next, it is necessary to evaluate why these agreements work.

A. The Issue Addressed Is One of Mutual Concern to the Countries Involved

The idea of reciprocity is implicit in a number of international agreements and negotiations. At its core, reciprocity is a term used to describe situations where two parties provide equal assistance or advantage to each other.⁸⁸ Where all involved parties have interests that align perfectly, all parties are able to trust that their fellows will act in a reciprocal manner, fulfilling all obligations under the agreements to reach the common goal.⁸⁹ Here, reciprocity is nearly guaranteed; where interests are the same, and no individual party has reason to defect, each party will act in kind with all others.⁹⁰ However, this ideal situation rarely exists in practice, yet the fundamental idea of reciprocity still underscores a wide range of agreements.⁹¹

Where countries do not have overlapping interests, the temptation to serve one's own interests at the expense of another's naturally arises.⁹² However, the threat of non-reciprocal behavior often limits this temptation.⁹³ Take, for example, the Nuclear Weapons Treaty, which has the goal of confining nuclear weapons to those countries who already own them and binding those countries to an agreement not to employ the nuclear weapons they have.⁹⁴ If Country A, which does not own nuclear weapons, defects in its obligations by acquiring such weapons from Country B, both Countries have now violated the Treaty. Country C, which does own nuclear weapons, no longer has any reason to trust that Countries A and B are committed to serving the common interest. Further, Country C may choose to employ its own nuclear weapons against Countries A and B to quell any forthcoming aggressive action. The theory of reciprocity rests

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-11&chapter=18&clang=_en (last visited Oct. 16, 2021).

⁸⁸ Shahrad Nasrolahi Fard, *Is Reciprocity a Foundation of International Law or Whether International Law Creates Reciprocity* 10 (2013) (Ph.D. Thesis, Aberystwyth University) (on file with author).

⁸⁹ Francesco Paris & Nita Ghei, *The Role of Reciprocity in International Law*, 36 CORNELL INT'L L. J. 93, 95 (2003).

⁹⁰ *Id.*

⁹¹ *Id.* at 97.

⁹² *Id.* at 99.

⁹³ *Id.* at 100.

⁹⁴ Strawbridge, *supra* note 53.

in this threat, and it places a safeguard against countries acting in their own interests to the detriment of others.

B. The Widespread Consent of Countries to the Agreements Makes the Provisions Reflect a Norm of Behavior Within the International Community

Another key reason why agreements such as the Nuclear Weapons Treaty, the Chemical Weapons Convention, and the Financing Terrorism Convention work is, first, because they are consensual agreements and, second, because they have attained such widespread consent that they now govern the overwhelming majority of countries. In international law, where state sovereignty remains a common impediment to all-encompassing standards, consent allows countries to maintain their autonomy while still allowing the international community to reach common goals.⁹⁵

The agreements above, with between 189 and 193 parties each, exemplify how important the role of consent is in international agreements. Imagine that only 20 states had signed on to any of the three example agreements given. The agreements, lacking consensual participation by so many countries, would have had little efficacy, as they could not have been invoked against any of the countries who did not sign onto them. But, because a majority of countries *did* sign onto each agreement, they became three highly successful international agreements.

The hypothetical above highlights the major role consent plays in effectuating desires held by various countries. First, and most directly, the 191 parties to the Nuclear Weapons Treaty, the 193 parties to the Chemical Weapons Convention, and the 189 parties to the Financing Terrorism Convention are all consensually obligated to follow the provisions instituted by those agreements.⁹⁶ The Financing Terrorism Convention, which came into being based on the recognition by the countries party to it of an “urgent need” to address the growing and previously unaddressed problem of financial contributions to the goals of terrorism, highlights how countries can solve a problem of international importance by, first, recognizing the problem and, second, consenting to provisions that allow for the suppression of the problem. Especially in the case of the Chemical Weapons Convention, which contains provisions allowing the OPCW to act punitively in the face of non-compliance,⁹⁷ countries have agreed, by their own consent, to be bound into agreements not to act, sometimes in what would appear to be a self-interested fashion, in a way that would violate these

⁹⁵ Daniel Bodansky & J. Shand Watson, *State Consent and the Sources of International Obligation*, 86 AM. SOC’Y INT’L L. 108, 111 (1992).

⁹⁶ Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161; Kimball, *supra* note 76.

⁹⁷ Kimball, *supra* note 76.

agreements and harm the collective community. Second, and perhaps less directly, the consent of a large number of countries to an agreement provides a sense of security and of commonality to other countries who have the same goals, thus incentivizing further consensual agreement from those other countries.

C. The Oversight Provided for Within the Agreement Allows for Enforcement of Provisions

Two of the example agreements provided, the Nuclear Weapons Treaty and the Chemical Weapons Convention, have oversight committees that ensure proper observance and implementation of the agreements within the signatory countries. The IAEA provides oversight for countries who are parties to the Nuclear Weapons Treaty, ensuring that those countries fulfill their obligations under the Treaty. Likewise, the OPCE does the same for countries party to the Chemical Weapons Convention. It is the oversight of these bodies that gives the agreements enforcement, for if countries know they are subject to review, they are much more likely to remain in compliance with the agreements and fulfill their obligations under them.

V. OPTIMISTIC OPTION: HOW THE THEMES OF RECIPROCITY, CONSENT, AND OVERSIGHT CAN SOLVE THE PROBLEM OF STATE-SPONSORED ECONOMIC ESPIONAGE

The threats posed by economic espionage mirror those that lead to the entries into force of the Nuclear Weapons Treaty, the Chemical Weapons Convention, and the Financing Terrorism Convention. Just as nuclear weapons, biological warfare, and terrorism were considered the greatest threats of their times, we have entered an age where the possibility of trade secret theft for exploitation by non-friendly governments poses a risk to the economic well-being and national security of the nation.⁹⁸ Just as the threats of nuclear and chemical weaponry and terrorism were addressed via international agreements, the threat posed by state-sponsored economic espionage should be as well, lest countries find themselves soon in a position where they are unable to protect their own trade secrets from each other.

The remainder of this Note will contemplate how a multilateral economic espionage treaty, like the agreements previously discussed, would employ the ideas of reciprocity, consent, normative behavior, and oversight to effectively curtail the effects of state-sponsored economic espionage. This Note will also examine the positives and negatives of using a multilateral treaty to reach that end, eventually concluding that while any effort to decrease the threat

⁹⁸ FEDERAL BUREAU OF INVESTIGATION, *The China Threat*, <https://www.fbi.gov/investigate/counterintelligence/the-china-threat> (last visited Sept. 3, 2021).

of economic espionage is welcome, a treaty will most effectively address this issue.

As Odeen Ishmael, a retired Guyanese diplomat, explains, “[r]eciprocity is a principle deeply rooted in the international arena and it allows to a large extent the advance of diplomatic relations.”⁹⁹ This is because an agreement that requires multiple parties to set aside an advantage, as signing onto a treaty to eradicate the use of state-sponsored economic espionage would, requires that trust exist between the two parties. China is not likely to agree to a cessation of the economic espionage efforts being promulgated by the Thousand Talents Program if it believes the United States is propagating those same efforts on its end in contravention of the proposed treaty. However, as Ishmael provides, reciprocity is a profound principle in international law.¹⁰⁰ Because of this, when one country signs onto an international agreement, it does so with an expectation that other countries party to the agreement will adhere to their obligations under the agreement. This “Golden Rule” understanding between countries provides an avenue for the issue of state-sponsored economic espionage to be addressed in a way that allows perpetrators of state-sponsored economic espionage to cease such efforts with the implicit guarantee that other countries will follow suit.

It must be emphasized that the theory of international relations of reciprocity is considered an instrument for achieving the development of relations of mutual trust and long-term mutual obligations and an incentive for compliance with international standards. Likewise, it is considered a fundamental principle for the interaction of states to effectively manage crises.¹⁰¹

Reciprocity does not only apply in dealings between two parties, however.¹⁰² It is instead an expansive, multilateral theory that allows multiple countries to deal with each other simultaneously while being subject to the same standard of fair and mutual dealing across the board.¹⁰³ In a treaty like the one proposed by this Note, this is essential. For a treaty such as this to maintain force, it must obtain a number of signatories, each of whom expects to be treated fairly and evenly by all other signatories. Here, where countries such as the United States, Canada, and Australia are experiencing the same threat of decreased economic and national security as state-sponsored economic espionage efforts

⁹⁹ Odeen Ishmael, *Reciprocity in International Relations*, NOTES ON DIPLOMATIC PRACTICE, para. 3 <https://odeenishmaeldiplomacy.wordpress.com/2013/08/19/41-reciprocity-in-international-relations/> (last visited Sept. 3, 2021).

¹⁰⁰ *Id.* at para. 1.

¹⁰¹ *Id.* at para. 7.

¹⁰² *Id.* at para. 9.

¹⁰³ *Id.* at para. 7.

grow,¹⁰⁴ the possibility of multilateral interest in a treaty that addresses this threat is very real. This possibility only grows where the theory of reciprocity in international dealings is acknowledged and respected.

Thus, reciprocity is essential in obtaining an agreement with the attributes necessary to impede state-sponsored economic espionage efforts globally. However, a mutual obligation of reciprocal dealings will not be enough to significantly hinder state-sponsored economic espionage between the greatest actors on the world stage. Consent of the involved countries party to a treaty aimed at impeding state-sponsored economic espionage efforts and the establishment of a norm against such economic espionage will contribute drastically to the goal of ending the state-sponsored theft of trade secrets from other countries.

If a treaty were to be made to address the state-sponsored economic espionage concern, it would only have force, at least initially, with the consent of the signatory countries to be subjected to its terms. However, consent is a cornerstone of international law; so long as countries maintain their sovereignty, they maintain their ability not to enter into agreements except for where they actively agree to do so. If various countries were to sign onto a treaty proscribing the use of state-sponsored economic espionage, like the one proposed by this Note, those countries would be signifying three things. First, they would signify their agreement that state-sponsored economic espionage, despite the obvious advantages it provides countries individually, creates a danger that must be eradicated if countries are to continue to prosper in their technological developments.¹⁰⁵ Second, when countries give their consent to such an agreement, they legitimize the goals of the agreement.¹⁰⁶ Finally, when a rule of international law is created through the consent of countries, the likelihood of those laws changing in the future decreases as the will to follow those laws already exists.¹⁰⁷

Consent by just two parties, or even by a small number of parties, is not enough to curb this threat, however. It is necessary to have a vast majority of countries to consent to a treaty disallowing the use of state-sponsored economic espionage to gain unfair advantages over each other. It is again useful to define the exact threat economic espionage poses. When trade secrets are stolen, those effects are felt on both large and small scales. Individuals lose their jobs. On a larger scale, businesses are closed. Billions of dollars in profits are lost when trade secrets are stolen. This leads to unstable national economies, which, in the globally connected world we live in, leads to unstable global economies. With this threat in mind, it becomes clear why state-sponsored economic espionage is

¹⁰⁴ True North Wire, *supra* note 17; Joske, *supra* note 18.

¹⁰⁵ Andrew Guzman, *The Consent Problem in International Law* 8 (Berkeley Program in L. & Econ., Working Paper, 2011).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

not just dangerous to the single individual, business, or country targeted, but instead to the global community. Thus, it is of mutual benefit for the majority of countries to implement an economic espionage treaty.

Further, where a majority of countries do ascribe to a treaty, the rules contained within that treaty become something more than contractual obligation; they become a normative standard for behavior. That is the goal here: to effectuate a treaty with such widespread consent that the prohibition against state-sponsored economic espionage becomes the norm rather than an aspiration. The relationship between the law and societal norms can most aptly be characterized as cyclical.¹⁰⁸ Laws are often written as a way to express pre-established norms in a standardized way, and as the laws take effect, the norms of society conform further with the law.¹⁰⁹ There is already a long-standing norm against the interference in one country's internal activities by another country so long as those activities do not violate an international law.¹¹⁰ However, a multilateral treaty, agreed to by sovereign countries would go beyond recognizing this norm by allowing countries to express in a written and lasting format the prohibition against the use of economic espionage to infiltrate and destabilize the economic and national security of other countries.

Finally, it is important to reiterate that a large amount of the Chemical Weapons Convention's success is owed to the oversight body it establishes. Such an oversight body would be needed in the proposed treaty to ensure that countries party to it are following their obligations not to commence, perpetuate, or assist in economic espionage. In the field of human rights, which is heavily addressed by international agreements, treaty bodies are often comprised of experts tasked with ensuring that the standards outlined in international agreements are followed by the signatories to those agreements.¹¹¹ These oversight bodies are responsible for the continuing success of agreements proscribing torture and various forms of discrimination, as well as agreements ensuring the rights of children and migrant workers.¹¹²

Based on these observations, a treaty aimed at eradicating the use of state-sponsored economic espionage between countries would be based, like most other international agreements, in the consent of the countries party to it. This consent would rest in the theory of reciprocity serving as a guarantee of mutual dealings between parties to a treaty. Finally, the treaty would need to establish an oversight body to ensure that the parties are fulfilling their obligations under the treaty.

¹⁰⁸ Josef L. Kunz, *Revolutionary Creation of Norms of International Law*, 41 AM. J. INT'L L. 119 (1947).

¹⁰⁹ *Id.*

¹¹⁰ Vattel, *supra* note 41.

¹¹¹ *UN Human Rights Treaty Bodies*, INT'L JUST. RES. CTR., <https://ijrcenter.org/un-treaty-bodies/> (last visited Sept. 3, 2021).

¹¹² *Id.*

VI. TURNING OUT TREATIES: HOW TREATIES ARE MADE

The process of creating a treaty begins with a negotiation. This negotiation typically takes place via an organization created for the specific purpose of negotiating that treaty, or by an international body that already exists, such as a United Nations council.¹¹³ Representatives of the negotiating countries engage in discussions—sometimes over a number of years—with the goal of creating terms to the treaty that satisfy all or most of the negotiating parties.¹¹⁴ After negotiations, the representatives of the agreeing parties sign the treaty.¹¹⁵ From here, the process varies among different countries. For instance, in the United States, the President must obtain the “advice and consent” of two-thirds of the Senate before ratifying the treaty.¹¹⁶ In China, the governmental department concerned with the treaty must work in conjunction with the Ministry of Foreign Affairs to submit the proposed treaty to the State Council for examination and verification.¹¹⁷ From there, the State Council submits the proposed treaty to the Standing Committee of the National People’s Congress for a decision on whether to ratify the treaty.¹¹⁸ The President of China may only ratify the proposed treaty with the consent of the Standing Committee.¹¹⁹

While this process seems simple, there are often background factors that make it a lengthy and taxing process on the people involved. For example, in the United States, a two-thirds vote of the Senate is required prior to ratifying a treaty in order to inhibit the United States from entering into a treaty on purely partisan lines.¹²⁰ There are also foreign policy matters to take into consideration, such as the amicability of the relationship between the countries negotiating and the ability of those countries to actually implement the terms of the treaty.

Even with these barriers in mind, the process of treaty creation is a relatively simple one that has been implemented numerous times over the course of history to settle disputes of extreme international importance. Considering the growing problem of state-sponsored economic espionage, and the recognition by the United States of America of how pervasive this problem is, it is time for the

¹¹³ *International Agreements*, U.S. DEP’T OF HEALTH AND HUM. SERVS., <https://www.phe.gov/s3/law/Pages/International.aspx> (last visited Sept. 3, 2021).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Law of the People’s Republic of China on the Procedure of the Conclusion of Treaties*, NAT’L PEOPLE’S CONG., http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/12/content_1383893.htm#:~:text=After%20the%20signing%20of%20a,refer%20it%20to%20the%20Standing (last visited Aug. 20, 2021).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *About Treaties: Historical Overview*, U.S. SENATE, <https://www.senate.gov/about/powers-procedures/treaties/overview.htm> (last visited Sept. 3, 2021).

United States to begin the process of negotiating a treaty to impede and eventually eradicate the practice of state-sponsored economic espionage.

VII. CONCLUSION: AN INTERNATIONAL TREATY AS THE BEST OPTION

One of the largest pros of implementing a multilateral treaty is that treaties have been used for centuries to reach agreements between nations. They are a practiced and historically effective method for eliminating problematic behaviors and encouraging beneficial behaviors between countries. This is because, first, of the consensual nature of treaties. Second, treaties legally bind the parties.¹²¹ Third, countries that have signed onto a treaty must act in good faith to avoid behavior that will defeat the purpose of the treaty.¹²²

The benefits of the consensual nature of treaties have been discussed, but it is worth while to reiterate that countries are more likely to uphold laws they consent to be bound to. Additionally, a treaty based on mutual agreement by all parties includes the theory of reciprocity, which requires parties to act in accord with the actions of others.

Under international law, treaties are binding legal agreements.¹²³ Once countries sign on to them, they are bound by the terms within.¹²⁴ Because of this, treaties create an environment of accountability where countries are bound to act in accordance with the agreement they've signed and may face ramifications if they fail to do so.

Article 18 of the Vienna Convention on the Law of Treaties requires countries party to a treaty to “refrain from acts which might defeat the object and purpose of the treaty pending its entry into force.”¹²⁵ This is especially advantageous when dealing with a proposed treaty that may require some time before gaining enough support to be entered into force. Article 18 means that once a country signs onto a treaty, even before the treaty becomes complete and binding by entry into force, that country signatory is required not to act against the terms of the treaty. This allows for the goals of the treaty to be met in the interim period between its being drafted and its entry into force.

The disadvantages of using a treaty to reach an agreement between multiple countries include, mainly, that treaties are only binding on the countries

¹²¹ *Strengths and Weaknesses of Treaties*, MINORITY RTS. GRP. INT'L, <https://www.minorityrightscourse.org/mod/page/view.php?id=1654> (last visited Sept. 3, 2021).

¹²² *Fact Sheet #5 Understanding International Law*, UNITED NATIONS, https://treaties.un.org/doc/source/events/2008/Press_kit/fact_sheet_5_english.pdf (last visited Sept. 3, 2021).

¹²³ Frederic L. Kirgis, *Treaties as Binding International Obligation*, 2 ASIL INSIGHTS 4 (1997).

¹²⁴ *Id.*

¹²⁵ Jan Klabbers, *How to Defeat a Treaty's Object and Purpose Pending Entry into Force: Toward Manifest Intent*, 34 VAND. J. TRANSNAT'L L. 283 (2001).

which sign onto them.¹²⁶ Countries practicing state-sponsored economic espionage, especially countries doing so in a way that largely benefits their own goals, are not going to want to sign a treaty that obligates them to cease their economic espionage efforts. A single country, or even a small collection of countries, neglecting to sign onto a treaty does not halt the progress of the treaty in its tracks, however. The reality is that even treaty agreements that are not unanimous can eventually come to represent a general principle of law with widespread use, which supersedes the power of the countries to deny consent.

General principles of law are not as prevalent in international law as treaties, but they are a very important source of law. A general principle is established when a vast number of countries, with varying legal systems, observe the principle as law domestically.¹²⁷ General principles may be evidenced by expressions of consensus in international documents and by multilateral international bodies.¹²⁸ This means that widespread agreement to a treaty condemning the practice of state-sponsored economic espionage combined with an extensive cessation of state-sponsored economic espionage would establish a general principle of law that courts could enforce even against non-signatories to the treaty.

This solution focuses on the long game and will likely need to be addressed in the future. Presently, the threat of state-sponsored economic espionage lingers and escalates, requiring direct action to ensure that the threat does not continue to grow. Domestic remedies are incapable of curtailing economic espionage when sponsored by a country, meaning that international remedies are necessary. A treaty is the best way to achieve this because it allows for countries to act of their own accord. A treaty would also rest in the theory of reciprocity to create a balance of obligation where each country is responsible for upholding its own responsibilities and for maintaining a system in which other countries will continue to maintain theirs as well. If the practice of state-sponsored economic espionage is not to continue to pervade the national and economic security of the United States, action is needed on the international stage. An international, multilateral treaty is precisely the type of action that could effectively eradicate the use of state-sponsored economic espionage.

*Jaylin Johnson**

¹²⁶ Guzman, *supra*, note 105.

¹²⁷ Christopher Greenwood, *Sources of International Law: An Introduction*, UNITED NATIONS, https://legal.un.org/avl/pdf/ls/greenwood_outline.pdf (last visited Sept. 3, 2021).

¹²⁸ M. Cherif Bassiouni, *A Functional Approach to "General Principles of International Law,"* 11 MICH. J. INTL. L. 768 (1990).

* J.D. Candidate, West Virginia University College of Law, 2022.