



# **Crisis and Resolution**

## **Journal of International Relations**

Vol. 6, No. 1  
April 2004

Sponsored by Sigma Iota Rho and  
the International Relations Undergraduate  
Student Association

### **Articles**

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#### **INTERNATIONAL SECURITY**

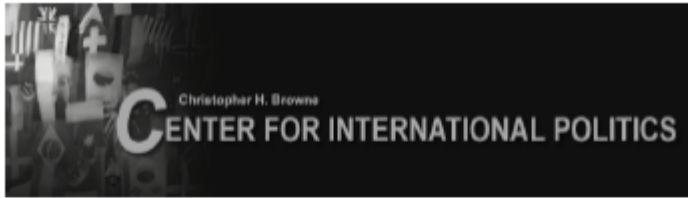
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Journal of International Relations

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Sponsored by Sigma Iota Rho and the International Relations Undergraduate Student Association

SPRING 2004

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## LETTER FROM THE EDITOR

Dear Readers:

It is my pleasure to present the sixth edition of the Journal of International Relations, produced in partnership by the Epsilon Chapter of the Sigma Iota Rho (SIR) International Relations Honor Society and the International Relations Undergraduate Student Association (IRUSA). With the publication of each new volume, our Journal has developed and strived to reach a broader audience. This year is no different as our newest installment surpasses the circulation, submission base, formatting and stylistic achievements of previous years.

This edition marks the second year that the University of Pennsylvania's International Relations Program has been home to Sigma Iota Rho's national headquarters. As part of this role, we have attempted to integrate and link individual chapters across the country in a greater SIR community. Part of our incorporative effort can be observed in the submissions pool expansion and the diversity of contributing authors. In the past, article contributions to the Journal of International Relations were restricted to University of Pennsylvania undergraduate students. This year we solicited papers from a nationwide applicant pool and, as a result, five different universities are represented in the published journal. We are proud to welcome Brigham Young University, James Madison University, Michigan State University and the University of Wisconsin-Oshkosh to our select group of published writers. This integration effort also included a broadening of our staff as the editing and paper selection process made its first national appeal for Peer Reviewers from other universities. These are only initial steps in developing what we hope will become a journal that represents all the SIR chapters.

The format and style of the Journal of International Relations changed as well. The enlargement of our submissions pool, in addition to producing highly qualified authors and article contributions, also allowed the Journal of International Relations to focus on particular topics within the overarching field of International Relations. Based on the themes of the majority of our submissions, we were able to divide the Journal into specific disciplines of International Relations, which include international security, international law and international development. Although these topics will change every year in accordance with the themes of our submissions, I hope this new format will garner interest for future submissions and increase the overall appeal of the Journal. The final drastic change is the Journal's overall appearance and title. We have created a new exterior that we think matches the professionalism of both the staff and the submission pool and which we hope will enable the journal to receive the recognition it deserves.

Finally, I must thank the Journal Committee and the Editorial Staff for their help and continued support in the publication process.

Sincerely,

Joseph A. Brandifino  
Editor-in-Chief



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**BALANCING ACT: A COMPARATIVE LOOK AT  
NATIONAL SECURITY AND CIVIL LIBERTIES**

*KEVIN CRONIN*

Michigan State University

The events of September 11, 2001 brought about tremendous changes to the basic structure of state and society. They succeeded in adding new complexities to an already complex relationship. The attacks on the World Trade Center and the Pentagon significantly altered the dynamics of governmental rule and reshaped the inner workings of the system. A shift in the fundamental thinking of the state and subsequent actions taken were the pending result. Today, national security is the central focus of both the domestic and foreign policy of the United States. Ensuring the safety of all American citizens, and taking all measures necessary to avoid further attacks is now of paramount concern. Preemptive military action is now deemed a necessary deterrent, while new laws that strengthen defense forces have been enacted with relative ease.

This drastic shift in policy has not come without criticism, however. Many citizens believe that the new legislation passed by the United States government impedes their civil liberties and threatens the democratic system in which they live. Stuart J. Taylor writes that “When dangers increase, liberties shrink.” (Taylor 2003: 25). Oftentimes, individuals feel that the extra security and protection that may be produced is not worth the personal sacrifice that is required. Many argue that a dangerous new precedent has been set and that civil liberties will continue to be further minimized in the name of security. Lately, civil rights activists have put significant pressure on the government to justify their recent actions and defense logic. One bill in particular, known as The USA Patriot Act, has come under intense scrutiny from citizens ranging from staunch civil libertarians to everyday librarians.

Therefore, the role of national security within democracy today is a very intricate one. There should be no doubt that the objective of the United States Government is to better secure and protect our citizens, our land, and our freedoms. The purpose of their recent actions was not intended to restrict or undermine the basic principles that this nation was founded upon. And, the end result of post September 11 policies, the Patriot Act for instance, does not attempt to restrict an individual’s basic rights and freedoms, nor does its impact inhibit one’s ability to fully realize the freedoms set forth in the Constitution.

In a comparative and historical context, this is particularly evident. One of the primary responsibilities of the state is to provide security for its people. Any form



of government identifies protection as an important and vital component of its everyday workings. Likewise, a liberal democracy is no different. In order to grant the ability for a person to practice free speech and free participation in civil society, the state must implement certain measures to undermine the intentions of rogue states (such as terrorist organizations or the countries that harbor them). Theorists like John Locke argue that one of the fundamental principles of a liberal democracy is the protection of necessary freedoms and liberties. And, liberties such as freedom of speech, freedom of religion, due process of law, and the right to vote, provide a strong foundation on which to build a liberal democratic state.

The German political system aims at producing basic freedoms to all German citizens alike. The efficiency and the means taken to accomplish these objectives are in contrast to those of the United States, however. The security structure in Germany requires more multilateral cooperation than that of the American one. Equally, the premium that is placed on protection without restricting individual rights is similar to the United States. Both nations essentially have the same aspirations for a successful and secure state, but the manner in which they are sought after is different.

Therefore, the state not only provides freedoms and rights that are vital to civil society, but it also provides a crucial security blanket for the preservation of it. Likewise, government leaders enact policies that provide the maximum amount of security and protection possible without infringing upon the civil liberties of a citizen. While, many believe that a dichotomy is created between civil liberties and national security, the possibility exists that the two can reinforce each other, thus improving the nature of the state and the civil society within it.

### **THE FOUNDATIONS OF A LIBERAL DEMOCRATIC STATE**

The main role of the liberal democratic state is to protect the will of the people. It is the responsibility of the state to allow for the achievement and advancement of an individual. Consequently, one of the essential components in a liberal democracy is the notion of choice and personal will. An individual should be allowed to choose and support ideas that matter most to them, without having to fear repercussions from the state. John Locke believed that a sovereign liberal state has a particular responsibility to provide for full citizenry of civil society. Locke argues that complete citizenship will result in the ultimate legitimization of the state. (Knutilla and Kubik 2000: 27)

Additionally, Ronald Axtmann states that “the state is legitimate only insofar as it enacts the people’s will and is, thereby, responsive and accountable to ‘the public’” (Axtmann 1996: 11). Axtmann writes that the primary function of a government is the maintenance and protection of individual rights, and the incorporation of all individuals into civil society. He believes that the citizens are sovereign, and that the authenticity of the state is only extended because of the fulfillment of the sovereigns’ wants. (16). Based on these principles it is clear that the basic concept of a liberal democratic ideology is the idea that state is a construction of civil society. A founding belief is that the state begins with an individual and becomes larger and more powerful as individual participation turns into community participation.

An efficient democratic state is the result of high civic participation in the

social order combined with low government involvement in the everyday workings of civil society. In a strong democracy, the role of the individual is an integral aspect to the maintenance of civil society, while that of the government is contingent on those particular workings. Similarly, the active participation of all members of society will ultimately enhance the stature and efficiency of the democratic state as an aggregate.

Every member of society should be granted an equal opportunity to exercise his or her personal liberties and freedoms. One is able to choose a distinct way of life, a specific source of earning income, to acquire property, and to do anything else necessary to sustain and improve their quality of life. These basic rights extend as far as possible without interrupting the same rights afforded to another individual. Likewise, in no way whatsoever should these inherent rights be infringed upon. John Locke writes,

“The state of nature has a law of nature to govern it, which obliges every one; and reason, which is law that teaches all mankind who will but consult it that, being all equal and independent, no one ought to harm another in his life, health, liberty or possessions.” (Qtd. in Knutilla and Kubik 2000: 24).

These principles, advocated by Locke and Axtmann alike, imply the basic duties of the state in a liberal democratic context. The protection of indispensable rights and needs are central in governmental rule, and are necessary in the creation of a successful state-societal relationship. In this environment, Axtmann believes that the state is established as, and limited to, a guarantor of individual liberty, and thus will not be able to negatively affect an individual’s way of life (18). When civil society is at its fullest, and when all rights are completely protected, then the hand of the state is not able to become too heavy.

### **THE SECURITY STRUCTURE IN A LIBERAL DEMOCRACY**

Similarly, in order for all of these necessary individual rights to be guaranteed to each citizen, a carefully designed security plan is required for the state. Locke believes that a state presence is needed when individual rights are violated, and when threats are posed to the democratic institutions of the state. He argues that when these rights are restricted, a state of war emerges and that the establishment of a commanding state power is crucial in the prevention of further violations of rights and liberties (Knutilla and Kubik 2000: 26). Therefore, a strong and powerful defense must be presented so that rogue terrorist organizations are not able to overtake the state and undermine the existing liberal democratic institutions.

Unfortunately, Al-Qaeda terrorists were able to infiltrate this system and upset the security balance on September 11, 2001. Because of this attack, many flaws were exposed in the United States defense structure and significant upgrades in the defense system were called for. Immediately following the attacks, considerable changes were made that improved the government’s capabilities of protecting the homeland.

A collaboration of authors explained and critiqued the actions taken by the government following the September 11 tragedy. In Protecting the American Homeland, Michael E. O'Hanlon writes that nine months following the terrorist attacks, in June 2002, President Bush proposed the creation of the Department of Homeland Security. The new department is believed to be the best possible deterrent of future attacks and is supposed to be the best defense mechanism against them. This department, under the guidance of Homeland Security Secretary Tom Ridge, now employs over 200,000 workers and unites twenty-two defense related agencies under a single department. "The basic concept," O'Hanlon writes, "is the creation of a cabinet-level department with overall responsibility for preventing, protecting against, and responding to a terrorist attack." (O'Hanlon 2003: 102).

More significantly, however, Congress passed H.R. 3162 on October 24, 2001. This bill, also known as the Patriot Act, greatly enhances the government's power of surveillance and ability to obtain intelligence, in order to better safeguard the nation from potential threats. As stated in the introduction, its main purpose is to serve as "An act to deter and punish terrorist attacks in the United States and around the world, and to enforce law enforcement investigatory tools and for other purposes" (The Patriot Act 2001:1). This bill, officially known as "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" (USA PATRIOT ACT) Act of 2001, was readily passed with minimal objection only six weeks after the terrorist attacks, and garnered unheard of nonpartisan support (2). The Patriot Act was considered essential when it was passed, and was believed to set a tone for the American response to terrorist organizations.

Shortly after the act was introduced in Congress, criticisms and objections to the quality and significance of the act were voiced. David Cole, in his article *Let's Fight Terrorism, Not The Constitution*, writes that the Patriot Act has considerable shortcomings. Cole believes that the act imposes guilt by association to immigrants, most notably Arabs; that it authorizes executive detention on suspicion only; and that it denies aliens the right to free speech when detained. He fears that such actions could lead to a resurrection of the McCarthy era ideology. Furthermore, Cole believes that certain provisions of the act are inherently unconstitutional (Cole 2003: 35). He writes, "It violates core constitutional principles, rendering immigrants deportable for their political associations, excludable for pure speech, and detainable on the attorney general's say-so" (36). Cole argues that the broadness of the act poses direct threats to immigrants and citizens that are in any way affiliated with immigrants, and therefore infringes upon their basic rights under the Constitution of the United States of America.

In order to protect American citizens and to preserve the quality of life that they enjoy, an extension of the government's power is necessary. Without updated surveillance and intelligence systems, American liberties will not be protected to the fullest extent. Granted, the Patriot Act does provide broader powers to governmental officials, but we need to place trust in our leaders that with these newfound abilities, potential threats to our homeland will be avoided.

It seems feasible that an exaggeration of the hazards of the act is possible. As Stuart J. Taylor argues, civil libertarians have misjudged the need for investigative

powers and have thus inflated the act's imminent threats on civil liberties. He believes that The Patriot Act is a vital component to homeland security today, and that some provisions of the act could even be expanded. Additionally, Taylor believes that, if done correctly, the Act could also enhance and better protect our civil rights today. He writes,

“Carefully crafted legislation could be good not only for security, but also for liberty. Stubborn adherence to the civil liberties status quo would probably damage our most fundamental freedoms far more in the long run than would judicious modifications of rules that are less fundamental” (Taylor 2003: 26).

Greater powers given to defense bureaus, Taylor continues, would have aided in the swift detention of Zacarias Moussaoui, the alleged “20<sup>th</sup> hijacker” and al-Qaeda member. He further explicates that early and aggressive reaction to terrorist, or any other threat, has become the most effective way in preventing attacks on Americans. (29)

The policies adopted by the United States government following September 11, particularly The Patriot Act, do more for ensuring security for all American citizens than infringing upon civil liberties. Under no circumstances have any innocent individuals had their basic, inalienable rights restricted. Moreover, the government has implemented a capable and powerful deterrent against future attacks on America.

And, as Harvard Law Professor, Laurence H. Tribe states, “The question is not whether we should increase governmental power to meet such dangers. The question is by how much” (Qtd. in Taylor 2003: 31).

## **THE GERMAN CRITIQUE**

Germany has experienced substantial changes in their country since the fall of the Berlin Wall, yet some basic institutions and fundamental ideologies have remained intact. The rights of their citizens are a main staple of their domestic agenda, while their foreign relations continue to be a sensitive subject. What's more, as one of the most powerful countries in the European Union, Germany is faced with similar issues as the United States. Protection of rights is paramount, and military action and growth is a widely contested and controversial topic. Yet, the Federal Republic of Germany is designed in a contrasting manner to the United States. And, while German citizens have extensive choice and individual rights in the republic today, the government still maintains a strong presence in the everyday events of social life.

According to Lewis J. Edinger and Brigitte L. Nacos, authors of [From Bonn to Berlin](#), the institutional structure remains the same as before reunification, and a strong political emphasis is based on German custom and tradition. Nonetheless, the authors refute the notion that German custom signifies a reemphasis on totalitarian rule; they do believe that this causes more formal political arrangements than seen in the United States. They write,

“Since formal-legal arrangements that provide carefully regulated ways for dealing with ordinary as well as extraordinary policy issues carry more weight in German than in American politics such institutional continuity matters” (Edinger and Nacos 1998: 47).

In addition, the constitutional framework of German law is different than that of the American Constitution, but the German Basic Law provides the same basic features. Edinger and Nacos explain that the “Parliamentary Council” of 1949 created the Basic Law as a provisional instrument, rather than reframing and recreating an entire constitution through a constitutional convention. Certain differences exist between the Basic Law and the US Constitution, yet the objectives of each are similar. Comparable to the Constitution, the Basic Law is constructed to protect the rights of individuals and to safeguard the federal system from being overtaken by a dictatorial power (54). Edinger and Nacos write,

“Like the American Constitution, the Law provides for a geographic division of public authority between national and regional bodies but puts federal law over state law.” (54).

The protection of civil rights is an important concept in German Basic Law. Ensuring liberties and freedoms to all German citizens is a vital component to their policy making and legislation. Florian Pfeil elucidates that German Basic Law stresses and guarantees a wide range of human rights, much like the American Constitution does. Human rights, she says, is comprised of five basic features: civil, political, economic, social, and cultural. Basic civil rights, then, are characterized as religious freedom, freedom from unlawful punishment, and freedom of speech (Pfeil 2001: 91). She believes that Germany exhibits a positive model of human rights to the rest of the European Union. Pfeil explains that, “In this legal and constitutional context, Germany has been an example for many transitional countries of Eastern Europe” (91).

Pfeil also argues that Germany’s effort to aid the EU in bringing greater civil rights to the countries of Eastern Europe justifies and validates the movement. She writes, “A Civilian Power’s human rights policy can only be legitimate and effective when its own domestic human rights situation is satisfactory, includes its submission to the scrutiny of international human rights regimes” (90).

Conversely, the German defense structure remains a complex and intricate component of German society. Ever since the rise and fall of the Third Reich, Germans have developed an innate fear of military growth and action. And while the need persists to protect their citizens, homeland, and fundamental beliefs, the worry of overextension is always present. Nina Philippi writes that, “After the Nazi terror in the Second World War, Germany was -and had to be- reluctant in the use of military force” (Philippi 2001: 50). Lack of military engagement, she says, is partly a result of the traditional interpretation of the Basic Law. Philippi further writes that Basic Law prohibits military engagement except for defense purposes. She does state, however, that slowly and very conservatively Germany is starting to become more involved in

military campaigns throughout the world, although the roles have been limited and within the larger NATO or United Nations Operation (52).

The German security structure today is largely set up to protect their domestic interests on an international scale. Ludger Kühnhardt writes that Germany's security is connected to their global and regional economic interdependence. He argues that Germany must abide with political multilateral contexts, in conjunction with the interests of the European Union. Therefore, Kühnhardt states, Germany has an international and multidimensional idea of security. These issues, which he defines as "soft," are enacted because of the German preoccupation with global stability (Kühnhardt 2003:5).

Kühnhardt finds this logic troublesome and believes that Germany will benefit if a stronger security plan is implemented. He writes, "in a world that does not consist solely of rational, peaceful, and saturated trading states, it often cannot be sufficient to wait passively until serious threats of this kind develop" (5). As is evident, German defense purposes are executed exclusively in supporting circumstances. No unilateral action is taken and military involvement occurs after all diplomatic options have failed, and is done within the larger scope of the EU.

While many comparisons between the importance of civil rights in American and German society exist, large contradictions appear in the military philosophies of the nations. The protection of individual rights and freedoms are emphasized as much in Germany as they are in America. However, the maintenance of German human rights has yet to be challenged by changing military policy, as has taken place in the United States. German security is constructed in such a way as to encourage multilateral involvement, and is used only as a supporting force; therefore, policies similar to the Patriot Act will probably never be necessary. Germany is fortunate enough to be working within European boundaries, eliminating the need for unilateral action. Essentially, human rights and military force have yet to impact each other in present day Germany.

At the same time, Germany has not faced as horrendous an attack, or as dangerous an opponent as the United States did on September 11, 2001. Thousands of innocent American lives were claimed and a widespread vulnerability in American security was evident. Consequently, a diplomatic and multilateral response by the Americans would not have produced the same amount of protection and security as the unilateral approach that was taken. Whereas civil liberties remained vital to American society, greater military efficiency and power was necessary and appropriate.

The essential difference between American and German security today is a result of the different contexts in which national security is required. While German military procedures seem to be effective in maintaining global stability, the country has yet to face an attack on its soil as severe as the Americans have. Similarly, the Americans would like to use their military might in an international framework, though certain circumstances do not allow for that luxury in the United States at this time.

## WHAT'S NEXT

The difficulty that powerful nations face in striking a balance between civil

liberties and national security is a daunting one. Both issues have significant bearing on the preservation and perpetuation of the state. Likewise, both civil liberties and national security have certain characteristics that must be retained in order for the state to function at its most efficient level.

Not only does a particular balance have to be struck, but the state must also find ways to incorporate the beneficial components of civil liberties and national security, while eliminating the negative aspects. Judge Richard Posner states in an article for *Atlantic Monthly* that the enhancement of both civil liberties and security is most conducive for the safeguarding of the state. He writes,

“The safer the nation feels, the more weight judges will be willing to give to the liberty interest. The greater the threat that an activity poses to the nation’s safety, the stronger will the grounds seem for seeking to repress that activity, even at the cost of liberty. This fluid approach is only common sense” (Posner 2001:46).

More concretely, elasticity between the two concepts should transpire. A balance between civil rights and security must be struck in a way that emphasizes the importance of both concepts in civil society. Also, constructing policy that enhances both civil liberties and national security concomitantly is imperative. In war times, a stronger security presence is demanded, whereas the further advancement of civil rights should take priority when times are more peaceful. It seems plausible that constant improvement and strengthening of the two will produce a quality of safe living that is unprecedented.

Legislation passed by the government should focus on strengthening security and civil rights at the same time. Since both security and civil rights can enhance and offset each other on a domestic scale, then the overall dynamics of the state will become much stronger. If the state is perceived to be a venue that is free of imminent danger and attack, then citizens will feel more comfortable exercising their beliefs, ideas, and values on a grander scale.

Similarly, the United States government must do everything possible, while still preserving civil rights, to afford maximum security to all American citizens. Terrorists and other opponents of the United States pose unimaginable threats to Americans today; consequently, their intentions must be countered and defeated with overwhelming force. Increasing the authority of the United States to respond to potential threats will provide greater protection. Posner explains, “It is true, therefore, as it appears to be at this writing, that the events of September 11 have revealed the United States to be in much greater jeopardy from international terrorism than had previously been believed...” (46).

Rescinding or revoking any powers that allow the United States military to assemble a united and formidable defensive front would be a grave mistake. In no way is it the intention of the United States government to limit any principle freedoms that this nation was founded on. The world today is ever changing and, in order to remain the leading nation of the free world, we must change with it. Taylor further

writes, "It is senseless to adhere to overly broad restrictions imposed by decades-old civil-liberties rules when confronting the threat of unprecedented carnage at the hands of modern terrorists" (Taylor 2003: 31).

Effectively, the cohesiveness of post 9-11 policies is vital for the stability of the state. And, while the protection of civil rights is necessary, the introduction of legislation that strengthens national security is critical. Civil rights remain a significant feature of the United States, but terrorism poses a constant danger to all Americans. Therefore, the American people and the American government alike must realize this threat, and do all they can to defend against it.

## SUMMARY

The development of a stable and effective government strategy that enhances both civil liberties and national security is imperative for the state. It is quite obvious that this is a period of transition, and the result that new policies have on the future of the state is enormous. The impact that September 11 had on state and societal functions is much more far-reaching and profound than imagined. Any liberal democratic state aspires to provide and protect as many basic and fundamental freedoms as possible, while trying to preserve the institutions that are most central to them. As has been stated, striking a consistent balance between the two is somewhat overwhelming.

Subsequently, the debate caused by the Patriot Act is not likely to recede any time soon, nor will it lessen in intensity. Furthermore, the mark that it will leave on the civil rights versus national security debate will likely be an indelible one. The current text of the act, in no manner whatsoever, poses any threat to the civil rights of an innocent American. As Judge Posner argues, the act can do more to retain and protect civil liberties in times of war than it can destroy primordial institutions of the state. In addition, it would be preposterous to think that the enactment of The Patriot Act would deliberately undermine the founding principles of the United States. The scale on which civil liberties and national security is balanced is not always objective, thus leading to erroneous descriptions of the threats to civil rights. Stuart J. Taylor explains, "Civil libertarians have underestimated the need for broader investigative powers and exaggerated the dangers to our fundamental liberties" (Taylor 2003: 26)

As the German state exhibits, a strong state influence is integral in preserving civil liberties as well. The state should provide a security blanket in which all freedoms and rights can be fully demonstrated without fear of repercussion or oppression. Without a state influence and security presence, this is not possible.

In order for a state to function at its highest level of efficiency, a definite balance must be maintained between security and freedoms. September 11 upset the stability between the two and caused us to reevaluate our means of protecting all citizens. Likewise, we are also now forced to reexamine the interaction between civil rights and national security. A definite shift in ideology has occurred, but the ensuing product may be a stronger, more prosperous liberal state. Consequently, not only will better protection be given to our citizens, but every civil liberty and freedom that



matters most to us will be better preserved.

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**AN ANALYSIS OF THE INTERNATIONAL COURT OF JUSTICE'S  
DECISION ON THE U.S. v. IRAN (1979)**

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**INTRODUCTION**

The United States Embassy in Tehran was seized on 4 November 1979, the days and weeks past by and the international community looked in awe as the Government of Iran failed to release the United States' diplomats. The actions of Iran towards United States' diplomats were unprecedented and in direct violation of international custom, treaty, legal opinion and general principle. The United States appealed its case to the International Court of Justice (ICJ), not because it believed the ICJ had the authority or right to hear the case, but as a matter of proving its point. The United States was willing to use several different methods in order to secure the release of its diplomats. Going to the Court was one way of embarrassing and making a point of Iran's wrongdoing. The case the United States brought against Iran was easy to make because the actions of Iran were in direct violation to the principles of diplomatic immunity codified in the Vienna Conventions of 1961 and 1963. For these reasons, the United States submitted an application to the ICJ on 29 November 1979 (International Court of Justice n.d., 4).

From the United States' point of view, the case against Iran was a clear-cut decision backed by the practice of diplomatic immunity which had been followed by states over the centuries. The decision of the Court was in compliance with international law. The Court set forth measures on how a state should act during court proceedings. These measures were a direct response to actions made by the United States during the proceedings. The two dissenting opinions of the Court do not question the principle of diplomatic immunity but question how to determine the responsibility of the Government of Iran in abiding by the principle of diplomatic immunity.

**BACKGROUND TO THE CASE**

In the late 1970s, the state of Iran was under political pressure. The head of state, Mohammed Reza Shah Pahlevi, appeared to be losing control of the state, producing a vacuum of political leadership to arise and take control of the state. Ayatollah Khomeini, a religious leader in Iran who opposed the Shah government in the 1940s and was exiled from Iran, filled the vacuum successfully by orchestrating the Islamic Revolution of 1979. He soon became the religious and political leader of the state of

Iran. Ayatollah Khomeini was openly opposed to the United States and he conveyed this anti-American sentiment before he began to take control of Iran (Internet Modern History Sourcebook 2001).

In October of 1979, Iran was still stabilizing its political, civil, social and economic institutions. For medical treatment, the ousted Shah desired to travel to New York from Mexico, after which he would return. The Carter administration communicated to the Iranian Foreign Affairs Minister that the United States was contemplating accepting the Shah into the United States for medical treatment. The Government of Iran responded that it frankly opposed the entrance of the Shah into the United States; nonetheless, it did not convey any concern for the security of the United States' Embassy and agreed to fulfill its international obligation in protecting the Embassy (International Court of Justice 11). After the admission of the Shah into the United States, Iran quickly asked for the extradition of the Shah to Iran to which the United States refused.

With the increased political hardship, the U.S. naturally feared for its Embassy because it had been seized previously on 14 February 1979 (Paolucci 1991, 210). In the events of 14 February 1979 some seventy people were taken hostage, two people were injured and at least one person was killed (Paolucci 211). The Iranian authorities acted quickly to the pleas of U.S. Ambassador William H. Sullivan, and some two hours after the seizure the Embassy was returned to U.S. control (International Court of Justice 10-11). The United States was concerned with the safety of its Embassy in Tehran and was communicating with Iran regarding the need for tighter security.

On 4 November 1979 three thousand demonstrating students overtook the United States Embassy in Tehran, taking sixty-five hostages and control of the premises.<sup>1</sup> The Iranian guards present at the time of the demonstration showed no efforts in guarding the Embassy; it appeared they had vanished when the demonstration began. All but two of the hostages were diplomats or staff of diplomats to the United States. Because the seizure of the Embassy was performed by students, the U.S. was not overly troubled by the situation, assuming that as soon as the Government of Iran was in control of the situation, the diplomats would be released due to the international implications of holding diplomats hostage. It became apparent that the Ayatollah's government did not plan the seizure of the embassy and, even though the Ayatollah was not responsible for the seizure, he did not release the hostages.

The United States tried to negotiate with Iran for the release of the hostages. In response to Iran's unwillingness to negotiate, President Carter decided to freeze twelve billion dollars of Iranian assets. A peaceful settlement to the conflict was not in the foreseeable future, so the U.S. decided to litigate in the ICJ. The ICJ contacted Iran and invited them to participate in the court hearings but Iran refused to participate in the proceedings (Malanczuk 1997, 260). The U.S. saw the conflict as a direct violation to international law and therefore prosecuted Iran in the ICJ. Using the ICJ was a way to publicly demonstrate the wrongdoings of Iran and its violation of international law.

## THE UNITED STATES CASE TO THE INTERNATIONAL COURT OF JUSTICE

The United States presented its case to the ICJ based on Iran's violation of two international treaties regarding diplomatic immunity, to which both states were members. In particular, the U.S. argued that the Government of Iran violated eight articles of the Vienna Convention on Diplomatic Relations, six articles of the Vienna Convention on Consular Relations, two articles of the Prevention and Punishment of Crimes against Internationally Protected Persons, four articles of the Treaty of Amity, which cover economic relations and consular rights between the United States and Iran, and three articles of the Charter of the United Nations. The violations of the aforementioned international obligations were due to Iran's failure, encouragement, and toleration of activities of the persons that seized the United States Embassy and held diplomats hostage. The focus of the case was the violation of the principle of diplomatic immunity, codified in the aforementioned treaties. As part of violating these treaties and compensation for doing so, the U.S. argued that "the Government of Iran is under a particular obligation immediately to secure the release of all United States nationals . . . [and] reparation for the foregoing violations of Iran's international obligations" (International Court of Justice 6).

Iran did not accept the ICJ's jurisdiction in the Hostage Case and therefore they were not represented in the court proceedings. According to the Court's statutes, the Court is able to proceed with the case as long as the Court notifies and gives Iran an opportunity to respond to the case (International Court of Justice 7).

The United States case to the ICJ was based mainly upon the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations. The 1961 Vienna Convention of Diplomatic Relations not only protects the diplomats themselves but also the embassy. The treaty states in paragraph one of Article 22, "The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission" (International Law Commission 2003, Article 22). It is clear that Iran violated this article by entering the U.S. Embassy. Not only is the mission "inviolable," but it is also the responsibility of the receiving state, Iran, to comply with the Vienna Convention by taking "appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity" (International Law Commission Article 22). In the account of what transpired on November 4, it is clear that Iran did not take or attempt to take proper actions to prevent the seizure of the embassy. Iran did not fulfill its obligations to the U.S. by allowing the seizure and also by not appropriately taking measures to turn the Embassy back over to the U.S.

The treaty not only protects the embassy of the sending state, but also the persons of the sending state. Aside from noncompliance with protecting the physical property of the sending state, Iran also mistreated the U.S. diplomats, violating its agreement from the Vienna Convention. In particular, Article 31 of the treaty details the proper jurisdiction over the diplomats by stating that, "A diplomatic agent shall enjoy immunity from criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction" (International Law Commis-

sion Article 31). Immunity would exempt Iran from having authority over the diplomats. Unlike Article 22, Article 31 outlines exceptions to the receiving state practice of diplomatic immunity by granting exceptions to the state in certain situations. A diplomat does not enjoy the freedom of diplomatic immunity if legal issues arise from real estate owned by the diplomat in the receiving state and in cases where the diplomat is involved in commercial, professional or other activity not related to his or her official functions as a diplomat (International Law Commission Article 31). Iran never presented any evidence or statements that would lead the Court to believe that the diplomats were held in custody under one of these exceptions. Iran did place authority and control over the diplomats by not releasing them and maintaining possession of the embassy. Therefore, by holding the persons hostage, Iran violated its international obligations.

### THE DECISION OF THE COURT

The International Court of Justice unanimously decided on 24 May 1980 that the Government of Iran was violating international legal obligations according to the Vienna Convention treaties of 1961 and 1963 (International Court of Justice 44). By unanimous vote, the Court decided that the Government of Iran should release and secure the passage of the hostages to the U.S. without detaining them for judicial proceedings.

This decision was based primarily on the principle of diplomatic immunity. Diplomatic immunity is an international legal principle that has been practiced for centuries.<sup>2</sup> It became customary law because of the widespread and long track record of continual practice. Codified in the Vienna Conventions of 1961 and 1963 on Diplomatic and Consular Relations, diplomatic immunity set standards of diplomatic treatment between states. Diplomats were given the necessary immunity they needed to successfully communicate between states.

Diplomatic immunity was not questioned in the two dissenting opinions of the Court. Because it has been a long standing customary law, codified in treaty, it was clear in the judgment that the Government of Iran had violated diplomatic immunity by not protecting and not releasing the United States' diplomats. All fifteen judges consented that Iran had violated international law on the basis of this principle. M. Cherif Bassiouni writes an article discussing the Islamic law of treating diplomats similar to that of international law. He argues that not only did Iran violate international obligations, but Iran also violated religious Islamic law by not releasing the diplomats (Bassiouni 1980, 609-10). "The seizure and continued detention of the detainees are in violation of Islamic law, Islamic international law, and conventional international law. Their detention also constitutes a crime under Islamic criminal law because there is no legal justification for it" (Bassiouni 631). It is obvious by both Islamic religious law and international law that Iran violated its duty of providing diplomatic immunity to the U.S.

The Court also decided, in a 13-2 vote, that Iran's Government was responsible for violating diplomatic immunity, as held in 1961 and 1963 Vienna Conventions (International Court of Justice 44). Judge Tarazi and Morozov believe that the Government

of Iran should not be held responsible for the violation of diplomatic immunity. Judge Tarazi believed that it is necessary to take into account the whole situation of the hostage case by looking first at the history of Iran and second at the United States' decisions regarding the Shah. The political history of Iran does shed light onto the conflict. Tarazi assumed that Iran could have possibly wished to not be a part of the Vienna Conventions and he also stated that Iran was politically weak at the time of the seizure. Logically if Iran had wished to disconnect itself from the treaties, they could have easily made a public announcement of their wishes. There is no record of any such attempts. At the time of the events of November 4, Iran was bound by its signature to the international treaties codifying diplomatic immunity.

Judge Tarazi writes that the Shah never had majority support in his government, which de-legitimizes the obligation of the treaties on diplomatic immunity (International Court of Justice 61). It is possible that not having majority support in the state at the time of the signing of the Vienna Conventions weakens, generally speaking, the agreement made by the state. Yet in the case of diplomatic immunity, the state and its citizens complied with the law for many years prior to and after the signing of the treaty, and it is even a principle found in the beliefs of the majority of the state, as noted by Bassiouni. Judge Tarazi believes that the U.S. knew, with the acceptance of the Shah into the country, the possible implications to the security of its Embassy in Tehran. Judge Tarazi writes, "That responsibility [of Iran] ought to have been qualified as relative and not absolute" (International Court of Justice 60). While Tarazi makes a legitimate argument, it is not feasible to assume the U.S. knew that, in receiving the Shah, their diplomats would be at risk, especially when Iran had assured the United States of the embassy's security in October. The decisions of allowing the Shah into its country and then not extraditing him to Iran may have irritated Iran, yet they do not justify the violations.

Judge Morozov in his dissenting opinion questioned the procedural process of bringing a case to the ICJ with only one party, the U.S., admitting an application, and the other party, Iran, never participating in the court procedures. The Nicaragua-United States ICJ case of 1984 was similar in procedural issues to the Iran-United States case, yet Judge Morozov approved of the procedure in the Nicaragua-United States case (International Court of Justice). Morozov also opined that Iran's responsibility to comply with the treaties is adversely influenced by the actions of the U.S. Iran's responsibility, however, is not dependent on U.S. actions because it voluntarily made an international obligation. The U.S. would have never attempted a rescue mission nor frozen the financial assets of Iran had Iran never violated the Vienna Conventions on Diplomatic and Consular Relations. Here Judge Morozov's arguments are not consistent or relevant to shift Iran's responsibility. American actions are irrelevant in deciding the bottom line as to whether Iran violated its treaties or not.

Most controversially, the Court decided, in a 12-3 vote, that the Government of Iran owed reparation for their actions against the United States. The Court has jurisdiction to decide on reparations when there is a breach of an international obligation.<sup>3</sup> Because Iran violated international law, it is responsible for paying reparations. The Court unanimously decided that Iran's actions violated international law. Judges Morozov and Tarazi both dissented on holding Iran accountable to the United States,

but they agreed that Iran's actions were not in compliance with international law.

### CONTEMPT OF COURT

It is interesting to note the actions of the United States in the Hostage Case. It went to the ICJ in November 1979 and supported a judgment from the ICJ. Iran as the other party in the court case, refused to recognize the ICJ as a legitimate party for deciding or investigating the issue of the hostages in Tehran. While the Court was in session, the U.S. decided to disregard the organization to whom it had consented power and instead opted to use force to release the hostages from Iranian custody. This attempt was a military activity called into action before the court case even started but was not initiated until during the actual court proceedings (Carter 459).<sup>4</sup> It is likely the U.S. viewed this case as a means to condemn Iran for its wrongdoing, which would give the U.S. authority to release the hostages by force.

Arguably the rescue attempt was influenced by political pressure within the United States. At this time President Carter was competing in an election run off and he knew that the hostage crisis was negatively affecting his odds in the November Election. In terms of the international legal system, President Carter's decision to use force in rescuing the hostages during the court procedures was foolish. But it is important to note that President Carter's decisions were influenced by domestic public relations.

The ICJ did rule on behalf of the United States and its claim against Iran. The Court remarked on the disrespect they felt from the actions of the U.S. The real opposition to American actions is evident in the dissenting opinions of Judge Morozov and Tarazi. The main arguments in both refer to how the U.S. acted during the court proceedings. The Judges regarded the military action as "an operation . . . of a kind calculated to undermine respect for the judicial process in international relations" (Stein 1982, 504). Stein argues that the language used in this passage of the ICJ Court decision is equivalent to that of contempt of court found in Anglo-American judicial systems. The language and terminology of the court case was not the first time that the ICJ had ruled on behalf of establishing a policy of "contempt of court". This case reaffirmed the Court's position of how a state should act during court proceedings. According to the ruling, the U.S. did not respect the ICJ's authority, jurisdiction, power and decision.

The ICJ is such that the Court is only as strong as states are willing to abide by its rulings. In the Hostages case, the U.S. was the only party present in the proceedings. The defense was not present because Iran refused to concede to the ICJ jurisdiction in this conflict. The primary purpose and reason for the case was in response to the principle of diplomatic immunity. How the United States acted during the proceedings is less than ideal. The Court recognized the actions of the U.S. and also the non-actions of Iran. In reference in how the Court dealt with the case, Ted L. Stein writes, "In the Hostages case, the International Court of Justice managed this difficult role very well indeed" (Stein 531).

## CONCLUSION

The prominent Hostage case between Iran and the United States, decided by the International Court of Justice, centered on the principle of diplomatic immunity. It was complicated by Iran's absence from the court proceedings, the lack of was clicated by Iran's absence from the court proceedings, the lack of acknowledgement Iran gave to the ICJ, the threat to the hostages themselves, and the muddling actions of the United States before and during the court proceedings.

The ICJ successfully decided the Hostage case by making a sound and comprehensive judgment. The decision was in accordance with international customs, general principles, and treaties. The findings of the court concluded that Iran did violate international law, was responsible for the violation, and should give reparations to the United States. The Court's decision reaffirmed and strengthened the practice of diplomatic immunity. The authority is even more powerful because the dissenting opinions agreed that Iran was in violation of diplomatic immunity. The dissenting opinions argued that Iran was not liable and should not make reparations for the kidnapping of the diplomats, but this is inadequate in shifting Iran's responsibility. Iran violated its international obligations under the 1961 and 1963 Vienna Convention on Diplomatic and Consular Relations and therefore Iran is legally accountable.

## ENDNOTES

<sup>1</sup> The number of hostages is either sixty-three or sixty-five. From the account of President Carter fifty-two hostages were released on Tuesday 20 January 1981 (Carter 3). The ICJ judgment discusses that thirteen hostages were released in November 1979 and that there were "at least" fifty others held hostages (International Court of Justice 13).

<sup>2</sup> Refer to Montell Ogdon's The growth of purpose in the law of diplomatic immunity, found in *The American Journal of International Law* 31 (July) 449-465.

<sup>3</sup> From the Basis of the Court's Jurisdiction paragraph 2 (d) it gives the Court the authority to decide, "the nature or extent of the reparation to be made for that breach of an international obligation." International Court of Justice. n.d. *Basis of the Court's jurisdiction*. At <[http://www.icj-cij.org/icjwww/basicdocuments/basictext/basic\\_basisjurisdiction.html](http://www.icj-cij.org/icjwww/basicdocuments/basictext/basic_basisjurisdiction.html)>. 2 December 2003.

<sup>4</sup> Two days after the seizure of the Embassy plans were started in how the United States could rescue the hostages (Carter 459)

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## FRANCE: NATO OR THE EU?

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The North Atlantic Treaty Organization (NATO) was established in 1949 to protect and secure the European and North American continents. When France and the United States became allies under the NATO alliance, the entire European continent needed both military protection from the growing Soviet Empire and economic aid for rebuilding. At that time, the treaty established “that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all”.<sup>1</sup> Throughout NATO’s history, France has not only displayed its independence from the alliance, but has also developed its desire to form a military alliance within the European Union structure that would better represent its policy goals. In this paper I will discuss the evolution of French policy in order to explain France’s changing relationship with NATO. I will explore reasons why France might now want to leave NATO entirely in favor of a European Union military security pact, as well as reasons against such a move. I will conclude by explaining why I believe France should remain in NATO and work together with the United States to achieve peace and stability on the two continents.

### THE FRENCH EVOLUTION

In the post-World War II era, the French relationship with the North Atlantic Treaty Organization grew out of the belief that a Soviet attack against Western Europe could be stifled by the threat of U.S. military retaliation. At this unstable juncture in European history, the French as well as ten other European nations welcomed the United States’ protection from the spread of communism in the East. To solidify and strengthen their relations, France invited NATO to house its command post in Paris. This command post included two branches—civilian and military. The civilian branch includes the North Atlantic Council, comprised of the Heads of Government (or their representatives) of NATO member states. The other branch, the Military Committee is comprised of Allied Command Atlantic, Allied Command Channel and Allied Command Europe. These two branches functioned in harmony with French policy for most of the 1950s until France implemented its new Constitution in 1958.

### *THE FIFTH REPUBLIC—A DRAMATIC CHANGE*

French policy toward NATO changed dramatically with the adoption of a new French Constitution in 1958. The Fifth Republic, as it was termed, was orchestrated

and implemented by President Charles de Gaulle. De Gaulle recognized that the previous government had been tentative and unsure in its decision-making, rendering it unstable and ineffective. In designing the new constitution, de Gaulle eliminated much of the laboriousness of the previous document, giving complete control over foreign policy and military alliances to the president. Consequently, de Gaulle was able to shape France's foreign and defense policies in relative freedom from domestic constraints. De Gaulle, however, wanted to expand his independence to fulfill "the notion that France 'because [it] can, because everything summons [it] to do so, [it] is France [who] must lead the global policy in the center of the world'".<sup>2</sup> To accomplish this and extend his policy of independence into the international community, de Gaulle began detaching the nation from international alliances.

In the detachment process, de Gaulle turned his focus to French membership in NATO. Within the alliance, France's independence was challenged by the powerful influence of the United States, the de facto leader of the alliance, over European military endeavors. De Gaulle believed France could not participate in an alliance that fostered American command of European military posts. He also wanted to guarantee civilian control over the alliance and all military operations, which the United States was unwilling to concede. Seeing no solution to the rift between the two nations, de Gaulle wrote a letter to United States President Lyndon B. Johnson on March 7, 1966 stating France's withdrawal from NATO's defense alliance. De Gaulle cited two reasons: "the need to escape the constraints of NATO's integrated command, and thereby reassert the full independence of France, and concomitantly, the need to keep France's nuclear weapons completely outside the NATO command".<sup>3</sup> France's military divorce from NATO facilitated the development of de Gaulle's defense policy outside the alliance framework, allowing de Gaulle to designate independence and nuclear freedom as his two main pillars.

To enhance France's military autonomy during the 1960s and the Cold War, de Gaulle aspired to develop nuclear weapons capabilities that would help construct a domestic independent defense mechanism. This nuclear deterrent would, in his mind, be utilized for the sole purpose of protecting French soil and those who lived on it. This policy also allowed France to amass the third largest nuclear arsenal behind the two superpowers—the Soviet Union and the United States. Furthermore, the "Gaullist security and defense policy offered France the luxury of pursuing a defense policy which supported specific French *national* interests, while Washington stationed forces in Germany and kept the Soviet Union out of Western Europe".<sup>4</sup> In theory, France was taking advantage of the purpose of NATO—keeping the Germans down and the Soviets out—by reaping the benefits of protection from the alliance without actually contributing any resources to it or to its success.

Because France was not contributing militarily to NATO, it was free to use its non-active forces and equipment as it pleased. In 1968 General Charles Ailleret used his policy, the *Toutes Azimuts*, to accomplish France's national security objectives. His policy—which never came into fruition—called for Intercontinental Ballistic Missiles (ICBMs) to be pointed at logistical targets within the United States.<sup>5</sup> France believed that to provide security for its citizens it needed "to defend France against any

threat from any direction”.<sup>6</sup> This idea included defending itself from the United States and all other allies on the European continent. To secure the nation from all international threats, France placed more importance on ICBMs and a rapid nuclear buildup, rather than developing conventional military capabilities. As a result, conventional forces were left to deteriorate and shrink. Nuclear independence resulted in marred relations between France and other NATO allies throughout the 1970s and 1980s.

## POST COLD WAR

The end of the Cold War in 1989 disrupted both France’s nuclear-reliant military policy as well as the defense structure of the entire European continent. It signified the beginning of a new era in European politics characterized by the desire for integration. This idea reached its culmination at the European Community (EC) summit in Maastricht, Netherlands (1991). This summit produced the Maastricht Treaty of the European Union, which contained three main pillars—economic and monetary union, Common Foreign and Security Policy (CFSP) and justice and home affairs. Within the next two years (1993) the Maastricht Treaty was signed and ratified by eleven European nations. The second pillar of this treaty signified the first time Europe had agreed to pursue the creation of a military entity that would operate without U.S. participation.

Unfortunately for France, the end of the Cold War also brought the end of the black-and-white nature of nuclear defense and security policies in Europe. Gaullist defense policy was based on the bipolar balance of power that had existed for the past 50 years that called for nuclear stockpiling instead of increasing conventional forces. With the fall of communism, “[t]he French too [were] awakening reluctantly to a messy Europe, where most of the basic foreign policy and defense guidelines laid out by General Charles de Gaulle 35 years ago [were] simply no longer relevant”.<sup>7</sup> However, the Gaullist tendency of independence prevailed and became the cornerstone of French policymaking in the post-Cold War era. Furthermore, the end of the Cold War also meant the end of the threat from the East—the prevention of which had been NATO’s main purpose. However, the United States and NATO still exhibited hegemonic tendencies over the European security project, refusing to rescind their control. Because they did not have a central role in this project, the French began to fear that “...NATO had adopted an ‘Anglo-Saxon’ strategy—that NATO should take precedence over other institutions even after the end of the Cold War”.<sup>8</sup>

Due to the United States’ heavy involvement in the European community, France has opened the door to foreign and security policy reanalysis with the goal of fulfilling the Gaullist tendency of an independent and autonomous decision-making process. With that said, France has defined four different policy options:

- 1) “France could revert to Pompidou’s ‘saturated nationalism’ ...of the seventies without any special international ambitions
- 2) It could try to pursue its interests in a reformed NATO
- 3) It had the possibility to develop Western Europe into an

- 4) ‘independent action center,’ if possible spearheaded by France. Finally, a link between the first two options was possible under the motto of a ‘European pillar in the alliance.’”<sup>9</sup>

With the adoption of the Maastricht Treaty’s second pillar, as well as the continued influence of NATO over European defense, the question for France now becomes “in which direction should it go?”—remain tied to NATO or pursue a stronger military alliance within the EU structure.

### THE ARGUMENT FOR AUTONOMY

Over the past 40 years, France has represented the foundation of independence and strength on the European continent. One of the two major players in integration, France has led the fight for independence from the United States and the North Atlantic Alliance. Because of France’s strong background in acting independently, it is only natural to pursue a stronger military alliance within the European Union, one in which it can voice its opinions and be heard. In a joint summit in December 1998, Jacques Chirac issued the following statement: “The European Union needs to be in a position to play its full role on the international stage.... To this end, the Union must have the capacity for autonomous action, backed by credible military forces, the means to decide to use them, and a readiness to do so, in order to respond to international crises”.<sup>10</sup> This statement illustrates France’s desire to strengthen the European Union and invest its time and effort into a common European defense structure. Under the United States’ NATO, this task grows increasingly difficult. On the other side of the Atlantic Europe is growing more cohesive, displaying cultural homogeneity, a viable European military structure as articulated in the Maastricht Treaty and an increasing desire for autonomy in European military endeavors. In the paragraphs to follow, I will enforce the validity of these three arguments for France’s desertion of NATO in search of a stronger foreign and security policy within the European Union.

The first reason France should abandon NATO is that France shares a common interest with its European neighbors. Since France’s decision to abandon NATO militarily in 1966, it has only participated in politicking within NATO. This has allowed France to appease its Gaullist tendencies—pursuing its own independent military endeavors—while still keeping an eye on the actions of its allies. As a result, the members of NATO, particularly the United States, have labeled France an outsider in the alliance. France’s limited involvement and its outsider status do not give France enough influence to successfully express its views and policy goals within the NATO structure. Thus, the alliance is unable to fully service the military and security needs of the French, simply because it does not know what those needs are. The European Union, on the other hand, is comprised of nations whose people have been living and dealing with European problems firsthand alongside the French. Europeans are better equipped to understand and implement French policy because the “French conceptions of its vital interests will coincide with those of its neighbors”.<sup>11</sup> Limited participation in NATO coupled with a European entity capable of representing France’s views make the European Union the obvious direction French policymakers will turn. With that said,

abandoning NATO would enhance the European Union's homogenous alliance, allowing France to pursue its individual foreign policy goals within a common defense structure, a task which NATO is unable to accommodate.

The second reason France should pursue a stronger Common Foreign and Security Policy within the EU is that Europe now has a serviceable defense infrastructure on which to found Chirac's "credible military force." With a new EU military, France would be able to "[break] through that so-called glass ceiling that ensured that it would not adopt military policy instruments that were traditionally associated with NATO and national armed forces".<sup>12</sup> In doing so, France would be able to strengthen the second pillar of the Maastricht Treaty, allowing greater "capacity for autonomous action backed up by credible military capabilities and appropriate decision-making bodies...".<sup>13</sup> In addition, the French believe that "without an independent European defense force...there can be no independent European foreign policy".<sup>14</sup> Until the second pillar of the Maastricht Treaty was ratified in 1993, the European Union did not have stable institutions or a decision-making infrastructure. However, after adopting the treaty, the second pillar gave the EU direction and an organizational base. This supranational agreement between the members of the European Union allows France to take a larger part in the decision making process, unlike its muted position in NATO.

The third reason France should pursue a stronger European alliance is its subjectivity to U.S. hegemony over policy-making decisions. Since NATO's inception following the Second World War, the U.S. has used the alliance to serve its own ends, often at the expense of its European allies. France remains at the whim of the U.S. war machine due to the fact that the Alliance's actions are funded primarily by the deep pockets of the United States. In the European Alliance, France would be able to express its views and policy goals uninfluenced by the interests of the United States. Furthermore the CFSP would be able to function outside the realm of "a threat to one is a threat to all," allowing France to pursue peacekeeping missions—a valid use of its military force—that do not fall under the jurisdiction of NATO. These peacekeeping efforts are defined as "traditional operations conducted under Chapter VI of the U.N. charter and premised on the consent of the parties and the existence of a cease-fire".<sup>15</sup> French policymakers also note that the line between peacekeeping missions and acts of war is very thin. For example during the conflict in Kosovo in 1999 "French forces encountered three types of [situations]: combat, periods of truce, and activity in between the first two".<sup>16</sup> France's pursuit of a stronger alliance within the European Union would allow it to take part in defining the foreign situations in which EU forces would participate. This would give France further autonomy in its foreign and security policies, allowing it to accomplish its policy goals.

Not only does United States hegemony extend into NATO, it extends into the European defense structure itself, making it difficult for Europeans to form a military force without the influence of the United States. During the mid-1990s France began negotiations to incorporate a military force into the European Union. Finally, in 1996, both the European allies and the United States came to the agreement that Europe could develop a European Security and Defense Identity (ESDI). This appears on the surface to be a step in the right direction towards a European-led military force. However, the United States demanded that this entity exist within the framework of NATO. It

would only allow the ESDI to be “‘separable but not separate’ [from] NATO’s assets for humanitarian, peacekeeping, or even peace making operations”.<sup>17</sup> The United States had allowed its European partners to create a defensive force comprised of solely European nations, but prevented this force from being completely separate from the NATO alliance and its influence. With France’s abandonment of NATO and a stronger European alliance, the EU could overpower the United States and gain the autonomy needed to eliminate U.S. domination.

In conclusion, France is unable to accomplish its independent foreign policy goals within the confines of the United States’ NATO. France will never be able to overcome the pressure the United States places on its allies from within the alliance, “...always believ[ing] that in the long run the EU must assert its independence of NATO, an organisation it regards as ultimately an instrument of American foreign policy”.<sup>18</sup> Consequently, by abandoning NATO and pursuing a stronger foreign and security policy within the EU, France will be able to operate independently of the United States.

### **IN DEFENSE OF NATO**

France, while having a strong political culture and sense of individualism, still depends upon the North Atlantic Alliance and the United States. Though it is France’s desire to pursue a stronger military alliance in the EU, it is clear that NATO has succeeded in defending and securing Europe throughout the Cold War and during the post-Cold War era. Because of this success, France should remain a member of the alliance that has kept its people alive for so many years. On the European front, there have been numerous failed attempts at a European military force. The second pillar of Maastricht has not materialized and, in its creation, Europeans ended up duplicating the forces and infrastructure already in place by NATO with nonexistent funds and personnel. In the following paragraphs I will reaffirm these three reasons for France to remain a member of NATO and not pursue a stronger Common Foreign and Security Policy within the EU.

Over Europe’s evolution into an integrated continent, beginning in the post-World War era, there have been many attempts to form military alliances strong enough to replace NATO. The first reason France should remain in NATO is that these past attempts have failed to produce a structure that could successfully protect the continent. Some of these attempts have included the “Fouchet Plans,” proposed between 1959 and 1962, that were “scotched over institutional disagreements,” or the 1994 Gensher-Colombo plan that also failed..<sup>19</sup> These examples, as well as the diversity in foreign policy goals, show that Europe is split over many issues, most profoundly over the reasons to use force. One of the causes of these divergences is France’s independent nature, which can be counterproductive in an organization of “equals.” The past failures and France’s independent nature do not give Europe a stable foundation on which to build its current military structure within the EU.

The second reason France should remain in NATO is the lack of progress made on the second pillar of Maastricht. EU policymakers began to frame a “defense component” to expand on the principles outlined in the second pillar only five years

ago in 1998. Since then there have been a number of meetings, including the Cologne European Council that decided “the Union must have the capacity for autonomous action, backed by credible military forces, the means to decide to use them, and the readiness to do so, in order to respond to international crises without prejudice to actions by NATO,” as well as the European Council in Helsinki that established two targets:

1) “co-operating voluntarily in EU-led operations, Member States must be able, by 2003, to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000-60,000 persons capable of the full range of tasks stated in Article 17 of the Treaty on European Union (TEU).

2) new political and military bodies and structures will be established within the Council to enable the Union to ensure the necessary political guidance and strategic direction to such operations, while respecting the single institutional framework”.<sup>20</sup>

These two meetings have made important progress. However, as of the beginning of 2003, the targets designed in Helsinki have not been met. Because of this, the European Common Foreign and Security Policy is not stable enough nor does it have the military wherewithal to protect France from international threats. Thus, it is in France’s best interest to remain part of NATO until the European Union can further develop its force.

The third reason France should not sever its ties with NATO is the risk of creating a second organization with similar objectives as NATO—protecting and securing the European continent. Since NATO already has troops and military hardware placed strategically around Europe, there would be considerable duplication if France were to pursue a defense alliance within the EU. Madeline Albright, in the *Financial Times*, “delivered a broadside to the British and French, reminding them of the problems of duplication of resources, of discrimination against those powers that are not in the EU and of decoupling—that is, unpicking the carefully crafted NATO alliance”.<sup>21</sup> The European Union Common Foreign and Security Policy would also rival NATO and in certain situations place the two military alliances at odds with each other. Rival armies could also cause fragmentation among those nations who support the United States and NATO, such as, the Eastern candidate countries and those who support the new alliance within the EU framework. “It is ironic that a defense initiative promoted in the name of European unity could well turn out to exacerbate the European Union’s divisions”.<sup>22</sup> This fragmentation would place the nation in greater danger undermining the goals of both organizations—peace and security.

Furthermore, duplicating forces on the European continent would be a wasteful endeavor. Presently, the United States is spending 40 percent more than the rest of the world combined on defense and national security. In addition, the Pentagon’s budget is 10 times the size of the next military spender in NATO. European nations have also been forced to make cuts in their budgets in adherence to the “convergence criteria” for European Union member status. Some of these criteria include: reducing deficits



in GDP to less than three percent and cutting total national debt to less than 60 percent of GDP. To meet this, most European nations have begun to cut government spending, most heavily cutting their military spending. As a result of cuts in European spending and the amazing capacity of the United States to fund its defense industry, the disparity in military spending between the two continents has grown. Currently, “budget constraints may prevent France from bridging the gap in the medium term; that is, within 7-10 years. France may be able to buy or lease adequate lift to deploy up to 5,000 troops during this decade, but its capacity to project much greater force will be inadequate at least until 2015”.<sup>23</sup> The NATO budget is therefore more able to fund the protection and security of the European continent than a European Union budget that is excruciatingly small and unable to amass the same amount of protection as NATO and the United States can.

The new military alliance and Common Foreign and Security Policy also requires the rapid deployment of troops, as discussed at the European Council in Helsinki. However, this poses a problem for most European nations who lack the military personnel and equipment to outfit an effective force. Specifically France, with its recently ended draft, “lacks lift capability and France is not accompanying its expansion of projection forces with parallel expansion of airlift or sealift, refueling and logistics support capabilities”.<sup>24</sup> With a EU military force, France and the EU are not only duplicating NATO’s present European forces, they are doing so with the inability to collectively fund and staff their new common defense structure.

With the lack of progress on the second pillar of Maastricht, an unsuccessful history of military alliances and the risk of duplication, it is not in France’s best interest to explore and pursue a stronger foreign and security policy within the European Union. France is therefore forced to remain tied to NATO and adapt itself to the alliance. In order to do so, it must give up some of its independent tendencies, thus increasing its flexibility in foreign policy. This will, in turn, enable France to become better acclimated as well as more active in the NATO alliance allowing its views and ideas to be better represented.

## **LOOKING TO THE FUTURE**

France has defined its political culture and foreign policy based on freedom and independence. However, the nation and its government have failed to see that this independence has alienated and isolated it from participation in international alliances. During recent NATO and United Nations meetings on the war in Iraq, France led the international opposition to a military invasion. Though this stymied action by the UN and NATO, the United States and Britain went ahead with military action by what they termed “a coalition of the willing.” France’s position as an outsider and a constant nuisance to the United States and its allies has eroded its influence over the decision making process from the start. Because the European Union is not ready to have a military force back its nonexistent common foreign policy, and in order for France to keep the United States in check, I believe France should not abandon the NATO alliance to pursue a stronger foreign and security policy within the European Union. In this

section I will offer three reasons why I reject the argument that France should pursue a stronger Common Foreign and Security Policy as well as outline the three largest obstacles that will hinder France's reintegration into the NATO alliance.

### AGAINST THE EU

The first reason for why I reject the argument that France should pursue a stronger Common Foreign and Security Policy is the lack of development and stability in the EU defense structure. Presently the European Union is a conglomeration of nations who have established a common currency and common fiscal and monetary policies, which represent the first pillar of Maastricht. The evolution of this pillar has taken years to develop, and is still not finished today. The second pillar, however, has not materialized, and in fact has the potential to cause Europeans more problems and fragmentation. Work on this pillar began in 1998 with the creation of a Rapid Reaction Force. However, five years is not enough time for Europeans to come to an agreement on how they believe the international community should look and interact. As a result, the European Union is not presently strong enough to foster a CFSP.

The second reason explaining why I reject France's desire to pursue a stronger foreign and security policy within the EU is France's inability to convince its European allies that the EU is the proper institution to protect the continent. France is currently trying to use the conflict in Iraq to muster support for the EU military alliance. Belgium is hosting a mini-summit at the end of April 2003 that will include France, Germany, Belgium and Luxembourg, in order to continue discussions on the possibility of an independent European military force. However, this is only a tiny gathering, which does not even involve half of the European Union member states. Additionally, it is not advocating the elimination of NATO in Europe: "NATO should remain the pre-eminent security organization in Europe".<sup>25</sup> Consequently, France's attempt to rally Europe behind it is simply talk. We have yet to see progress on France's part to encourage and rally the entire European Union, including the ten new candidate nations, behind a collective EU defensive force. Therefore France should still remain a party to NATO for lack of a better European option.

The third reason for France to reject a stronger Common Foreign and Security Policy in the EU is simply the integrated nature of the international community. The decision to leave NATO brought France farther away from the most powerful military alliance in Europe and rendered France immobile in shaping the world political society. In contrast with French isolationism, the international community was developing together, becoming more and more interdependent. As a result, today's international community is defined by globalization—the exchange of ideas, customs, capital, and goods across international borders. The theme of interdependence has also crossed into the realm of national security, making alliances the most advocated course of action. France's pursuit of a new alliance in the EU is effectively removing France from this interdependent community.

## OBSTACLES

Integration does not come without formidable obstacles, the biggest, in my opinion, being France's desired policy independence from the United States and from other European nations. It is a tautology that independence is the antithesis of alliance. NATO was designed to protect every nation; an attack against one is considered an attack against all. France's independent stance has hindered its ability to take advantage of the alliance. As a result, today France feels it must look to other venues to reach its goal of an autonomous decision making process. However, France is not capable of this task, and must relinquish some of its independence and pride to take part in the only alliance that can presently offer Europe peace and protection.

The United States, on the other hand, is the second obstacle France faces in reintegrating into the NATO alliance. One of France's main problems with the alliance is the United States' inability to allow Europeans to man NATO posts in Europe. If the United States would surrender some of its control, it would make France as well as other European nations more likely to accept its involvement on the continent. European leadership would also allow NATO to better represent the views and needs of the continent. Therefore, United States hegemony hinders France's ability to participate alongside the United States in one alliance that successfully protects the European continent.

France will also be faced with a third obstacle—reforming NATO to include its views and “reforming it in such a way that the American influence would be decisively curbed”.<sup>26</sup> In the past ten years, France has proven itself powerful enough to demand reform in the alliance. It has taken part and has been one of United States' most reliable partners in the Gulf War, Somalia, Bosnia and Kosovo. France has also made a name and case for peacekeeping missions to become an appropriate mechanism in NATO's military structure. The peacekeeping sector is one in which France has a comparative advantage to the United States. In reforming NATO, France will be able to expand and control a peacekeeping side of the alliance that was not originally part of NATO. This will enable France to exercise control over a part of NATO as well as the United States.

A European Union defensive force and NATO would both be working towards the same goal—protecting and keeping Europe peaceful. In my opinion, security and the protection of Europe could be achieved by one existing alliance—NATO—instead of creating a new alliance in order for France to be in control. France may think it has a “special status” but it must understand that it is no better than any other European nation or the United States. Once it understands this, France will be able to participate in NATO and will not have to pursue a separate military alliance within the European Union framework.

## CONCLUSIONS

Over the years France has continually attempted to assert itself as an individual in the international community. As a result, France withdrew from military NATO and in doing so isolated itself from the international community. Clearly France is not strong enough to survive as an independent military entity, free of the responsibilities and compromises brought into the picture by alliance. It is necessary to become a part

of a larger cooperative under the goal of unifying and protecting Europe. To become integrated into that world, France must work towards cooperating with the NATO alliance instead of fragmenting Europe into two camps. France can achieve this goal in two different ways: through the European Union, (as a united force under the NATO umbrella) or by becoming a full-fledged member of NATO. The implications of this policy decision will, however, require France to yield some of its Gaullist independence and learn how to cooperate with its partners in protection. Though this will force France to compromise on some of its foreign and security policies, it will allow its views to be addressed in a feasible environment rather than the notion of a non-existent alliance. France should not abandon NATO to pursue a stronger foreign and security alliance within the European Union structure but rather work together with the United States to come to an agreement through which all parties can profit.

### ENDNOTES

<sup>1</sup> North Atlantic Treaty, August 24, 1949, U.S., Fr, Bel, Can, Lux, Nld and UK art. 5.

<sup>2</sup> Menon 2000, 50.

<sup>3</sup> Cogan, Charles G. *Forced to Choose: France, the Atlantic Alliance, and NATO—Then and Now*. London: Praeger, 1997, 125.

<sup>4</sup> Johnsen, William T., and Thomas D. Young. Army. *French Policy Toward NATO: Enhanced Selectivity, Vice Rapprochement*. 09 Sept. 1994. 25 Mar. 2003. Available from <http://www.carlisle.army.mil/ssi/pubs/1994/frnchpol/frnchpol.pdf>, 1.

<sup>5</sup> Dinerman, Taylor. "France and the Idea of Strategic Defense: Technology, Politics and Doctrine." *The Journal of Social, Political and Economic Studies* 25.3 (2000): 291.

<sup>6</sup> Dinerman, Taylor. "France and the Idea of Strategic Defense: Technology, Politics and Doctrine." *The Journal of Social, Political and Economic Studies* 25.3 (2000): 291.

<sup>7</sup> Johnsen, William T., and Thomas D. Young. Army. *French Policy Toward NATO: Enhanced Selectivity, Vice Rapprochement*. 09 Sept. 1994. 25 Mar. 2003. Available from <http://www.carlisle.army.mil/ssi/pubs/1994/frnchpol/frnchpol.pdf>, 2.

<sup>8</sup> Menon, Anand. "From Independence to Cooperation: France, NATO and European Security." *International Affairs* 71 (1995): 24.

<sup>9</sup> Schmidt, Peter. "French Security Policy Ambitions." *Aussenpolitik* 44.4 (1993): 336.

<sup>10</sup> Deighton, Anne. "The Military Security Pool: Towards a New Security Regime for Europe?" *The International Spectator* 35.4 (2000): 42.

<sup>11</sup> Menon, Anand. "From Independence to Cooperation: France, NATO and European Security." *International Affairs* 71 (1995): 28.

<sup>12</sup> Deighton, Anne. "The Military Security Pool: Towards a New Security Regime for Europe?" *The International Spectator* 35.4 (2000): 42.

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<sup>14</sup> "NATO versus the European Union." *The Economist* 10 Apr. 2003. 03 Apr. 2003. Available from <http://www.economist.com/displaystory.cfm?story>.

<sup>15</sup> Gregoire, Joseph P. U.S. State Department. *The Basis of French Peace Operations Doctrine: Problematical Scope of France's Military Engagements within the U.N. or NATO Framework*. Sept. 2002. 25 Mar. 2003. Available from <http://www.carlisle.army.mil/ssi/pubs/2002/frnchpec/frnchpec.pdf>, 4.

<sup>16</sup> Gregoire, Joseph P. U.S. State Department. *The Basis of French Peace Operations Doctrine: Problematical Scope of France's Military Engagements within the U.N. or NATO Framework*. Sept. 2002. 25 Mar. 2003. Available from <http://www.carlisle.army.mil/ssi/pubs/2002/frnchpec/frnchpec.pdf>, 5.

<sup>17</sup> Pond, Elizabeth. *The Rebirth of Europe*. Washington D.C.: The Brookings Institution P, 2002, 72.

<sup>18</sup> "NATO versus the European Union." *The Economist* 10 Apr. 2003. 03 Apr. 2003. Available from <http://www.economist.com/displaystory.cfm?story>.

<sup>19</sup> Deighton, Anne. "The Military Security Pool: Towards a New Security Regime for Europe?" *The International Spectator* 35.4 (2000): 54.

<sup>20</sup> <http://ue.eu.int/Pesc>.

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## THE ECONOMIC CONTEXT FOR THE NORTH KOREAN NUCLEAR PROGRAM

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### INTRODUCTION

At the end of the Korean War, North Korea found itself in a predicament very similar to that faced by the Soviet Union at the end of the Bolshevik Revolution: an infrastructure and population ravished by civil war, a communist government ruled by an authoritative dictator, and an economy oriented towards military production. With the invasion of South Korea thwarted by the United States during the war, Secretary General Kim Il-Sung, North Korea's equivalent to Stalin, would make reunification of the North and South the country's principal objective. Facing similar obstacles that Lenin and Stalin encountered during the reconstruction of Russia after the Bolshevik Revolution, and armed with similar economic assets as their Soviet predecessors, North Korea adopted virtually the same development model as the Soviet Union had implemented thirty years prior. During the more contentious years of the Cold War, when there was extreme demand for military production, the Democratic People's Republic of Korea (DPRK) witnessed phenomenal economic growth under the Soviet model. The country's rigid adherence to self-sufficiency and heavy industrial and military production championed by the Soviet model, however, made it virtually impossible for the DPRK to adapt to the rising international trends of economic and military cooperation. In this era of increasing global economic integration, the North Korean economy has found itself on the outside looking in, with the only prospect for growth resting in the success of their nuclear program.

### FOLLOWING THE RUSSIAN SOCIALIST DEVELOPMENT MODEL

The basis of early North Korean development closely resembled the Socialist model originated in the Soviet Union, and was subsequently replicated by many Eastern European countries. The principal characteristics of this development model are no private ownership, state-directed allocation of factors of production, cultivation of a military-oriented heavy industry, self-sufficiency, and the creation of trade barriers to shelter the economy from foreign influence. Accordingly, articles 20 and 21 of the North Korean constitution were rewritten to reflect the new orientation of the economy.

The primary vehicle for wealth in the Soviet development model is a series of state-headed economic programs that systematically allocated factors of production across each sector of the economy, the most prominent example being Stalin's New

Economic Plans, implemented in Russia from 1929-1937. In an effort to duplicate the NEP in North Korea, Kim Il-Sung implemented a series of economic programs that proved tremendously successful during the initial rebuilding period. In particular, the Three-Year Plan from 1954-1956 and the Five-Year Plan from 1957-1960 were rated as the most successful of all economic plans undertaken by North Korea, as GNP grew at unprecedented annual rates of 17% and 22%, respectively. These growth rates eclipsed the benchmark 13% annual growth rate of the Soviet Union's NEP.

### **SOCIALIST DEVELOPMENT MODEL - EARLY SUCCESS**

As was the case in Stalinist Russia, North Korea's early economic success was driven by extreme political authority to forcibly motivate workers and consolidate the ownership of resources under state control. By advocating the Marxist belief that a market economy cannot efficiently and expeditiously allocate workers and other factors of production, both the Soviets and the North Koreans justified the creation of such artificial worker motivation. The truth is that, in the early stage of economic construction, North Korea and other former socialist countries achieved a higher economic growth than capitalist market economies. A socialist economy is not more efficient than a capitalist one, but the forced incentives of a command economy have a more immediate effect than the implied profit and consumption incentives of a capitalist economy.

### **MILITARY-BASED HEAVY INDUSTRY ECONOMY**

Yet, despite their phenomenal economic growth through the 1950s and early 1960s, North Korea's chief objective was to reunify Korea through a second invasion of the South. With the South Korean economy still in shambles from the war, and with President Nixon steadily decreasing the U.S. presence in the De-Militarized Zone and South Korea, Kim Il-Sung saw an opportunity. Consequently, beginning in the early 1960s, virtually all of North Korea's resources were directed toward military production.

The general belief was that Cold War tensions would create enough of a market amongst the communist countries to justify orienting most of the attention to the North Korean economy. Any production not absorbed by the Soviet Union, China, or the rest of the eastern bloc could be used in the invasion. Therefore, during the economic growth of the 1950s and 60s, the DPRK's military capability increased substantially, as defense spending reached an unparalleled level. By 1970, official budget figures showed that defense expenditure exceeded 20% of total GDP while the rival South Korea was spending merely 5% of its GDP on defense.

### **COURSE OF CHANGE IN SOCIALIST COUNTRIES**

By implementing the Soviet development model, Kim Il-Sung began positioning the economy and military exactly where he desired. With Moscow and Beijing accounting for over 73% of their total exports, they were able import food, energy



sources, and light industrial products from their communist allies in exchange for the weaponry required in the Cold War arms race. As inefficiencies of the Socialist economy began to arise in the 1960s, however, the Soviet-headed East European bloc, began promoting intensive growth based on more market-oriented distribution of resources and more private ownership. The forced mobilization of resources had stalled overall economic growth, making it difficult for the socialist countries to match the consumer wealth prospects offered by capitalist countries. In an effort to accommodate these rising consumer needs, socialist countries began moving to more market-driven systems that would facilitate trade and integration into the global capital markets.

This sweeping movement was most prevalent in the Soviet Union. An economic reform plan, introduced by Aleksei Kosygin in 1965 introduced the idea of discarding many economic plan indices and adopting the profit rate as a criterion for industrial achievement. This created momentum for Mikail Gorbachev's sweeping reforms in the early 1980s where he combined economic and political reform in Perestroika ("restructuring") and Glasnost ("openness"). The Soviet Union's policy changes initiated radical political and economic changes throughout Eastern Europe, ultimately leading to the collapse of the Soviet Union in 1989 (I thought it collapsed in 1991?) and the end of the Cold War.

#### **FAILURE TO FOLLOW THE SOCIALIST REFORM MOVEMENT AND ECONOMIC DECLINE**

Kim Il-Sung and the rest of the Korean government officials recognized that the era of détente and cooperative East-West arms reduction efforts was rapidly shrinking the market for weapons production. In an effort to diversify North Korea's output, the government took on substantial foreign debt to finance technological advancement throughout the economy. The DPRK was still resistant to foreign direct investment, however. Thus, despite access to foreign capital, they were not getting access to the foreign technology and expertise needed to create new products and processes. As efforts to replicate Western technology and add new industries to their economy continuously failed, North Korea again resorted to arms production.

The North Korean economy's large stakes in an industry that offered few growth prospects became even more insecure after the 1973 Arab-Israeli War and the subsequent rise in interest rates. The combination of rising interest rates and meager returns on foreign capital pushed the DPRK to default on much of its foreign debt. This prompted most developing countries to freeze all capital availability to North Korea, and to impose severe trade sanctions. Consequently, the only trade partners remaining were Russia, China and the other communist countries, making the economy highly dependent on them for food, energy sources, and light industrial products. And as margins from weapons production steadily declined, the DPRK would also rely on its communist allies to offer these imported products with large subsidies, and for extra humanitarian aid necessary to keep the economy running.

#### **POST-COLD WAR ECONOMIC COLLAPSE**

All aid from Russia, however, effectively ended with the Cold War: no longer

would the Soviet Union be North Korea's principal importer of weapons; no longer would it extend capital to fund economic growth; and no longer would the Soviets allow North Korea to trade for its energy. By 1990, Moscow had informed Pyongyang that further oil purchases would have to be made in hard currency. At the time, the Soviet Union was shipping \$1.9bn-worth of oil to North Korea in return for products valued at less the \$0.9bn. This hard currency requirement prompted a 75% decline in oil imports the following year. China, North Korea's principal source of grain, followed Russia's lead in 1991 by also demanding hard currency payment for their products. This had a similar effect, as Kim Il-Sung mandated that all North Koreans only eat 2 meals per day.

In general, the end of the Cold War had staggering negative effects on the North Korean economy. From 1980 to 1989, GDP grew at an average annual rate of 8.1%. From 1990 to 1998, GDP *declined* at an average annual rate of 4.1%, resulting in an overall decline in output of 31%. The two economic sectors most greatly affected were the agriculture and energy sectors, for both were heavily dependent on communist support leading up to the end of the Cold War.

#### **NORTH KOREAN ENERGY SECTOR**

The North Korean economy was always susceptible to fluctuation in energy costs for two principal reasons: a) heavy industry and arms production require tremendous amounts of energy inputs to fuel the production process and, b) the only prevalent energy source within North Korea is coal. During the Cold War, North Korea mitigated this energy price risk by trading for Soviet petroleum at a subsidized rate, and by utilizing Soviet aid to build electrical plants and infrastructure. When the Cold War ended, not only did the DPRK no longer have Soviet capital to build the necessary infrastructure, but the new Russia also required hard currency payments for their oil. North Korea's horrid credit (after defaulting on most of its foreign debt in the 1970s and early 1980s) made it virtually impossible for the government to purchase oil with hard currency that they had previously been trading for at a subsidized rate. Consequently, after the Cold War ended, North Korea experienced a tremendous decline in energy output, importation and overall consumption (per capita energy consumption declined over 30% in the 1990s.)

#### **CURRENT AGRICULTURAL CRISIS**

North Korea's mountainous topography, limited arable land, and unfavorable climate have always made agricultural self-sufficiency virtually impossible. Consequently, the regime relied both on foreign food imports (namely from China) and on political campaigns to reduce consumption. While these methods collectively had little success prior to the end of the Cold War, they were drastically inadequate afterwards. Specifically, the already high 18% malnutrition rate in 1989 seems trivial in comparison to the 34% malnutrition rate currently faced by North Korea. The lack of sufficient energy sources to produce fertilizer has further aggravated the malnutrition problem, as the government has lacked the excess energy necessary to produce fertil-

izer. For instance, the amount of nitrogenous and phosphate fertilizers produced by the DPRK has declined nearly 87% from 797,000 metric tons in 1989 to only 104,000 metric tons in 2000.

### **“THE NUCLEAR CARD”**

With the agricultural, energy, and heavy industrial sectors in turmoil, Kim Il-Sung led the government to reconsider their nuclear policy. While the 1985 Nuclear Non-Proliferation Treaty that North Korea signed with the United States and the then Soviet Union prohibited the DPRK from further investment in nuclear technology, Kim believed that the only viable solution to the economic crisis was to successfully develop nuclear and ballistic missile technology. While there were security reasons for developing a nuclear threat, the primary rationale was to develop a bargaining chip for trade, humanitarian aid, and economic concessions from the United States and the rest of the West. Therefore, in March of 1993, North Korea announced they were withdrawing from the Non-Proliferation Treaty and resuming their nuclear program.

### **“THE AGREED FRAMEWORK”**

The North Korean nuclear issue became a pivotal topic as the Western democracies, led by the United States, had to balance the proliferation problem and the problem of rewarding bad behavior. Yet, in 1994, the Clinton administration was able to broker a settlement. In exchange for freezing and dismantling its nuclear program and disclosing its past nuclear activities, the U.S. promised to a) organize a multilateral effort to provide two light-water energy reactors with about 2,000 megawatts of power-generating capacity by 2003, b) provide 500,000 sand tons of heavy oil annually and negative security assurances, and c) “to move towards full normalization of political and economic relations.” The agreement materialized to an extent in December of 1999, when the U.S., Japan, and South Korea formed the Korean Peninsula Energy Development Organization (KEDO), agreeing to jointly finance the \$4.6 billion cost of the two light-water reactors.

### **KEDO DELAY AND DPRK DECAY**

The agreement was intended to simultaneously solve the deprived nation’s energy problem, to rid the international community of the North Korean nuclear threat, and to foster an improved relationship between Pyongyang and Washington. So far the agreement has done the exact opposite of all its objectives. After commencing the LWR project in 1997, KEDO halted construction of the two facilities in January 2003, after the DPRK again withdrew from the Non-Proliferation Treaty. In addition, KEDO has refused to continue construction until the DPRK abandons its nuclear projects and forfeits its arsenal of biological and chemical weapons. The prospects for a resolution between KEDO and the DPRK seem distant. Meanwhile, the North Korean nuclear and biological weapons program still remains one of the most dan-

gerous threats to international security. Relations between the U.S. and North Korea have eroded as the DPRK's war games have reached unprecedented heights, and the North Korean energy sector and industrial economy is in shambles.

As the DPRK economy continues to decline, the government has looked to underground markets to generate revenue from weapon sales. In 2001 alone, North Korea raised \$580 million from sales of ballistic missiles to rogue nations in the Middle-East, namely Pakistan and Iran. Because these arms sales and the nuclear threat are the primary concern of an international community threatened by state-sponsored terrorism, the dire economic situation in North Korea continues to be neglected. Per capita energy consumption has declined by 44% since 1990, as the coal reserves in North Korea are steadily depleted. Currently, over a third of the total population relies upon foreign humanitarian aid as its principle food source, with this number increasing daily as the North Korean economy becomes less and less able to feed its people.

### **UNCERTAIN FUTURE, RISING INTERNATIONAL CONTRIBUTIONS**

Whether or not the U.S. State Department or any of its counterparts in the Western world will admit, there is tremendous uncertainty in assessing the extent of the North Korean nuclear and biological threat. U.S. intelligence reports estimate that North Korea has the world's third largest stock of biological weapons, and has enough weapons-grade plutonium for two to five nuclear devices. This level of nuclear capability affords North Korea "first strike capability" (ability to launch an initial nuclear attack) but not "second strike capability" (ability to sustain a nuclear counter-attack and launch a second nuclear attack). According to the Nash Equilibrium specific to nuclear deterrence, this leaves the world in a very unstable position, as the DPRK is more prone to use its nuclear capability in a preemptive manner.

Since North Korea announced its nuclear aspirations in 1994, development grant expenditures extended to the DPRK have risen at an exponential rate. Specifically, the \$5,113,000 in assistance grants that North Korea received from UN organizations in 1994 increased to \$246,558,000 in 2001. When North Korea fired ballistic missiles over Japan in 2000, the UN alone increased their development grants by nearly 90% from 2000 to 2001.. The ballistic missile test also prompted the KEDO countries to finally begin constructing the two light-water reactors initially scheduled for 1997. These responses by the United Nations and KEDO countries are indicative of the knee-jerk reaction pervasive throughout the entire international community to extend aid whenever North Korea flexes its nuclear capability.

### **CONCLUSION**

Given North Korea's current economic and agricultural crisis, and with little prospect for internal growth, Kim Jong-Il has very few alternative directions in which to lead his depressed country. The only real assets at the government's disposal are their ballistic missile technology, the reserve of biological weapons, and their budding nuclear threat. The only way to extract value out of these assets is to leverage

them in the international community. Consequently, North Korea must continue holding the world hostage with its nuclear threat in order to ensure a steady flow of food and capital assistance from the United States, European Union, and the World Bank.

September 11<sup>th</sup> opened the lid on acts of international terrorism. Now, more than ever, Western democracies, in particular the United States, are going to unprecedented lengths to suppress threats to homeland security. Perhaps the greatest fear of these nations is a state-sponsored nuclear attack from rogue nations such as North Korea, Pakistan or Iran. While it may seem barbaric to recommend that the DPRK maintain its current path, today's incentive to stop terrorist activity "at all costs" will almost certainly make the West more prone to offer economic assistance to North Korea.

**THE INTERNATIONAL CRIMINAL COURT, INTERNATIONAL CRIMINAL LAW AND STATE  
SOVEREIGNTY IN THE 21<sup>ST</sup> CENTURY**

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**INTRODUCTION**

On July 1<sup>st</sup>, 2002, the International Criminal Court enacted the Rome Statute, 60 days after ten countries<sup>1</sup> deposited their instruments of ratification with the Secretary General of the United Nations. That date marks the culmination of over 50 years of international struggle for human rights and the strengthening of the rule of law against the most severe crimes ever committed by humankind. With the conclusion of the First and Second Assembly of States Parties (ASP), the Court has effectively become a functional institution, with all of its main organs staffed and en route to achieving full operational status. The Second Assembly of States Parties, which convened on September 2003, further demonstrates a breakthrough in the development, codification and enforcement of international law and human rights.

The rise of the ICC is instrumental in assisting the international community in attaining the goals stated in the UN Charter. The Court is a fundamental mechanism for preventing and suppressing threats to peace, advancing the UN mandate to maintain international peace and security, as well as strengthening universal peace, based on the respect for human rights<sup>2</sup>. It is vital to understand how the Court's enforcement of humanitarian agenda do not infringe on the sovereign rights of nation-states. Rather, they represent progress toward a unified world. This vision was first proposed by Presidents Woodrow Wilson and Franklin D. Roosevelt after the catastrophic events of the First and Second World War (WWII), and produced the resolve to prevent such atrocities from ever taking place again. As new security threats arise, particularly international terrorism, an effective ICC may become a valuable weapon for the prosecution and delivery of legal action.

**THE 20<sup>TH</sup> CENTURY AND THE RISE OF HUMAN RIGHTS IN THE INTERNATIONAL REALM**

The indictment massive atrocities perpetrated during individuals' service to national governments was characteristic of the late 20<sup>th</sup> century. This represented the further enabling of international organizations to exercise rights classically associated with states' sovereignty.

The Treaty of Versailles, which ended World War I in 1919, specifically called for the trial of German monarch Kaiser Wilhelm II on the account of starting the war<sup>3</sup>. After the Kaiser escaped to the Netherlands, the victorious powers insisted that of-

fending German officers be tried. The results were the Leipzig trials, in which German courts judged the war criminals. The result was that no Germans received a major punishment and legal critics characterized the proceedings as a sham<sup>4</sup>.

International prosecution of war crimes did not take place until the end of WWII, when military courts established by the Allied powers tried German and Japanese leaders. The trials represented the first time crimes against humanity were used as a basis for indictment<sup>5</sup>.

Based on the results of the Nuremberg (1945-46) and Tokyo (1946-48) trials, the UN General Assembly adopted Resolution 96(I), which denounced genocide as a "crime under international law." This provided for the 1948 adoption of the Convention on the Prevention and Punishment of the Crime of Genocide<sup>6</sup>. In that same resolution, the General Assembly invited the International Law Commission (ILC) to "study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide"<sup>7</sup>. This was the first time states had agreed to surrender a small degree of their sovereignty to an international court, in this instance solely regarding *crimes of genocide*. The establishment of a UN Commission on Human Rights (1946), the adoption of the Universal Declaration of Human Rights (1948) and the four Geneva Conventions (1948) would further advance the international resolve to address grave violations of human rights.

In 1950, after the ILC concluded that such a court was desirable, the General Assembly appointed a 17-member committee to prepare proposals for the establishment of the Court. The lack of a universal definition of *aggression* and the inability to reach consensus caused the General Assembly to postpone the issue's consideration. The geopolitical antagonism of the Cold War era prevented the establishment of an international criminal court. An interest in this proposal occurred once in 1989, whereby the proposed court would preside over the crime of drug trafficking, a request made by Trinidad and Tobago.

## THE POST-COLD WAR PERIOD AND THE UNITED NATIONS REVIVAL

The end of the Cold War allowed for the revival of the United Nations. The UN deployed an increasing number of peacekeeping operations throughout the globe, many of them under the emerging concept of humanitarian intervention. As a result of the United Nations Protection Force (UNPROFOR, 1992-1995) and the revelations of the many horrors in the war in Yugoslavia, the UN Security Council established the first genuine international criminal court: the International Criminal Tribunal for the Former Yugoslavia (ICTY). The ICTY was created by S/RES/827 (1993) with the purpose of:

*"...prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and the date to be determined by the Security Council upon the restoration of peace..."*<sup>8</sup>

In this context, the ICTY was to render justice to the victims, to deter further crimes, and to contribute to the restoration of peace by promoting reconciliation in the

former Yugoslavia<sup>9</sup>.

The first conviction was Dusko Tadic, who was convicted of every count on the ICTY Statute, except genocide<sup>10</sup>. The Court mainly relied on the North Atlantic Treaty Organization for the apprehension and extradition of suspects. As of January 2003, over 100 individuals had been indicted, 42 had been detained, and 14 had been tried. Slobodan Milosevic, former Yugoslav President, was handed over to the Court in 2001, charged with war crimes, crimes against humanity, and genocide. The ICTY has been given a vast array of cases, so much so that its budget has been raised from US\$276,000 in 1993 to an estimated US\$223,169,800 for 2002-03<sup>11</sup>.

Precedent cases have taken effect as a mechanism for dictating legal action against the most severe crimes committed by humankind. Late in 1994, the Security Council established the International Criminal Tribunal for Rwanda (ICTR), in Arusha, Tanzania to prosecute:

*“...persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994...<sup>12</sup>”*

The Court, based on the same model as the ICTY, had indicted over 70 suspects, detained over 60, and conducted nine trials, by January of 2003.<sup>13</sup>. The last modern precedent for the creation of an international criminal court also came out of Africa, but under slightly different circumstances.

The Special Court for Sierra Leone was created in late 2000, to prosecute those responsible for the atrocities that took place in its recent civil war, as well as to help sustain the country's post-conflict reconciliation process. Mandated by S/RES/1315 (2000), the Court was not actually established by the resolution, but by a subsequent agreement between the UN and the Sierra Leonean government. The Court would differ from both the ICTY and the ICTR in several aspects. First, the Court was not established under Chapter VII of the Charter, which undermines its power to supercede national courts, as well as its power to detain an accused party located in a third state. Fortunately this has not been a problem, for most of the suspected perpetrators are already in custody of Sierra Leonean authorities<sup>14</sup>. Second, the Court is not an international body, as it is equally composed of Sierra Leonean and international judges, prosecutors and staff. Third, the Court's jurisdiction goes beyond crimes against humanity and war crimes, with authority over certain crimes under Sierra Leonean law, such as the rape of minors or arson.

The Court's central location helped the Sierra Leonean people follow the proceedings as well as rebuild the legal system of the country. Unfortunately, the funding shortfall for the Special Court not only reduced the tribunal's budget from an original US\$114 million to an approved US\$57 million, but also prevented it from being effectively established<sup>15</sup>. In light of this, the actual agreement between the Sierra Leonean government and the UN did not take place until January 2002, and the Court is not expected to begin trying any indicted individuals until June 2003<sup>16</sup>.



### **THE BENEFITS OF A PERMANENT INTERNATIONAL CRIMINAL COURT**

As the success of the ICTY and ICTR became evident, proposals for a permanent ICC gained momentum. Proponents argued that the UN was not well-suited to manage and finance additional country-specific criminal tribunals<sup>17</sup>. A permanent ICC would also help remedy the deficiencies of the ad hoc tribunals, namely the consistent budget shortfalls and their characteristic temporal and spatial restrictions. Another deficiency of temporary courts is termed as “tribunal fatigue”, defined by the usual delay between the request for the establishment of a tribunal and the date of its actual functioning – a timeframe where evidence can deteriorate, be destroyed, suspects can disappear, and witnesses can be intimidated or disappear<sup>18</sup>.

The ICC would also help strengthen the post-conflict peace-building process in any country by providing for national reconciliation<sup>19</sup>. The establishment of a criminal court, on a permanent or ad hoc basis, provides for the delivery of justice, through conviction of the most severe human rights abusers. This not only reveals the truth behind the most obscure events that burden society, but also strengthens the respect for the rule of law and judicial institutions within that country. For instance, a review of the accomplishments of the ICTR shows that “above all, the Rwanda Tribunal, through its work, has made and continues to make a substantial contribution to the replacement of a culture of impunity by a culture of accountability”<sup>20</sup>. It is also relevant to note that one of the stated objectives of the ICTY was “to contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia”<sup>21</sup>.

Finally, the establishment of the ICC is a deterrent against future war criminals. This concept dates back to the Nuremberg trials, and is also behind the establishment of both the ICTY and the ICTR.

### **THE WORLD CALLS FOR A PERMANENT INTERNATIONAL CRIMINAL COURT**

The success of the ICTY and the ICR had prompted several countries such as Sierra Leone, East Timor and Cambodia to express their desire for additional ad hoc criminal courts. The support for a permanent court in 1989 helped build the consensus to establish an international assembly; by 1992, the General Assembly had already requested the ILC to expedite its work on drafting the statute for the ICC<sup>22</sup>. The Rome Conference was held in the summer of 1998, and was attended by 160 States, 32 observers and 128 Non-Governmental Organizations. The Conference adopted the Rome Statute of the ICC after five weeks of intense negotiations. It also passed a Final Act and several resolutions that laid the groundwork for the Court.

### **THE ROME STATUTE AND THE ESTABLISHMENT OF THE INTERNATIONAL CRIMINAL COURT**

In accordance with Article 126, the Statute of the ICC entered into force on July 2<sup>nd</sup>, 2002, creating the Court as an independent international organization. With its own seat at The Hague, Assembly of States Parties, and budget. Although the actual building will be ready for occupation between 2007 and 2009, the Court is currently housed at “the Arc”, on the outskirts of The Hague.

### *STRUCTURE OF THE COURT*

The Assembly of States Parties (ASP) has the ultimate accountability and management mechanism of the ICC. It is composed of the Treaty-signatory States, each with one vote to represent their equality under international law. Meeting annually it is responsible for the budget as well as making amendments to the statute.<sup>23</sup>

The Court consists of 18 independent judges. They are nominated by state parties and elected by the ASP for nine-year terms. Their selection is based on (a) the representation of the principal legal systems of the world, (b) equitable geographical representation, and (c) a fair gender representation<sup>24</sup>.

According to Article 34 of its Statute, the ICC is composed of four organs: the Presidency, its Chambers, and the Office of the Prosecutor and the Registry. The Presidency, held by Judge Philippe Kirsch of Canada, acts as somewhat of a Secretariat, ensuring the proper administration of the Court and its functions. The Chambers are subdivided into the Appeals Chamber, a Trial Chamber, and a Pre-Trial Chamber. The Office of the Prosecutor, headed by Chief Prosecutor Luis Moreno-Ocampo of Argentina also acts independently. It receives referrals and substantive information on crimes within the jurisdiction of the court, conducting investigations and prosecutions before the Court. The Court's Registry is headed by Registrar, Bruno Cathala of France, who will be the principal administrative officer of the Court. He was elected by a secret ballot of 18 judges for a five-year term, subject to reelection once.

### *CRIMES UNDER THE COURT'S JURISDICTION*

The ICC has jurisdiction over international crimes, committed by individuals independent of official status in their native country<sup>25</sup>. They are committed within the territory of a State Party, or by a national of a State Party. Furthermore, the ICC will only preside if a state is unwilling or incapable of prosecuting a suspected individual. This is determined by the judges, in accordance with provisions contained primarily in Article 17 of the Statute. The ICC has jurisdiction over the following crimes:

- (a) *Genocide* – Various acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group. These may include killing or causing serious harm, precluding births within the group, or deliberately infringing on the group's conditions of life to bring about its destruction<sup>26</sup>;
- (b) *Crimes against Humanity* – Several acts such as murder, deportation, forcible transfer of population, torture, and/or sex crimes, committed as part of a conscientious, widespread, or systematic attack against any civilian population<sup>27</sup>, even if conducted in absence of war<sup>28</sup>;
- (c) *War Crimes* – Grave breaches of the four Geneva Conventions as well as other serious violations of the laws and customs that can be applied to both inter and intra-State conflicts, particularly when committed as part of a plan or policy or large-scale commission of such crimes<sup>29</sup>;
- (d) *Crimes of Aggression* – Although the UN adopted a definition of *aggression*<sup>30</sup>, the ICC still lacks a definition of *aggression* as well as the circumstances in which the Court can exercise its jurisdiction. The Final Act of the Rome Conference included a Resolution (F) that mandated the Prep

Com to establish conditions of *aggression*, but the decision was eventually forwarded to an open-ended Special Working Group established by the First ASP.

Other than the crimes specifically mentioned in the Rome Statute, two other categories of crimes have been seriously considered for further inclusion. *Drug Trafficking*, was dropped from the Rome Statute after delegates realized that its magnitude would severely overwhelm the Court's limited resources and jeopardize its very existence<sup>31</sup>. The second crime, *terrorism*, was also not included because it lacked an international definition. Resolution (E) of the Rome Conference recommended that a Review Conference consider both crimes' inclusion within the jurisdiction of the Court. The Court may exercise jurisdiction if the case is referred by a State Party or the UN Security Council *The Assembly of States Parties I and II*

ASP I convened in September of 2002, to adopt legal instruments that would allow the Court to begin operating. Included in the agenda were the *Rules of Procedure and Evidence, Elements of Crime, Financial Rules and Regulations, Rules of Procedure for the ASP*, and the procedure for the nomination and election process for judges and Prosecutor,<sup>32</sup>. Finally, a budget of some 30,893,500 euros was adopted for the Court's first financial period. Two resumed sessions of the ASP-I were held, the first of which elected 18 judges out of 43 nominations forwarded by States Parties. Subsequently, the judges elected Mr. Philippe Kirsch as the President of the ICC. The Second Resumed Session met in April and elected the Chief Prosecutor and Registrar. The Second Session of the ASP convened from 8 to 12 September 2003, and carried the Court's agenda forward, electing a Committee on Budget and Finance, the Board of Directors of the Victims Trust Fund, as well as adopting several other institutional procedures that paved the way for the full functioning of the Court<sup>33</sup>.

### **THE ICC, STATE SOVEREIGNTY AND SECURITY COUNCIL RESOLUTION 1422 (2002)**

It has been eloquently argued that the establishment of the ICC will in fact severely hinder the international community's ability to punish and deter future acts of genocide, war crimes and other crimes against humanity. Particular amongst these claims is the one that the Court's jurisdiction will become highly susceptible to politicized application, particularly in light of a Prosecutor that arguably lacks an efficient system of checks and balances<sup>34</sup> and will eventually trample, rather than protect human rights<sup>35</sup>. It was this vision that largely drove former President William Clinton to indicate that despite signing the Rome Statute on 31 December 2000, the United States did not intend to ratify the Treaty in its present form<sup>36</sup>. Further yet, on 6 May 2002, the George Bush Administration went so far as to nullify its signature on the Statute, by sending a letter to the Secretary General of the UN communicating that the United States did not recognize any obligations arising from the Dec. 2000 signature<sup>37</sup>.

The most radical critics of the ICC argue that the Court is an attack against the sovereignty of every Nation-State<sup>38</sup>, a principle enshrined in Article 2.7 of the UN Charter that has been one of the foundations to international relations since the peace Treaty of Westphalia, of 24 October 1648<sup>39</sup>. This view widely argues that the Court is another instrument of supranational coercion of national governments, the most recent

out of a series that would include the European Court of Human Rights, the Inter-American Court of Human Rights, as well as several disarmament, arms control and regulation agreements. At the Rome Conference, only seven States voted “No” to the adoption of the Statute and the Final Act, in an unrecorded vote<sup>40</sup>. However, three countries did state their reasons for voting against the Statute. First, the People’s Republic of China believed that the checks and balances on the Prosecutor’s initiative to start a case were not sufficient, as well as that the Statute should have been adopted by consensus rather than a vote. Second, Israel failed to understand why the action of transferring populations into an occupied territory was included in the list of war crimes. The United States opposition to the Rome Statute related mainly to the Court’s jurisdiction over non-State parties as well as the need for the Statute to recognize the primacy of the UN Security Council in determining the event of an act of aggression<sup>41</sup>. The US position has consistently revolved around the following points<sup>42</sup>:

- (a) The ICC has the potential to investigate and prosecute US citizens without the consent of the American government, despite the US non-adherence to the Rome Statute;
- (b) The Prosecutor has too much power and not enough accountability;
- (c) Fear that American leaders may be one day tried for *crimes of aggression* (for this purpose generally defined as the unlawful – according to the UN charter – use of force by one State against another State);
- (d) The Court represents an erosion of American sovereignty;
- (e) Fear that the Court will become an instrument of politically motivated action against US leaders and soldiers;
- (f) The US supports, primarily, trials conducted in the country where the crimes were committed; and
- (g) The Rome Statute violates provisions under American Constitution, particularly regarding the due process of law.

These concerns led the US to openly confront the international community by vetoing a customary UN Security Council resolution that extended the mandate of the UN Mission in Bosnia and Herzegovina (UNMIBH), on 30 June 2002, on the grounds that the US was incapable of supporting the renewal of any UN Peacekeeping operations until peacekeepers on the ground were granted blank immunity from arrest and prosecution by the ICC<sup>43</sup>. Following the impasse, the Security Council convened a meeting open to all UN Members on 10 July 2002, on the Agenda topic “The situation in Bosnia and Herzegovina”. During the meeting, several Member States spoke united against the US stand, including Denmark (speaking on behalf of the European Union), Australia (on the behalf of the Like-Minded Group) and South Africa (speaking for the Non Aligned Movement). The widespread opposition to the US proposal was based on the fact that several Members considered that such a resolution would go beyond the mandate of the Security Council, which did not include the interpretation of international agreements. Furthermore, it was widely believed that granting immunity to a class of soldiers – peacekeepers – was in severe contradiction with Article 27

of the Rome Statute, which deems official status irrelevant on the indictment of suspects of serious crimes.

A carefully worded compromise, S/RES/1422, was adopted on 12 July 2002, prohibiting the ICC from prosecuting any peacekeepers for the renewable period of twelve months. This followed a provision under Article 16 of the Rome Statute, which empowers the UN Security Council to defer any investigation or prosecution for that time period. Foreseeing that an additional renewal of the resolution in 2003 is very unlikely, the United States has engaged itself in an arduous process of establishing bilateral agreements with every State Party to the ICC, prohibiting these countries to extradite a US national to the ICC. These agreements are arguably allowed by a provision under Article 98 of the Rome Statute, although a consensus on the validity of these agreements in the manner that the US seeks them remains uncertain<sup>44</sup>. By December 2003, 66 countries had signed such agreements with the US, 32 States Parties to the Rome Statute<sup>45</sup>.

#### **THE ICC'S GUARANTEES AGAINST UNITED STATES CONCERNS AND OTHER ALLEGATIONS**

The ICC has an extensive array of provisions that guarantees not only the due process of law granted to all accused, but also several mechanisms that prevent its potential abuse for politically motivated reasons. First and foremost, regarding the possibility of the prosecution of a national of a non-State Party overseas (for instance an American), it is imperative to note that under current international law, if an individual of any given nationality commits a crime on a State's territory, that individual can be prosecuted by that State, without the consent of his or her respective government. The ICC jurisdiction is solely an extension of this principle<sup>46</sup>. It is also imperative to note that the ICC can only exercise its jurisdiction *when a national court is unable or unwilling to genuinely do so itself*, as mentioned earlier. Therefore, the claim that the creation of the Court results in the complete erosion of national sovereignty is invalid, for the resort of action is left primarily under national jurisdiction. Even if the Prosecutor of the ICC did initiate an investigation, its validity has to be approved by the Pre-Trial Chamber before continued. And even before continuing, the Prosecutor is obliged to inform the relevant governments so that they may decide whether to take action, which would in fact stop the proceedings at the ICC. In addition, any of the judges, the Prosecutor or the accused can ask the judge or the Prosecutor to be disqualified if there are doubts of his or her impartiality. Moreover, provided any judges or Prosecutor have acted in bad faith, the ASP can remove them from their position. Ultimately, the UN Security Council can (as it has already under S/RES/1422) defer any investigation or prosecution it deems a threat international peace and security. In regard of the States Parties' obligations to furnish information to the Court, a State reserves for itself the right to withhold any information that it deems vital to national security, and even its choice to cooperate with the Court is derived from the exercise of its sovereign right to ratify/accede to the Rome Statute.

If acceding to the Rome Statute now, the US as well as any other country would have the option to eventually opt-out of an amendment relating to *crimes of aggression*, if it went against its national interests. In regard of the unconstitutionality

of the ICC in relation to US laws, the Rome Statute contains due process taken primarily from the US Constitution<sup>47</sup>, except for the right to a jury trial. This exception was successfully agreed upon during the negotiations of the Statute<sup>48</sup>. Ultimately, any State Party that decided the Court has lost its legitimacy can withdraw from the Rome Statute, as provided for in Article 127.

Finally, it is imperative to note that the Court not only addresses the rights of the accused, but also has several provisions relating to the rights of victims, including the establishment of a Trust Fund for the benefit of victims and their families, as well as a Victim and Witness Unit, under the Registry, that will provide these people with counseling and protection.

### **CONCLUSION: THE FUTURE OF THE ICC**

The International Criminal Court has been deemed one of the most significant accomplishments of the United Nations<sup>49</sup>. Its establishment represents a milestone on the evolution of the international community, the Nation-State and its relations with the world's peoples. As noted by Secretary General Kofi Annan in his address to the First Assembly of States Parties, the ICC represents the conclusion of a process that started in 1948, with the Universal Declaration of Human Rights, signaling a new era in the international struggle for human rights. The Secretary General also noted that Court cannot and will not become the instrument of political witch hunting. For that purpose the Rome Statute provides for an extensive array of provisions that guarantee the Court's responsibility, impartiality and accountability, in addition to the protection of the accused and the victim, based on the highest international standards of human rights. The ICC represents yet another step in which Nation-States surrender an acceptable degree of sovereignty towards the benefit of the international community as a whole. If put into a historical perspective, this concession is significantly smaller in size and precedence than for instance, when States at the 1945 San Francisco Conference surrendered their sovereign rights to the UN Security Council under Chapter VII of the UN Charter<sup>50</sup>. The determination that the ICC jurisdiction must be expanded to include additional crimes accounts for the international resolve that the Court will in fact become the catalyst for an international regime of justice and accountability against the perpetrators of crimes of genocide, war crimes, crimes against humanity, and potentially terrorist activities, international drug trafficking or even the unreserved and indiscriminate abuse of the natural environment<sup>51</sup>.

The increasing number of States Parties to the Rome Statute guarantees that the Court will unyieldingly serve its purposes in punishing and preventing the perpetration of the most serious crimes that violate basic standards of human rights and the norms of civilized society, ultimately advancing the purposes of the United Nations itself, in maintaining international peace and security, strengthening universal peace as well as international cooperation in solving humanitarian problems, with full-fledged respect for human rights and fundamental freedoms.

## ENDNOTES

<sup>1</sup> Bosnia and Herzegovina, Bulgaria, Cambodia, the Democratic Republic of the Congo, Ireland, Jordan, Mongolia, Niger, Romania, and Slovakia.

<sup>2</sup> Purposes of the United Nations, as stated in Article 1 of the United Nations Charter.

<sup>3</sup> *The Versailles Treaty*, Article 227. <<http://history.acusd.edu/gen/text/versaillestreaty/all440.html>>

<sup>4</sup> Becker, Douglas J. *War Crimes Tribunals*, in John A Moore and Jerry Pubantz. Encyclopedia of the United Nations. New York: Facts on File Inc, 2002. p370.

<sup>5</sup> *Anonymous*, *International Law*, in Moore and Pubantz. Encyclopedia of the United Nations. p178.

<sup>6</sup> A/RES/96 (I), of 11 December 1946.

<sup>7</sup> A/RES/260 A (III), of 9 December 1948.

<sup>8</sup> S/RES/780 (1992)

<sup>9</sup> *ICTY at Glance*, ICTY Official Website. <[www.un.org/icty/glance/index.htm](http://www.un.org/icty/glance/index.htm)>

<sup>10</sup> Becker, *International Criminal Tribunal for the Former Yugoslavia (ICTY)*, in Moore and Pubantz. Encyclopedia of the United Nations. p171.

<sup>11</sup> *Ibid.*

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<sup>15</sup> Reuters. *UN Approves War crimes Court for Sierra Leone*. January 2002. <[www.globalpolicy.org/intljustice/tribunals/2002/0401sl.htm](http://www.globalpolicy.org/intljustice/tribunals/2002/0401sl.htm)>

<sup>16</sup> Fofana, Lansana. *War Tribunal to Start Operation Soon*, found at Inter Press Service Agency. <[www.ipsnews.net/africa/Focus/conflict\\_prevention/note\\_17.shtml](http://www.ipsnews.net/africa/Focus/conflict_prevention/note_17.shtml)>

<sup>17</sup> UNA-USA, *International Criminal Court Overview*

<sup>18</sup> *Rome Statute of the International Criminal Court: Overview*. <[www.un.org/law/icc/general/overview.htm](http://www.un.org/law/icc/general/overview.htm)>

<sup>19</sup> Boutros Boutros-Ghali. *Supplement to an Agenda for Peace*, 1995. Paragraph 13.

<sup>20</sup> *Achievement of the ICTR*.

<sup>21</sup> *ICTY at Glance*.

<sup>22</sup> A/RES/47/33, of 25 November 1992.

<sup>23</sup> *Rome Statute of the International Criminal Court*, Article 112 <[www.un.org/law/icc/statute/rome.htm](http://www.un.org/law/icc/statute/rome.htm)>

<sup>24</sup> *Ibid.* Article 36.8(a)

<sup>25</sup> Unlike the International Court of Justice, that settles disputes between countries, the ICC has jurisdiction over crimes committed by individuals, despite official status, such as Head of State, General or any other office that may grant immunity to prosecution under national law.

<sup>26</sup> *Rome Statute of the International Criminal Court*. Article 6

<sup>27</sup> *Ibid.* Article 7. This definition of crimes against humanity stems mainly from the *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*, adopted by the ILC in 1950.

<sup>28</sup> Wedgwood, Ruth. *Fiddling in Rome*. Foreign Affairs Vol.77 No.6 November/December 1998. p22.

The concession made to Stalin during the Nuremberg Trials - that crimes against humanity were prosecuted only as a result of war – were reversed under the ICC, closing

a loophole that prevented Soviet leaders from criminal responsibility for the events of Katyn Forest and the Gulag..

<sup>29</sup> *Rome Statute of the International Criminal Court*. Article 8

<sup>30</sup> A/RES/3314 (XXIX), adopted without a vote in 1974.

<sup>31</sup> *Setting the Record Straight: Facts about the UN – The ICC*. <[www.un.org/News/facts/iccfact.htm](http://www.un.org/News/facts/iccfact.htm)>

<sup>32</sup> For these and more instruments, resolutions and decisions adopted by ASP I, see the *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court in its First Session (ICC-ASP/1/3)*. <[www.un.org/law/icc/asp/aspfra.htm](http://www.un.org/law/icc/asp/aspfra.htm)>

<sup>33</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court in its Second Session (ICC-ASP/2/10)*. <[www.icc-cpi.int/library/basicdocuments/ICCASP2\\_EN.pdf](http://www.icc-cpi.int/library/basicdocuments/ICCASP2_EN.pdf)>

<sup>34</sup> Kissinger, Henry A. *The Pitfalls of Universal Jurisdiction*. *Foreign Affairs* Vol.80 No.4 July/August 2001. p94

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<sup>37</sup> *UNA-USA: Frequently Asked Questions about the ICC*. <[www.unausa.org/programs/qaicc.asp](http://www.unausa.org/programs/qaicc.asp)>

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<sup>39</sup> Ziring, Lawrence and Robert Riggs and Jack Plano. *The United Nations: International Organization and World Politics*. Third Edition. Orlando: Harcourt Brace & Company, 2000. p5

<sup>40</sup> Wedgwood, p20. The “no” votes consisted of China, Israel, the US, Libya, Iraq, Yemen and Qatar.

<sup>41</sup> These explanations of the votes at the Rome Conference were included in *Rome Statute of the International Criminal Court: Some Questions and Answers*. <[www.un.org/law/icc/statute/iccq&a.htm](http://www.un.org/law/icc/statute/iccq&a.htm)>

<sup>42</sup> *Frequently Asked Questions about the ICC*

<sup>43</sup> The US veto as well as the impasse around the adoption of S/RES/1422 (2002) is described in *UNA-USA: ICC and the UN – Peacekeeping and the ICC*. <[www.unausa.org/issues/icc/un.asp](http://www.unausa.org/issues/icc/un.asp)>

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## U.S. RATIFICATION OF THE INTERNATIONAL CRIMINAL COURT

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### **The United States should ratify the ICC in order to strengthen the court, dispense global criminal justice, and prompt legal reforms in nations worldwide.**

“Justice for yesterday’s crimes supplies the legal foundation needed to deter tomorrow’s atrocities. Without justice, there is no peace.”<sup>1</sup> In today’s world, justice is essential in order to battle serious abuse and atrocities committed by those who do not respect human rights. Unfortunately, as the destruction of human life continues throughout the world, a permanent international system has not been established capable of punishing and deterring those who commit these atrocities. However, considerable advances toward the creation of an international system have been made, especially with the July 1, 2002 ratification of the Rome Statute of the International Criminal Court (ICC). The Statute is the first permanent global international court with the authority to prosecute individuals for “the most serious crimes” of concern to the international community.<sup>2</sup> Thus far, the United States has not ratified the ICC for a number of reasons. This paper will analyze four of these reasons specifically, and propose that the creation of the ICC does reflect U.S. values. The United States should ratify the International Criminal Court in order to strengthen the court, dispense global criminal justice, and prompt legal reforms in nations worldwide.

The United States advanced the idea of a permanent international court in 1994, and has since been deeply engaged in promoting this establishment. The U.S. has been involved in all of the discussions, and has desired a structure for the International Criminal Court that would gain the support of not only the United States government, but of many other countries around the world as well. Both President Clinton and Ambassador to the United Nations and Secretary of State Albright, have committed themselves to the formation of the ICC by the end of the century.<sup>3</sup> The treaty was open to signature until December 31, 2000, after which states could only join through a formal step of ratification. After countless negotiations, the United States could not come to an agreement about a number of factors in the document and felt that it still contained significant flaws. President Clinton did sign the Statute on the last possible day, which he believed afforded the U.S. more time to negotiate the differences within the document. In signing, Clinton declared: “The United States has a long history of commitment to the principle of accountability, from our involvement in the Nuremberg tribunals that brought Nazi war criminals to justice to our leadership in the effort to

establish the International Criminal Tribunals for the former Yugoslavia and Rwanda. Our action today sustains that tradition of moral leadership.” He is also noted in saying: “I believe that a properly constituted and structured International Criminal Court would make a profound contribution in deterring egregious human rights abuses worldwide, and that signature increases the chances for productive discussions with other governments to advance these goals in the months and years ahead.”<sup>4</sup>

In the first two years of George W. Bush’s administration, the United States had still not ratified the treaty. The United States notified the United Nations in May of 2002 that it was opposed to the Statute and renounced any obligations to adhere to it. President Bush informed the United Nations: “The United States cooperates with many other nations to keep the peace, but we will not submit American troops to prosecutors and judges whose jurisdiction we do not accept. Every person who serves under the American flag will answer to his or her own superiors and to military law, not to the rulings of an unaccountable International Criminal Court.”<sup>5</sup> In opposing the ICC, the United States voted along with Iraq, Libya, and China, all notorious for indifference to honoring human rights law.<sup>6</sup> The U.S.’s unwillingness to ratify the Court is based upon other fears and concerns regarding American sovereignty. The three principles around which the Rome Statute was based are:

- Complimentarity-upholding the primacy of national courts over ICC.
- Confining itself to dealing with more serious crimes against international community as a whole (specifically, genocide, crimes against humanity, war crimes, and aggression).
- Remaining within the realm of customary international law. That is, any provision in the Statute, which conflicts with or is inconsistent with general international law, shall be subordinate to it except in case of Article 53 of the Vienna Convention on the Laws of Treaties, 1969.<sup>7</sup>

These principles are not part of America’s chief concerns, and are actually considered satisfactory pillars for the foundation of the Court. The first of the U.S. government’s concerns is the fear that the Court might limit the use of American military power. This objection to the ICC is that it might subject American soldiers (including peace-keeping forces) to criminal prosecution for minor infractions while on patrol in foreign nations.<sup>8</sup> In addition to that, according to Robert Johansen, having a court ready to investigate U.S. officials for war crimes or crimes against humanity might inhibit officials from sending forces into combat and using aerial bombardment that might kill many civilians.<sup>9</sup> Yet, it should be kept in mind that the international laws governing military conduct are unchanged by the establishment of the Court. The U.S. should have nothing to fear from the ICC so long as its military actions are legal. While some also claim that the ICC is unconstitutional, in actuality the Court provides almost all of the same due process protections as the U.S. Constitution does. If U.S. soldiers were to be tried in the International Criminal Court, they would have more rights there than if they were subject to trial in other foreign justice systems, many of which would not provide for a jury trial or any other due process protections. Furthermore, the United States has signed a number of extradition treaties in the past that have allowed for Americans to be tried in foreign courts without juries. Even in the United States, military personnel are not always guaranteed a trial by jury under the Courts-Martial

system.<sup>10</sup>

The United States even went as far as to pass a bill called the American Service members Protection Act which seeks to achieve what the U.S. could not get through negotiations: exemption for Americans from the International Criminal Court for genocide, crimes against humanity, and war crimes. Senator Jesse Helms declared that any treaty for an international court that could prosecute U.S. citizens would be “dead on arrival.”<sup>11</sup> It should also be noted that this act would bar the U.S. from cooperating with the ICC in any way, even if a fugitive accused of genocide was found in the United States, we would not be able to turn him over to the ICC. This bill would protect future criminals more than it would protect American servicemen. The U.S. administration should also bear in mind that the International Criminal Court is a “Court of Democracies” and those members of the Assembly value democracy and human rights just as the U.S. does. The Court will only have jurisdiction over the kind of leaders who plan to commit the worst atrocities, not over military personnel who have made mistakes during combat missions. Even if U.S. peacekeepers were to commit such crimes, they would be protected under a Status of Forces Agreement (SOFA), a bilateral agreement which is always signed before a peacekeeping mission by the host country and contributing country which ensures that the U.S. always obtains jurisdiction over its nationals.<sup>12</sup>

The second major concern keeping the U.S. from ratifying the treaty is that the Court may be used as a political instrument to undermine U.S. leaders and servicemen. The United States sees itself as a target for political manipulation because of its status as a superpower and for its commitments around the world. Billy Buckner mentions four safeguards against politically motivated prosecutors and judges in his Strategy Research Project. The first is that prosecutors who have been found to have committed serious misconduct or breach of duties can be subjected to disciplinary measures or even removed from office. The second safeguard is the right of the state to initiate its own investigation under the “complementarity” principle, which ensures that the ICC only acts when a state is unable or unwilling to conduct an investigation itself. Third, under Article 16, the United Nations Deferral Option, the UN Security Council has the right to step in at any time if it believes the prosecutor’s actions are malicious or corrupt in any way which will give the Security Council a veto over the court. Buckner’s fourth mentioned safeguard is the obligation of the ICC to honor all bilateral and multilateral agreements and treaties between states as described in the Statute.<sup>13</sup> To further explain the complementarity principle, it is basically an assurance that no American would be tried in front of the ICC unless there was an “inconceivable breakdown of the justice system within this country.”<sup>14</sup> The Rome Treaty requires that the Court defer to domestic investigations and courts if a state has a functioning legal system. Therefore the U.S., even as a non-party member at this time, would be able to take over all investigations of U.S. nationals and remove it from the Court’s jurisdiction.

Any attempts to use the Court for political reasons would undoubtedly fail for an additional number of reasons. Again, the countries who are parties to the ICC are predominantly our EU and NATO allies who will uphold the rule of law. It is

extremely unlikely that any of these countries would use the Court for political motivations against the U.S. Secondly, even if countries did join the Court for political reasons, they would not be able to do so because each state has only one vote in the Assembly of State Parties. Almost every Assembly decision requires a majority vote. Lastly, the treaty's regional representation requirements ensure that all states are removed from political pressures from other states in their region.<sup>15</sup>

The next key American opposition to the International Criminal Court is the checks and balances argument. The argument stems from the fact that the Court does not have the legislative or executive power to check its power. The United States also claims that the Court's prosecutor has too much power to initiate investigations because he or she can do so without a Security Council decision. But if the treaty had stated that prosecutors could only act with Security Council referral, then chances for politicizing the court would have increased greatly. The veto power may have been overused and taken away from the authority of the Court. Additionally, if a prosecutor wants to pursue a case, he or she cannot begin a formal investigation without approval from a Pre-Trial Chamber, found in Article 15 of the Rome Statute. If the Pre-Trial Chamber concludes that there is reasonable basis to begin a trial, it will authorize the commencement of the investigation.<sup>16</sup> Moreover, no two judges can be nationals from the same state. Also, if a trial chamber acted inappropriately, an appeals chamber made up of five judges from five different countries could overturn its decision. Along with all of these safeguards, the Assembly as a whole manages the administration of the Court and can remove a prosecutor if need be. The Assembly also controls the budget of the Court and decides what to do if a part does not adhere to Court regulations.

Under Secretary Marc Grossman asserts that the prosecutor has the ability to try persons for the not yet defined crime of "aggression." This is inaccurate because until the term aggression is discussed and defined by two-thirds of the Assembly of States Parties, no person will be tried for this crime. The International Criminal Court Statute also says that any definitions must be consistent with those in the UN Charter. For now, negotiations of the definition are being carried out at ongoing Preparatory Commission meetings.

The last reason to be discussed in this paper for the United States' reluctance to ratify the ICC is the issue of non-parties. The U.S. claims that the Court will have unjustified jurisdiction over U.S. citizens even as a non-party to the treaty. The argument further insists that U.S. citizens could be accused of a crime and subjected to a trial even though the U.S. has not ratified the Statute. Senator Jesse Helms often voices this concern. However, this assertion is a mischaracterization of the Court in that there have been no new laws regarding human conduct in the Statute; the existing international laws will simply be better enforced. The crimes contained within the Statute are, for the most part, crimes of universal jurisdiction, which means that if a crime were so heinous, any nation in the world could exercise jurisdiction over a suspect without the permission of the individual's own national government under the Universality Principle.<sup>17</sup>

The International Criminal Court does not introduce any new obligations to non-parties that they do not already have the duty to fulfill. For instance, all nations

are already obligated to prosecute or extradite anyone who commits atrocious crimes against humanity. The United States already participates in a number of treaties that could feasibly prosecute U.S. nationals if they were accused of a crime in a foreign jurisdiction such as the Geneva conventions on war crimes. The ICC would, in fact, provide greater protection for U.S. nationals by ensuring due process and other rights of defense that other foreign jurisdictions may not necessarily provide. Additionally, the U.S. claim that no person ought to be tried without the approval of his or her national country defeats the purpose of an international court, or international law for that matter. If no person could be tried without the consent of his or her government, then the most terrible of all criminals could be kept out of court. It is not likely that the government of Saddam Hussein would have allowed for him to be put to trial, for example.

From the United States' point of view, by prosecuting citizens of non-party states, the Court violates the Vienna Convention of the Law of Treaties which requires that only a state that has ratified a treaty can be bound to its terms.<sup>18</sup> The U.S. argues that if nations are held to the terms of a treaty they never signed, then the international system of treaties will be undermined. Essentially, the United States considers the Court, and specifically the issue of non-party states, as a challenge to U.S. sovereignty. The U.S. even tried to challenge this issue by establishing a mandatory role for the UN Security Council to decide when the Court can pursue a trial, but the member states refused to accept such a proposal. The U.S. vehemently argues that non-party jurisdiction of the Court infringes upon the UN Charter. The Statute does not directly bind non-state members to the treaty; however, if a crime occurs within a member-state, then a non-state party citizen can be tried. This is based upon the concept that all states will cooperate with one another and would want individuals who commit crimes to be held responsible. It also relates back to the universal jurisdiction over crimes like genocide under the principle of customary international law.

The American arguments against the ratification of the International Criminal Court may seem valid on the surface, but after a careful evaluation of each case against the treaty, it has been found that the U.S. arguments are invalid and miscalculated. The United States should ratify the ICC for multiple reasons. First, the U.S. has used its power to formulate successful international tribunals in the past that have helped many people including Americans. Next, the ICC guarantees protections and safeguards similar to those guaranteed by the American Bill of Rights. Once again, if the U.S. does not ratify the Court, then offenders of international law would be held under the jurisdiction of military courts-martial or foreign courts where the offense occurred. Lastly, American military service-men will be protected by SOFAs where the President of the United States would be addressed by the Court for execution of a criminal complaint.<sup>19</sup>

According to a 1999 Roper Poll, 66 percent of United States citizens support ratification even after hearing U.S. arguments against it, and more than 1000 associations have joined the Coalition for the International Criminal Court (NGO), including the Red Cross, American Bar Association, Amnesty International, Human Rights Watch, Lawyers Committee for Human Rights, and the International Commission of Jurists.<sup>20</sup> Moreover, the Court is cost effective because it avoids the call for time,

energy, and money to establish less effective ad hoc tribunals. The Court will not only serve American interests but will deter a number of atrocities and possibly a few genocides as well.

The U.S. Ambassador to the 1998 Rome Conference declared to the U.S.:

“[A]s the most powerful nation committed to the rule of law, we have a responsibility to confront assaults on humankind. One response mechanism is accountability, namely to help bring the perpetrators of genocide, crimes against humanity, and war crimes to justice. If we allow them to act with impunity, then we will only be inviting a perpetuation of these crimes far into the next millennium. Our legacy must demonstrate an unyielding commitment to the pursuit of justice.”<sup>21</sup>

The Ambassador's commentary should be taken very seriously because the American resistance from the International Criminal Court may have detrimental long-term effects on multilateral treaty making and international relations. Likewise, American commitment to its allies and to international justice is being questioned and is drawing much criticism from around the world. As a long time world leader in promoting human rights and the rule of law, the United States needs to take this opportunity to join the ICC and promote human rights and global interests. The U.S. can have a positive influence on the Court as it already has made extensive contributions in shaping its current structure. By participating in the Court, the U.S. would also be able to enjoy the benefits that it provides, including the provision where parties can choose not to accept the Court's jurisdiction on certain war crimes for seven years so they can see how the Court handles these cases and if they are not satisfied, they can withdraw from the Court.

Ever since the end of World War I, holding individuals accountable for human rights abuses has been on the international political agenda. Since the First World War, five international investigative commissions and four ad hoc tribunals have been created to try individuals for violating human rights.<sup>22</sup> Nonetheless, the frequent grievance with these trials has been that they have been held by the victor, otherwise known as “Victor's Justice” where the winners try the losers such as with the Nuremberg and Tokyo trials. The ICC has been established in such a way that there cannot be any practice of the victor influencing the process of the trial after the conflict.

Unfortunately, in the years following both the World Wars, the world has sustained atrocity after atrocity without having established a permanent and international system to prevent and punish such crimes. Last year alone, according to the Genocide Watch, there were over 120,000 documented deaths as a result of genocide and political or religious killings worldwide.<sup>23</sup> In addition to this, in May of 2000, the United States was voted off of the United Nations Human Rights Commission. This action has reflected the world's frustration and disappointment in the United States' ever more unilateralist approaches to international institutions.<sup>24</sup> It is not too late for the United States to resurrect itself as the world's leader in human rights protection and commitment to international law and justice. For the best interest of the interna-



tional community, the U.S. needs to renew its commitment to the International Criminal Court and provide it with the strength, dedication, and leadership, in order to deter acts of genocide, war crimes, and all other horrific crimes against humanity. With this being said, the United States should ratify and play an active role in the International Criminal Court.

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## INTERNAL MIGRATION AND SUBSIDIES IN NORWAY

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### INTRODUCTION

The Norwegian government provides high subsidies to many of its primary industries, in particular to fishing and agriculture. In many communities, this form of government support is believed to have become necessary in preventing a mass exodus to the cities. Without government subsidies, it is assumed that people will move out of their small communities and into the larger towns and cities. These towns and cities are likely to provide, among other things, a less strenuous life and a higher and more stable income. This paper sets out to analyze the effects on urbanization that would have been seen had the Norwegian government removed its subsidies.

If Norway were to join the European Union (EU), it would have to cut its subsidies. The EU considers government subsidies an unfair competitive advantage that should be removed. In my thesis, I will simulate how the demographics in Norway would change if Norway were to join the European Union and have to cut its subsidies to the primary industries. In contrast to Norwegian popular belief, I will demonstrate that subsidies do not play a significant role for most rural communities, and that if they were taken away, Norway would not experience the substantial surge in urbanization that many fear.

In part one, I will present descriptive statistics on the spread and centralization of the population in Norway. This will provide a good general idea of where people live and to what extent the population is already urbanized. I will continue by examining how the demography has changed over the past seventeen years. I will demonstrate that the population in Norway is not only abnormally centralized in its larger cities and towns, but that there is also an ongoing trend indicating an increasing movement of people into the more urban areas, even in the presence of government subsidies.

In part two, I will study the primary explanations for migration in Norway. This part will be composed of a brief literature review followed by a regression analysis.

Part three will be devoted to policy analysis. I will construct an equilibrium model allowing me to measure the effects that Norway joining the European Union and cutting its government subsidies would have on urbanization. I will demonstrate that taking away subsidies will have no significant effect on urbanization, and therefore that it should not be factored into the decision of whether or not to enter the European Union. The final results of this model will prove very interesting for both the

Norwegian government and its people, especially because entrance into the European Union continues to be one of the most controversial issues in Norway.

### POPULATION DEMOGRAPHY

The population in Norway is centralized in its urban areas. The three largest municipalities (out of 434) contain 20% of the total population per square kilometer. The six largest municipalities contain 30% of Norway's population per square kilometer. To compare, the six largest municipalities in Great Britain, Sweden and Denmark contain 13%, 22%, and 24% of their respective total populations which indicates statistically that Norway is more centralized in its largest urban areas than its neighboring countries.

I will now take a closer look at how the demography in Norway has developed from 1986 to 2002. To illustrate that migration has indeed occurred across municipalities in Norway, I have calculated the percentage change in population from 1986 to 2002 and plotted it on a map of Norway. The map illustrates that Norway has seen large population declines along the interior of the country. These regions are rural and fairly mountainous which explains the outpour of people; the rugged landscape makes for strenuous and difficult lives. Lives in the urban areas are likely more comfortable, especially with regards to a more stable income and a more consumer oriented economy where the availability of goods and services are better. As one moves further up toward the north of Norway, one also notes a declining population in most municipalities. The economies of the few that are increasing are commonly comprised of fishing and oil industries, which are naturally attractive because they generate employment and military facilities.

The areas that have had the most growth in population are typically located in the south of Norway. They are characterized by a warmer climate and a lifestyle that is generally a lot less strenuous than up north. These areas also contain the largest cities and populations densities. Oslo, the capital and by far the largest city in Norway, along with its neighboring municipalities (located in the south east), have all seen an especially noteworthy surge in population, ranging from +15 to almost +50 percent. Also, municipalities in the south and south west of Norway have grown markedly in population. Here too, the municipalities contain larger populations densities and are characterized by a warmer and a more favorable climate.

To confirm the migration trend in Norway into its urban areas, I examine how the gini coefficient has changed from 1986 to 2002. A positive change would suggest that the population is becoming more urbanized, while a negative change would indicate decentralization. From 1986 to 2002, the gini coefficient increases by 2.7%. This suggests that while Norway's population is already centralized in its largest urban areas, there is a clear trend toward more centralization. Also, because this trend has increased at a constant pace every year, a similar stable increase in the coming years is likely.

To further explore the cause of this increasing urbanization, I have split the population into eight age groups; this will allow us to observe if the increased urbanization has come through a movement of all age groups or instead from some age

groups in particular. Most interesting is children (age 0-12 years). My calculations suggest that while children are historically among the least centralized (most likely due to higher fertility rates in rural areas), they are also the ones who account for the largest recent move into the centralized areas. I assume that the fertility rate does not change. The gini coefficient has increased by 3.5% from 1986 to 2002. Since children cannot move by themselves, this increased move should be accompanied by a similar increase by their parents. My data confirms this; the gini coefficient for adults from 26-35 years of age has seen an increase of 2.71%. This suggests that the largest increase in urbanization from 1986 to 2002 has primarily been a result of young adults moving to the cities with their young children. Also interesting is that adults (age 46-55 years) account for the smallest change in centralization, by only .72%. This suggests that middle aged adults are not continuing to centralize at the same rate as some of their other respective age groups.

In addition to the above age groups, I split the population into marital status. Most noteworthy here is that the gini coefficient for single people has increased by almost 3% and that the gini coefficient for divorced people has decreased by more than 3%. Assuming that marriage rates are constant, this suggests that single people account for a large increase in migration into urban areas, while divorced people account for a large migration out of urban areas. The reason for these two trends might be that single people are often young and travel to the cities for work. If one is divorced, one might more likely want to get away from the city and relocate into less populated areas. Divorces also generally occur at an older age.

## REGRESSION ANALYSIS

In recent decades, a multitude of academic research has been conducted and published on the underlying factors of rural-urban migration. Liften (1976), Dandekar (1971), and Ilo (1966) have through their individual research suggested that poverty in rural areas acts as a significant push factor in rural to urban migration. Singh and Aneyetei (1977) noticed that the scarcity of good quality land in the rural areas motivated a migration into the urban areas. Along the same lines, S. P. Singh and Aggarwal (1998) found that the lack of proper irrigation and farming facilities were the main cause of urbanization. Another often noted factor for migration has been employment in non-household manufacturing in rural areas, which was found by Chakrapani and Mitra (1993) to have a strong negative correlation with rural-urban migration. Sensarma (1997) found that the literacy rate plays an important factor in migration. He writes that educated people who can read and write migrate at a higher rate from rural to urban areas than illiterate people.

Agesa (1998) views skilled rural workers as more likely to migrate than unskilled workers. The correlation between skill-level and migration has, however, been subject to controversy in previous literature. While some consider the level of education a measure of a person's skills, others define it as years of experience of work or the rank in a work hierarchy.

Dapeng Hu (2002) points to infrastructure and mobility between rural and urban areas as an explanatory variable for rural-urban migration. Another interesting

variable is the unemployment rates in rural and urban areas. It is hypothesized that the larger the difference in unemployment between rural and urban areas, the more migration occurs. Job tenure has also become an important variable in explaining why people move. Areas where many people have high tenure might logically have low rates of migration, while rural areas with mostly low tenured workers would have high migration rates because the workers would not have much to lose in the form of lost tenure and advancement.

The employment of wives has also been argued to play a significant role in rural-urban migration. If many wives are employed, migration of the whole family is usually less likely; if a family has two stable incomes, there is a big risk attached to migrating and potentially losing one of the jobs. In addition, areas where divorce rates are high have been found to have more migration compared to areas where divorce rates are low. This is understandable because it is much easier for a single person to move as opposed to a whole family. Past studies have also discovered that rents and housing markets have substantial effects on migration. Expensive cities would not be that attractive for a middle or low class rural worker. Similarly, local and state taxes might also make it more expensive to migrate from one place to another. The distance between a rural area and an urban area has also shown to be important when explaining migration.

One of the most acknowledged factors in rural-urban migration is income, or more precisely income differences between rural and urban areas. Most often, income is greater in urban areas than in rural areas. This makes a move into the urban areas attractive for the rural population. John R. Harris and Michael P. Todaro (1978) argue that rural-urban migration is not necessarily based on raw wage differences, but instead the differences between the rural wage and the expected urban wage. This might be a valid point because a city with high average incomes might not necessarily be that attractive to the rural population if a high unemployment rate deflates the expected wage equations enough.

Migration from rural to urban areas takes places when the expected utility of moving reaches a certain level. What might cause the expected utility to increase will always be comprised of a combination of many factors, some measurable, some not. Earlier literature has led me to six exogenous variables I believe will best explain rural to urban migration patterns in Norway.

It suggests that more densely populated areas tend to have larger government subsidies per square kilometer. This was not expected. A common belief in Norway is that it is the rural areas that get the largest subsidies, and not the municipalities, which are most dense; many are under the impression that a primary purpose of government subsidies has been to try to prevent people in the rural areas from moving into the cities.

To summarize, my regression analysis suggests that subsidies are significant determinants of the demographics in Norway. Municipalities with high subsidies are likely to have denser populations. As discussed, this contradicts the common belief that subsidies are more prevalent in rural areas. Income is also significant, and suggests that higher incomes are more common in urban municipalities. With respect to the unemployment rate, high employment rates are often found in more densely popu-

lated regions. Furthermore, the more northwest a municipality is located, the smaller the population tends to be. Lastly, more primary schools per square kilometer suggests a more dense and urban population.

### CLOSING REMARKS

The primary purpose of this paper was to test the impact of subsidies on migration and urbanization in Norway. Subsidies are important because they relate to a potential entrance into the European Union. A popular belief held by the Norwegian government and many of its citizens is that by joining the EU, Norway will have to reduce barriers to trade and cut subsidies to its primary industries. When subsidies are taken away, it is believed that Norway will experience a mass exodus to its urban areas, increasing the already highly centralized demographics of the country. This effect would be unfavorable to both the government and the Norwegian people.

In an econometric framework, I constructed an equilibrium model that measured the effect of subsidies on migration. The regression results suggest that subsidies are not significant determinants of migration. The model predicts that when subsidies are decreased in a given municipality, the municipality will not be significantly affected by an outflow of people. This contradicts the common perception held in Norway. Based on this, I concluded that this common fear for urbanization is likely nothing more than a misconception.

Norway has had two polls for entrance into the European Union. In 1972, 53% of the population voted against joining the EU; this negative vote only decreased to 52% in 1994. One of the primary hesitations for entering the European Union has been the fear related to reduced subsidies and a resulting mass urbanization. My equilibrium model suggests that this fear is nothing but a misinterpretation of reality. As my equilibrium model predicts that subsidies have no significant effect on migration, it also implicitly argues that the Norwegian government should promote further analysis and examination of the importance of subsidies. If statisticians come to the same conclusions as I have, and people's common fear moderates, we could likely see a positive outcome in our next poll for entrance into the European Union.

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**THE COURSE OF POLITICAL DEVELOPMENT IN UGANDA AND  
ITS EFFECT ON ECONOMIC DEVELOPMENT**

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Development has recently become a new buzz-word in International Relations. Through an exploration of political, social and economic development around the globe, scholars are trying to understand which policies are most beneficial, and why certain policies are effective while others fail. The connection between different types of development is often an important part of this research as well. The connection between political and economic development is of specific interest since the end of the Cold War and the failure of most communist-based systems. The emergence of capitalism as the dominant world economic system at the conclusion of the Cold War forced countries in the developing world to adopt capitalist policies. However, the question remains as to the effect of political development on economic development.

Political development is traditionally defined as a state's movement towards a democratic system with free and fair elections in which all citizens can participate to govern themselves, and eventually a movement toward a more liberal democratic state which also protects civil rights. The path of this development is often hard to define because each state has its own history and therefore its own methods for moving towards this end goal. Many western scholars recommend that states create and implement institutions to promote democracy, hold elections and open political competition to multiple parties. However the success of states' attempts at implementing these policies is debatable. Economic development, on the other hand, is historically defined as economic growth, often based in gross domestic product, increased international trade, industrialization, and integration into regional and world economies. In the past, the Washington Consensus has played a large role in prescribing policies for economic development along those lines in the developing world. The interdependence between political and economic development in Uganda provides a strong case for the relationship between the two spheres. The lack of political development in Uganda since independence from Britain in 1962 has hindered economic development and it was not until recent political stability that Uganda has been able to experience any sort of economic development.

To understand the political development in Uganda, it is important to start shortly before 1962 to examine the political atmosphere of independence. Under the colonial system, Uganda was a protectorate, meaning that land rights of Africans were respected, despite the commonplace of forced labor and high taxes.<sup>1</sup> In 1961 Uganda was granted self-rule before gaining full independence in 1962. With the granting of



self-rule, three major political parties formed, the Uganda People's Congress (UPC), the Democratic Party (DP) and the Kabaka Yekka (KY). The main platform of the UPC was nationalist and the party strived to unite all Ugandans despite ethnic differences. The KY was mainly an ethnic party consisting of the Baganda people who were the most favored under British rule. An alliance between the UPC and KY gave them more collective strength than the DP and increased the political power of UPC leader Milton Obote.<sup>2</sup>

At independence in 1962, Obote was appointed Prime Minister by the British and he selected Mutesa II of the KY to serve as the President. A popular slogan among the Baganda people was, "Mutesa I invited the Europeans into Buganda and Mutesa II was going to order the Europeans out of Buganda."<sup>3</sup> However, Mutesa II served only as a figurehead of the central government. The 1962 constitution was modeled after the British system and Uganda held parliamentary elections for the first time. The UPC won 37 seats, the KY won 21 seats and the DP won 24 seats.<sup>4</sup> The alliance between KY and UPC gave them an upper hand in parliament. However, despite these indicators of political development, strong ethnic divisions existed between and within parties. The main rivalry was between the Banyoro and Baganda groups and these divisions led to instability in Obote's administration.<sup>5</sup>

In 1964, this instability led to a full stop in political development. Opposition from within the UPC, led by UPC Secretary-General Ibingira, pointed to Obote and his Deputy Army Commander, Idi Amin, for their involvement in an ivory and gold scandal. Due to this, Obote arrested Ibingira and other opposition, suspended the 1962 constitution, promoted Amin to Army Chief of Staff and deposed Mutesa II. In 1966, Obote proclaimed himself President and convened the national assembly to write a new constitution. This new constitution restricted the power of the Baganda people and created a strong executive branch. In response to this, Obote declared a state of emergency and stormed the palace of Mutesa II. More than one hundred people died during the struggle, but Mutesa II managed to escape to London where he lived the rest of his life in exile. In 1967 Obote introduced his own version of the constitution, which gave him even more power and abolished the kingdoms within Uganda. After an assassination attempt in 1969, Obote banned political opposition groups thus creating a single party state.<sup>6</sup>

In January of 1971, Obote left Uganda for a conference in Singapore, and Amin staged a military coup.<sup>7</sup> Amin and his forces were upset with Obote for his constant consolidation of power in the executive, so they overthrew his administration in a guardian coup.<sup>8</sup> Amin stated, "I am not an ambitious man, personally, I am just a soldier with a concern for my country and its people."<sup>9</sup> Those in opposition to Obote originally welcomed the coup and Amin's government. However, this changed when Amin's radical policies came into light. Amin suspended the constitution and declared himself President for life. He violently suppressed all political opposition and created the Public Safety Unit and the State Research Bureau to carry out this suppression. One of Amin's first acts was to separate the military along ethnic lines and have most of those in the Acholi and Lango groups killed because they were seen as opposition ethnic groups. Under Amin's rule, between 100,000 and 500,000 people were killed,

including his Chief Justice Benedicto Kiwanuka and the Anglican Archbishop Janani Luwum. In 1972, Amin ordered all Ugandans of Asian descent to leave the country. He claimed their business success was a hindrance to Africans and when the 70,000 Asians left the country, he gave their businesses to friends and family.<sup>10</sup> Amin's administration alienated most diplomatic friendships with Uganda, which brought a halt to foreign aid. Most skilled Ugandans fled the country in fear of their lives, and the infrastructure collapsed.<sup>11</sup>

Despite the strong crackdown on opposition, the Uganda National Liberation Front (UNLF) was able to form and operate from surrounding countries. Due to these activities, and the presence of Obote in Tanzania, Amin ordered troops into Tanzania and Uganda annexed 1,800 square meters known as the Karega salient. President Julius Nyerere of Tanzania sent forces to defend Tanzanian land. They were joined by the Uganda National Liberation Army (UNLA), the military force of the UNLF, and together ousted the Amin administration in April of 1979. Amin escaped alive and lived in exile in Saudi Arabia until his death in August of 2003 where he was never held accountable for the atrocities of his rule in Uganda.<sup>12</sup>

After the overthrow of Amin, the UNLA appointed Yusef Lule, the chairperson of the political wing of the UNLA, as the new president. His government lasted for sixty-eight days. He had a pro-Buganda slant which was not appreciated by all members of the UNLA. Due to tension between the military and political branches, the UNLA ousted Lule in a guardian coup and replaced him with Godfrey Binaisa in June of 1979. During the year of his rule, political parties were banned and Obote returned to Uganda and began gaining support in the UNLA. Pro-Obote forces in the UNLA removed Binaisa from power in May of 1980 and promised democratic elections in December of 1980. An interim Presidential Commission was put in place before the elections. It consisted of three men from different ethnic backgrounds, Wacha Olwol, David Musoke and Polycarp Nyamuchoncho.<sup>13</sup>

During the interim period, two new political parties emerged, the Uganda Patriotic Movement (UPM) and the Conservative Party (CP), and two old political parties, the UPC and the DP, reemerged and regained their support. The elections in December were won by Obote. However, the other political parties along with the international community believed the elections were rigged by the pro-Obote military. Under Obote's second government, civil war broke out. Yoweri Museveni of the UPM formed the National Resistance Army (NRA). They fought to obtain power and for radical change in the government. Museveni argued that his call to arms was a legitimate response to undemocratic practices: 'Once again, a minority, unpopular clique was imposed on the people of Uganda, leaving them with no option but to take up arms in defense of their democratic rights.'<sup>14</sup> It was estimated that Obote's government exceeded the brutality of Amin's rule when dealing with opposition. Hundreds of thousands were killed by Obote's forces during the civil war that lasted for five years. Other rebel groups formed which made a strong military campaign against the NRA very difficult.<sup>15</sup>

Due to ethnic tensions in Obote's UNLA, General Tito Lutwa Okello staged a coup and disposed Obote in May of 1985. However due to political differences, Museveni and the NRA did not back the Okello government. Okello worked on a

platform of national reconciliation. He wanted to solve the ethnic issues in Uganda and went to Nairobi, Kenya to draft peace accords. However, civil war continued between the Okello government and the NRA and the peace accords were never implemented.<sup>16</sup>

The civil war was finally brought to a close in 1986 when the NRA defeated the UNLA and Museveni took control of the government. Museveni banned political party activity, exactly like his predecessors. He claimed he would work in an interim period of four years to rearrange political and economic policies and create institutions. However, this period was extended for another five years in 1989. During this time he created democratic institutions at the local level which included elected councils.<sup>17</sup> Museveni's government, like all those before his, faced internal armed opposition, the suppression of which led to accusations of human rights abuses from the international community. However, unlike his predecessors, Museveni did move towards a more democratic system as he had promised at the beginning of his interim administration. In 1989, the Odoki Commission, officially known as the Uganda Constitutional Commission, was formed to draft a new constitution. The Odoki Commission worked on outreach programs to the Ugandan public and received over 25,000 submissions of suggestions for the new constitution. A popularly elected Constituent Assembly debated the Odoki Commission constitutional outline from 1994-1995. On September 22, 1995, the Constituent Assembly adopted a new constitution, which included strong restrictions on political party activity.<sup>18</sup>

Democratic presidential elections were held in 1996. The main candidates were Museveni, Dr. Paul Kwanga Ssemogerere and Mohammed Mayanja Kibirige. It was a no-party election, so the candidates based their platforms on personal merit. Museveni ran on a platform of economic improvement. He compared Ugandan economic performance under other governments to his government since 1986. He also pointed to the security and stability of his government as compared to the past. Ssemogerere countered Museveni by saying that the new economic development benefited only a few Ugandans and he promised instead to eliminate poverty. Mayanja took a dependency theory stand and blamed the international system for Uganda's economic problems. Both Ssemogerere and Mayanja accused Museveni of increasing instability and insecurity with his suppression of political parties and opponents. Despite this, Museveni won with 75.5% of the popular vote. Although the losing candidates claimed the elections were rigged, international and third party monitors validated the election results. Along with the presidential election, parliamentary elections were held. Of the 271 seats, 214 were directly elected by the people. The remainder was comprised of special representatives from the army and trade unions, along with disabled people and women.<sup>19</sup> Museveni was reelected in 2001 and looks hopefully toward the next election in 2006.

Political development in Uganda has gone full circle, from parliamentary democracy to years of dictatorships and military rule and back to a parliamentary democracy. The democracy in place today, however, is more legitimate than the original parliamentary system left behind by Britain because the Ugandan people elected representatives at all levels and had a voice in the creation of the new constitution. Since Museveni was able to remain in power after the transition to elected government,

Uganda is a success story for state-led democratization. Uganda has politically recovered and bloomed into a successful democracy. The political development in Uganda is a beacon of hope for other African countries plagued with military rule and dictatorships.

Along with this full circle transition in political development, Uganda has also experienced a circular transition in economic development.

At independence, Uganda was more fortunate than most of its African neighbors in that the country had promising economic potential...The industrial sector produced a wide range of commodities satisfying much of domestic needs. The export sector was buoyant, especially with respect to cash crops such as coffee, cotton and tea. Some minerals, including copper, were also exported.<sup>20</sup>

The cycle has gone from prosperous beginnings with high potential for success to the destruction of the economy and infrastructure by civil war and dictators, despite foreign aid, back to an era of potential growth and development under new economic reforms.

The high economic expectations of the post-independence period were soon destroyed by the governments of the first eight rulers. The original government, put in place by Britain under the leadership of Obote and Mutesa II, did not implement economic policies to promote strong development in Uganda. Instead the economy remained tied to Britain in terms of exports. When Obote ousted Mutesa II and strengthened the executive, a lack of checks on his fiscal and economic policies occurred. The main drains on Uganda's economy were increased military expenditures and corruption throughout the administration. Development plans to improve conditions of the ordinary citizen and to decrease poverty levels were largely ignored under Obote's rule.<sup>21</sup>

Amin, it can be argued, caused the most economic damage to Uganda of all of the first eight administrations. High levels of corruption along with Amin's unrelenting spending quickly disabled the economy. Amin regularly printed more currency when the national treasury was empty, and had economic advisors killed who instructed him on the harmful economic implications of such actions. Amin's human rights abuses and disregard for the international community alienated most allies and led many foreign aid donors to cease all economic assistance. Along with damaging investment and the treasury reserves, Amin destroyed the human capital. He killed those opposed to him, forced all the Asian business-owners to leave, and most remaining intellectuals and skilled workers fled the country to save their lives. Amin replaced these people with unskilled, often illiterate, Africans who did not have the proper training or experience to take over the positions. Amin did not create any economic policies to promote development in Uganda.<sup>22</sup>

The three successive governments also failed to implement policies to promote economic development. The short-lived governments of Lule, Binaisa, and the interim Presidential Commission of Olwol, Musoke and Nyamuchoncho simply did not have the time, resources, or stability to design and implement development strategies. Unrest within the political and military sectors of the UNLA led to this unstable leadership.

When Obote returned to power, the country was thrown into a civil war that not only created instability but also destroyed a large amount of the national infrastructure. Along with these economic hindrances, the corruption that plagued the first Obote administration reoccurred in the new administration. Okello came to power after a coup and focused his resources on achieving peace within Uganda, planning to address the economic situation only after social issues had been resolved. Since his government failed to resolve both the ethnic tensions and the fighting within the borders, economic development was never discussed. Civil war and lack of steady leadership made the six years following the overthrow of Amin unsuccessful in terms of economic development.<sup>23</sup>

After the failures of these first eight regimes, Museveni proposed new approaches to economic development. He created a centrally controlled economy, revalued the currency and held tight control over imports and prices. Museveni was strongly opposed to policies that would unlock the flow of foreign aid because he feared Uganda would become economically dependent on the international community. However, these policies proved detrimental. Inflation increased rapidly and by May of 1987 it had tripled to 380 percent. The failure of these original policies led Museveni to agree to the structural adjustment policies of the World Bank and International Monetary Fund in order to receive loans to rebuild the economy. He implemented tight fiscal and monetary policies, focused on trade and political liberalization and reformed the civil service and financial sectors. These policies improved the situation temporarily, but inflation returned.<sup>24</sup> Despite this downturn, in time the policies began to steadily improve the Ugandan economy, and the World Bank came to consider Uganda as one of its star examples.<sup>25</sup> The economy during the first seven years under Museveni achieved stabilization, and growth was an average of 6 percent per annum.<sup>26</sup> The impressive recovery can be attributed to stability and Museveni's adoption of policies that took in to consideration the lack of economic development in Uganda.

Museveni and his current administration have many proposals for continued economic development in Uganda. They are promoting sound macroeconomic management, long term development strategies, creation of efficient energy, improvement of transport and communications infrastructure, stronger regional economic integration and increased human capital. The government is also working to encourage those Asian-Ugandans living in exile to return to the country, as this would greatly increase the human capital.<sup>27</sup> These economic goals are within reach as long as appropriate planning, policies, coordination and cooperation are implemented.

"A conducive political environment is the cornerstone of peaceful coexistence, economic prosperity and sustained development."<sup>28</sup> The stability of Museveni's administration has made the last decade and a half of economic development possible in Uganda. By following the relationship between the political development and economic development it becomes obvious that economic development is dependent on the political climate. The political instability present during the first eight Ugandan governments since independence directly correlates to the lack of economic development and eventual economic degradation and destruction.

The prime example of Uganda can be instrumental in addressing the main question of the relationship between political and economic development. As proven

above, political development is of utmost importance to economic development. Economic growth and development is hindered by a lack of political development and stability. The lessons learned from the destruction and reconstruction of both the economic and political systems of Uganda can be applied to other situations worldwide. Developing countries across the globe should focus on achieving and maintaining political development and stability in order to reach goals of economic development.

### ENDNOTES

- <sup>1</sup> Gakwandi, 1999.
- <sup>2</sup> Jørgensen, 1981.
- <sup>3</sup> Gukiina, 1972, p 100.
- <sup>4</sup> Jørgensen, 1981.
- <sup>5</sup> Gukiina, 1972.
- <sup>6</sup> “Hostile to Democracy,” 1999.
- <sup>7</sup> Jørgensen, 1981.
- <sup>8</sup> Clapham, 1985.
- <sup>9</sup> “Idi Amin Dada Oumee,” 2003.
- <sup>10</sup> “Hostile to Democracy,” 1999.
- <sup>11</sup> Kreimer, 2000.
- <sup>12</sup> “Hostile to Democracy,” 1999.
- <sup>13</sup> “Hostile to Democracy,” 1999.
- <sup>14</sup> Ibid, p 34.
- <sup>15</sup> Ibid.
- <sup>16</sup> “Hostile to Democracy,” 1999.
- <sup>17</sup> Bocquier, 1999.
- <sup>18</sup> “Hostile to Democracy,” 1999.
- <sup>19</sup> Bocquier, 1999.
- <sup>20</sup> Kreimer, 2000, p 17.
- <sup>21</sup> Ibid.
- <sup>22</sup> “Hostile to Democracy,” 1999.
- <sup>23</sup> “Hostile to Democracy,” 1999.
- <sup>24</sup> Harvey, 1995.
- <sup>25</sup> Kreimer, 2000.
- <sup>26</sup> Sharer, 1995.
- <sup>27</sup> “Uganda Vision 2025,” 1999.
- <sup>28</sup> Ibid, p 23.

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**CHINA'S NATIONAL INTERESTS AND  
INTERNATIONAL AGRICULTURAL TRADE**

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As a sovereign nation, the People's Republic of China (PRC) is confronted with the problem of preserving its national interests in the face of international anarchy created by the peace of Westphalia system in the 1648. As the world's most populated nation, how well China preserves its interests determines the well being of over one billion people. This paper will assess the role of US-Sino bilateral relations and China-WTO relations with regard to agricultural policy and their effects on China's national interests. As will be seen, US-Sino bilateral relations and China's relationship with the WTO in regard to agriculture affects the PRC's ability to maintain sovereignty, its ability to keep the CCP regime in power, and opens its domestic agricultural market to outside competition and opportunities.

Before assessing international agricultural influences on China's national interests, US national interests in China's agricultural market will be discussed. In President Bush's new National Security Strategy, which was delivered to Congress this year, Bush outlines the role of trade in our overall relations with China. Bush cites joint interests in protection from terrorist, health and environmental threats. As areas of dispute, he notes the Taiwan issue, human rights, and the issue of China "pursuing advanced military capabilities that can threaten its neighbors in the Asia-Pacific region."<sup>1</sup> Economic relations, however, clearly play a key role as Bush points to the fact that China is the United States' fourth largest trading partner, with "over \$100 billion in annual two-way trade."<sup>2</sup> He also applauds China's entry into the WTO, which he claims will "advance openness and the rule of law in China" while creating "more export opportunities and ultimately more jobs for American farmers, workers, and companies."<sup>3</sup> The US agricultural industry seems equally excited about conducting business with China, and why shouldn't they be? US exports of consumer-oriented foods and agricultural products to China reached an all-time high in 2001, with \$285 million worth of exports.<sup>4</sup> Furthermore, the USDA Foreign Agricultural Service expects "US consumer food and beverage products in the Chinese market [to] continue to be strong."<sup>5</sup>

At present, the economic framework that guides the relationship between the US and Chinese agricultural sectors is made up of three important documents: the Sino-US Agricultural Cooperation Agreement of 1999, the US-China Bilateral WTO agreement of 2000 and the US Farm Security and Rural Investment Act of 2002. The result of these agreements has been better access for the US into China's food ser-



vice, food retail and food processing markets. According to the USDA, “the most important developments for US food exporters may be the opening of the distribution and logistics sectors; the opening of the retail sector; the phase-out of agricultural subsidies; and the reduction of tariffs for a wide range of agricultural products, from wine to citrus fruit, from 22% to an average of 17.5%.”<sup>6</sup> The increasing presence of US and other foreign farmers in the Chinese market, which has been facilitated by agreements like those mentioned above, have important implications for three of China’s four major national interests: sovereignty and territorial integrity, military and strategic security, regime survival, and economic security.<sup>7</sup> We will consider the effects of agricultural policy on each of these, beginning with sovereignty and territorial integrity.

Although bilateral and multilateral agricultural relations obviously have no effect on territorial integrity, the power of Inter-Governmental Organizations (IGOs) such as the WTO to infringe upon a nation’s sovereignty is important. International relations are generally assumed to be ruled by the norms of sovereignty: nations are autonomous units and the highest form of authority within their territorial boundaries. The power of the WTO to force companies to adopt or nullify domestic laws, however, erodes this sovereignty. Consider the case of sea turtles and the United States. In this case, foreign countries felt that US laws intending to protect sea turtles were too strong and stifled trade, and brought a case against the US. The WTO appellate body found that the law was consistent with trade rules, but that the US had implemented such a law unfairly, and as a result would be required to reconsider their implementation of the law. Clearly, the right of the US to set its own domestic regulations was denied by the WTO.

With respect to China’s sovereignty, similar cases with similar results are often brought against them in the WTO courts. International pressure to persuade China to accept genetically modified foods (GMFs) is an issue to watch. Countries have accused China of restricting the importation of these goods with ‘health’ reasons not based on science. The WTO may eventually order China to provide sounder reasoning or abandon the restrictions, which unquestionably is a threat to their sovereignty. It is worth noting, however, that the system works both ways and provides China with an avenue to fight what it views as unfair trade or trade that harms their interests. China’s recent suit to protect themselves from the dumping of foreign paper goods at prices that were too low is an example of the benefits.

Military and strategic security is not much affected, if at all, by agricultural policy, although the WTO will affect it and so I will briefly mention some points here. The world’s largest land force is paid for, in part, by over 15,000 businesses run by the People’s Liberation Army (PLA).<sup>8</sup> Their ownership of everything from professional basketball teams and restaurants to pharmaceutical manufactures assures that the international competition brought on by the WTO may weaken the major source of the PLA’s income, thus limiting their ability to maintain troops and develop new arms.

The third area affected by international agricultural policy is regime survival. In China’s political system, the Chinese Communist Party (CCP) is the one ruling party and responsible for not just political and administrative duties, but also

judicial, military and economic duties as well. Simply stated, the CCP is the state, and so national interest lies in the survival of the regime that is the PRC. Popular unrest is a major threat to the regime and it comes in many forms. There is the growth of the middle class in China and their demands for rights, as well as the rise of capitalists in China who also seek more rights. There may also be “some 25 million of the 85 million workers at state-owned enterprises [who] will see their jobs disappear as more-efficient foreign companies produce in China or import products from abroad”<sup>9</sup> and as a result of unemployment grow increasingly upset with the CCP.

China’s floating migrant population is also a significant force, considering that in 1996 one hundred million people left their land in search of employment.<sup>10</sup> In terms of sheer amounts of people, Chinese farmers represent the biggest threat as “demonstrations are increasingly common, reflecting the frustrations of farmers unhappy with stagnant incomes and rapacious local officials.”<sup>11</sup> Rural residents, who represent more than 75% of China’s population, have their well being directly linked to fluctuations in agricultural policy. As demonstrations have shown, many rural residents are not content with the current regime, often because of stagnating agricultural incomes. When asked about their current situation, 80% of peasants in a Henan survey said they were “dissatisfied.”<sup>12</sup> Despite the fact that from 1978 to 1990 the average per capita annual income rose from 137 Yuan to 630 Yuan for rural peasants,<sup>13</sup> this average is still barely over the 454 Yuan poverty line. Considering that the 1990s have brought stagnating or declining agricultural incomes, and nearly 60% of peasants in the Henan survey expected this trend to continue,<sup>14</sup> it’s no wonder there is unrest. Furthermore, things do not look good on the horizon. “Average prices for agricultural produce in China are 20-40% higher than world prices, and supply far outstrips domestic demand.”<sup>15</sup> With competition from foreign exports, prices are likely to fall, and of course incomes will follow.

The final aspect left to consider is the international agricultural market and its effect on China’s economic security. Before considering these effects, however, China’s agricultural economy must be analyzed.

The most important development in China’s agriculture in recent history has in fact not been in agriculture, but rather the growth of rural industry. Plagued by an ever-increasing population but fixed land resources, China’s population pressure has, for decades, prevented any sizable increases in per capita income. As collectively-owned enterprises boomed in the 1980s, and then with the rise of private rural businesses in the 1990s, China’s rural surplus labor problem is finally being addressed. As surplus labor is absorbed by industry and population pressure on the land is relieved, incomes may increase, thus having important implications for the problem of rural discontent and regime survival. As rural industry has grown, the shift from agriculture to this sector has been dramatic, both in terms of output and employment. While sideline productions and agriculture accounted for 83.1% of a commune’s output in 1958, they accounted for only 16.9% in 1984, with industry now accounting for 83% of total output.<sup>16</sup> As one case study in the Yangzi delta showed, by 1988, “only those villagers above the age of fifty still remained entirely in farm work.”<sup>17</sup> The growth of rural industry was tremendous as total output generated by rural enterprises “rose almost

nine fold from 1980 to 1987,"<sup>18</sup> accounting for "close to one-quarter of China's total exports,"<sup>19</sup> and by 1987 "rural industry surpassed agriculture as [the] dominant source of total rural income."<sup>20</sup>

The problems of rising population and less land, and thus less productivity, have been aided by this outflow of labor from agriculture to industry. From 1978 to 1990, "the percentage of the rural labor force engaged in village and township enterprises more than doubled."<sup>21</sup> In fact, from 1978 to 1986, collective owned enterprises (COEs) managed to generate 57 million new jobs, which about equaled the total number of workers hired by state owned enterprises (SOEs) from 1952 to 1986!<sup>22</sup> The rural industry growth, however, was powered in large part by the growth of COEs in the 1980s. Today these businesses are no longer a model of growth and private businesses must be relied on to pick up the slack. Thus we again see the role played by foreign direct investment (FDI) facilitated by the WTO and bilateral agreements. The input of FDI into China's economy will bring valuable capital and technology, in order to maintain rural industrial growth and continue attracting peasants from low productive agriculture to more productive industry. Again, this shift in employment will also relieve population pressure on the land and raise per capita incomes for farmers and workers alike.

Furthermore, many of the COEs from the 1980s were capital-cheap operations that received spare and outdated machinery from the SOEs. Since COEs often had this "junkyard dimension"<sup>23</sup> to them, FDI may bring much needed technology to China and provide jobs that will remain competitive even after China's full opening to the WTO, another component of rural content, regime survival and of course economic security.

Although providing less employment and a smaller share of the national GDP each year, China's agricultural economy is still a vibrant one. In 2000, "the aggregate market, including wholesale, retail and food services, for consumer foods and beverages reached US \$81.3 billion, up 11% over the previous year." As a percentage of the total Chinese workforce, over 50% still work in farming, forestry, animal husbandry or fisheries. Furthermore, in almost half of China's provinces, agriculture still represents over a fourth of the total Gross Domestic Product.<sup>24</sup>

The WTO and bilateral agreements bring both opportunities and threats to China's economic security from the perspective of the agriculture market. By lowering tariffs, eliminating the right to provide export subsidies to farmers and making it more difficult to use measures such as 'health concerns' to prevent imports, international agreements put Chinese farmers at risk and susceptible to the competition and fluctuations of the international market. A recent article in the *China Daily* entitled "Farmers feel shocks of int'l competition" reflects these concerns. It reports that despite three successive good harvests, farmers in Fujian are worried because, "affected by cheaper imported longans from neighboring Thailand, the price of local fruit has slumped to...its lowest [price] in a decade."<sup>25</sup> On the other hand, international agricultural agreements have also opened up foreign markets to Chinese farmers. The importance of this cannot be underestimated considering that in 2001, China represented 4.3% of the world's total exports.<sup>26</sup>

With two thirds of its population living in rural areas and 50% of its work

force still employed in agriculture based jobs, it should come as no surprise that international agricultural policy has important implications for China's national interests. As we have seen, US-Sino bilateral relations, and China's relations with the WTO have a direct impact on China's national sovereignty, regime survival, and economic security. Whether agricultural policy will have a negative or positive effect on China's national interests, however, remains to be seen.

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**ON THE WAY TO DEVELOPMENT:  
A COMPARATIVE STUDY OF BELARUS AND SOUTH KOREA**

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**INTRODUCTION**

In our world, where one fifth of the population – 1.2 out of 6 billion – lives below the international poverty line,<sup>1</sup> the topic of development has to be of great significance. This study will turn to the region of East Asia for a model of development, because the countries known as the Asian Tigers, (South Korea, Hong Kong, Taiwan and Singapore) have exhibited unprecedented growth with equity in the second half of the 20<sup>th</sup> century, and Japan, the leader in the region, rose to the status of the second largest economy in the world.<sup>2</sup>

The Asian miracle illustrates that the latecomers have some advantages on the way to development and can succeed through the employment of appropriate industrial policies. This study will focus specifically on the South Korean story and its applicability to the case of Belarus. I believe Belarus is in a position to excel given its authoritarian government, highly educated labor force, and presence of political capital conducive to the implementation of reforms. In order to start the journey towards development and prosperity, the government of Belarus needs to employ the appropriate policies, for which we will turn to South Korea for examples. Before that, however, the paper will examine the Asian model for development and take a closer look at the reasons for why the comparison between the two countries may be appropriate.

**BELARUS: DIFFERENT MODELS OF DEVELOPMENT**

After the partition of Poland in the end of the 18<sup>th</sup> century, the territory of Belarus became a part of the Russian Empire and later, the Soviet Union. Thus, in its economic development, Belarus mirrored the policy of the Russian and Soviet governments until its independence in 1991. Today, Belarus continues to look to Russia for economic assistance and advice, despite its sovereign status.

*WESTERN MODEL*

Historically, Russian development is characterized by spurts of industrial growth followed by long periods of relatively little growth, which usually takes place after the Russian government realizes its relative economic backwardness through contacts with the West.<sup>3</sup> Precisely for that reason, Russia looked to the West for its roadmaps for development.

Two important periods of development for Belarus under the Western model took place between 1885 and 1900 and between 1906 and 1913. The interruption was caused by the general European recession in the 1900s. The Russian government, with the help of the foreign capital and management, instituted meaningful structural market-oriented reforms during that period. The economy grew through intensive railroad construction and the development of private industry, aided by direct and indirect investment and protective tariffs.<sup>4</sup> The construction of railroads was especially beneficial for Belarus, as it was on the way to the lucrative Western markets for Russia. The construction of railroads provided demand for steel and machinery, in addition to facilitating future economic activity by lowering transportation costs.<sup>5</sup>

By 1906, due to the high degree of cartelization and the decrease of direct government investment in the economy, Russian banks began taking a more active role in capital formation. The Stolypin reform of 1906 proved to be beneficial to the largely agrarian Belarus, as it encouraged the establishment of private farms through the consolidation of land-strips.<sup>6</sup> The success of this reform lay in its ability to address the concerns of the peasants, as it was a response to mounting uprisings. In addition, it became a good fit into the tradition of communes in the rural areas.

In the 1985-1900 period, industry growth was at 6.7% per year,<sup>7</sup> and from 1906 to 1913, industrial production grew more than 6% per year.<sup>8</sup> For the first time in its history, Russia was becoming an integral part of the world economy. However, the Bolshevik revolution of 1917 and the Civil War that followed in 1918-1921 shifted the path of Russian, and thus Belarusian, development to the path of a planned economy.

### *SOVIET MODEL*

The Civil War devastated the economy. In 1920, industrial production and agricultural production were at one-fifth and one-third of the pre-war level, respectively, and a shortage of fuel jeopardized transportation.<sup>9</sup> However, by 1928 the Russian economy had recovered and somewhat surpassed its pre-war levels: GNP was 13% higher than in 1913 and agricultural and industrial output was 16 and 8 percent higher, respectively,<sup>10</sup> due to the introduction of the NEP (New Economic Plan), a fusion between market and planned systems.

With the first Five Year Plan in 1928, the Soviet economy began a process of rapid industrialization. Centralized planning and control were introduced, while agriculture was nationalized. Labor employment in non-agriculture rose at 6% a year, (five times the growth rate of the population) investment increased to 25%, and the input flow of fixed capital in the economy increased at around 10% a year between 1928 and 1940. The share of producers' goods in total industrial output climbed from 40% in 1928 to 61% in 1940.<sup>11</sup> This success was achieved through the state's direct, military-like involvement in the economy, which became known as a "command economy." The levels of final and intermediary output, as well as the levels of inputs, were determined centrally as a set of formal economic plans and controlled through centralized bureaucracy. The state not only mobilized the resources through enforced high rates of savings and investment, but also directed them towards the high growth sectors of the economy.<sup>12</sup> The trade-off of consumer goods for producer goods, coupled with artificially low energy prices, continued to be the engine for economic growth for

the Soviet Union.

World War II brought much peril to the Soviet economy, but despite the lack of Western assistance, it recovered quickly in the post-war period. The growth of the economy posed new challenges to the central government in terms of the creation and implementation of the plans. The 1960s brought a series of economic reforms aimed at improving managerial performance and overall economic efficiency. However, these reforms failed to create any lasting effect due to their partial nature and entrenched economic bureaucracy.<sup>13</sup> Sharp economic decline since the mid-1970s brought widespread disillusionment to the Soviet system and caused the eventual demise of the state, despite the economic reforms proposed by Gorbachev since his rise to power in 1985.

Under the Soviet system, Belarus had a privileged status. Due to its location on the Western frontier of the Soviet Union, Belarus was highly industrialized for production of high-tech machinery (by Soviet standards) and weapons, which resulted in a highly educated labor force and preferential access to the Soviet markets. Industrial development depended heavily on importation of oil and gas from Russia at less than 10% of the world prices in 1990. Belarus relied greatly on trade with other countries of the Eastern Bloc, with imports and exports contributing 50 to 60 percent of the GDP, with intra-regional trade being 70%. At the time of the collapse of the Soviet Union, Belarus was the richest of the twelve republics, based on per-capita income.<sup>14</sup> However, the Soviet regime endowed Belarus with massive collective farms, which relied on Russian fertilizer, and left the ecology in ruins, adding to the disastrous effects of the Chernobyl catastrophe.

#### *NEXT STEP: ASIAN MODEL?*

After gaining its independence in 1991, the Belarusian economy experienced a dual shock: it lost access to traditional markets for its products, and had to face much higher energy prices at the same time. Until 1996, the Belarusian economy was contracting at an average rate of 8.1% per year in real terms.<sup>15</sup> Since 1996, the official statistics suggest that the average real growth rate is 5.4%, which is severely overstated due to the recorded profitability of the subsidized state-owned enterprises.<sup>16</sup>

The consequences of the transformational recession were compounded by the reluctance of the government to implement market-oriented reforms. In an attempt to protect the people from the adverse initial impact of the market, the government enacted expansionary monetary policy and controlled the exchange rates at artificially high levels, which significantly eroded the competitiveness of the domestic enterprise.<sup>17</sup> As one of the most heavily industrialized and trade-dependent economies in the Former Soviet Union (FSU), Belarusian enterprises were designed to serve the entire FSU as well as major markets in Central and Eastern Europe.<sup>18</sup> Despite these efforts, privatization in Belarus still remains partial: the public sector is responsible for 80% of the GDP and five of six major banks are state owned.<sup>19</sup> Overall, the attempt to shield the people failed – by 1995, the poverty level rose from 5 to 25 percent, according to World Bank data, despite the commitment of the authoritarian government to create a socialistic state through direct involvement in the economy.

The aforementioned features of Belarus possess striking similarities to those

of South Korea, on the eve of the period of its rapid growth and expansion. The dictatorial government of Park Chung Hee nationalized the banks and relied on the large industrialized conglomerates (“chaebol”) as the engine for economic growth. The similarities and differences between South Korea and Belarus are subject for examination later in the paper.

### **COMMONALITIES BETWEEN BELARUS AND SOUTH KOREA**

There are certain characteristics that are common to both modern Belarus and South Korea in 1961, which can be grouped into three major categories: historical, economical and sociological. An interesting parallel in the countries’ history is that before gaining their independence, both Belarus and South Korea, were occupied by their respective neighbors – Russia and Japan. Although the occupation left some resentment, the countries to this day maintain close political and economic ties, and much of their policies are affected by the legacy of their former aggressors.

#### ***A LOVE-HATE RELATIONSHIP***

As it was mentioned earlier, Belarus became a part of the Russian empire in 1795, after the Partitions of Poland. However, the bitterness of Belarusians towards Russia is more recent and dates back to the Chernobyl disaster of 1986. It is believed that Russia forced radioactive fallout over the territory of Belarus in order to protect the Kremlin.<sup>20</sup> There has been no official recognition from the Russian side, as nobody wants to take the responsibility for the covert act of genocide.<sup>21</sup> The Belarusian government is not pressing the issue either, because it is hoping to bring to life an economic union between Belarus and Russia. Overall, the people of both countries recognize their common Slavic heritage and still share the language,<sup>22</sup> which facilitates cross-cultural co-operation. Russia is treated like a big brother that Belarus often turns to for advice or assistance.

The antipathy towards Japan in South Korea can be traced back to the brutalities of Japanese occupation in the first half of the 20<sup>th</sup> century, when thousands of people were killed as they attempted to voice their protest and desire for liberation. After WWII, when Korea was liberated, it maintained strong cultural hatred toward any form of foreign domination, which could explain the resistance to promote FDI in South Korea. Nevertheless, Japanese occupation modernized the Korean economy and established some institutions that would be instrumental in the subsequent Korean development.

#### ***ECONOMIC SIMILARITIES***

When Belarus and Korea gained their independence, they inherited all of the economic structures that were put in place by their respective occupants.

As a part of the Soviet Union, Belarus was one of the most industrialized republics. From the Soviet times, Belarus retained large enterprises, (which were designed to serve Central and Eastern European markets) reliance on intra-regional



trade, and dependence on the imports of oil and fertilizer from Russia, as was mentioned before.<sup>23</sup> The Soviet banking system relied on one bank “Sberbank” for settling the transactions, and current Belarusian government has been reluctant to give up the banks to the private sector, as five of six major banks are state-owned.<sup>24</sup>

Japan left South Korea the pattern of industrial organization known as “zaibatsu” in Japan, which became the stepping-stone for the development of the Korean “chaebol”. These large enterprises proved to be instrumental in the Korean development strategy. Japan also maintained the norm of close interaction between the company and its bank, although no “main-bank system” developed in Korea, as the banks were nationalized by the Park government.

Due to the similarity of institutions, both Belarus and South Korea looked to their neighbors for possible patterns of reforms. Due to their indecisiveness, Belarusian politicians look to Russia for successful reforms to be implemented in Belarus. The example of this could be voucher privatization, which was never fully complete in Belarus. In turn, South Korea looked to Japan for industrial development policies and borrowed ideas of state intervention in order to correct for market failures. Unlike Belarus, South Korea was more successful in the implementation of the borrowed policies. A possible explanation to this phenomenon may be the fact that South Korea and Japan are much more similar countries than Belarus and Russia, and for that reason, I believe that it behooves Belarus to turn to South Korea rather than to Russia for advice, as there are more similarities there.

Belarus and South Korea are small, trade-oriented economies, which can be explained by the small domestic markets in both countries, and the lack of important natural resources. Naturally, due to former economic ties, Russia and Japan became important trading partners for both countries. For Belarus, the trade with Russia alone is 50% of its GDP, while the country has been running a current account deficit.<sup>25</sup> South Korea imports more from Japan than from anywhere else, (11.7% of total 2001 imports) and the Japanese markets is the third most important destination for Korean products, with export to Japan accounting for 11% of total (US – 20.7%, China – 12.1%).<sup>26</sup>

### *SOCIOLOGICAL SIMILARITIES*

Another part of the legacy that Belarus and South Korea received from Russia and Japan is the highly educated work force. As was mentioned previously, Belarus was one of the most industrialized republics of the former Soviet Union, and it manufactured the majority of the high-tech products (by Soviet standards) as well as military equipment. South Korea, in turn, had primary education enrollment rates second only to Japan in the region.<sup>27</sup> The majority of the second and third generation chaebol managers received their education in British or US business schools.<sup>28</sup> Due to economic and political instability in Belarus in recent years, many of the highly educated people have left the country, and the Belarusian government needs to encourage them to become engaged in the remaking of the country by exhibiting a credible commitment to do so itself. Should the government claim be persuasive, I suspect the situation in Belarus may mirror the situation in China today, where many of the ethnic Chinese have contributed financial and human capital through the creation of joint ventures in

mainland China.

An important element for the success of the reforms is the perceived need for change. It is curious that after both countries have gained independence, the new government has done little to improve the condition of the economy. South Korea gained its independence in 1945, and the meaningful development-oriented reforms did not start until the military coup by General Park in 1961, after the need for change became apparent to all members of the society. In turn, Belarus gained its independence in 1991, and the current government has not been effective in countering the adverse effects of the transformational recession or implementing developmental reforms. Let us hope it will not take Belarus 16 years until things start to improve, because people are being disillusioned by the failure to create positive change by the current administration.

### **DIFFERENCES BETWEEN BELARUS AND SOUTH KOREA**

Despite the striking similarities between Belarus and South Korea, there are some important difficulties in the areas of geopolitics, industrial organization, and the characteristics of the state.

#### ***GEOPOLITICS***

While Belarus has little concern for its own security, South Korea's geographical position has created a substantial security concern both in the time of the Cold War and today. South Korea was a theatre for military operations during the Korean War of 1950-1953, which devastated the country. Today, the situation with North Korea is again dangerous, due to the recent episode of nuclear black mail, and the inclusion of North Korea in the "axis of evil" list by President George Bush during his declaration of the War on Terrorism.

As a consequence of the Korean War, South Korea received \$4 billion in grant aid from 1953 to 1974 from the U.S. Some 60% of all investment in South Korea before 1968 came from the U.S. as well.<sup>29</sup> Although the US aid was crucial in restoring the country after the war, it was by no means instrumental in the rapid development of South Korea.

However, a point of significance is the free trade policy that the U.S. had towards the nations of Japan, Taiwan and South Korea, by not retaliating against the protectionist measures employed by those countries. Currently, the U.S. and other industrialized nations insist on fair trade policy and reciprocity of trade relations. Nevertheless, through the employment of the Flying Geese pattern in trade this obstacle may be temporarily overcome, while Belarus prepares herself for the opening of the markets.

Another consequence of the Korean War for South Korea was relative U.S. tolerance for the dictatorial government of Park Chung Hee, because of his anti-communistic ideology. Since the demise of the Soviet Union, the prevalence of ideology in U.S. Foreign Policy in the region has declined significantly. However, Belarus is not currently enjoying preferred diplomatic status with the United States because of its

authoritarian regime, and I believe that over time as the developmental focus of the government becomes apparent, the criticism will lessen.

### *INDUSTRIAL ORGANIZATION*

In addition to the geopolitical differences, there are some differences in the industrial organization of both countries. Despite the fact that the chaebol and the large enterprises of the soviet time appear similar to a certain degree, the most important difference between them is the ownership and profit achieving incentives. While the chaebol in South Korea was privately owned by a family group or corporatized, the majority of the large enterprises in Belarus are state owned.

One of the most important factors of the success of the Korean model was the entrepreneurial spirit of the managers of the chaebol. It is not sufficient to allocate capital and other resources to a particular enterprise, but the utilization of those resources needs to be efficient in order for the project to be successful. When the government owns large firms, the agency problem is exacerbated, as the managers believe that the government has vested interests in the success of the enterprise. This significantly decreases, if not eliminates, the threat of bankruptcy, thus making the managers risk-neutral and the resource allocation inefficient. In South Korea, even when the enterprises were owned and operated by the private sector, the management believed that the threat of bankruptcy was not credible, which led to unhealthy debt-to-equity ratios, and eventual bankruptcy for some of the firms as a result of the Asian Financial Crisis.

There are two parts to the efficient operation of the enterprise. The first part lies in the well-defined property rights, which guarantee that greater effort will be better rewarded,<sup>30</sup> thus removing the artificial ceiling imposed on productivity. The South Korean government did that successfully, by providing chaebol with low interest rate loans if they invested in the targeted industries, and then by allowing the most successful enterprise to appropriate the benefits, in addition to rewarding them with competitiveness-based export assistance. However, the second part lies in the credible threat of bankruptcy, i.e. performance that is not good enough will result in the loss of property rights (bankruptcy), which imposes a floor on productivity. This was something that the South Korean government has not done, which had to be changed during the response to the Asian Financial Crisis.

### *AUTONOMY AND CAPACITY OF THE STATE*

The authoritarian regime of the Belarusian government makes it similar to the Park government in its capacity, but the fact that the majority of the enterprises are still state owned significantly lessens relative autonomy of the Belarusian state, as the politicians can be influenced more easily by the heads of the firms.

The Soviet regime relied on extensive bureaucracy for implementation of the centrally planned economy. Therefore, the bureaucracy in Belarus is developed, but it is not embedded,<sup>31</sup> i.e. shielded from the influence of other groups in the society. In fact, due to the numerous imperfections of the central plan and the necessity to meet the targets, an extensive network has developed, which was based on mutual favors, or so called "blat." It is this network that can be blamed for the extensive degree of corruption and nepotism in the republics of the FSU. Nevertheless, according to Aslund,

the degree of state capture in Belarus is the third lowest among the republics of the FSU.

### **WHAT NEEDS TO BE DONE: A CONCLUSION**

From the examination of the position of Belarus and South Korea, it is evident that Belarus today stands in a situation similar to that of South Korea in 1961, and with a few changes, it can embark on a path of development similar to that undertaken by South Korea.

In order to begin the transformation, the Belarusian government needs to commit itself to the strategy of development by transforming itself into a comprehensive developmental state. The desire of her people for change is conducive to radical reformism, as it provides sufficient political capital for the implementation of drastic measures. The authoritarian regime of the current government creates further advantages in speed, stability, and, if necessary, forcefulness of the reforms. In addition, the fact that the authoritarian regime is already in power creates an incentive for it to begin these reforms, as the people of Belarus become disillusioned by indecisive and inconsequential incremental changes that were the policy of the state thus far. Therefore, in order to preserve their position of power and not fall victim to a possible coup, it is in the interest of the incumbent government to initiate reforms.

The fact that the state controls most of the major banks will make the nationalization of the banking sector less painful than it was in South Korea. Control of domestic capital would prove to be essential, as it would be difficult to attract foreign investors in the short run. However, in order to make domestic capital effective, the government needs to commit to tight monetary policy, in order to battle inflation.

The bureaucratic apparatus of Belarus needs to undergo structural reform that would insulate the bureaucracy from the influence of interest groups within the state. In order to increase the relative autonomy of the state, it needs to offer the bureaucrats pay that is higher than anything they could have received from bribes, merit based incentives, and severe punishment (life in prison) for pursuing private interests. Such polarization of incentives will help to solve the co-operation dilemma. In order to make civil service more attractive and prestigious, it may be beneficial to require a civil-service entrance examination, in order to select talented staff. Belarusian universities are full of soon-to-be graduates who are concerned with finding a job in the private sector. In addition, adding new blood to the bureaucracy will help to disrupt and eventually dismember old nepotistic networks.

In order to provide incentives to the state-owned enterprise for efficient operation, soft budget constraints have to be removed. The enterprises need to be privatized and restructured in order to ensure efficient property rights. Those unable to be competitive after privatization and restructuring would have to be forced into bankruptcy. A credible threat of bankruptcy is instrumental in imposing a floor on productivity and forcing the employees and the management to work their hardest, especially if they have a cash-flow right to the profits of the companies. Domestic enterprises, especially those that were part of the military-industrial complex of the FSU, have a potential to develop into a Belarusian version of chaebol. Although the

technology of these firms is long obsolete, the skills of the engineers are not. This aspect may prove to be a source of competitive advantage for Belarus.

Since Belarusian capital markets are practically non-existent, foreign capital would be instrumental for the resale of the aforementioned firms. Recent positive attention received by Russia may facilitate the flow of the foreign capital to Belarus. In order to attract foreign capital, the government needs to create incentives through the construction of efficient institutions. First and foremost, the government needs to assert the rule of law, with the use of the military, if necessary. MNCs should be provided with tax and other incentives to invest in Belarus; for example, subsidized loans to joint ventures, establishment of a corporate tax rate equal to that in the US without dividend repatriation tax, creation of off-shore capital facilities and cash-waterfall systems in order to guarantee repayment to the creditors and lower the risk of the expropriation of the profits. Effective mergers and acquisitions regulation, adopting international accounting standards, strengthening voting rights of the minority shareholders, and making appointment of the outside directors compulsory<sup>32</sup> may also attract foreign investors, as it is often the preferred and quickest way for MNCs to enter foreign markets.

In order to foster the creation of new businesses, the government should provide credit to local entrepreneurs. The cross-subsidization of the energy prices must stop. The government has been successful in increasing the wages of the population, thus people should be able to pay full price for electricity and heat – both private sector and businesses should pay the same rates for utilities.

In order to promote domestic savings, the state should issue ruble denominated inflation-indexed notes to the public. The issuance of these notes will also provide the incentive for the government to stay committed to tightening monetary policy and combating inflation. Negative population growth should also facilitate savings.

Belarus should use its important geographical location between Russia and Western Europe as leverage. The investment in development of infrastructure, especially toll roads, may be possible with the engagement of the foreign corporations through the methods of project finance. The crucial part would be to ensure that the investors would be repaid, which is possible through the Build-Operate-Transfer model. Development of the transportation network within Belarus will also facilitate trade with Russia. At the early stage of development, until Belarusian products become competitive enough for the world markets, intra-regional trade will prove to be of great importance, thus it is beneficial to invest in its development at an early stage.

In order to be successful in the end, Belarus needs to take into account the lessons from the Korean case that emerged after the Asian Financial Crisis. The threat of bankruptcy must be credible, and the banks should monitor the enterprises in order to maintain healthy debt-to-equity ratios. Improvement in accounting transparency and corporate governance will allow better monitoring and increase the chance of attracting foreign investors.

Judging from the South Korean case, Belarus stands on the brink of a breakthrough of rapid development. The similarities between the two countries make the choice of the South Korean strategy of development particularly suiting. The “yellow brick road” to development put forth by South Korea and tested by the Asian Financial

Crisis lies in front of Belarus. The only thing remaining is taking the first step.

### ENDNOTES

<sup>1</sup> Defined in terms of \$32.74 PPP 1993 per month or \$1.08 PPP 1993 per day, World Bank estimates.

<sup>2</sup> CIA World Fact Book, 2003: <http://www.cia.gov/cia/publications/factbook/>

<sup>3</sup> Levine, Herbert. "The Future of the Soviet Economy." Rubles and Dollars Ed. J. Hecht. NY: Harper Business, 1991, p. 205

<sup>4</sup> Ibid., p. 207

<sup>5</sup> Black, Cyril, et al. The Modernization of Japan and Russia. NY: The Free Press, 1975, p. 171

<sup>6</sup> Op. cit., Levine, p. 208

<sup>7</sup> Op. cit., Black, p. 167

<sup>8</sup> Op. cit., Levine, p. 208

<sup>9</sup> Op. cit., Levine, p. 211

<sup>10</sup> Op. cit., Black, p. 169

<sup>11</sup> Op. cit., Black, pp. 169-170

<sup>12</sup> Op. cit., Black, p. 173

<sup>13</sup> Op. cit., Levine, p. 215

<sup>14</sup> The World Bank, Belarus: Prices, Markets and Enterprise Reform.

Washington, D.C.: World Bank, 1997, p. xiii

<sup>15</sup> Economist Intelligence Unit, Belarus, 2003

<sup>16</sup> Ibid.

<sup>17</sup> Ibid., pp. xiii-xiv

<sup>18</sup> Ibid., p. xvi

<sup>19</sup> IMF, Republic of Belarus, Selected Issues. Country Report # 03/119.

Washington, D.C.: IMF, 2003, p. 21

<sup>20</sup> Fitzpatrick, Catherine. "17<sup>th</sup> Anniversary of Chernobyl Disaster." (Un)Civil Societies Vol. 4, No. 11, 30 April 2003 <<http://www.cdi.org/russia/255-14.cfm>>

<sup>21</sup> Rich, Vera. July 1, 2002. Radio Free Europe/Radio Liberty <<http://greennature.com/modules.php?op=modload&name=News&file=article&sid=1346>>

<sup>22</sup> Belarus has two official languages: Belarusian and Russian, which are approximately as similar as Italian and Spanish.

<sup>23</sup> Op. cit., The World Bank, Belarus, p. xiii-xv

<sup>24</sup> Op. cit., IMF, p. 21

<sup>25</sup> IMF, Republic of Belarus, Selected Issues. Country Report # 02/22.

Washington, D.C.: IMF, 2002, p. 8

<sup>26</sup> Korea National Statistical Office. Statistical Handbook of Korea, 2002. Chapter 11.

<<http://www.nso.go.kr/eng/handbook/chapter11.shtml>>

<sup>27</sup> Ahlburg, Dennis and Jensen, Eric. "Education and the East Asia Miracle." Population Change and Economic Development in East Asia. Ed. Andrew Mason. Stanford, CA: Stanford University Press, 2001, p. 233

<sup>28</sup> Op. cit., Kim, p. 64

<sup>29</sup> Scahill, Tom. What Korea Has Accomplished. International Action Center. March 2003.

<[http://www.iacenter.org/korea\\_accomp.htm](http://www.iacenter.org/korea_accomp.htm)>

<sup>30</sup> In this particular case, property rights are cash-flow rights to the profits of one's asset.

<sup>31</sup> Evans, Peter. Embedded Autonomy: the State and Industrial Transformation Princeton, NJ: Princeton University Press, 1995

<sup>32</sup> These some of the reform that South Korea undertook after the Asian Financial Crisis

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