Book Reviews

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Articles for submission to the Bologna Center Journal of International Affairs will be accepted on a continuous basis. Article selection for the print edition takes place in February. Articles will be judged according to academic merit and relevance to the selected theme. Articles may be submitted to Managing Editor, Bologna Center Journal of International Affairs, Via Belmeloro 11, 40126, Bologna, Italy. Submissions should include a paper copy, as well as an electronic copy on disk in RTF or plain text format. Please also include a current curriculum vitae. Please visit our web site at http://www.jhubc.it/bcjournal. Comments are welcome at bcjournal@jhubc.it.

Table of Contents

Articles

Book Reviews

Acknowledgements

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Editor's Note

While reading through past BC Journals, I noticed that almost every previous editor leads with what he or she believes to be the most important issues of the day. Last year's journal began "War in Iraq. Terrorism." These are undeniably important problems and, for the most part, they remain crucial as the world has not managed to solve them since last year. This is not surprising to students of International Affairs. History tells us that since the birth of civilization many of the same problems have persisted and as humans we continue to make many of the same mistakes. But this is not a reason to be pessimistic; indeed, for the authors of the following pieces and for the students at the Bologna Center there is a sort of embedded optimism. By studying International Affairs, one tacitly suggests that relations among nations can be changed for the better, that international problems can be solved or at least assuaged.

This year's articles come from scholars on four continents and a host of exceptionally keen Bologna Center students. They can be placed into four groupings:

The first two articles deal with democracy and democratization in the developing world. Professor Imtiaz Hussain explains fundamental problems with democratization in ethnically divided societies. Using Afghanistan and Iraq as examples, he shows that for foreign troops it is difficult to make a new democracy stable, even on paper. The second article, by Randall Wood, is a prudent call for democracy in Cuba. He suggests that the United States should reverse its closed policy toward its island neighbor.

The second group of articles loosely addresses embedded elements of Western culture. The first, by Professor David Ellwood discusses Britain's national identity with respect to the United States. He argues that Britain has engaged in a policy of "top-down" Americanization for many years but that this policy is now failing. Next, Michael Heimbinder's says that the Bush administration "has... establish[ed] the denigration of human rights as the root of terrorism" and that this "narrow formulation" thwarts any attempt to formulate an effective national security strategy. Finally, according to Professor Gokhan Bacik, the West is "co-opting" Islamic countries to support its hegemony, which is a flawed strategy and a source of global terrorism.

The third group focuses on the European Union with three articles

speaking to the accession process in particular. Alastair Coutts argues that there is a "mutual mistrust" between the European Union and Turkey and that one should question just how serious the EU is about Turkish accession and just how serious Turkey is about meeting EU guidelines. Polina Gerasimova believes that 10 new entrants into the EU will "shake" the system and that policies are required to "restore balance." She examines the case of Poland to make this point. Sarah Giles analyzes the Ukraine, Belarus, and Moldova, and tries to explain the reasons and implications behind their recent non-accession. The last article in this group deals with how scholars and policy makers should think about the European Parliament. The author, Julia Speht, suggests that traditional research comparing the EU to mature democracies is not appropriate and that democracies in transition are a more appropriate benchmark.

The fourth and final grouping deals with human rights. Hannes Opelz goes inside a secret Israeli detention center where, he maintains, grave violations of human rights are being committed. Kelly Jones argues that human rights abuses in Sub-Saharan Africa are "fatal" as they increase the risk of HIV transmission for women. And Steve Arons looks at the monitoring process for multinational corporations in El Salvador and explains why one particular institution is more effective than others.

The journal concludes with reviews on four books about the 'American empire' and transatlantic relations. The authors include Ania Kielbratowska on Charles Kupchan , Richard Tite on Robert Cooper, Kevin Croke on Andrew J. Bacevich, and Frederick Hood on Charles Grant.

On a more administrative note, this issue of the journal has a number of new attributes, including redesigns for the cover and the layout. The journal will also be distributed electronically to a much wider group of scholars and policy makers. The staff hopes that all of these changes will be considered improvements.

Ron Watson
Editor-in-Chief

Democratizing Afghanistan and Iraq

PAPER TIGER, CLAY PIGEON, AND MILITARY SURVEILLANCE

Imtiaz Hussain

Even with foreign military surveillance, Afghanistan's democratization may become no more than a paper tiger and Iraq's a solid clay pigeon for ethnic groups to shoot at. So suggests a post-war comparative study of (a) the democratization mandates, (b) structures and procedures envisioned, and (c) the implementation record. Depending on how welcome foreign troops are in other ethnically divided societies today, they too may find their fate between the paper and pigeon roles.

PUZZLE

Democratizing defeated countries remains a puzzle. Nazi Germany and imperialist Japan could be irreversibly transformed after World War II, but that is cold comfort for the US in today's thrice-threatened Afghanistan and Iraq. Unlike Germany and Japan, Afghanistan and Iraq are not just ethnically divided societies, but these divisions also antedate Islam—indicating democratization means more than cutting the Islamic Gordian Knot. Just as these ethnic groups seek their own Westphalian moment of self-assertion and identity, the Muslim Middle East is also gripped in a second tussle: religious versus secular forces, much akin to West Europe's Thirty Years War. The third source of Afghan and Iraqi pressure is democratization itself, not the stereotypical domestically-determined version, but one externally catalyzed and with a conspicuous exogenous component.

Democratization was mandated under external supervision, for Afghanistan through the December 2001 Bonn Agreement (BA), and for Iraq through the Coalition Provisional Authority (CPA), established by the Coalition of the Willing (COW), but operating through the Iraqi

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Governance Council (IGC). A comparative study of both mandates, the structures and processes they stipulate, and their implementation thus far informs us of both Afghani and Iraqi prospects, and possible Middle East spillovers.

APPLES, ORANGES, AND FRUITFUL COMPARISONS

No two countries are alike. Even though both Afghanistan and Iraq had monarchical backgrounds, faced, and still face, internal divisions and foreign interventions, flirted, even if briefly, with one kind of socialism or another, and eventually became failed states, differences between them predominate: Afghanistan's lack of resources and remote location contrast with Iraq's enormous oil reserves, its pivotal world economic position and its location at the crossroads of civilization. Iraq's *Sunni-Shi'ite* religious divide belies a broader and deeper Arab-Persian ethnic chasm, just as recent *realpolitik* invoking Afghanistan, dubbed the "great game", conceals a more historical ethnic *Pashtun-Tadjik* rivalry. Adjusting historical gravitations to today's priorities necessitates meaningful comparative dimensions.

HISTORICAL THORNS

As artificial constructions, the Afghani and Iraqi states were doomed to fail. The indicators of their fall may be gleaned from the nature of cleavages, the relative power between groups, and pinning stability on foreign military presence.

Ethnicity, religion, and ideology sharply divided both countries. Afghanistan's *Baluchis, Hazaras, Tadjiks, Turkmenis,* and *Uzbekis,* among others, were historically subjugated by *Pashtunis,* just as Iraq's *Kurds and Shi'ias* were by Arab *Sunnis.* Imported socialism not only deepened these schisms, evident in Saddam Hussein's *Baathist* totalitarianism and Afghanistan's Soviet invasion, but also divided the dominant groups. Afghani *Pashtunis*, for example, are divided along a pro-democracy faction under Hamid Karzai, a pro-*Taliban* fundamentalist counterpart under Mullah Omar, and a less severe pro-Islamic alternative under Burhanuddin Rabbani. In Iraq, *Shiítes* account for 60% of Iraq's 25m people, and therefore theoretically may command absolute majority, but diverge along fundamentalist, moderate, and secular loyalties—catalyzed in part by anti-Saddam war alliances.

Democratization ultimately rests upon the relative strength of Afghani and Iraqi groups. Prior to the conflict, *Pashtunis* wielded power

in Kabul, whether under the monarchy, the communists, or the *Taliban*, and in Iraq, *Sunnis* held a vice-like grip. Both countries faced excesses, Afghanistan from religious fundamentalism, Iraq from military totalitarianism. Changing the regime in both, therefore, could easily invite tyranny. In Afghanistan, minorities could face the brunt, in particular *Tadjiks* exploiting intra-*Pashtuni* differences between a pro-democracy faction under Karzai, pro-*Taliban* under Mullah Omar, and a less severe Islamic group under Burhanuddin Rabbani. In Iraq, a tyranny of the majority in *Shi'ite*-controlled Iraq,[1] or a divided *Shi'ite* camp, are distinct possibilities. Whereas *Tadjiks* are too small to continue directing Afghani affairs without substantial external military support, *Shi'ite* governance carries even more damaging spillover potential. Among the likely sources of *Tadjik* support are India, Russia, and the United States, however India lacks contiguity, Russia would reopen old wounds elsewhere in Afghanistan, and the US never fully accepted the *Tadjik* preponderance from the very outset. Similarly for Iraq. *Shi'ite* excesses may be applauded by, and encouraged in Iran, but generate resentment among Iraq's southern neighbors and the United States. Sensing the opportunity, *Kurds* may push their autonomy desires into a full-fledged independence movement, thus breaking Iraq, rattling Iran and Turkey, and complicating democratization.

Democratization therefore necessitates military order, and as a corollary, US engagement. However, direct US military engagement in Iraq against its more off-shore Afghani role also unofficially expresses the lower degree of US confidence in democratizing Iraq than Afghanistan. Afghanistan's democratization is in the hands of Karzai, augmented by a token international force, of which the US provides 12,000 troops and off-shore military presence, Great Britain 2,000 troops, while Canada and others provide 5,000 troops. On the other hand, Iraq's democratization is directly supervised by a former US ambassador, L. Paul Bremer, serving as Bush's envoy from May 2003, with roughly 130,000 US troops supplemented by Great Britain's 11,000, Poland's, 2,400, Italy's 2,300, Ukraine's 1,650, Spain's 1,300, the Netherlands's 1,100, and Japan's 600, with 3,000 non-combat South Korean soldiers also offering support.

Centralizing presidential authority in both countries faces all kinds of obstacles. Without the US-based military presence, ethnic rivalries would explode; with it, democratization assumes different colors.

COMPARATIVE DEMOCRATIZATION

All three barometers—mandate, structures and procedures envisioned, and performances—illustrate the perils of adjusting historical tensions to modern society.

MANDATE

Assumed as the strategic goal in both countries, democratization nevertheless developed differently in each. Afghanistan's various ethnic groups were locked up in Petersberg Hotel, Koenigswinter, until they forged what came to be called the BA; Iraq's ethnic groups stemmed from instruments of surrender as well as surreptitious arrangements with exiled groups, crystallizing into the IGC through the CPA.

Leadership was curiously provided by exiled or cosmopolitanized persons or groups in both cases. Karzai led a long Afghani list, which also includes the US ambassador in Kabul, Zalmay Khalilzad. Owing to his popularity and US backing, Karzai, the monarch's *Popolzai* relative, became Interim Authority/Administration (IA) leader from December 22, 2001. Yet, relative power positioning rather than proportional representation propelled the *Tadjik-Uzbeki* Northern Alliance (NA) to the top under the *Panjshiri* troika, named after the *Tadjik* valley that has been uncaptured by the *Taliban*: General Mohammad Qasim Fahem, Yunus Qanuni, and Dr. Abdallah Abdallah—future defense, interior, and foreign ministers. They did not want the monarchy restored, nor any international security force at first. Having been kicked out of Kabul in 1996, they routed the *Taliban* in Mazar-i-Sharif in November 2001.

In the Koenigswinter background were the Peshawar, Cyprus, and Rome groups, representing the *Pashtunis*, *Shi'ite Hazaras*, and exiled monarchists, respectively. The *Pashtuni* representative, Haji Abdul Qadir, later a short-lived, assassinated vice president, even left the negotiations to protest *Tadjik* high-handedness. As the group from which the *Taliban* emerged, the *Pashtunis* were reduced to either supporting the return of ex-king Zahir Shah, himself a *Pashtun*, or becoming *tadjikized*, that is befriending the *Tadjiks*. Whereas the Rome Group was more interested in the monarch's home-journey from exile rather than in his restoration, the Cyprus Group essentially sought to preserve minority *Shi'ite* rights in Kabul. They were held together by UN Special Representative Lakhdar Brahimi and a no-nonsense United States.

On the Iraqi front, both *Kurds* and selected *Shi'ites* were in touch

with the US even before Saddam Hussein abandoned Kabul. Among the *Kurds* were Massoud Barzani of the Kurdistan Democratic Party (KDP) and Jalal Talabani of the Patriotic Union of Kurdistan. Among the *Shi'ites* were Ayatollah Mohammed Bakr al-Hakim of the Supreme Council for the Islamic Revolution in Iraq (SCIRI), who worked with the US until his August 2003 assassination, but reflected neither Najaf *Shi'ite* temperaments, nor *Shi'ia's* emerging youth aspirations; and businessman Ahmad Chalabi of the Iraq National Congress (INC), who is a US neoconservative favorite but not trusted by either the CIA or the Department of State. There was no Koenigswinter equivalent of independent parleying between them: the US alone kept them connected.

After crossing many hurdles, Afghanistan stands on the threshold of its first general elections in September 2004, while Iraq is scheduled to begin its interim governance from July 2004 until elections are held in late 2005. Whereas Afghanistan needed new centralized institutions, such as the constitution, presidency, and regularized elections, as well as emerging administrative, legislative, judicial, and banking agencies to replace old counterparts like the monarchy and *loya jirga,* Iraq's replacement of centralized *Baathist* institutions creates a more formidable Achilles Heel. Dubbed the paper tiger and clay pigeon models, both illustrate options other failed states may one day face: Afghanistan's progress is satisfactory, but only on paper, while Iraq's is being shot down even before it is erected. Clearly democratization needs long-term military safeguards in both countries.

Three playing field differences between the two models are noteworthy: Whereas IGC's 25-members handpicked by Bremer were not part and parcel of any endogenously unfolding dynamics after Saddam's exit, many Afghanis in Koenigswinter directly reflected battlefield interests; Afghani centralization was a necessity given the absence of any ethnic group commanding absolute majority, whereas Iraq's centralization, given the absolute *Shi'ite* majority, merely invites future civil war; and finally, whereas the BA picked up on independent UN-based efforts from the 1988 Geneva Accord to facilitate Soviet withdrawal, post-war UN efforts in Iraq were subordinated by US political preferences and military imperatives, and ultimately shattered when the August 2003 killing of Sergio Vieira de Mello and 21 other UN officials prompted a UN Iraqi departure.

STRUCTURES AND PROCEDURES

Even though democratization is the common strategic goal, Af-

ghanistan and Iraq are on two different tracks, in part reflecting dissimilar US interests. Whereas both were prioritized in the US war on terrorism, Iraq also had a leader the US wanted out. The result: greater US hands-on engagement in Iraqi than in Afghani democratization.

Two successive governing structures were spelled out to prepare the 2004 elections in Afghanistan: the Interim Authority or Administration (IA) from December 22, 2001 until the Emergency Loya Jirga (ELJ) convened in June 2002; then the Transnational Authority/Administration (TA), chosen by the ELJ, framed a constitution by December 2003. After specifying a UN-approved chairman, five vice chairmen, and twenty-four department heads, the IA worked with a UN-approved 21-member Special Independent Commission (SIC) to convene the ELJ. Local elections for 1051 ELJ delegates were held in March 2002, but were left at the mercy of the 32 provincial governors and the many more warlords. To account for displaced persons, professionals in exile, deep ethnic cleavages, nomadic groups, and particularly women, 501 additional delegates representing 381 districts (including foreign enclaves as far away as the US east coast), were nominated. They met three extra days amidst applause and brawls, accomplishments and intimidations, to elect a TA president and approve his cabinet. Within its first two months, the TA established a Constitutional Commission; and the January 4, 2004 constitution ratification leaves only the elections to be staged, not in June 2004, as initially earmarked, but possibly in September. Less than one-tenth of eligible voters have been registered as of March, with women lacking sufficient representation, while security conditions remain ever-precarious in the region.

In addition to challenging their traditional counterparts, emerging institutions also promote secular, western practices, such as voting by ballots, creating a supreme court, and extending adult franchise, among people largely untutored in such practices. Building a national army or police force is slippery as the International Security and Assistance Force (ISAF) and NATO refuse to be deployed outside Kabul. How these play out in traditional Afghani societies remains to be seen.

As previously alluded to, once the US-dominated COW had defeated Saddam's regime decisively, President Bush's call for the cessation of war from May 1, 2003 resulted in the CPA establishing a 25-member IGC in July, consisting mostly of exiled political and secular *Kurd, Sunni*, and *Shi'ite* leaders. It accurately represented (a) Iraq's ethnic composition, with 13 of the 25 members being *Shi'ites*, and (b) regional composition, with 9 of its 18 provinces under *Shi'ite* control, 7 under *Kurds/Sunni*, and

2 mixed. However, this governing body is too exogenous, as it grossly ignores sentiments within Iraq: religious *Shi'ite* views were underrepresented, in addition to *Sunni* and *Kurd* apprehension of a tyranny of the majority.

Bremer's Transitional Plan of November 14, 2003, which the IGC fully approved, called for caucus elections in Iraq's 18 provinces to eventually produce an Interim National Assembly and an Interim National Government by July 1, 2004. These, in turn, would produce a constitution and hold free and fair elections based on universal adult suffrage within 18 months. A Transitional Administrative Law, or interim constitution, was adopted on March 7, 2004 to facilitate their tasks.

PERFORMANCES

How the cards are originally stacked eventually skews outcomes. Afghanistan is fulfilling all of its pre-election obligations while Iraq is struggling to get to first-base. In the final analysis, Afghanistan may still fulfill all paper obligations without fully democratizing, while Iraq's efforts may be furiously contested.

As expected, the IA was heavily weighted in favor of the NA, even more so against the Pashtunis. Of the 30 appointed officials, 18 belonged to the NA factions, 11 to the Rome Group, 1 to the Peshawar Group, and none from the Cyprus group. Karzai remained the only significant Pashtuni in the IA. The Tadjik stranglehold troubled even the Uzbekis within the NA, led by General Rashid Dostum's Junbish-i-Milli (National Islamic Movement). Although subsequently made a Deputy Defense Minister, Dostum, together with Ismail Khan, a Persian-speaking, born-again Herati mujahedeen, were essentially ignored at the ELJ. They claim the centralization process, and especially any state armed force, as the cause of the murder of Ismail Khan's son revealed in Herat this March.

There is no doubt to observers that this monumental exercise at centralizing Afghani authorities through a constitution, democratic elections, and a strong president would not have proceeded so smoothly without the military presence of the United States. Whether it is the ISAF, off-shore retaliatory capabilities, selective deployment of special forces to hunt Taliban die-hards, or even providing Karzai's personal bodyguards, the United States military presence has forced expectations into realities. This does not necessarily guarantee Afghanistan's first democratically elected government, based on universal adult suffrage. The assumption ignores how ISAF does not operate outside of Kabul and Afghanistan's porous borders, particularly with Pakistan, prevent a

Taliban-proof countryside. Until the decisive day of reckoning between the democratic and disruptive forces, Afghani restoration may remain surreal. Nevertheless, in contrast to Iraq, Afghanistan has come a long way: Specified goals, no matter who set them and under what supervisory circumstances, have by and large been met, whereas in Iraq they continue to be defied.

The roles of Bremer himself and the CPA complicate Iraqi democratization. Bremer is re-enacting Douglas A. McArthur's inappropriate over-lord Japanese role after 1945 with the veto-power he wields over IGC, for example, in preventing the enactment of Shari'a, and the unwritten Muslim code, undercutting the constitutional and democratic ends being sought in Iraq. In addition, the CPA encouragement to develop private militias across Iraq as a step towards forging a multi-militia security for Iraq is also capturing attention. As Jennifer Bremer of the University of North Carolina's Kenan Institute of Private Enterprises's Washington Center surmises, "this process could slide into Northern Ireland-style chaos, with each faction forming its own militia for defence against all the other militias."[2]

Adopting Iraq's Transitional Administrative Law (TAL) was hindered when Ayatollah Sistani opposed two Kurd demands: First, subjecting the permanent constitution to a two-thirds majority vote, and second, installing a rotating presidency among five members, three of them Shi'ites, one Kurd, and one Sunni. A long political road lies ahead in chronologically diminishing time to resolve these differences. As it currently stands, the TAL, also called the Fundamental Law, includes a bill of rights, federalism, and Islam as one source of legislation, which the actual constitution cannot alter. The first two seek to reconcile the different ethnic groups by recognizing a wide variety of rights, while the third does not make Islam the only source of law. Misgivings abound; for example, demands from the 3 women IGC members for formalizing 25% of legislative seats for women, Kurds insisting their militia, pesh merga, be retained at the federative level, and the ambiguity in the role of Islam. The US seeks a power transfer in time for the November elections, but whether the IGC continues after June 30 is a more urgent issue. Walid Khadduri of the London-based Middle East Economic Survey proposes *confessional approaches*:[3] bringing in neglected *Sunni* or *Shi'ite* members after that date to work out a future collectively. Others, such as the US, call for its dissolution; yet others, like Sistani, only see the IGC as an illegitimate collection of US-stooges.

Weaving a way out of this quagmire is undoubtedly important to a

viable Iraq, but the critical contemporary issue deals with the nature of those caucuses. As previously observed, selective US preference contrasts with Sistani's direct elections demand, and this fissure was compounded by comments from a UN electoral team which returned from Iraq, under Carina Perell, during February, claiming Iraq will not be prepared for elections as early as June 30.

According to the BBC's Barbara Plett, four issues dividing the US and Iraqi officials not only predict *Shi'ite* reactions, but also increasing UN involvement:[4] completing voter registration by June 30, the June 30 deadline itself, building a pluralistic political culture and security. The first two reflect administrative problems, but are affected by the underlying constraint combined in the second two issues: Iraq's identity problem. US Secretary of State Colin Powell insists the June 30 US deadline for transferring power will not be compromised,[5] itself an acknowledgment of the limits of US military power in pursuing political goals. Barry Schwerd of the Associated Press, among others, sees this as a *philosophical* US shift towards embracing UN engagement. To recall, prior to the March 2003 outbreak of war, the US reduced the UN to a helpless body and ridiculed Security Council opponents of Resolution 1441, namely France and Germany. "We are waiting to see whether or not the U.N. has better ideas than the caucus system," Powell conceded.[6] While this may not be tantamount to the UN finally finding its place in the sun after almost sixty years on the run, it is the one agency Iraqis of all constituencies place faith upon, Iraq's neighbors are clamoring for, and the US is increasingly turning to. If the UN is not engaged, the alternative of civil war may otherwise be just around the corner.

Democratization by defiance necessitates the US and UN, the former to provide military cover, the latter as a diplomatic symbol. Neither the US nor the UN can remain permanently in Afghanistan and Iraq. Both countries have no choice but to utilize this briefly safeguarded opportunity to eliminate historical windows of vulnerability. Under today's demanding circumstances, this may be a tall task.

CONCLUSIONS

Democratization faces at least five trip-wires: the impact of military victory, the nature of rogue/failed states, the middle class, the superpower's engagement, and the UN.

A military victory today promises a slippery slope: Germany and Japan landed on their own feet under similar circumstances by the

1950s, however Afghanistan and Iraq face damoclean propositions from greater population diversity, porosity of state boundaries reducing the state's gatekeeping capacities, and the disruptive and costly localization of more globalizing trends and developments.

Drifting from mainstream attitudes, behaviors, and policies imposes greater costs for rogue/failed states today than before. Even though the Cold War was not democracy-friendly, Germany and Japan had no choice but to embrace it. Under today's contrasting atmosphere of greater transparency and accountability, overblowing domestic concern enhances rather than eliminates procedural obstacles.

Supposedly the motor behind modernization, the middle class is split between those who adapt well to changing circumstances and those who don't. Shana Cohen argues that without bonding with the state, the individual fails to identify with such desirous overarching developments as market liberalization or a Kantian perpetual peace.[7] Instead, he/she falls prey to another overarching development, terrorism. With more educated persons in absolute and proportional terms, Iraq carries more seeds of long-term breakdown, irrespective of its ethnic conflicts, than Afghanistan. Within these conflicts, it becomes but a time-bomb.

Superpowers need to draw the line between retribution and remolding society to avoid what John Lewis Gaddis calls the *Agincourt syndrome,* that is, inflicting a military victory so imposing as to psychologically change the defeated, as Henry V did at Agincourt and the US in Germany and Japan. He identifies three ways to prevent it:[8] (a) multitasking, (b) winning and sustaining local welcome, and (c) maintaining the moral high ground. Whereas Afghanistan has a mixed record with all three, Iraq is failing with each: the BA's progress contrasts with Bremer's restoration plan facing stumbling blocks; Afghani locals find US and allied troops more fascinating than fearsome, however in Iraq *Sunnis, Shi'ites,* or formerly exiled supporters either never welcomed the US, and if they did, are taking back that welcome; and finally, whereas 9/11 gave the Afghani invasion the much-needed high moral ground, in Iraq not involving the UN and not substantiating the WMD argument are undermining both the morality behind invasion and the morale of ground occupying forces.

Multitasking has been pursued differently by the US in Afghanistan and Iraq: With an occupying army in Iraq, the US must face all eventualities and pursue every opportunity, in contrast to its off-shore Afghani posturings, which allow local dynamics to be ignored. One consequence: The US Embassy in Baghdad is not only bigger than the one in Kabul, but

the biggest of all embassies worldwide.[9] Yet, suicide bombings and threats inflict greater US losses in Iraq than in Afghanistan.

Sweden's former prime minister, Carl Bildt, extracts six state-building *lessons* from Iraq relevant to the comparison.[10] First, a secure environment must be established. This seems to be more advanced in Afghanistan than in Iraq. Second, prioritizing state building over reconstruction. While generally true for Afghanistan precisely because of a more secure environment, in Iraq state-building is not taking roots, owing to the lack of a secure environment. Third, the stipulation of a final goal. This is true in Afghanistan, and the necessary bricks to put them into place are also largely there; but Iraq has yet to conceptualize where it wants to go, and therefore the needed pieces cannot even be precisely defined. Fourth, the necessary conditions for long-term economic growth should be present. Here both countries face deficits, Afghanistan from its lack of resources, inadequate infrastructure, and abject poverty, and Iraq from its collapsing infrastructure, diversion of resources to pay reparation and inherited *Baathist* debt, and increasing impoverishment. Fifth, a benevolent regional atmosphere should prevail. With Pakistan playing a spoiler role in Afghanistan and Iran doing the same in Iraq, this will be the Achilles Heel in both cases. Neither Afghani nor Iraqi reconstruction and rehabilitation can be quarantined from their influences. A final state-building lesson is the availability of international support. Yet, this is harder to garner for Iraq than for Afghanistan, given the divided world opinion behind the Iraqi invasion and the large-scale UN exit, or subordination, in Iraq. In the final analysis, even by fulfilling many of the stipulated checkpoints, Afghani democratization remains reversible, but Iraq is barely in the democratization playing field.

Finally, without the United Nations working as a player, Afghanistan, Iraq, and the United States would be in a deeper hole. The durability and dignity the world body demonstrated in Afghanistan during the 1980s and in Iraq through the 1990s, prove its capability to aid in making the world a safer place for democratization.

IMPLICATIONS

Democratization impacts development, identity-searches, and regional relations.

Afghani and Iraqi experiences challenge the development approach of Gabriel Almond and others in the Social Science Research Council project. They predicted identification, among other sources of crisis, as

but *means* towards the *ends* of political modernization. As this study suggests, political development may have to be the *means* for resolving the embedded identity crisis in Afghanistan and Iraq.

Development procedures that worked during the Cold War, however, may be damaging for democratization. In grappling with ethnic, racial, religious, or nationality identification problems, a state revolving around a dominant nationality has proven more stable, than an artificial state composed of embattled nationalities. The identity crisis inside Afghanistan and Iraq is not dissimilar to predicaments faced by India and Pakistan in South Asia, the post-Soviet successor states of Central Asia, elsewhere in the Middle East, and across Africa.

Given the artificiality of many Middle East, African, South Asian, and Central Asian boundaries, two scenarios follow: The worst case scenario remains an Afghani or Iraqi explosion rippling across neighboring countries, prioritizing military considerations over both democratization and development. The best-case scenario of democratization spilling over would challenge Middle East political structures. Both are inherently destabilizing.

NOTES

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impact of market integration," Comparative Studies in Society and History 45 (January 2003) 168-89.

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Overwhelming Force

PROMOTING DEMOCRATIZATION IN CUBA REQUIRES A RADICALLY DIFFERENT APPROACH

Randall Wood

> Four decades of the American embargo against Cuba
> have not led to significant political change on the island.
> It's time to contemplate a more effective policy against
> Castro: allowing unlimited investment and travel to
> Cuba. This will strengthen the nascent democratic
> movement already present there and promote real
> change from within, but a policy reversal this drastic will
> take political willpower that's unlikely in an American
> election year.

INTRODUCTION

Visitors to Cuba are prone to comment that visiting the Caribbean nation is like traveling back in time to the 1950s when heavy cars ruled the highways and televisions were as likely as not to be black and white. Half a century of Castro's grotesque economic mismanagement and the squandering of billions of dollars of Soviet subsidies have impoverished Cuba even by Latin American standards, and the American embargo against Cuba – America's longest-running economic sanction – has exacerbated the economic stagnation. But as desperately as Castro's government needs to reassess its devotion to the socialist policies that have failed in Eastern Europe, the American government must reassess its anachronistic loyalty to a policy that has brought about no obvious benefit: the embargo.

Ambassador Roger F. Noriega, Assistant Secretary of State for Western Hemisphere Affairs, in a statement before the Senate Foreign Relations Committee, reiterated in October of last year, "Our hemisphere will be a safer, happier place when Castro leaves the scene, whether by

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natural processes or, as is the goal of U.S. policy, as the result of the will of the Cuban people and the concerted action of advocates of peaceful change in Cuba."[1] But it's now more obvious than ever that America's foreign policy towards Cuba – the trade embargo and travel restrictions – has instead had the opposite effect: after over 40 years, Castro's grip on power is no weaker and his regime has been unaffected politically, while the brunt of the economic sanctions have been borne by the Cuban people. It is time for a radical change of policy.

CURRENT POLICY HAS FAILED

The Department of State Consular Information Sheet of May 2003 declares that due to the requirements of the "Cuban Assets Control Regulations" of the U.S. Treasury Department, a special license is required for all persons subject to U.S. jurisdiction in order to engage in any transaction related to travel to, from, and within Cuba, including tourist travel to Cuba or through a third country like Mexico. Only certain categories of travelers are permitted to engage in financial transactions with Cuban organizations or citizens, including declared journalists, Cuban Americans making a maximum of one trip per year to visit relatives, and certain professionals, such as athletes and some scientists.[2] The effective ban on financial transactions and travel to Cuba have effectively sealed off Cuba for access by Americans, while Europeans and the rest of the world are unaffected.

The most glaring failure of the United States' policy towards Cuba is the economic embargo. Only the altruistically myopic continue to have faith that unilateral embargoes – and the embargo against Cuba in particular – have had any real success in achieving their stated goals. From 1996 to 2001, the American government either imposed or threatened to impose 85 new unilateral economic sanctions, most of them against Libya, Cuba, Syria, North Korea, and Burma. These unilateral sanctions, at an estimated cost of $19 billion per year to American companies, have done little to advance the policy agenda of the American government, and have had overwhelmingly detrimental effects on the people the policies are allegedly intended to protect. For example, UNICEF reports indicate that economic sanctions against Iraq were responsible for the death of nearly 500,000 Iraqi children through malnutrition and child mortality; in Myanmar, the American ban on imported textiles has led to a layoff of between 30,000 and 40,000 garment workers. These workers, many of them young women who lack

alternative ways to make a living, are often forced into the sex trade, where they are exposed to AIDS and worse. But while the embargo was undeniably detrimental to the welfare of these women, it has had no obvious effect on the Myanmar generals, whose power has not been seriously challenged.[3] The effect on Cuba has been no better, where the sex trade has grown to proportions higher than pre-Revolution days in an economy distorted by lack of other opportunities.[4]

Only the multilateral embargo against Libya had any noticeable effect, and the reason is the steadfast unanimity with which the international community upheld it together: in 2004 after 20 years of withering multilateral sanctions and concerted international pressure, Mohammar Qaddaffi succumbed to the growing discontent within Libya and made concessions to the West in exchange for the dropping of the economic embargo that had isolated Libya economically.[5] But even Qaddaffi's reconciliation can be considered no more than half a win: he is still very much in power, as was Saddam Hussein at the end of a decade of the embargo implemented against his regime. Elsewhere, lack of international consensus on the embargoes enervates their efficacy.[6] Embargoes – especially unilateral embargoes – do not work.

But the sanctions against Cuba have been largely ineffective. Besides the fact that they're unilateral, they have been weakened by several loopholes, most prominent of which are the special exceptions granted to Cuban Americans. It is estimated that remittances of hard currency by overseas Cuban Americans as part of their nearly 120,000 annual visits to the island lead to revenues for the Castro government of more than $1 billion per year, most of which is generated through purchases at the Cuban dollar stores where markups can reach 240%, as well as through currency exchange mechanisms. That figure makes family remittances a better profit earner of crucial hard currency for the Castro government than both tourist activities or the sugar and nickel exports combined.[7]

In addition to being inefficient and nearly impossible to enact multilaterally, economic embargoes cause human suffering. Amnesty International has not faltered in its criticism of the United States' embargo, which has had "undeniably negative consequences for the enjoyment of human rights in Cuba." The embargo has clearly had a detrimental effect on nutrition, health, and education on the island, and has particularly affected – as embargoes have been shown to do – the weakest and most vulnerable members of society.[8]

While the embargo was imposed on Cuba to weaken the nation and promote democratization, paradoxically the harm the economic embargo

has caused the Cuban people has unequivocally strengthened Castro's hand. Analysts postulate that the embargo helps Castro rally support for Cuba and alienate the United States from Europe over the embargo's detrimental effects on the Cuban population, pointing out Castro's propensity to provoke the United States in times of political rapprochement to ensure the continuation of the embargo. Castro manipulated the United States in this way for example in 1996, when Cuban jets shot down two small planes belonging to the Cuban exile group Brothers to the Rescue, which immediately led the American Congress to adopt legislation again tightening the embargo.[9] The embargo has given Castro an opportunity to legitimize his repressive policies and deny civil freedoms such as the freedom of association, expression, and assembly. Moreover, the United States' stipulation that certain aid allocations be used for democracy-building activities has played directly into Castro's hands, facilitating Castro's effort to portray suspected dissidents as foreign sympathizers. This has ultimately diminished the prospect for a strong and independent human rights movement.[10]

Finally, American policy in the determination of where to apply economic sanctions is decidedly both lopsided and hypocritical. President Bush in 2002 told Cuban Americans, "I want you to know I know what trade means with a tyrant. It means that we will underwrite tyranny, and we cannot make that happen," proceeding to list the major human rights abuses for which the Castro regime is responsible. But where China is concerned – a state whose human rights record is not remarkably better than Cuba's – the Bush administration has favored the use of quite a different policy tool – expanded trade – to provide opportunities to engage rogue states with the goal of expanding democracy. Clearly, this is inconsistent.

Castro has masterfully manipulated the American government through more than four decades of political sparring. At this point, two policy options remain. The first is to close the loopholes in the embargo, which would mean forbidding all trade with the island as well as family remittances by Cuban Americans. Since it would be both unquestionably inhumane to deny the Cuban American community the right to contribute economically to their families in Cuba and would simultaneously furnish Castro with yet another reason to blame the United States for the social and economic distress caused by the blockade of remittances, not to mention that it would be political suicide in an already tense political climate, it is clear that the embargo in its current form is an untenable policy option. It is therefore necessary to abandon this outdated policy

and evaluate another mechanism to contribute to the democratization of Cuba. It's time to rescind the economic embargo, remove travel restrictions to the island, and submit the Castro regime to the overwhelming force of foreign capital and international influence.

A Chance to Reform

The time to promote democracy is now. While Cuba, when allied with the Soviet Union, represented a formidable threat to United States' national interests in the 1960s, the fall of the Soviet Union stripped Cuba of its geopolitical threat. And consequently, Latin America as a whole slipped remarkably quickly from the American government's policy agenda. But even in the absence of a Soviet threat, the United States, whose stated foreign policy goals are defined not by territorial ambition but rather by a desire to foster the spread of freedom, prosperity, and peace would be wise not to forget Latin America, where the gap in economic inequality has widened and growth has not been sustained. The United States should not overlook this opportunity to promote free trade and democracy.[11]

European nations, once more inclined to rail against the American embargo than against Castro's human rights abuses, are now reevaluating their relationship with the dictator in light of recent events. In April of 2003, while an American Senate working group on Cuba was reevaluating the embargo, Castro rounded up 78 journalists, economists, and social workers in a crackdown unprecedented in scale since the 1960s. These included respected journalist Raul Rivero and economist Marta Beatriz Roque. Cuban prosecutors tried them for collaborating to undermine the Cuban revolution, in some cases, asking for life sentences. For crimes such as associating with U.S. diplomats, writing counter-revolutionary articles, and operating independent magazines and libraries, some of the accused received sentences of up to 20 years.[12] The Cuban government simultaneously ended a three-year de facto moratorium on executions in order to execute by firing squad three men who had been involved in a hijacking. They were given a summary trial and executed within one week of its start.

The European Union, the Organization of American States and numerous United Nations bodies all protested vociferously, and Amnesty International published a scathing report of the crackdown in which biographies of the 78 persons imprisoned were detailed.[13] This marks the first time Castro's relentless oppression has received more attention in

Europe than have the negative effects of the American embargo. The Inter-American Commission on Human Rights manifested its profound concern for the human rights of Cubans imprisoned by Castro's regime shortly after the crackdown, and by May 17 OAS member states, including 14 from Latin America, issued a declaration against the regime's treatment of dissidents. In April the United Nations Commission on Human Rights passed a resolution calling for a visit to Cuba by a representative of the U.N. High Commissioner (Cuba refused to permit the visit). Both the Chilean Congress and the Central American Parliament passed resolutions condemning the crackdown. The European Union, condemning the arrests, decided to postpone indefinitely Cuba's bid to join the Cotonou agreement,[14] a preferential trade framework that will provide the basis for bilateral trade agreements between Europe and 79 of the least developed countries until 2020.[15] The United States government is imprudently but not uncharacteristically missing an opportunity to strengthen democracy in Cuba by foregoing the opportunity to build a coalition with Europe.

At the same time a new Cuban American Community is looking for other options, and there is reason to believe the dynamics of the Cuban American population are changing in ways that make policy change towards Cuba a reasonable action. The newest generation of Cuban Americans is on the whole less hardline than earlier generations have been and they are looking for new policy responses. The Cuban American National Foundation (CANF) – by far the most influential Cuban American lobbying group – recently argued that tightening the embargo through the denial of food sales and family remittances would play into Castro's hands, giving him yet another excuse to blame the suffering of the Cuban population on the embargo and other U.S. policies. This represents a radical departure from the CANF's past, in which it never passed up an opportunity to increase the pressure against Castro.[16] The drastic change in mindset among the Cuban American population is partly due to the political fallout from the Elian Gonzalez case, in which political hard-liners intent on keeping Gonzalez in the country regardless of the implications cost the Cuban American crowd politically. The televised images of exiles demonstrating, blocking traffic, and flying American flags upside down led to a backlash against the hard-liners who are popularly perceived in the Latin American community to have damaged the reputation of Cuban Americans as a whole.[17]

Most propitiously, the American Congress too, is ready to contemplate innovative policy options in light of the failure of the embargo to

provide any real results. In October 2003 the Senate joined the House in voting to ease travel restrictions to Cuba. The House bill, part of a $90 billion spending bill for the Treasury and Transportation Departments, was nearly identical to the Senate's bill. That such a coordinated policy in Congress was defeated just a month later when the House and Senate met to reconcile their spending bills is prima facie evidence that Republican electoral concerns again trumped coherent foreign policy.[18] It is claimed that the provision was dropped to save President Bush the ignominy of having to veto it. Commented Congressman Jeff Flake (R: Arizona), "For the same reason we will never have a rational farm policy as long as presidential campaigns begin in Iowa, we will never have a rational Cuba policy as long as presidential campaigns are perceived to end in Florida."[19]

But the most powerful reason to move now in revamping American policy is found, not surprisingly, in Cuba itself. The dissident movement in Cuba is growing more vocal in spite of the 2002 arrests, and American policy can help strengthen it. In 2002 dissident leader Oswaldo Paya gathered approximately 11,000 signatures asking the Cuban National Assembly to consider a referendum that would allow free elections and free speech in Cuba. The request was categorically denied, but the movement was emboldened as a result, which led to support among the Cuban American community in Miami for national political movements and increased political pressure from within Cuba. Remarkably the CANF is promoting a measured policy response to Castro's April 2003 crackdown, arguing that Castro will simply use tightened American foreign policy as a pretext to throttle the dissident movement further. The CANF argues that Cuba's economy is near complete failure just as the Cuban dissident movement has grown in visibility (for which the crackdown galvanized international support), and Castro is eager for a justification of his silencing of political opinion.[20]

In light of the favorable conditions for radical change in policy against Cuba, the American government should not miss the opportunity to promote democracy in Cuba in a drastic new way: by opening up the borders, that is, by dropping the embargo against Cuba and more importantly, by removing all existing travel restrictions to the island. The resulting pressure on the Castro regime, generated not just by American businesses and entrepreneurs infiltrating the island in search of the business opportunities provided by 40 years of economic stagnation, but also by tourists and travelers engaging and interacting culturally with the locals, will be a powerful force for change. Most importantly, the change

will happen through the Cuban people. By insisting that America will drop the embargo only upon the condition of Castro making sweeping reforms, President Bush has put the ball squarely in Castro's court, from where he can not expect a volley.

OVERWHELMING FORCE

The economic benefits alone to both countries would be enormous, a fact that has not been overlooked by the American Congress. Ten American senators formed a special Senate Commission on Cuba in March 2003 with the goal of reevaluating the current trade and travel restrictions on Cuba, including an expansion of the types of products that Cuba can purchase with cash, and a lifting of restrictions on remittances. Consisting mostly of representatives of the midwestern states who are eager to capitalize on food sales to Cuba, the Senate commission is similar to but not affiliated with the bipartisan Cuba Working Group in the House, which in 2003 had 44 members. Sale of agricultural products and medicines have been legal since 2000, though Cuba is forced to pay cash or arrange for financing through a third party.[21]

Under the Trade Sanctions and Reform Act of 2000, U.S. companies exporting permitted goods to Cuba earned $138.6 million in revenues in 2001, making Cuba one of the top 50 customers of U.S. food exports. Nine basic commodities – wheat, corn, soybeans, lard, soybean oil, rice, frozen chicken, eggs, and dicalcium phosphate – represent more than 99% of the 875,000 metric tons of U.S. commodities exported to Cuba in 2002, with branded food products making up the remaining one percent.[22] There is no reason to believe dropping the embargo would negatively impact trade. On the contrary, the U.S. International Trade Commission found that in the absence of the embargo, U.S.-Cuba trade in the late 1990s would have been $700 million to $1 billion annually.[23]

The fact that in impoverished Cuba, a thriving underground economy has not yet been quashed by the state-run apparatus is the biggest weapon in the policy arsenal. As any tourist to Cuba is aware, outside of the government-run establishments that keep tourists in careful isolation from Cubans, there is a parallel economy run in U.S. dollars, where for cash one can obtain consumer goods and services. The risk to these market entrepreneurs is not to be underestimated, for being caught could mean imprisonment or worse. Yet these are the risk takers who would most support overthrow of the Communist regime if they were only supported. Supporting them means providing them with a

source of income, which means nothing more than opening the market to America's most potent weapon: throngs of tourists armed with U.S. dollars.[24] Critical to this approach is ensuring the number of visitors is overwhelmingly large. The Castro government has attempted to monitor, cordon off, and control the 1.7 million tourists that visit Cuba. It would be unable to do so if tourism and travel to the island were so great that entrepreneurs' demands for opportunities would increase the pressure on Castro for change.

There is no doubt that the swelling number of tourists would provide income for Castro's state-run tourism industry. But it would have a much more subtle – and thus dangerous – effect as well: it would make glaringly obvious the inefficiencies and limitations of the state-run industries and provide a strong impetus among Cuban entrepreneurs to capitalize on the opportunity. Should Castro refuse the groundswell of demands the political pressure on his administration for reform will grow and rifts among the ruling elite are inevitable. But absent significant opportunities for profit, the political pressure on Castro will be muted.[25]

Opening up trade with Cuba would go a long way to fostering democracy in Cuba as well. The power of economic development as an endogenous and developmental force has been much studied: economic advancement – through which lives are improved – is a powerful engine for political progress, and mutual interests would go a long way towards increasing the leverage of the American government with Cuba. But the brunt of this ideational and developmental force would have its effect not with the Castro government, which has over the past four decades proved to be more obstinate than wise, but with the Cuban people, who would press their government harder for reform in order to conduct business with the United States. In this case, by appealing directly to the entrepreneur class, the carrot of trade could well wield more weight than the stick of sanctions.[26]

Most importantly, releasing a flood of capital on Cuba would put Castro in a very uncomfortable position. Castro has regularly used inflammatory war rhetoric to mobilize the Cuban people against an outside aggressor – America and its trade policy – as a way of distracting attention from the island's untenable economic position. Cubans are used to the rhetoric and probably don't believe it any longer. Removing the embargo is the most efficient way of torpedoing his argument. In an open economy, Cuba's industries – particularly its failing sugar industry, which since the withdrawal of Soviet subsidies in 1989 has diminished to 20% of its former production, closed half of its plants, laid off 100,000

workers, and is thought to be near collapse – will be forced to compete on their own merits. Let it compete then, in the absence of a convenient American scapegoat. Should Castro retaliate with trade barriers, let the blame fall where it may.[27]

The tourism industry, equally important to the Cuban economy, has also suffered a slowdown since the Al Qaeda attacks of September 11, 2001. With such a desperate need for hard currency, the Castro government would likely expand the tourism sector to capitalize on the foreign exchange, but in opening up the borders to a flood of American tourists Cuba would be unable to prevent a tremendous growth of contact between Cubans and foreign visitors. Castro has long fought to isolate his island from the information age: television programming and the radio are controlled with an iron fist, and listening to America's Radio Marti is considered a subversive activity; internet use is almost completely forbidden. But it would be patently impossible to regulate, control, or even effectively monitor the conversations and interactions of thousands and thousands of visitors to the island. Tourists and their conversations are a highly visible reminder of the pleasures and freedoms that democracy provides, and would go a long way towards energizing both the Cuban business community and civil society. At a minimum, the contact would shatter the veil Castro has kept over the eyes and ears of his people.[28]

From 1989 to 1992 the Communist regimes of Eastern Europe moved towards market economies because they had no alternative in the face of a hostile economic climate and political pressure *from within* to do so. More than a decade later, Cuba finds itself in a similar position: three essential elements have all been met. First, the increasing strength of the dissident movement indicates that there is widespread support from within Cuba for change, and most importantly, that the will to change is to be found both within and without the political elite, as exemplified by the diversity of dissenters from within the intelligentsia, journalist, and scientist groups. The middle class of industrialists, businessmen, and financiers who participate in the Cuban economy, even as actors of the state, are well aware of the gains to be made from economic growth and to rationalize their own personal gains in welfare in the context of a different economic environment. These groups are the most likely to participate in the support of the dissent movement, visibly or behind the scenes, and to add to the ideological fractures that are inevitable during times of economic hardship.[29]

Second, Cuba's position at the periphery of the international political economy implies domestic conditions are strongly shaped by interna-

tional factors, but that domestic pressure is most effective in motivating regime change, and a regime like Cuba whose government seeks to insulate his nation from that force subjects its people to semi-autarky and economic stagnation. Any shift in loyalty by the system's economic elite causes a disruption to the power of the ruling coalition and increases both the pressure for – and likelihood of success of – regime change. This force is magnified, not diminished, by the presence and penetration of international capital, and this is precisely why40 years of economic isolation in Cuba has had no effect. The embargo, essentially a hands-off approach to confronting Castro, has diminished the presence of American capital and Cuban exposure to democracy.[30]

Third, the growing strength of the dissent movement indicates a fair degree of regime disunity. These fissures in the surface of the regime are the elements most likely to bring about change in the regime, if they are representative of disunity within the ruling coalition – the second and third tiers of Castro's state structure – and if these factions can be exploited politically, for example by providing alternatives or by encouraging the promotion of different interest, such as those of the business or industrial class. The very existence of disunity within a regime's elite leads to a collapse of authoritarianism, if through a process of accommodation the regime delegitimizes itself. This was the experience of Eastern Europe. Here again, American policy has failed, by neglecting the opportunity to foster that disunity economically and politically. By failing to engage this class and foster – even support – dissent, the American government has failed to engage the system and effectively strengthened Castro's hand.[31]

CHALLENGES

Reshaping American foreign policy towards Cuba will take a tremendous amount of collective political willpower, which will be difficult if not impossible to surmount in an election year. The nation's largest minority since 2003, the 35 million-strong Latino vote is more important than ever to American politics and rocking the Latino vote has become political death. 32 million Latinos live and vote in the United States now, and they are concentrated in the 5 most populous states: New York, Texas, California, Illinois, and Florida.[32] The latter provides 25 of the 538 electoral votes.[33]

Former presidential candidate Al Gore learned that to his disadvantage in 2000, when general disaffection with how the Clinton administra-

tion handled the Elian Gonzalez affair – the so-called "Elian Gonzalez effect" - strengthened Bush's rapport with Cuban Americans and translated into a dramatic loss of 80% of the Cuban American vote for Al Gore in Florida in 2000. The 833,000-member Cuban community in South Florida is the only Latino group that regularly supports the Republican party and in the 2000 election their support of Bush contributed in no small way to Bush's 537 vote win.[34]

Bush is not guaranteed the same political goodwill this year. The Cuban-American believes Bush has failed to deliver on some of the promises he made during his 2000 election campaign: that he would thoroughly review the immigration policies and all other Clinton policies on Cuba, that he would ease travel and trade restrictions only if Castro instituted sweeping reforms like the release of political prisoners and the institution of free and fair elections. Most important to the Cuban-American community was the promise to revise the historic "wet foot, dry foot" policy drafted in 1994 by Castro and Clinton, in which Cubans attempting to emigrate to the United States by raft that are picked up at sea are repatriated to Cuba, and those that reach land are granted asylum. The Cuban-American community's belief that Bush has not made good on his promises could result in the loss of critical votes in an election year predicted to be contentious, even by recent standards. Bush is unlikely to want to rock the Cuban electoral boat at a time when it is so crucial to him.[35] And so it is no surprise that in February 2004, with rhetoric typical to his presidency in the post September 11 period, Bush has tightened travel rules in regard to off-shore shipping, vowing to cut off traffic to Cuba within American territorial waters. This move is typical of the Bush administration: superficially defensible, but against better judgment in light of better alternatives.[36]

CONCLUSION

There is no doubt that in the 21st century, a remarkable number of tyrants still run repressive, violent, brutal regimes in which justice, truth, and liberty are not to be found, and Castro's Cuba is without doubt among the worst of them. His failed economic policy, iron-handed control of the media and of the repression of perceived dissidents is unconscionable and the ruthlessness with which he attacks any perceived threat to his failed socialist experiment is appalling.

But the time to make a change is upon us, and President Bush is at best misguided and at worst foolish by letting electoral politics cloud his

vision on Cuba policy. Castro is a sworn enemy of the United States, but inappropriate American policies only strengthen him. The overall consensus among the American people, Congress, and European opinion make this an propitious moment to press for social justice and the democratization of our island neighbor. The embargo has over the course of 40 years, proven to be an inappropriate weapon to promote that change and a tool used to the detriment of the most vulnerable people. In light of this, as well as the willingness of Castro to use the embargo as a scapegoat for his failed economic policy and as a ral;lying point for support, not to mention as a means of distracting his people from domestic problems, it's time to drop the embargo. Engage Cuba and let America's most powerful diplomats – its dollars and its citizens – do what 40 years of ineffective policy have been unable to do: promote the democratization of Cuba. Open the doors.

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Bridge, Beacon, or 51st State?

BRITAIN'S TROUBLED AMERICAN DREAM

David Ellwood

Ever since the end of the Cold War the British people and their leaders have been involved in a lengthy debate on national identity, a discussion now likely to come to a head with the referendum on the proposed EU constitution. In this context the alliance with America functions not only as a guiding principle in foreign policy, but has provided the governments of the last twenty years with a constant source of models for modernization of the State, the political culture and national economic performance. But 'top-down' Americanization is a contradiction in terms and is failing.

THE MEANING OF A CHOICE

As a result of Prime Minister Tony Blair's unexpected decision in April 2004 to hold a referendum on the proposed European constitution, the people of the United Kingdom will finally be obliged to decide on their long-term attitude to the European Union. Like all the nations of Europe, Britain faces this moment of decision in a prolonged spasm of national self-interrogation, triggered by the end of the Cold War but intensified by the choice over participation in the Iraq war. Germany discovers pacifism to be the principal national sentiment its foreign policy must take into account after the double trauma of the end of the East-West confrontation and re-unification. France tries to re-define its position in the Atlantic community and the European community. Italy disputes whether Fascism, Communism or Catholicism should

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take most blame for its unsatisfactory sense of nationhood. The British worry most about 'Europe': specifically the past, present and future, the costs and the benefits of their membership of the institutions of the European Union.

All these national debates share a tendency to condense a great many issues, some old, some new, some borrowed, some imposed, into one over-riding, never-ending argument about the contours of national identity in the new era. This central dispute reflects a wide range of concerns about sovereignty and modernity in today's globalized world. As in previous eras of rapid change, the search is on to build and defend a distinctively Italian or French or German path to the future, one a people can recognize as its own, balancing the most attractive of the new and the best of the old. What distinguishes the French, the German and the British varieties of this debate, and differentiates them from many others, is the importance of the role of America in their discussions; not United States policy or personalities of course, but a version which includes all the forms American power has taken on in these national scenes over the years.

The pages that follow focus on how the American inspiration functions in Britain's key identity debates today. The central question concerns the role of the American myth and model in the United Kingdom's search for a satisfactory, stable modernity of its own: one which at home and abroad enjoys consensus, legitimacy and – above all - *success*.

A Bridge Too Near

A palpable sense of unease has spread in British opinion in the wake of Tony Blair's effort of stretching Anglo-American relations to cover the most ambiguous of US foreign policy operations since the end of the Cold War, the campaign against Saddam Hussein. The Prime Minister's self-appointed role as chief front-man for US policy in Britain and Europe has disorientated those who believed in his earlier insistence that Britain should be a 'bridge' between the two sides of the Atlantic. [1] There is widespread concern that the bounds of the old Anglo-American 'Special Relationship' as laid down by Churchill in 1946 and relaunched by Margaret Thatcher in the 1980's have been breached. In strict diplomatic and military terms, the British government has probably been consistent with the practice of the Special Relationship as carried on since the Suez misadventure of 1956. Yet participation in the Iraq War has provoked all sorts of accusations based on the metaphor which the former Tory

Foreign Minister Douglas Hurd scornfully applied: Britain as 'the farthing wheel in the penny-farthing Anglo-American bicycle'. [2]

Both of Blair's Foreign Secretaries, first Robin Cook, then Jack Straw, have confirmed their faith in his 'bridge' conception of Britain's place in the Atlantic world. They have insisted that - as the first of them said in a speech entitled 'Celebrating Britishness' - 'our value as an ally to our friends in Washington is in direct proportion to our influence over our partners in Europe.' And vice-versa, added his successor. [3] But a full understanding of these foreign policy statements is only possible if we consider them in the context of Britain's version of those post Cold War debates on identity, modernity and sovereignty which have taken place in every European nation, large and small. In the words of the historian Richard Weight, the 1990's witnessed 'the most sustained critical inquiry into the nature of Britishness since the aftermath of the Suez crisis.' [4] What role then has the American connection played in this protracted effort of self-examination ?

A visionary image of the United States was central to Prime Minister Margaret Thatcher's political revolution of the 1980s. As Mrs Thatcher told a Joint Session of Congress on one of her most triumphal visits to Washington: 'We are having to recover the spirit of enterprise which you never lost. Many of the policies you are following are the ones we are following.' Citing the monetarist approach to inflation control, the elimination of bureaucracy and regulation, liberalization, privatization and popular capitalism, the 'Iron Lady' extolled the success of her new post-industrial version of the British economy. It was confirmed by the embrace of entrepreneurs and financiers across the Atlantic Ocean: 'America is by far the largest direct investor in Britain and I am delighted to say that Britain is the largest direct investor in the United States .' [5]

From the beginning of the Thatcher era political styles were a thoroughly americanized as the Conservative Party embraced without reserve all the latest techniques of political marketing in its election campaigns and party conferences.[6] As for the substance of policy, certain public sectors, in particular the school and university systems, were reformed again and again in the hope of hooking them up to the motor of economic growth in the way their equivalents were supposed to function in the United States.[7] Employment policy was explicitly modelled on Reaganite ideology and experience, as David Dolowitz has shown in a detailed, operational study of the transfer process. As well as specific policy structures, even the wording of legislation was directly copied.[8] The highly regulated broadcasting duopoly of the BBC and the Indepen-

dent Television network was attacked frontally with the aim of producing a market-driven commercial system, and the 'enterprise culture' was imposed throughout the institutional world of the arts. Even inner-city renewal was promoted using United States models and connections. [9]

But the enduring legacy of all this was much more mixed than these images would suggest. At the end of the 1980's Arthur Marwick, a leading social historian, noted that social attitude surveys conformed the persistence of 'uniquely British characteristics, few of them conforming to Thatcherite ideas'. In particular attitudes toward wealth creation, job security and social services, all continued with little change from previous eras. Marwick concluded that 'despite a Government openly admiring of American ways of doing things, and the spread in Britain, as never before, of a universalized American style and gimmickry, the Britishness of British life was still abundantly in evidence.' [10] In the intense debate which followed upon her fall in 1990 on the meaning of the Thatcher years, America and Americanization were barely mentioned. Nor have they been in the succeeding years of reflection on that experience. [11]

Yet Margaret Thatcher's drive to renew British life by means of a form of top-down Americanization has continued unceasingly under Tony Blair. The "Third Way", it turns out, goes one way. In spring of 2002 Tessa Jowell, the Minister for Culture, announced measures to liberalize gaming laws and 'encourage the spread of Las-Vegas style casino resorts.' By September 2003 large-scale projects were being formalized for the construction of such resorts, and United States companies were making specific plans to link them to Premier league soccer clubs.[12] Laws against racial discrimination copied from the United States came into force in May 2002. In the early summer of 2003 ministers unveiled a new scheme to protect the pensions of bankrupt companies, based directly on the example of the American Pension Benefit Guaranty Corporation. The *Sunday Times* reported in April 2003: 'Ministers are backing plans to bring the so-called Chicago policing model to Britain', and most recently the new Department of Constitutional Affairs (DCA) announced the creation of the first Community Justice Centre, based explicitly on United States practice. The Lord Chancellor, Charles Falconer, (head of the DCA) told New Yorkers that he was 'utterly delighted' to import their community tribunal system in England and Wales. In this he was simply taking up the running from the Home Office, which since the 1980's, has been the most zealous of departments in importing American methods and innovations. [13]

The proposal of extra, differential, university fees of course signals

the further development of market forces in the supply of higher educa-
tion. In 1992 *The Economist* anticipated this trend and enthused over
'the rapid Americanization of British higher education' it would bring. In
2004 a *Financial Times* commentator called it an inevitable 'lesson in the
American way.' The government's new university admissions control
office will, according to its head Steven Schwartz, borrow examples from
Texas and California (as well as elsewhere) to engineer a form of affirma-
tive action. [14]

   In his spring 2003 Budget statement, the Chancellor, Gordon
Brown, pointed out that Britain and Europe still suffered from a 20-30%
productivity gap with the United States and so promised reforms which
would 'learn from American innovation, competition and enterprise'. [15]
At the same time the Trade and Industry Ministry is proposing a further
deregulation of the markets for television and radio along lines which,
say powerful critics, will promote the further 'Americanization' of pro-
gramming in these media. In an average week - in July 2002 - the pro-
portion of American programmes on major UK networks varied from less
than 15% on BBC1,2 and ITV, to 35% on Channel 4, 73% on Channel 5,
and 339% on Rupert Murdoch's multi-choice Sky One, the force most
professionals are referring to when they mention the 'threat' of Ameri-
canization. [16]

   Meanwhile as the arguments over immigration and national unity
continue, the government has instructed schools to begin compulsory
classes in citizenship and Britishness. The Home Office has excelled
itself. The Nationality Act of 2002 arranges for a a formal naturalization
ceremony for new immigrants, which includes a traditional oath of
Allegiance to the Crown, plus a new pledge on rights and duties in a
constitutional democracy. The entire process has been designed on the
basis of precedents adapted from the United States. [17] At the Labour
Party conference in autumn 2003, Gordon Brown celebrated the creation
of 500 Sure Start centres for healthcare and early education support of
children in deprived areas. The programme, launched in 1998, is based
on the long-running American Head Start organization. At the same
conference Tony Blair extolled the success of his effort to eliminate long-
term youth unemployment in a program entitled the 'New Deal'. [18] Since
then the Health Secretary, John Reid, has been investigating how private
United States health organizations might help manage parts of the
National Health Service, Police chiefs have been discussing whether or
not to set up a British FBI, and the judiciary is debating the government's
proposal for the introduction of a Supreme Court. [19]

While one might assume that the Conservative opposition would be of a different mind, it is even more enthralled by the American example and by President George W.Bush in particular. A reporter from *The Times* listening to the first speech of then new party leader, Iain Duncan Smith, in May 2002, found its themes and slogans to be exactly those he had heard covering the Bush campaign of 2000. 'I met President Bush when I visited America last December, and we can learn a great deal from him', said Duncan Smith, who on his return from VIP treatment in the United States wrote an article entitled ' My Manhattan project for a transatlantic conservative revival.' The new Tory leader, Michael Howard, was the Thatcherite Home Secretary who led the way in bring-ing the reforms made to America's penal system to the United Kingdom. He has switched from criticising Blair for insufficient zeal in following America's lead, to insisting that Britain must not be subservient to the United States. [20]

With the collapse of voter turn-out in the 2001 election, many observers see a replication of American electoral patterns and similar causes: an inability to distinguish between the policies and practices of the two major parties. [21] Was this the predictable result of Mrs Thatcher's famous vow to abolish socialism in Britain and her explicit desire to see parliamentary politics revolve round a choice between two centrist parties ? Surely it was predictable only to the extent that New Labour offered no significant alternative to the Thatcherite legacy. The Oxford political commentator Timothy Garton Ash has spoken of..: '.. something that both the Thatcher and Blair governments have had in common: a fascination with United States policy and United States solutions.' The political scientist David Marquand has written that the nation's leaders are 'fixated on the American social model.' [22]

THE DOG THAT DOESN'T BARK

And yet one will look in vain for any significant discussion in Britain of these fixations and fascinations. Occasionally journalistic critics will raise a mild complaint such as the ones penned by the commentator Michael Prowse in the *Financial Times*. He has argued repeatedly that British governments are in danger of becoming 'obsessed' with a cure-all they believe they have found for all the country's ills: turning everything they can touch, even education, into a 'business' experience that would bring the magic of private enterprise to the rescue of all things public. Citizens would be turned into consumers and the disciplines of the

market place applied to the supply of schools and prisons, hospitals, roads and all the rest. What was the origin of this conviction ?

There can be no clearer symbolic illustration of the source of Labour's business model for education than the surreal news that the government intends to import school buses from the United States (you know, the yellow ones with flashing lights)....I'm all for safe transport, but that doesn't mean British children must have the very same buses as their American counterparts. This compulsion to emulate the United States is nothing short of pathological...In the case of education it is also irrational. [23]

Other examples of skepticism can be found on occasion in the press. The former editor of the centre-left daily *The Guardian*, Peter Preston, described the then leader of the Conservative Party William Hague, as 'pathetically desperate to worship at the Washington court', and denounced the unquestioning reverence of British politicians for the American way. (In 1998 Preston wrote a fantasy novel in which Britain became the 51st State). While one *Guardian* writer urged his fellow-citizens to copy the United States constitutional model, another blasted 'the mixture of desperate fawning and haughty resentment that (we) offer up to the United States we sneer as we stoop.' [24]

The forceful ex-editor of *The Observer*, Will Hutton, an economic journalist and political commentator, has offered the most powerful denunciation by any contemporary observer of the dependence of the nation's governments and business leadership on the specific myth of the American 'enterprise culture'. In great detail he documents the baleful effects this tendency has had on the functioning of the Britain's welfare state and its economic development.[25] But the narrow focus of his argument and a tendency to dramatize the contrast between the malevolent American hegemon and the benign inheritance of 'European' experience, have limited the impact of Hutton's ambitious study. Above all Hutton fails to explain why the British ruling classes - heirs to one of the proudest and most distinctive traditions of government in the West - should have become so single-mindedly fixated on the project of constructing their own American dream.

Criticisms of US foreign policy in Britain have of course been vibrant recently, even virulent, recalling the era of Vietnam and expanding that inheritance of 'classical' anti-Americanism - I use the phrase with care - which was long the privilege of the traditional upper classes. [26] But that is not the same as reflecting on the sustained importation of American notions and practices by the State in order to fulfil its vision of a

British modernity. The Queen told the House of Lords on the official opening of Parliament in September 1998: 'My government's second legislative programme, like the first, will focus upon the modernization of the country'. [27] So how does the use of so many American precedents in this effort relate to the nation's status as the number one destination in Europe for United States foreign investment, the land that provides more tourists to the United States than Germany, France, and Holland combined, the place where, says novelist Amanda Craig, children live in their own '51st state', such is the force of soft American cultural power in their lives ? [28]

It might be thought that the great English/British identity debate of the last 10-12 years would provide clues to the America question but, although often mentioned, a sustained reflection on it is not on offer. Take the voice of young, multi-cultural Britain, the novelist Ms Yasmin Alibhai-Brown, heard in her outspoken tract, *Who Do We Think We Are* ? After the Cold War, writes Ms Brown, 'a new cultural hubris fed by economic might begins to prevail. The end of history has been announced by the US, which has become the great cultural aggressor, and Britain hangs on to the tail of this great power in spite of fear of being demolished by it.' A quick reference to the world of theatre, another denunciation of America's conception of might and right, then the argument moves on.[29] The year before Britain's best known television anchor, Jeremy Paxman, produced a brilliant written portrait of the English people, reckoned by all to be at the heart of the general identity crisis. Here too we find complaints about the 'over-dependence' of the governing classes on the Special Relationship, about cultural subservience, and about forms of Americanization such as jeans and T-shirts, whose impact on the world is juxtaposed with the general indifference towards equally great British achievements such as the tailored man's suit. The discussion stops there. [30]

David Powell's book *Nationhood and Identity* notes that the country is being 'shaped more by outside forces than at any other time in its history', particularly by globalization - yet devotes only one chapter to these pressures. Here we read that American influence is stronger than ever, not only because of the strategic connections, but because 'of the almost hegemonic influence of American popular culture, through film, television and the cultural imperialism of the Coca Cola society'. There is an allusion to the strong influence of American intellectuals and politicians on recent governments and an assertion that ' in this American-European competition for cultural influence the American elements

appeared to be those which were more widespread in their effect.'
Again, a reality is acknowledged, but it's not an issue. [31]

Two big books by historians confirm this tendency. Robert Coll's
impressive *Identity of England*, Richard Weight's *Patriots, and National
Identity in Britain 1940-2000*, refer briefly to older patterns of cultural
protectionism, and in particular to battles over film, television, and
working class leisure. Weight in particular brings out how important was
the stand taken on television, when BBC television and then the commer-
cial sector were being developed - under strict political control- as it had
become clear by the mid-1950's that the long battle over cinema had been
definitively lost. This is a story which would bear more development,
given the overwhelming centrality of television in any serious consider-
ation of the history of contemporary British identity.[32]

Especially because the controversies over television and national
identity continue today. One hears echoes of them in the militant criti-
cism offered by the then director general of the BBC, Greg Dyke, of the
coverage of the war in Iraq offered by the United States TV networks. If
Iraq proved anything, said Dyke in a London University seminar soon
after the war, 'it was that the BBC cannot afford to mix patriotism and
journalism. This is happening in the United States and if it continues it
will undermine the credibility of the United States electronic news
media...In the area of impartiality as in many other areas we must ensure
that we don't become Americanized.' [33]

Both Dyke and his predecessor, John Birt, were widely criticized in
the country for commercializing the BBC, pandering to the lowest forms
of popular taste, and in general dumbing down the output of the nation's
greatest cultural institution. Yet they both insisted on the BBC's role in
defending the most distinguished strands in the traditional view of
national identity, and throughout the BBC there is clearly a conviction
that, as the new Director of Television said on returning from three years
running a US network: 'American television is often rightly described as a
jungle - but it can also be a desert. British broadcasting is a much more
cultivated landscape.' [34]

It is probably true, as David Powell concludes, that to describe the
situation of planet Britain, it 'may be more appropriate to think in terms
of a variety of global influences rather than of a single pull being exerted
from any one particular direction.' [35] And as Garton Ash points out, it is
European Union Europe which has provided the most significant innova-
tions in law and governance. There is also a great deal of evidence, as
everywhere else, to confirm Stanley Hoffman's 1964 perception that

'(t)he more European societies become alike in their social structures and economic makeup, the more each national society seems to heighten its idiosyncrasies'.[36]   But all this still leaves open the question of just how much *like* the United States the British want their society to be, just how much they want to depend on the American inspiration for their ideas of a successful response to the contemporary conundrums of modernity, identity and sovereignty. Surely the possibilities of Anglo-American relations as represented by Julia Roberts and Hugh Grant in the allegorical *Notting Hill* (Roger Michell,1999) can't represent the greatest aspiration of the classes in charge of Britain today ? [37]

BETWEEN MARS AND VENUS

Shrewd observers on both sides of the Atlantic have pointed out that the British risk being caught undecided between the two strong models they are engaged with. The *Wall Street Journal* concluded in a large-scale survey of March 2001 that:

Britain hasn't decided whether it wants to be a Continental European-style welfare state, with the government ensuring high-quality social services for all, or a U.S.-style bastion of capitalism, with lower taxes and services left largely to local authorities or private enterprise. [38]

Leading British commentators have made similar points, with John Stevens, the leader of a pro-Euro element in the Tory Party, declaring that the inability to decide between the United States and Europe 'underpins most of the contradictions in our politics...we are getting the worst of both worlds....The battle between (...) American and European models will be fought out in Britain.' [39]

In response the government has offered two positions. To traditional supporters at the 2003 Labour conference Tony Blair's likely successor, Chancellor of the Exchequer Gordon Brown, pointed to America's social inequalities, as well as its merits. Brown declared that a Labour Britain would indeed synthesize the best of both worlds, and become 'more than a bridge, a beacon for all.' To readers of the *Daily Telegraph*, on the day before his autumn 2003 Budget statement, Brown promised that Britain, 'mirroring America' would become a land where a new 'consensus for enterprise' would penetrate every corner of the land, and a 'deeper, wider British entrepreneurial culture (would).. once again rival America.' [40]   In 1999 Brown created a large fund connecting up the University of Cambridge and MIT so that British academics could learn to monetize their research in a way similar to that of Americans, and at

his January 2004 'Advancing Enterprise' conference, with prominent British and American treasury ministers, central bankers and business leaders present (including Bill Gates), Brown announced further measures in the same direction. [41]

But few American observers are convinced by this spectacle. The *Sunday Times*'s resident American economic commentator praised the Chancellor after his 2003 Budget for being such a close student of United States economic achievement, but attacked him for not showing an understanding of what 'American-style entrepreneurship is all about', and insisting on perpetuating the welfare state. The American management specialist Candace Hetzner has drawn up a long list of reforms that must be undertaken before Britain even begins to resemble America, starting and ending with attitudes toward business. [42] Whether the Chancellor seriously believes that Britain's business is 'to rival America's entrepreneurial dash', as he told his *Daily Telegraph* readers in December 2003, it is perhaps significant that of all the comments on his Budget statement the following day, not one dwelt on this challenge, not even *The Economist*, which for many decades now has been the great champion of the path chosen by recent British governments. Meanwhile in Brown's native Scotland, long a slowcoach in business formation, psychological profilers hired for the purpose were able to discover traces of the true entrepreneur's animal spirits in only 10% of today's Scottish schoolchildren, and the 'Minister for Enterprise', another exalter of the American way, was being written off as a failure.[43]

Tony Blair has chosen his own way to fill the democratic deficit between the United States and its allies. On one level Blair's posture is in line with a long tradition of British élite attitudes toward America, an outlook dating back to Gladstone and imperial politics at the end of the 19th century, when it was decided that the British Empire's day was bound to end and that to give way gracefully to the United States was the most intelligent of all possible positions. As Alastair Burnet, the official historian of *The Economist*, wrote some years ago, from this time on: 'Britain was determined to appease the United States, and did so repeatedly, to the paper's satisfaction.' [44]

But the presumed exigencies of the Special Relationship don't explain the current state of dependency of the British governing class on America's inspiration. In Mrs. Thatcher's era a new kind of ideological affinity was invented, celebrated and placed at the heart of the Iron Lady's reforming crusades. What moves the Blair governments instead appears to be a kind of dogmatic pragmatism, an unthinking impulse

that sees in America a land where the mechanics of wealth and job creation *function*. It's a posture reminiscent of another Stanley Hoffmann *aperçu* of some years ago: 'What works in America works because Americans believe in it; what Europeans believe in today is what works'.[45]   But will the top-down Americanization of the last twenty years ever produce results in the manner imagined by the Chancellor and his followers ? How can a powerful, highly-centralized State such as the British example pretend to generate by exhortation and sermonising the rugged individualism that the true enterprise spirit requires ? This conundrum is not just an economic one.

The contemporary era in British politics begins with Mrs Thatcher, and what Hutton describes as her 'two-fold mission: to pull down the social democratic settlement [of the post-1945 welfare state] and to construct in its place a simulacrum of the United States.' [46] By combining this effort with an ever-more devout interpretation of the 'Special Relationship', Thatcher and her successors evolved their own interpretation of the meanings of sovereignty and modernity in the post-Cold War era of re-adjustment. But whether the voluntary choice of a kind of Commonwealth Dominion status vis-à-vis the United States corresponds to the best interests or the settled will of the British people is anything but clear. In de Tocqueville's section on external affairs in the new American democracy, the great French traveller quotes with approval not only Washington's Farewell Address, but also a previous remark by the first President:

"The nation that delivers itself to habitual sentiments of love or hatred toward another becomes a sort of slave to them. It is a slave to its hatred or to its love.' [47]

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NOTES

[1]   Systematic use of the 'bridge' metaphor reported in Ellwood (2003); the phrase was launched by Tony Blair in a wide-ranging foreign policy speech of 13 Nov.2000; cf. www.fco.gov.uk

2   Quoted by Peter Riddell, 'The EU still has a lot more than the US to offer Britain', in *The Times*, 13 March 2003; for high-level expressions of doubt on the utility of the Special Relationship, bestselling British historian Niall Ferguson, 'What's really in it for Britain?', in *Financial Times*, 15-16 March 2003; letter of protest against British foreign policy in the Middle East, especially its un-critical alignment with America, signed by over 50 senior ex-diplomats, published in *Financial Times*, 26 April 2004

3   Robin Cook, 'Celebrating Britishness', 19 April 2001, Jack Straw, debate on the Queen's Speech, House of Commons, 22 June 2001, both available at www.fco.gov.uk

4   Weight (2002) 665

5   Speech of 20 Feb.1985, reproduced in Thatcher (1986); citations at pp.112-13

6   Evans (1997) 48

7   Cf references in Ellwood (2003) 136

8   Dolowitz, (1998) 26-7, 108, 143; quotation at p.175

9   Hewison (1995) Ch.VII,VIII

10   Marwick (1996) 371-72

11   Cf references in Ellwood (2003) 149, n.44; Reilly (1995) 771-73

12   *Financial Times*, 4-5 May 2002

13   On race laws, David G.Green, 'Liberal anti-racism', in *Prospect*, Oct. 2001, p.34; on Chicago model, *Sunday Times*, 13 April 2003; on Community Justice centres, official anouncement at www.homeoffice.gov.uk (11 Sept. 2003); Falconer's New York remarks reported in *International Herald Tribune*, 17 Dec. 2003

14   *The Economist*, 20 June 1992; *Financial Times*, 17-18 Jan.2004; on affirmative action in university admissions, *Financial Times*, 15-16 March 2003, *Sunday Times*, 13 April 2003

15   Speech of 9 April 2003 at www.hm-treasury.gov.uk

16   The work of a House of Lords committee, chaired by Lord Puttnam, on the Government's Communications Bill was discussed by him in the edition of *Hardtalk*, BBC2, 4 Oct. 2002, cf. www.news.bbc.co.uk/2/hi/programmes/hardtalk; the Committee's report is available at http://www.publications.parliament.uk/pa/jt200102/jtselect/jtcom/169/16901.htm; the committee's work was also widely discussed in the Press, e.g. *The Independent*, 31 July 2002, which provided the percentages referred to here

17   Compulsory classes reported in *Financial Times*, 28-29 Dec 2002; details of the Act and the ceremony can be found at www.ind.homeoffice.gov.uk; the first of these ceremonies, celebrated on the main television news broadcasts, took place on 26 Feb 2004

18   Details at www.labour.org.uk/conference 2003

19   on health initiative, *The Guardian Weekly*, 30 Oct. - 5 Nov. 2003; on FBI proposal, *The Guardian*, 28 Oct. 2003; on much debated issue of a BritishSupreme Court, *Daily Telegraph*, 18 March 2004

[20] *The Times*, 25 May 2002, *The Guardian Weekly*, 14-20 Nov. 2002; for recent Tory positions, speeches at Conservative Porty Spring 2004 Conference, Anthony Howard, 'One consequence of a war with Iraq is certain: anti-Americanism', in *The Times*, 4 March 2003; 'Mad at America', in *Time*, 20 Jan. 2003

[27] Cit. in Weight (2002) 683

[28] On investment and tourism, Paxman (1999) 41; on children, A.Craig, 'For kids, Britain is the 51st state', in *New Statesman*, 25 Dec.2000 - 1 Jan. 2001

[29] Alibhai-Brown (2000) 29

[30] Paxman (200), 39-41

[31] Powell (1999)

[32] Cf. Camporesi (2000)

[33] Talk by Greg Dyke, Journalism Symposium, Goldsmiths College, U.of London, 24 April 2003, , www.bbc.co.uk/pressoffice/speeches

[34] For Birt's defense, 'Holding on to Auntie', in *Prospect*, Feb 1999; Director of Television, Jana Bennett, speech to the Royal Television Society, London, 18 Sept. 2002, www.bbc.co.uk/pressoffice/speeches

[35] Powell (2002) 248

[36] Hoffmann (1964) 18

[37] A production whose influence should not be underestimated: it was the most watched film of all in the EU between 1996 and 2000, with almost 27.5 million tickets sold: table in 'Quelle diversité face à Hollywood ?', special number of *CinémAction*, Paris, 2002, p.86

[38] *Wall Street Journal*, 9-10 March 2001

[39] John Stevens, 'Bi-Polar Britain' in *Prospect*, Oct.2001; cf. Gamble (2003), particularly Ch.8 on 'Anglo-America' as an 'imagined community'

[40] Brown conference speech at at www.labour.org.uk/conference 2003; *Daily Telegraph* article in edition of 9 Dec.2003

[41] on Cambridge -MIT link, *Daily Telegraph*, 17 March 2004 (the scheme is under attack for scarce returns and poor financial control); on conference www.hm/treasury.gov.uk/documents

[42] *Sunday Times*, 13 April 2003; Hetzner (2003)

[43] *Scotland on Sunday* 29 Feb. 2004; figures casting doubt on the resurgence of a British 'enterprise spirit' in Hutton (2002), 275-6

[44] Burnet (1993), 63-6, 74; but in Robert Kagan's celebrated discussion of trans-Atlantic relationships, Britain merits mention only in two footnotes: *Power and Weakness*, n.113 (Internet edition)

[45] Hoffmann (1964), 22

[46] Hutton (2002), 267

[47] de Tocqueville (2000) 218

The Roots of Terrorism, the Logic of Humanitarian Intervention, and the Reality of American Engagement

Michael Heimbinder

How American discourse defines terrorism and identifies the factors responsible for its genesis and evolution has a significant impact on U.S. foreign policy. Since the events of September 11th the Bush administration has made a conscientious effort to establish the denigration of human rights as the root of terrorism. The narrowness of this formulation has had a negative impact on the development and deployment of an effective national security strategy.

How American discourse defines terrorism and identifies the factors responsible for its genesis and evolution has a significant impact on U.S. foreign policy. Since the events of September 11th the Bush administration has made a conscientious effort to establish the denigration of human rights as the root of terrorism. Emerging from the intersection of terrorism and human rights has been the logic of humanitarian intervention. Accordingly, the U.S. can reduce the likelihood of future terrorist attacks by engaging nations that fail to respect human rights.

However, the foreign policy prescriptions of the U.S. executive have consistently failed to reduce terrorist activity against American targets, and the U.S. record on promoting human rights abroad is, at best, mixed. This is the result of both miscalculation regarding the dynamics of terrorism and the preference of the executive for humanitarian intervention using the weapons of war. The emphasis on the psychology and political economy of terrorism distracts from its structural and technological components and the logic of humanitarian intervention is betrayed by the reality of its implementation under the auspices of the U.S. military. Ultimately, the inability of the American political establishment to

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accurately model the threat of terrorism or honestly intervene to promote human rights will lead to a misallocation of resources in the "War on Terror" and increasing political, social, and economic instability outside of the core industrialized nations.

THE ROOTS OF TERRORISM

Since the events of September 11th there has been an enormous mental effort to come to terms with the motivations of those who perpetrated the attacks. This soul searching has popularly been framed as: "Why do they hate us?". The rhetoric of the President provides one answer: "They hate our freedoms"; the clash of civilizations is upon us. More sophisticated but no less racist observers, such as Samuel Huntington, come to similar conclusions, stressing the irreconcilable differences between distinct and stable cultural entities which are naturally at odds with one another: "The peoples to the east and south of . . . the eastern boundary of Western Christianity in the year 1500 . . . are Orthodox or Muslim; they historically belonged to the Ottoman or Tsarist empires and were only lightly touched by the shaping of events in the rest of Europe; they are generally less advanced economically; they seem much less likely to develop stable democratic political systems."[1] Others focus on dependency theory or more accurately the "perceptions of *injustice* that motivate political violence."[2] Accordingly, if Arabs blame a "foreign power or foreign culture for undermining their society and causing their condition, they may mobilize against that foreign power."[3] Still others sympathize with the marginal social circumstances of those who fall prey to the ideologies of terrorism. These latter critics focus on the limited employment opportunities available in "the narrow oil-based economies of many Muslim countries" and the "the closed and authoritarian regimes" which prevent "reform or a broad array of roles in politics".[4]

Each explanation regarding the roots of terrorism has the potential to catalyze different modes of American engagement. If the clash of civilizations is accepted as reality then an argument may be made for disengaging. If the presence of American military installations in the Middle East is stoking the ire of the Arab world and transforming men into terrorists then the bases should be removed. Continuing to engage the Middle East under these circumstances will promote counterbalancing. The result will be an escalation in terrorist violence directed towards undermining American hegemony. "Disengagers . . . argue that U.S. engagement increases incentives for others to balance substantially over

what they would do to counter 'disengaged' U.S. potential."[5]

If the structure of economic and political relations between nations is viewed as a major constraint to the independent development of countries outside of the core industrialized nations, and if this perception of an inequitable world system is fomenting terrorist rage in the periphery, then perhaps the solution is engagement along an alternative axis. Efforts should be made to redesign the architecture of global governance to minimize perceptions of injustice. The U.S. should make a concerted effort to reform international financial institutions such as the World Bank and IMF and international governing bodies such as the U.N. in order to make them more responsive to the demands of traditionally less influential populations. In addition, the U.S. should modify the unilateralist stance of the Bush administration, either couching dissent within the language of diplomacy or incorporating the concerns of those without direct access to the President and his foreign policy advisors.

Generally speaking, the first two explanations have been manipulated and subsequently dismissed by the Bush administration. The clash of civilizations has been turned on its head and reformulated not as a clash between the Western world and the Middle East, but as a clash "inside a civilization, a battle for the future of the Muslim world."[6] On one side are the extremist fundamentalist "Baath party loyalists" or "foreign terrorists" and on the other are the moderate Muslims for whom faith in the universal doctrine of human rights as promulgated by Western powers binds them to loyally support U.S. foreign policy initiatives. In the words of Condoleezza Rice, the present National Security Advisor, "We are aggressively attacking the Baathist remnants and foreign terrorists. And increasingly, Iraqis are fighting alongside our troops to secure their own freedom. The numbers of Iraqis now risking their lives to defend their nation is over 85,000 and growing. Together, we continue to discover arms caches, thwart attacks, track down killers, and dismantle the terrorist infrastructure."[7]

The same logic is applied to dismiss perceptions of injustice in the structure of the world system. It is "suggested that an American-dominated international order . . . best guarantee[s] the expansion of democracy and secures[s] the liberty of all nations."[8] Dissent is the false path to prosperity of the irrational and uninformed; in the words of George Bush "Instead of dwelling on past wrongs and blaming others, governments in the Middle East need to confront real problems, and serve the true interests of their nations"[9]. And oddly enough the "true interests" of the nations of the Middle East, according to Deputy Secretary of Defense

Paul Wolfowitz, are identical to U.S national interest; "When we guard our own interests, when we protect the very things that make America what it is, we help shape a secure and peaceful world."[10] Suddenly oppositions that were significant (between East and West, core and periphery) and likely to erupt into violent conflict, are absorbed, distorted, and redefined as in line with American values and U.S. foreign policy.

By blurring the boundary between its own position and those of the opposition the Bush administration has rerouted the roots of terrorism eliminating those arguments that might implicate the American lifestyle or the exercise of American power abroad as contributing factors in the escalation of terrorist violence. So what's left? Only the correlation between autocratic regimes and popular discontent. Accordingly, the explosion of terrorist activity is the responsibility of delinquent dictators and miscreant monarchs. Their intransigence in supporting human rights leaves the population festering with unmet demands—demands that have no peaceful outlet and therefore come to be expressed in the deeds of terrorists. These authoritarian regimes will not accept responsibility for the violence that results from their abuse of human rights, thus the United States must intervene. Ultimately, the roots of terrorism dictate an extended American engagement formulated as humanitarian intervention.

THE LOGIC OF HUMANITARIAN INTERVENTION

"During the Cold War period, peacekeeping was based on the assumption that wars were of the Clausewitzian type. The job of peacekeepers was to separate the warring parties and to monitor cease-fires on the basis of agreements. Peacekeeping was sharply distinguished from peace enforcement, which was equated with war fighting, i.e. intervening in a war on one side"[11]. Since the end of the Cold War peacekeeping operations have undergone radical change. The U.S. has emerged as the world's sole superpower and is no longer inhibited by the counter-agenda of the Soviet Union. With the balance of power firmly on its side U.S. foreign policy actors can afford to openly promote peacekeeping as a means to political ends without encountering stiff opposition. The need for clandestine CIA operations to counter the emergence of communist leaders has now been supplanted by the legitimate and open use of peacekeeping forces to achieve similar political ends; namely the expansion of liberalism, but this time against a different enemy: regional and global instability.

"The new tasks for peacekeepers include the protection of safe havens, where civilians can find refuge, the protection of convoys delivering humanitarian assistance, disarmament, and demobilization, providing a secure environment for elections or the return of refugees or displaced persons, or capturing war criminals."[12] Both the ethics and success of peacekeeping operations are complicated by these "new tasks". Peacekeeping under such conditions has a political component and normally involves taking sides, providing humanitarian and military assistance to friends and disarming and demobilizing foes. In addition, since peacekeeping operations are often directed towards countering instability and resolving civil war, forces are frequently inserted into situations in which it is difficult to discern ally from enemy and the methods of military engagement are unorthodox. The aim of war under conditions of domestic instability are no longer "achieved through the military capture of territory and victory in battle . . . rather the aim is to expand the networks of extremism". The "warring parties use techniques of terror, ethnic cleansing, or genocide as deliberate war strategies . . .. Violations of humanitarian and human rights laws are not a side effect of war but the central methodology of new wars."[13] Under such conditions it is vital that peacekeeping forces avoid adding fuel to the fire. They must be assigned discrete objectives and provided precise intelligence in order to minimize the possibility of providing safe haven to military operatives or arms and assistance to those parties seeking to sow chaos.

Prior to the terrorist attacks of September 11th the U.S. role in humanitarian intervention was extremely contentious. Because the risks of intervention under conditions of regional instability are severe and the likelihood of success slim, the U.S. was often reticent to make peacekeeping commitments during the 1990's. This led to heated debate and a division among foreign policy elites. "In Bosnia, Haiti, Northern Iran, Kosovo, Rwanda, Sierra Leone, Somalia, Sudan and elsewhere in the past decade American foreign policy elites have expressed differing normative beliefs about where and when the United States should intervene. These competing beliefs appear to rotate around the selective engager and liberal humanitarian axis."[14]

The selective engagers dominated the American national security apparatus during the years of the Cold War. They maintained that "humanitarian emergencies were by nature political events, and thus one side or another would balk at international assistance. This meant that intervention would ultimately require taking sides—and this would inevitably create a threat to U.S. forces."[15] Furthermore, peacekeeping

under such conditions was considered not just dangerous but foolhardy, as it was likely to antagonize the Soviets, thereby inviting their presence into the region and escalating nuclear tensions. According to the selective engagers, the U.S. should only intervene in situations where there was a clear and present danger to American national security.

With the end of the Cold War the cogent threats to American national security seemed to dissolve. Kenneth Waltz characterized the situation as follows, "The absence of serious threats to American national security gives the United States wide latitude in making foreign policy choices."[16] The necessity and urgency of action is gone, "A dominant power acts internationally truly when the spirit moves it."[17] Thus, the post Cold War status of the United States opened up a window of opportunity for liberal humanitarians. The effort was underway to move the "spirit" of American foreign policy and its central image was the abuse of the innocent by the powers that be. The call for U.S. troops to intervene in foreign countries and halt human rights abuses became increasingly vocal.

Central to the debate between the two parties was the ability of the government to recognize and control sources of instability. Could those perpetrating human rights abuses be identified and stopped? Did they represent the actions of "deliberate, highly coordinated, and politically driven"[18] actors, as liberal humanitarians believed, or were the differences between people that inspired human rights abuses "pre-given and primordial"[19] as the selective engagers claimed; the brutal result of "spontaneous bottom-up hatreds"?[20]

Unfortunately, the debate between selective engagers and liberal humanitarians has been eclipsed, but not resolved, by the terrorist attacks of September 11th. Selective engagers

> drew a bright line between geographical areas important to the national interest and those parts of the world that were insignificant from the standpoint of interests. Now that attacks against the United States can be planned and fostered within countries formerly viewed as insignificant, this bright line has been blurred. One of the implications of this blurring of lines is that the distinction between self-defense and humanitarian intervention may become less clear.[21]

This is clearly illustrated by the recent U.S. invasion and occupation

of Iraq. Did the U.S. invade to counter the threat of terrorist attacks and halt the proliferation of weapons of mass destruction or did they intervene to remove a dictator who was committing atrocious human rights abuses? National Security Advisor Condoleezza Rice offers the answer, both. "The world has an obligation to confront squarely the threats of our time, and President Bush is determined to meet that obligation. But, of course, we must do more than just confront problems. We also have an historic opportunity to make the world better by fighting poverty, by fighting disease, and by ending hopelessness."[22]

When two planes collided with the World Trade Center towers on the morning of September 11th a new threat had emerged. The looseness that had characterized U.S. foreign policy during the 1990's and opened up the debate between selective engagers and liberal humanitarians ended. An old threat had been identified anew, global terrorism, and over the course of the next few months the Bush administration was to articulate a different kind of foreign policy, war as humanitarianism. In his own words "If we must *use force*, the United States and our coalition stand ready to *help* the citizens of a liberated Iraq. We will deliver medicine to the sick, and we are now moving into place nearly 3 million emergency rations to feed the hungry"[23]. In order to provide a legitimate platform for these strange new foreign policy bedfellows, military force and humanitarian aid, boundaries had to be reconfigured. The roots of terrorism had to be confined and strictly correlated to the abuse of human rights by foreign autocratic regimes and peacekeeping had to be transformed from an exercise in separation and negotiation carried out by a disinterested third party into a politically motivated act of moral reform. The logic of war as humanitarian intervention is the bridge that connects the roots of terror to the reality of American engagement.

THE REALITY OF AMERICAN ENGAGEMENT

By redefining the discourse on terrorism and peacekeeping, the Bush administration has successfully recast war as humanitarian intervention. This development has created a superficial consensus between selective engagers and liberal humanitarians that hides a deep and widening schism and an odd reversal of roles. For the selective engagers the perpetrators of human rights abuses, those fueling terrorist activity, can now be identified effectively. The United States can use high-tech munitions, laser guided smart bombs and patriot missiles, to execute precision strikes against known enemies. In addition, allies can be

identified, the KLA in Kosovo, the Northern Alliance in Afghanistan, and the Kurds in Iraq, and armed as proxy fighters.

These efforts at humanitarian intervention alarm the liberal humanitarians who have switched positions and now claim that the situation is more complex; that the enemy is too elusive for the instruments of war to effectively target; and the arming of allies too indiscriminate to offer true solidarity with American ends. The liberal humanitarians now claim that American intervention is self-serving and ultimately runs counter to the long-term interests of the United States.

> The chain of events from the U.S. arming and training of Afghan and Pakistani mujahedeen to fight the Soviets in Afghanistan, to the Taliban and Al Qaeda and its international networks, including fighters sent to Bosnia-Herzegovinia, Somalia, Chechnya, and Central Asia, is direct. The U.S. government's 'lift and strike' policy (lift the arms embargo and bomb Serb positions) that used covert operations to arm the Bosnians and the Kosovo Albanians, was an international copy of the original Afghan policy . . .. One consequence in both instances was to spread the instruments of war . . . and the trafficking networks far beyond their initial geographical focus . . . and to undermine the assumptions as well as the practice of a Western policy of containment.[24]

What the liberal humanitarians have discovered is that war and humanitarian intervention are incompatible, that the "logic of war wins out every time over concurrent policies, particularly diplomatic negotiations and humanitarian goals."[25]

The reality of U.S. engagement is not stability and security. Rather, war as humanitarianism creates chaos. The volatility of the engaged region peaks and the opportunity to "spread the networks of extremism" through human rights abuses multiply. Strategic bombing kills civilians and disrupts the lives of those who survive by destroying essential health and transportation infrastructure. "Similarly, the American strategy of relying on local armies for the ground component of the military campaign is directly in conflict with the political goals of diplomatic negotiations for a postwar state...Control over territory trumps all normative theories about the best political arrangements to achieve postwar reconstructions and a stable government."[26]

CONCLUSION

Many framed the response to the terrorist attacks of September 11th as a choice between "doing something versus doing nothing". Something was chosen over nothing. Action was considered to be morally imperative and pre-emption became the order of the day. Military plans were drawn up, precision munitions were guided from the doorstep of the White House into the caves and bunkers of Afghanistan and Iraq, and the Northern Alliance and the Kurds were armed as proxies.

The problem with this approach is that it undermines the effectiveness of alternative options. The choice is not between doing something or doing nothing. Rather the choice involves an entire spectrum of options. The administration's efforts to redefine the roots of terrorism and reshape the logic of humanitarian intervention obviated potential solutions that were less overt and telegenic than T.V. guided bombs and embedded reporters. This does not bode well for the future stability of those countries struggling to provide opportunity and security for their people nor does it effectively address the phenomenon of global terrorism. If the United States continues to rely exclusively on "military power and bilateral trade deals rather than also on economic assistance, trade benefits, and efforts at cultural understanding" the costs will include "estrangement from our democratic allies and hatred of the United States in much of the world. Ultimately, such a vision of national interest is a recipe for isolation and continual conflict."[27]

The emphasis on the correlations between authoritarianism, the "freedom deficit", Islamic fundamentalism, and global terrorism distracts from issues of greater pertinence to the "War on Terror". As is evidenced by the bombing of the federal building in Oklahoma City by homegrown terrorists and the sarin gas attack carried out by a Japanese cult on a Tokyo subway, terror may glean sustenance from a range of different environments. The terrorist transformation requires neither the tenets of radical Islam nor the deprivations of life under an authoritarian regime.

What is of essential importance to the "War on Terror" is not the culture of terrorism but the technologies of terror. Terrorism has a greater impact today because the geographical and technological constraints of an earlier era have been suspended. Porous national borders along with the spread of information and communications technology have enhanced the mobility and reach of networks of extremism. This phenomenon has coincided with the proliferation of nuclear material, the

relatively low cost and negligible technical capacity required to manufacture certain deadly biological and chemical agents, and the effectiveness and ease with which soft targets and civilians can be attacked. Thus, counter-terror tactics should focus on networks and technologies, not the failure of authoritarian regimes to uphold human rights.

Finally, if the "War on Terror" is to succeed the U.S. must reverse the momentum of its present foreign policy. Authoritarianism does not breed terrorism and neither does instability. However, they do create spaces which are opaque to American intelligence and therefore provide unique opportunities for the organization and consolidation of terrorist networks. Thus, in addressing terrorism over the near-term the U.S. government should look to foster stability in the periphery, giving preference to financial and diplomatic means over the use of force, and over the long-term it should begin to invest significant time and effort towards establishing institutions of international governance that can contain and convert wayward regimes.

NOTES

1   Samuel P. Huntington, "The Clash of Civilizations?". *Foreign Affairs* (Summer 1993): 103.

2   Jack A. Goldstone, *States, Terrorists, and the Clash of Civilizations*. In Calhoun, Craig, Paul Price, and Ashley Timmer (eds.), *Understanding September 11*. (New York: The New Press. 2002): 154.

3   Ibid.

4   Ibid., 155.

5   William C. Wohlforth, *U.S. Strategy in a Unipolar World*. In Ikenberry, John G. (ed.), *America Unrivaled: TheFuture of the Balance of Power* (Ithaca: Cornell Press. 2002): 114.

6   The National Security Strategy of the United States of America (September 2002): 31.

7   Speech delivered to the National Legal Center for the Public Interest at the Waldorf Astoria Hotel (October 31, 2003).

8   Melani McAlister, *Epic Encounters: Culture, Media, and U.S. Interests in the Middle*

9   Speech delivered to the National Endowment for Democracy at the United States Chamber of Commerce (November 6, 2003).

10   Speech delivered to the Georgetown University School of Foreign Service at Georgetown University (October 30, 2003).

11   Mary Kaldor, *Beyond Militarism, Arms Races, and Arms Control*. In Calhoun, Craig, Paul Price, and Ashley Timmer (eds.), *Understanding September 11*. (New York: The New Press. 2002): 171.

12   Ibid.

13   Ibid., 164.

14   John Western, "Sources of Humanitarian Intervention: Beliefs, Information, and Advocacy in the U.S. Decisions on Somalia and Bosnia". *International Security* (Vol. 26, No. 4): 139.

15   Ibid., 116.

16   Kenneth Waltz, *Structural Realism After the Cold War*. In Ikenberry, John G. (ed.), *America Unrivaled: TheFuture of the Balance of Power* (Ithaca: Cornell Press. 2002): 53.

17   Ibid.

18   John Western, "Sources of Humanitarian Intervention": 127.

19   John Martinussen, *Society, State, & Market: A Guide to Competing Theories of Development* (New York: Zen Books, Ltd. 1997): 324.

20   John Western, "Sources of Humanitarian Intervention": 127.

21   Robert O. Keohane, *The Globalization of Informal Violence, Theories of World Politics, and The Liberalism of Fear"*. In Calhoun, Craig, Paul Price, and Ashley Timmer (eds.), *Understanding September 11* (New York: The New Press. 2002): 87.

22   Speech delivered to the National Legal Center for the Public Interest at the Waldorf Astoria Hotel (October 31, 2003).

23   Speech delivered to the American Enterprise Institute at the Washington Hilton Hotel. (February 26, 2003).

24   Susan L. Woodward, *On War and Peace-building: Unfinished Legacy of the 1990s*. In Calhoun, Craig, Paul Price, and Ashley Timmer (eds.), *Understanding September 11* (New York: The New Press. 2002): 223.

25   Ibid., 224.

26   Ibid., 225.

27   Robert O. Keohane, *The Globalization of Informal Violence*: 88.

Islam and the West: The Poverty of Co-optation

Gokhan Bacik

This article criticizes the nature of relations between the West and the Islamic world by suggesting that current relations of "co-optation" are not beneficial to either party.

Since September 11, 2001 Islam has been attracting worldwide attention resulting in numerous papers being written, speeches given, and programs held. This worldwide interest in Muslims has revived an almost forgotten spirit of brotherhood among Muslims themselves. Since they are studied as one homogenous body, Muslims living in different nation states now feel that they are facing a common destiny. This is somewhat surprising given the many conflicts that have arisen in the past among Muslim community groups. However, the Western world seems to see no differences among Muslims and approaches them all in the same way: they are all the same. For the West, what is important is stopping the terrorist threat to their civilization from the Islamic world. This priority has given way to a problematic instrumentalist illusion in the Western world: Westerners believe that they can solve the problems of Muslims for them. This is a belief that has previously been put into action. During the heyday of colonialism, Western powers tailored and tamed the Islamic world. They created their states, borders, institutions, and, finally, created their Western-minded leaders. Now the Western world again wants to follow the same route. This time however what is to be shaped is not the geographical and political configuration of the Islamic world. The Western world is now disputing the question of the proper lifestyle for Muslims. Shlomo Avineri has written in *Dissent*, "use Turkey and Iran as examples" in order to convince Arab people. According to Avineri, "although Turkey and Iran differ from the Arab world,

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their experiences have something to offer."[1] Is the cited "something" of Turkey and Iran significant for other Muslims?

It is important to note both that the idea of using Turkey and Iran as examples displays a Gramscian co-optation scheme; also, the Turkish and Iranian examples are not really as clear as Avineri might think. In terms of their political systems, Turkey and Iran are structurally similar. Civil political actors are limited and the elites of the two states define the margins of action in both countries. Just as it is difficult to carry out any policy against the mullahs in Iran, it is difficult to demand structural change in Turkey. Turkey has its own secular "mullahs." Recalling Carl Schmidt, both Iran and Turkey have their own political "theologies." All elected actors, both in Iran and Turkey, need to be aware of the fact that they are not the real patrons of the state. They are the elected side of the state-government coalition.

As for the project of co-opting the Islamic world, this would not be as easy to carry out as might be assumed. Furthermore, co-optation is not a solution. Forcing Muslims to change and accept a Western lifestyle would be a unilateral game in terms of protecting the originality of their identity. It is also reductionist and is inevitably based on illusion since it does nothing but attempt to clone Muslims using Western genes. What might be created is likely to lack the Islamic essence, which would be contradictory for a religion claiming universality. One should remember that Islam involves a sacred unity. It is a unity intended to include everyone, and a unity that transcends borders, cultures, and time. Nevertheless, given the overwhelming power of the Western world, it might seem that it could carry out a grand project of co-optation in the Islamic world. However, such an endeavor would not provide a long-term stabilizing solution. Pushing co-opted examples of several modernized Islamic countries forward in order to convince unco-opted Muslims is a hegemonic move. In addition, such hegemonic solutions would break down if any power shifts occurred in the systems being focused on. It should also be mentioned that in any co-optation model, the masses of Muslims are excluded. Co-optation only takes place between the West and Western-minded Muslim elites such as soldiers, bureaucrats, intellectuals and media owners in the Islamic world.

MODERNIZATION VERSUS WESTERNIZATION

A very important question remains to be answered. In terms of recognizing universal norms, are the modernizing elites of the Islamic

world actually pro-Western? There are in fact clear examples that provide an answer to this question. In Turkey, to other important Muslim countries, despite so-called elites championing the values of modernity for a long time, it becomes apparent that these elites are actually anti-Western. Conflict between the West and the Islamic world arises due to the incompatibility between Western values and what modernizing elites in the Muslim world actually do. What has happened can be summarized briefly: firstly, the extension of the Western notion of sovereignty into the Islamic world has produced several problems. The following question needs to be asked: Why did "the post-colonial states, since independence in the decades following the Second World War, emerge as the most strident defenders of Westphalian sovereignty in the international order?"[2] The answer lies with the different meaning of sovereignty in the newly independent states. Since sovereignty bestows power on some people and removes it from others, it has a strong impact on domestic politics. Jean-Pierre Vernant's note on the usage of sovereignty in ancient Greek society is useful: "Sovereignty is therefore intimately connected, in the minds of the Greeks, with idea of *kratos,* the power of domination, and of *bia,* brutal violence." More simply, sovereignty has been very important for the leaders of the newly independent states because it gives them unfettered control over their internal affairs, and notably over their own domestic populations. In other words, sovereignty is used as an ideology for internal consolidation: "Sovereignty provides individual states with a license to purify their domain of opposition, silence alternative voices, and eliminate dissent."[3] As Naeem Inayatullah puts it, ". . . in the Third World states, the recognition of sovereignty by international society allows corrupt, irresponsible, and incompetent governments to violate the rights and welfare of their population." The elites in these countries consolidate their positions through the institutionalization of sovereignty.

Secondly, in the process of state formation, the modernizing elites in Islamic countries have used Western concepts and institutions to further their own interests.[4] In no way have they used Western concepts and institutions to create real democracies in their countries. They have been instrumentalist modernizers who always set out rigid boundaries. Consider, for example, the way that they have been instrumentalist feminists. They have championed so-called women's rights; however, they cannot bear to see university students in headscarves. They have championed the idea of democracy; however, they have never been happy seeing Islamists win elections and form governments. They support moderniza-

tion until the moment of inescapable choice—whenever there is a transfer of power from themselves to the people through elections. Since they are only instrumentalist modernizers, their aim has never been to create a real Western-style regime. Nor have they been creating democratic societies. Historically, the basic reason they have used Western concepts and institutions is to eliminate the legacy of the past and create a new system based on their perceptions. They have abused the idea of Westernization. For example, in the name of Westernization they have curbed religious education. For similar reasons they have curbed private enterprise. From the economic realm to religious concerns, many restrictions have been placed in the Islamic world in the name of modernization. It is still the same story: Muslims today face many prohibitions in the name of protecting the modern façade of their countries. It has been the same modernizing elites in Islamic states that have hindered the development of democracy in their countries. Modernizing elites such as the military in Turkey, for example, have intervened in politics and totally annihilated nascent civil actors.

The cited account has created the following problem: Muslims, faced with different types of anti-democratic policies by their governments have established a one-to-one analogy between their repressive modernization and the West. In other words, the oppressive modernizing reforms of the central elite are understood as analogues to Westernization. Since terms like Westernization, modernization, and Europeanization have been used interchangeably, all three concepts have become similarly tainted. One example of how these concepts have come to be understood in only limited ways is that of Europe becoming understood only in terms of colonialism. Another example from Turkey is that of Turkish Islamic groups rejecting European civilization in the name of refuting the strict policies of the secular modernizing regimes. These narrowed views of Western states have created a number of problems both for Muslims and for the West.

Because modernizing elites are actually anti-Western, co-optation brings about difficulties. For the elites in Islamic states, their recognition of Western values now means the potential end of their rule since their own policies are in contradiction with Western values. Thus, in this sense there is a clash between the East and the West. But it should also be suggested that there are actual cultural differences that need to be considered. In this context, how some Western writers describe the clash between the East and the West might be helpful. James Kurth discusses three different traditions that he says make up the West.[5] These are the

classical culture of the ancient era, the Christian religion, and the Enlightenment world view of the modern era. It is clear that both Christians and Muslims have carried out missionary work, which has created some clashes in the past, and tension still exists between the two religions as a result. However, today it is the Enlightenment world view that mostly shapes the Western world, and the Muslims who are upset are not attacking Christian identity but the Enlightenment worldview. Not since such Islamic writers as Sayyid Qutb (1906-66), has the Christian face of the West come under criticism. Other than several basic religious debates (such as the status of Jesus and whether the Holy Books have been distorted), there is little in Christianity that upsets fundamentalist Muslims. That trade centers and not churches were attacked is important to note. For fundamentalist Muslims today it is trade centers that symbolize America and the West.

The clash between the Enlightenment world view and that of Muslim fundamentalists is similar to the clash between European values and the values of the modernizing elites of Islamic countries. Both Muslim fundamentalists and modernizing elites are unhappy about the legacy of the Enlightenment. The Muslim fundamentalists view the democratic civilization of the West as a threat, while the modernizing elites try to curb the development of democracy in the Islamic world.

In fact, the legacy of Islam and the legacy of the Enlightenment can be reconciled. The question is how this task should be carried out. The policy of co-optation, which envisages using propaganda in the Third-world and claiming that modernizing elites are good models for all Muslims, has failed. It has failed because the Third-world elites have never truly represented their people and because their regimes have created a mistaken understanding of the West among Muslims.

In order to discuss the reconciling of the legacies of Islam and the Enlightenment, it is first necessary to consider the concepts of the *center* and the *periphery* in Islamic societies. Historically, modernization was the project of the central authority and it was aimed at improving the ability to cope with the West. However, the notion of modernity that is discussed today is mostly a concept of the periphery. In the long history of modernization in Islamic societies, as indicated, a fault line developed between the states and the citizens of those states. Consequently, today the center in Muslim societies has almost lost its capacity for reform. In fact, no one expects the current elite establishments to bring about structural reforms any more. In other words, dynamism in political thinking now belongs to peripheral actors in these political systems, and

these actors want to see a type of modernity that, for example, brings about real democracy. Thus, this peripheral type of modernity has the capacity to produce a synthesis based on universal values also found in the West. Paradoxically, the elite establishments in Islamic states today stand as actors likely to hinder this process. As previously noted, the modernizing centers of Islamic states never permitted the realization of such universal values in their societies. When they face criticism from abroad, they explain, for example, how their culture is different and how this difference legitimizes the role of the army in politics. The same thing has happened in many Islamic countries such as Turkey, Algeria, and Pakistan. The modernizing elites never believe in the people. From Turkey to Algeria, the number one threat has always been the domestic one. France devotes 4 percent of its GDP to its military, but Saudi Arabia devotes 30 percent. Why? Is it because of real enemies? As Mohamed Tabi has written, its neighbors and Israel are nothing but alibis. In other words, the enemy is a domestic one. The enemy is either a fundamentalist Muslim seeking a kind of insurrection or a member of a minority group seeking more autonomy and a less centralized system. This situation has created several strange cases. After defying French troops in Anatolia with the aid of the Kurds in the early twentieth century, the Turks forbade Kurdish but permitted French speaking colleges and universities. The case is not very different in other Middle Eastern countries.

As part of this discussion of domestic enemies, the concept of independence in these countries should be considered. In Islamic countries, the idea of independence is a purely institutional one. Of concern is the independence of the state from other states in the international community. Therefore, when it comes to the term freedom, we have a unique, if not a bizarre, situation. In spite of all of the brave and ambitious speeches on the importance of freedom, the term refers to nothing related to the individual vis-à-vis the state or to the core freedoms of the individual facing any threatening "leviathan." Freedom is viewed as totally outside of the domestic context. What states in the Islamic world are saying to their citizens is as follows: You are free of other states but not free of me.

Put briefly, the center in Islamic societies has failed to represent the hopes and desires of their people. Thus, any new co-optation discourse that emphasizes the importance of Turkish or Iranian modernizing elites seems anachronistic. The Western world should develop a dialogue with the peripheral actors in Islamic societies. More importantly these periph-

eral actors should be listened to and be given the chance to take initiative. The Western world's determination to remain in dialogue with Muslim societies via their elites only worsens the situation. There is a very clear reality: only the ordinary people in Muslim societies have become reconciled to the legacy of the Enlightenment. Having experienced many years of anti-democratic regimes in their countries, Muslims want change. Many important universal concepts and values such as democracy and human rights are now cherished *en masse*.

CO-OPTATION: A SOURCE OF GLOBAL TERRORISM

In fact, the new co-optation policy, a remnant of Western colonialism, has created such "great" outcomes as international terrorism. Corrupt and anti-democratic regimes in Islamic countries have been backed by the Western world, and Western support for anti-democratic regimes has not just been limited to the Middle East. The support has been widespread from the Middle East to Africa. France, for example, between 1962 and 1995 intervened militarily 19 times in African states. France's traditional desire to protect its interests in the region did not stop it from supporting the most-despotic and murderous pro-French rulers such as Mobutu Sese Seko of Zaire.[6] Unfortunately, anti-democratic Third-world regimes quickly become "schools" that radicalize their citizens. When millions of people feel oppressed because of their religion, ethnicity, or their demands for human rights, they are bound to become radicalized. Political systems in Islamic countries have not created the necessary democratic institutions, such as domestic opposition groups. Millions of people have been trapped in strict and unfair systems. Their only options have been to love them or leave them. Radicalism has become the number one problem in a wide area of the world's geography, from Algeria to Pakistan, for example. How it has happened is easy to understand: Muslims have faced the well-known problem of *alienation*. Under anti-democratic and harsh regimes, Muslims have not been allowed to be themselves. They have been forced to be different. New regimes have aimed at changing—one may say breaking—all of the living links between ordinary Muslims and their culture, religion, and history. This creates an *Umma* (community)-level anxiety in the Muslim world. Uprooted from their traditional cultural structure, these Muslims have felt exiled and anxious. Thus, at the center of Islamic societies there exists an identity crisis. This crisis accordingly leads to legitimacy crises. The Muslim masses now feel that there is a deep psychological chasm between their

elites, their governments and themselves. They have felt terribly deceived by their despotic cadres. Once the links between a brilliant and complex Islamic civilization and Muslims became damaged, reductionist and extreme ideologies found fertile ground in which to develop. It has become easy for people to believe a simple teleology. In this way, simple but radical discourses have hijacked the real message of Islam. Replacing the historical and grand narrative of Islamic civilization, simple slogans such as "Kill Americans, be happy!" have invaded alienated people's minds. Consequently, these alienated people have started to reject everything about "other," which only increases the anxiety in Islamic lands. Unless these people are permitted to be themselves, this anxiety will continue to influence them. As long as Third world anti-democratic regimes continue to exist, it will be nearly impossible to stop global terrorism. These regimes by their nature further the spread of terrorism.

The only logical solution to the vicious circle in Islamic countries is to give people a chance to display their identities. Islam has proven its ability to harmonize its values with universal values. The false gap between Islam and Muslims should be closed through democratic mechanisms. In this process the role of the Western world is crucial. Instead of the former co-optation method, the West now should accept the reality of the periphery in the Islamic world.

INTEGRATION, NOT CO-OPTATION

This can be done in two ways. First, grand social integration projects such as Turkey's membership in the European Union (EU) should be supported as well as the Euro-Mediterranean Cooperation. Turkey's EU membership might help stop the vicious circle of alienation, at least in Turkey. However, in this process European decision-makers should be realistic. They have been trying to convince the Turkish establishment to implement European standards, but they should realize the limited nature of the Turkish establishment's desire to bring about these reforms. The European view of Turkey should be decided according to the desires of ordinary Turks who support EU membership almost *en masse*. Such great and historic integration projects should not be stifled because of reluctant establishments. By missing this point, social democrat leaders in Europe have made even extreme rightists in Turkey happy. The structural limits of the existing establishment in Turkey are continuously causing delays in Turkey's EU membership. As a typical developing country, issues such as foreign policy are almost only a matter of the

state. What people want rarely influences foreign policy. In other words, high-politics is one of the primary components of the state-theology in that, despite the different demands of the people, it is conducted according to the fixed state policies. The elected actors in Turkish politics can hardly ever utter a differing opinion about the symbolic issues related to high-politics such as foreign policy. As a result, public opinion and the preferences of the state elites can be different concerning important issues. In the name of protecting their privileged position, the establishment may make use of well-known nationalistic discourses that focus on national pride, unity, and sovereignty. It is, therefore, the Europeans who in such cases will need to take the side of the excluded actors.

The second way to aid those in the periphery would be for Western powers to support and cooperate with elected actors in the Islamic world. Though unstable, several Islamic countries such as Turkey, Iran, Algeria, Pakistan, and Malaysia have democratic traditions. When peripheral actors, for example, Islamists in Turkey and Algeria and moderates in Iran come to power as part of a democratic process, it is seen that the establishments in these countries quickly want to remove them. When they succeed, the nascent democratic process is put on hold, and the people are once again excluded. Anxiety then re-emerges, and the failure of the democratic experience again facilitates radical elements in those societies to develop. To stop this process especially for the United States, a very important paradigm shift is needed. For millions of people, America is perceived as a superpower that only cares about its global strategic interests. Furthermore, it is believed that the United States cooperates with the anti-democratic establishments in Islamic countries in the name of protecting its position in several regions of the world. However, if Western countries want to, they can contribute to the democratization process in Islamic countries by cooperating with the elected peripheral/Islamic actors. It should be noted that elected governments with Islamic affiliations would be able to aid Western countries in their struggle against global problems. Unfortunately, people in Islamic countries do not trust Western claims about fighting terrorism when they see the West supporting anti-democratic regimes. In fact, the way the U.S. has been fighting terrorism has led to a new atmosphere in world politics that seems to give license to anti-democratic regimes to take offensive action against their own dissatisfied and therefore "threatening" populations. This is the paradox of the September 11 attacks. They have enhanced the power of Third world establishment members who are all happy to watch the American government stick to its "war on terrorism."

Thus, there is, in a sense, a coalition between Western powers and the anti-democratic regimes in Islamic countries, which is likely to deepen the anxiety among Muslims.

In brief, the co-optation policy as a continuation of colonial rule has failed. It is time for dialogue with the broad masses of Muslims in Islamic societies. International politics should be rescued from being an elitist game between Western powers and anti-democratic Third world establishment elites. Muslims can participate in modern international system with their Islamic culture and identity. To achieve this, Muslims should be allowed to be themselves. If the alienating nature of the international system is not changed, it will not be possible to put an end to terrorism and other global problems.

NOTES

[1] See S. Avineri, "Failed Democratization in the Arab World", *Dissent* (Fall, 2002).

[2] Christopher Clapham, "Sovereignty and the Third World State", *Political Studies* 47 (1999) 522.

[3] Naeem Inayatullah, "Beyond the sovereignty dilemma: quasi-states as social construct", in Thomas J. Biersteker-Cynthia Weber (eds.), *State Sovereignty as Social Construct,* (Cambridge: Cambridge University Press, 1996), p. 50.

[4] For a general discussion that introduces several examples, see George Sorensen, "Sovereignty: Change and Continuity in a Fundamental Constitution", *Political Studies* 17(1999) 600-601.

[5] See James Kurth, "The New Protracted Conflict The War and the West", *Orbis* 46 (Spring, 2002).

[6] S. Gregory, "The French Military in Africa: Past and Present", *African Affairs* 99 (July, 2000), 435-448.

Mutual Mistrust

THE GREATEST BARRIER TO TURKEY FULFILLING THE POLITICAL REQUIREMENTS ARE LAID OUT IN THE "COPENHAGEN CRITERIA" NECESSARY TO JOIN THE EU.

Alastair Coutts

The EU has long not fully trusted whether Turkey really intends to make the political and cultural changes necessary for EU membership. Turkey, for its part, reciprocates the suspicion. Turkish President Ozal stated in 1992, Turkey's human rights record "is a made up reason why Turkey should not join the EU. The real reason is that we are Muslim, and they are Christian". From the Turkish point of view, the EU has never been serious about admitting Turkey.

"Turkey should not join the European Union, we have said this from the beginning. Look at a European city, and then look at Istanbul. It's not a Christian city."[1]

Not an unusual sentiment in Western Europe. Yet this was not from a German Christian Democrat or an elderly French statesman, but none other than Abdullah Gul, former Prime Minister of Turkey and right hand man to the current leader, Recep Tayyip Erdogan. This quote is from 1994. However, given their ruling AK Party is now firmly committed to the reforms required to satisfy the political criteria to join the European Union (EU), their change of heart has aroused suspicion in the EU. Yet this is just the latest. The EU has long not fully trusted whether Turkey really intends to make the political and cultural changes necessary for EU membership.

Turkey, for its part, reciprocates the suspicion. Turkish President Ozal stated in 1992, Turkey's human rights record "is a made up reason why Turkey should not join the EU. The real reason is that we are Muslim, and they are Christian".[2] From the Turkish point of view, the EU has never been serious about admitting Turkey. But Turkey's undeniable geostrategic importance means there has been much to be gained by keeping

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it close to membership.

These two points of view exaggerate the truth. But both have some validity. The purpose of this paper is to understand why the mutual mistrust exists and assess whether the two sides can go beyond it. In doing so, firstly the roots of Turkish suspicions towards the EU will be addressed. These are primarily of a historical nature. This will be followed by a look at EU concerns towards Turkey. These, by contrast, have a chiefly cultural character. Finally, it will be proposed that, for reasons more related to the internal mechanisms of the EU, rather than because of a bilateral understanding, the EU will ultimately deem Turkey to have fulfilled the Copenhagen Criteria.

What are the Copenhagen Criteria?

The 1993 Copenhagen European Council summit laid out criteria that all candidate countries must satisfy before they can embark on negotiations with the EU. The "Copenhagen Criteria" have economic and political components. However, because a customs union has existed between the EU and Turkey since 1995, Turkey satisfies most of the economic criteria. It is the political criteria, which state it is essential "that the candidate has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities"[3] that have proven to be problematic. These criteria will this be the focus of the paper.

Turkish suspicions of the EU

"The West has always been prejudiced against the Turks...but we the Turks have always consistently moved towards the West...In order to be a civilized nation, there is no alternative."[4] Kemal Ataturk.

By straddling both physical and ideological divides, Turkey has been described by Samuel Huntington as one of the world's future "torn" states.[5] And "torn" countries are condemned to a gloomy future (as he expects Turkey to be). However, a re-orientation away from an Asian legacy towards Europe was exactly what the founder of the modern Turkish state, Kemal, sought to achieve. And in doing so, he deliberately attempted to avoid the perceived weaknesses of the Ottoman Empire: namely expansionism and national heterogeneity.[6] Irredentism was dropped, secularism adopted and the French model of a centralized nation state was imposed onto a Turkish population hitherto unfamiliar with the concept of state loyalty. However, while homogeneity and

secularism gave the state a more "modern" appearance, the way it came about was in an authoritarian manner. Adoption of the Latin alphabet was mandatory, the calendar was converted to Gregorian, the Caliphate and Sharia courts were abolished, and wearing the fez was banned. And the military was granted the role as protector of the state. Understanding this Kemalist legacy in relation to Turkey's EU membership highlights an important contradiction: integral to Kemalism is "modernization", and joining the EU represents the next step in this direction; the manner and style of Kemalism is inconsistent with the standards of the club that it wants to join. The disapproval by many in Europe of this "progress" has been met with consternation in Turkey. However, as Tocci points out, many in Turkey have missed the point. In fact, it is the Kemalist legacy itself that is the problem. EU perceived shortcomings, such as the role of the military or suppression of the Kurdish minority result directly from this.[7] Most in Turkey are proud of Kemalism. Therefore, this lack of recognition has fostered a sense of dismay. This was particularly evident during the Cold War. Feeling genuinely threatened by the Soviet Union and becoming a member of NATO in 1952, Turkey felt it was playing a crucial role in the Western security alliance. As part of a move to position itself with the west, Turkey first applied to the EEC in the year following its creation in 1958. However, as with all attempts throughout the Cold War, the application was unsuccessful. Suspicion grew that the EU dangled the carrot of EU membership simply to keep Turkey "on side" with the West without there ever being any intention to actually go through with it. Thus, the end of the Cold War brought about a new sense of anxiety for Turkey. Firstly, it witnessed former Soviet Eastern European countries (CEEC's) being extended the invitation by the EU, whilst it was still being denied. Secondly, Turkey was acutely aware that it geo-strategic significance to both the US and the EU was at best subject to change, and at worse risked being deemed worthless. Such was its sense of insecurity, Turkey briefly considered a re-orientation back towards Asia: namely a policy of Eurasianism. In February 1992, Demirel, then prime minister, envisioned "a gigantic Turkic world stretching from the Adriatic to the Great Wall of China".[8] Turkey was to be the example and leader of this world.

Ultimately its failure sadly highlighted Turkey's lack of financial and ideological wherewithal to take on such a leadership role. So while this attempt indicated the sense of insecurity Turkey felt, its failure only confirmed Turkey's perceived need for closer association with the EU. Besides, the collapse of the Soviet Union prompted a change in the EU's attitude, not just towards Turkey, but towards the membership criteria in

general: Turkey's geo-strategic position was weaker; the EU started to see itself more as a social and political institution. And as Sevilay Elgun Kahraman said, the "Turkish authorities failed to notice the shift in community priorities...Consequently, they believed that ... the economic reforms they had been implementing since 1980 [in preparation for the customs union] would satisfy the conditions for accession."[9] But this was not the case. The tightening of political criteria (culminating in the Copenhagen criteria of 1993) seemed to send a pointed message to Turkey. Not only were the CEEC's leapfrogging Turkey into membership, but also the criteria were becoming harder. Indeed, the 1997 publishing of Agenda 2000 seemed to confirm Turkey's suspicions. Whilst all candidate countries were placed either on a "fast track" or "slow track", Turkey was on neither. Such was its consternation, Turkey halted all relations with the EU.[10] To those in Turkey, at least, this seemed to be confirmation that the promises of EU membership throughout the Cold War had been hollow. The conditions of membership had been tightened; Turkey would now have to achieve the agreement of an additional ten or twelve new members.

Today, relations between Turkey and the EU are more constructive, thanks initially to a confluence of events in 1999. The arrest of the PKK leader in February 1999 quickly brought about a virtual end to Kurdish separatist violence; a more reformist coalition government was elected in April; and Greek aid for the Istanbul earthquakes heralded a significant improvement in Greco-Turkish relations. However, even this most recent *rapprochement* has not helped cure the relationship of its inherent suspicions. Nevertheless, the Helsinki summit in December 1999 saw Turkey finally being granted candidate status,[11] albeit without a timetable for its accession. Then, as part of the build up to the 2002 general election, the incumbent government, recognizing the popular support for EU membership, embarked on a series of ambitious political reforms. Three legal packages followed,[12] making significant progress towards meeting many of the aspects laid out in the Copenhagen criteria. However, whilst still insufficient ("Turkey does not fully meet the criteria"),[13] they had the effect of raising Turkish expectations that the December 2002 Copenhagen summit would finally see Turkey given a date to start negotiations. Unsurprisingly, despite a generally positive reception of the international lobbying efforts of Turkey's new leader, Erdogan, Turkey did not receive a firm date to start negotiations. Instead, it got "a date for a date": if Turkey has met the political Copenhagen Criteria by December 2004, negotiations will commence "without delay."[14]

Some in Turkey recognized this as a positive outcome. Previously,

July 2005 had been mentioned as a possible point to start negotiations. Indeed, Erdogan himself described it as "an historic victory" when he returned to the Turkish parliament.[15] However, only days before the Copenhagen summit, Prime Minister Gul had said, "We have our own Plan B. We would not like to offend other countries, but we cannot tolerate such a thing [referring to a lack of date being granted]. We will not keep on sitting in the waiting room."[16]

The historical context outlined above is important to this paper for one reason: many within Turkey feel that their country has not been dealt with fairly; and this has served to create arguably the biggest barrier to full cooperation between the EU and Turkey, namely mistrust. "Turkey has a more developed market economy than most of these countries [CEEC's] and its political problems are no worse than those of many of the other applicants"[17] is a view typical in Turkey. As Prime Minister Ozal stated in 1999, "as Turkey had shared for forty years the burden of the defense of Europe against communism, it should share the benefits of European economic growth."[18] A peace dividend was owed to Turkey, but none has been forthcoming. Furthermore, the end of the ideological battle contained in the Cold War seemed to bring about a change in the *cultural* goals of the EU. The religious (and hence cultural) overlap with Eastern European countries meant they were natural members of the European "family". Turkey's non-Christian nature meant it was not.[19]

Certainly these sentiments are biased. Nonetheless, it has created a feeling that the EU is deliberately keeping Turkey "in the waiting room": holding Turkey close enough so as to not lose the benefits of having Turkey aligned with the EU, namely a stable democracy on its borders in a volatile region; but not having to bear the consequences of its membership in terms of potential migration or cultural dilution.[20] However, for its part, Turkey has consistently exaggerated its chances for membership. It clearly underestimated what the end of the Cold War would mean for conditions of membership. It recognized the downgrading in its geo-strategic importance. But failed to spot the emerging cultural dimension that the CEEC's potential membership would bring.[21]

EU SUSPICIONS OF TURKEY

Lack of trust from the EU towards Turkey has two dimensions: a lack of belief that Turkey has the will, conviction or ability to initiate and implement the changes required to meet the Copenhagen criteria; and a concern that Turkey's cultural characteristics are incompatible with those

of the EU.

Until a year ago, the EU could argue that Turkey had made little progress in satisfying the Copenhagen criteria for EU membership. However, as a result of reforms passed in the last 18 months Turkey has, on paper at least, started to resemble harmonization with EU standards.

"EU officials say that, though the new laws look good on paper, the EU would like to see them in practice, not least because they have loopholes galore."[22] Is EU skepticism justified? In their defense, a number of areas can be cited. Firstly, the changes are insufficient. For example, the loosening of law 159 ("insult to the State and State institutions and threats to the indivisible unity of the Turkish Republic") still implies a limitation on the freedom of thought. Even the somewhat subjective Turkish Industrialists and Businessmen's Association (TUSIAD) acknowledges as much, stating, "this amendment was definitely not sufficient to guarantee freedom of thought on its own."[23] Secondly, while some laws are being loosened, others are being tightened. As a case in point, anti-terror laws that introduced the notion of "propaganda in connection with the (terrorist) organization in a way that encourages the use of terrorist methods" actually saw their sentences increased. Thirdly, some changes have simply involved the shortening of the sentence. This overlooks the fact that the law's very existence is in violation of European standards. For instance, changes to the broadcasting laws now means the closure of TV stations was simply reduced from fifteen to seven days. Finally, the EU believes that loopholes still exist: "Case law shows there has been little consistency in the implementation of the legislative changes."[24] Other laws have frequently been used to achieve the same ends. As an illustration, the EU highlights that the law referring to "support for illegal organizations", has been used frequently in the months after the above changes had taken place. In total, there were 100 ending cases against journalists, writers, and publishers.

Which leads on to the issue of the judiciary. "One of the main difficulties...is the inconsistent use, by public prosecutors, of a broad range of articles of the penal code...As a result, there is a lack of clarity, transparency and legal uncertainty."[25] Furthermore, the predictability of the law has been questioned. For example, five journalists were convicted under the reformed law 312,[26] while others have been acquitted.[27] This highlights why the EU remains cautious about Turkey satisfying the political Copenhagen criteria in the short-term. Enacting the reforms is one thing. The EU clearly wants to see their consistent implementation.

Demonstrating the will, conviction and ability to apply the laws consistently is one concern of the EU. But there is broader unease,

regarding the nature of the Turkish state. In this context, the role of military is relevant. By defending the principles of the Kemalist state, namely secularism, unity and democracy, the military has thus seen itself as the protector from both external and internal threats (hence the military interventions of 1960, 1971, 1980 and 1997). Through the National Security Council (MGK), the military has had an institutionalized role in Turkish politics. It is true that the military recently accepted reduced representation in the MGK[28] and is, in theory, a consultative body. In reality, it exercises considerable authority. And it still represents a role for the military in government. Nonetheless, the role of the military is an interesting one. Opinion polls consistently make it the most trusted institution (83%). At 16%, parliament is the least.[29] Furthermore, the role of the military is there to protect many of the same qualities that the EU seeks, namely secularism and democracy.

As Tocci points out, "Arguably the role of the military in Turkish political life is questionable in so far as it has facilitated the institutionalization of repressive measures and human rights violations."[30] It is for this reason that the focus on Turkey's track record on torture is symbolic. The most recent EU Progress Report finds that the incidence of torture has decreased significantly, but violations are still present. The European Committee for the Prevention of Torture (CPT)[31] and Human Rights Watch both agree.[32] However, as TUSIAD points out, "no matter how many amendments are made, the complete elimination of torture and maltreatment practices is, above all, contingent upon...training and disciplining of the security forces."[33] Notwithstanding this, defenders of the military's role take the view of General Cevik Bir, former deputy chief of the general staff, that "the Army is not interested in politics, but we have been tasked to protect the Turkish state as well as our land... Our aim is to help Turkey reach civilization, and the EU is a way to achieve that."[34] In other words, the military will be prepared to hand over its custodian role to the EU once full accession is secured. Unsurprisingly, the EU is unconvinced.

Nevertheless, there is some recent anecdotal evidence to suggest that the military is prepared to accept a lesser role. Their acceptance of the coming to power of Erdogan's Islamic based AK Party was significant. One of the main self-perceived roles for the military was controlling the rise of Islamic parties. Only five and a half years ago saw the "soft coup."[35] According to the Economist, chief of the armed forces General Hilmi Ozkok accepted that Mr Erdogan enjoyed the support of the Turkish people, and therefore said, "their will should be respected."[36] Also, the military's acceptance of the Turkish Parliament's decision to not

allow US troops access to Turkish soil during the Iraqi war was significant. Foreign policy issues, especially those relating to war, were almost exclusively the realm of the military. Besides, by allowing many of the recent reforms mentioned above, the military is accepting a less important role. For example, their influence over the judiciary is significantly less, by virtue of a 1999 reform that rid all state security courts of a military judge for "crimes against the indivisibility of the State."[37] Contrastingly, the experience of Cyprus has sent conflicting signals on the power of the military. The collapse of the UN led "Annan Plan", which hoped to unite Cyprus in a loose confederation, was blamed by most sides on the Turkish Cypriot leader Denktash ("this time it is overwhelmingly Mr. Denktash's fault that the settlement has been blocked").[38] And in particular, on support he received from the military: "many of Turkey's still-too-influential generals see the Turkish-run bit of Cyprus as a strategic asset."[39] In reality, Cyprus has virtually no strategic importance. If the military did back Denktash to scupper the deal, could their motives have been to actually maintain a stumbling block to Turkey's EU membership? In spite of General Cevik Bir's above quote, some in the military have good reasons to be squarely opposed to EU membership: a reduced role for the military, transparent democratic government, full compliance with international human rights treaties, less latitude to deal with the Kurdish issue in the future and weaker links with the US. In fact, as recently as March 2002, General Tuncer Kilinc, the Secretary General of the MGK, said that the efforts to join the EU "were doomed to fail," and that Turkey needed new allies; it would be "useful if Turkey engages in a search that would involve Russia and Iran."[40]

EU cultural concerns extend beyond the role of the military. In November 2002, Valery Giscard d'Estaing, president of the EU's constitutional convention, spelled it out clearly. By declaring that Turkey's membership "would be the end of Europe" and that Turkey has "a different culture, a different approach, a different way of life",[41] Giscard exposed a blatantly cultural line of opposition. However, Giscard's comments proved to be counter-productive. It allowed Erdogan to take the moral high ground ("to say such a thing about such a country…is nothing more than emotion").[42] Public opinion across the EU was generally in disagreement. Most importantly, as noted by an EU diplomat, "After Giscard said Turkey could never join the EU, it made it much harder for us not to give Ankara some sort of date for the start of accession talks."[43] And this last point also highlights in important aspect of EU enlargement to date: the institutional process can take on its own momentum. Or as the Economist put it, "the EU has an ingrained characteristic working in

Turkey's favour: a habit of being trapped by its own promises. It worked for Central Europe. It may yet work for Turkey."[44]

WILL THEY AGREE?

Erdogan recently said in an interview, "We have to reach the level of the Copenhagen criteria [for EU membership]. That means freedom of expression and religion, and ending the ban on broadcasting in one's mother tongue-for Kurds [and] everyone-and ending torture." [45]

The election of the Erdogan government represents an important development in maintaining the momentum of reforms towards meeting the criteria. Indeed, it seems that the will certainly exists within the current Turkish government. Success or failure will come down to three factors.

Firstly, does Turkey have enough confidence in the intentions of the EU? This is critical for Turkey to make the psychological leap required to allow consistent implementation of the reforms. As Volkan Vural, Turkish diplomat in charge of EU affairs said, the new laws "represent a fundamental change in our concept of identity."[46] And the psychological leap refers not only to the military. As the Turkish Daily News reported in the build up to the last election, ironically the pro-EU Turkish Businessmen and Industrialists Association (TUSIAD) was found to have had "secret contact" with the military over the issue the emerging Islamic AK Party.[47] If the most pro-EU body in Turkey still behaves in this way, what does it say about other institutions?

Secondly, does the EU trust that the recent developments really represent a permanent departure from the traditional Kemalist state? The issue of the military continues to be important, both with regards to the independent functioning of the judiciary and the role of the MGK in politics. The evidence had started to point to an acceptance of a lesser role. However, the collapse of the proposed Cyprus settlement sheds doubt on that. Indeed, unless the Turkish Cypriots are prepared to accept a de facto EU membership along with the Republic of Cyprus, this alone could represent a barrier to EU membership. In this context, the recent opening up of border points across the green line represents a possibly irreversible development for Turkey. But how the military will react to this remains to be seen.

Thirdly, is there sufficient institutional momentum working in Turkey's favor to make the process inevitable? This seems to be what Giscard feared. Notwithstanding the approval of ten new members and the Cyprus situation, if the experience of the CEEC's is indicative, he is

well justified. Furthermore, Turkey has an additional issue working in their favor: the credibility of the EU itself. As Heather Grabbe points out, "Enlargement puts EU credibility on the line. Turkey is the litmus test."[48] Thus far, they only have "one really effective foreign policy instrument: the attraction of membership."[49]

In January 2003, Human Rights Watch listed torture, harassment, freedom of expression, prison conditions and the rights of refugees as areas of concern.[50] Still, it implied only torture and freedom of expression remain significant barriers to start negotiations.[51] The Erdogan government seems to realize that by forcing through specific reforms in time for the December 2004 deadline, a window of opportunity exists. By satisfying these particular issues, it will be hard for the EU's institutional process to stop itself. Mutual mistrust could well be put to one side. And negotiations may well begin.

NOTES

[1]   Woollacott, Martin, 'Is it in Turkey's interests to join this Christian club?", *The Guardian*, December 13th, 2002

[2]   Huntingdon, S, *"The Clash of Civilisations"* (New York: Simon and Schuster, 1996 p146

[3]   Copenhagen European Council, Presidency Conclusions, June 1993 [available on-line: www.europa.eu.int]

[4]   Kemal Ataturk in Erdogdu, Erkan, "Turkey and Europe: Undivided but not united", Middle East Review of International Affairs, Vol. 6, No. 2 (June 2002) [available on-line: www.ciaonet.org] p40

[5]   Huntingdon, S, *"The Clash of Civilisations"* (New York: Simon and Schuster, 1996, p138. A country that "has a single predominant culture which places in one civilization, but its leaders want to shift it to another civilisation." This transformation will be successful only if three conditions are met: the political and social elites are supportive, the public is prepared to be "acquiesced" and the host culture is "willing to embrace the convert."

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[26] "Incitement to hatred on the basis of differences of social class, race, sect, or religion" saw the term   "incitement" altered to "in a way that may be dangerous for public order"

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[28] Number of civilian members increased from 5 to 9 while number of military maintained at 5

[29]   Tocci, Nathalie, "21st Century Kemalism: Redefining Turkey-EU relations in the post Helsinki era", *Centre for European Policy Studies*, Working document no. 170, September 2001 [available on-line: www.ceps.be]

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Poland, the EU and NATO: Competitors or Partners?

Polina Gerasimova

Poland, among 10 states, is taking an extraordinary step by joing EU on May 1st. The sensitive balance of EU and the future of the new member states are about to change. The vital step in sustaining this balance is the ability and timeliness of adjustment processes for both Poland and the EU.

INTRODUCTION

Eastward enlargement of the European Union (EU) is an unprec edented event that will have lasting consequences for Europe and the rest of the world, including the United States. This paper is both a description and argument: I will describe the transition period of an Eastern European nation – Poland - from 1989 to the present; I will discuss major implications of this event but will focus primarily on economic issues and Poland's preparedness for EU accession. More importantly, I will discuss the impact of accession on the candidate and current member states, as well as their respective opinions regarding this issue. I will argue that EU enlargement will benefit both current members and candidate countries; however, the extent to which Poland will be able to discuss its concerns and share power with other member states, in effect to become an equal partner in the EU, is of paramount importance.

In 1989 the countries of Eastern Europe officially broke their ties with communism. After more than 50 years of communist rule, Poland experienced a so-called "velvet revolution" which marked a new page in its history; relatively bloodless reform. Poland then launched an aggressive reconstruction of its political structure, institutional framework, and economic and developmental structure. These changes were further promoted by Poland's commitment to the Europe Agreement (December

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1991) and subsequent application for the EU membership in April 1994.

Enlargement will bring more growth but also more unemployment. New member states will likely boost the sluggish economies of EU, even though they will only contribute 5% to the overall GDP of the EU after enlargement; their economies, growing faster than those of the current member states, should spur economic growth in the present-day EU. Candidate countries will offer comparatively cheaper labor costs that will encourage foreign firms to open new production facilities, and therefore, contribute to the trans-border economic efficiency of the EU. This will spur foreign direct investment (FDI) and will serve as an impetus to improving the new member states' infrastructure and the standard of living.

These are the issues that I would like to discuss in my paper. If EU enlargement is to succeed, a long-term commitment from current members is necessary. I will start with description of the situation in Poland after 1989 and its accomplishments up to the present. Based on the descriptive part of my paper, I will proceed with an argument about the benefits of enlargement for both current and new member states. I will make a pragmatic analysis on what is to come in May of 2004 and immediately thereafter.

POLAND – TRANSITION AFTER 1989

POLITICAL DEVELOPMENTS

Poland's round-table talks in March of 1989 marked the break with the Communist system and the accession of the first non-communist government since the interwar period. Ironically, although the Solidarity movement transformed quickly from trade union status to a political party, it played a political game of musical chairs with the Democratic Left Alliance (SLD), a former communist party, by trading seats in the parliamentary majority and government leadership. This power game did not disrupt their mutual agreement over the importance of European Union ("EU") accession and the country successfully took necessary steps toward its acceptance into the EU.

In April of 1994 Poland applied for EU membership but at that time inclusion in the EU was proffered strictly as a political nicety which Poland considered an insufficient, second-class offer.[1] Nevertheless Poland was counting on the start of accession negotiations after the 1996 Inter-Governmental Meeting (ICG). However, accession strategy was not

discussed until the June 1997 Amsterdam European Council meeting with accession negotiations Poland beginning in March 1998.

Furthermore, Poland adopted a new constitution in April 1997 that diminished the president's executive powers and consequently strengthened the role of parliament and broadened the government. The new constitution also gave independence to the National Bank of Poland (NBP) with independent committee leadership of monetary policy. The constitution further stressed the government's role in decreasing unemployment and the importance of macroeconomic stability through adaptation of the EU enlargement criteria set forth in Maastricht Treaty.

Following the convincing vote in favor of joining the EU in the referendum of June 7th-8th 2003, Leszek Miller, the prime minister and leader of the center-left SLD, successfully won a parliamentary vote of confidence in his minority government and subsequently consolidated his position as an unopposed party leader of the SLD at the party's congress. Despite these successes the approval ratings of Miller's government then fell to its lowest levels and is now under tremendous pressure to secure Poland's EU voting position after failing to acquire additional EU enlargement funding.

Politically speaking, this situation is unfavorable for both Miller's government and the country. Miller's government needs public support to maintain a domestically stable situation and the country needs unity in order to focus on the upcoming accession on May 1st. The nature of domestic political situation pressures Miller's government to further complicate the already complex intergovernmental relations with current EU member states; it causes Poland to be viewed as unreasonably demanding and uncompromising, thus leaving less room for further compromises related to enlargement funding and the EU constitution. Recently, for example, Germany has taken a harder stance toward additional enlargement funding and the EU constitution voting protocol and is among six member states to reduce the ceiling of member state EU fund contribution from 1.27% of GNI to 1.00% of GNI.[2]

The complex political and international issues surrounding Eastern enlargement are unlikely to be resolved any time soon; the EU constitution talks in December 2003, for instance, failed to produce meaningful results and domestic political situation in Poland remains unstable. This instability is not only due to a weak government that is unable to complete meaningful reforms, but also due to trade union opposition to the costs of reform and the attendant cuts in subsidies, as well as the growing support for opposition parties.

Overall, the chances of solving these problems on the international and domestic political front are close to impossible. Miller's government will have to play a sophisticated and multilayered game, balancing their international interests and domestic stability, with the aim of implementing successful and much needed reforms, the success of which will benefit both the Polish electorate and international players.

NATO Membership

Poland, along with the Czech Republic and Hungary, joined NATO during the first wave of its enlargement in March 1999 in order to gain additional political security as well as the political legitimacy of a buffer state between Russia and Germany. There is a clear connection between the EU and NATO integration processes. They are perceived as complementary processes that strengthen European security and it is assumed that there will be a greater convergence between members of the two organizations at the end of the process. The EU integration process covers the full spectrum of social, economic, and political issues. For this reason, EU criteria for the progress needed by Poland and other candidate countries are far more stringent than NATO's. NATO has, however, enlarged at a quicker pace than the EU.

Some realists argue that expansion of NATO might destabilize the United States-Russia relationship and consequently lead to a strong negative reaction that would constitute an increased threat to Poland. At the same time an equally plausible argument could be made that enhancing NATO's power via enlargement would stabilize the region between Germany and Russia and keep Germany entrenched in NATO.[3]

NATO membership is important for Poland in terms of domestic political security. It gives positive tone to the recent social and economic changes, and to a certain degree provides legitimacy to the government and its policies. Given the political uncertainty of Miller's government, NATO membership serves as internal political security support.

On the international front, NATO membership is important for Poland as a bargaining tool and a source of political legitimacy. Russia, given its political and economic situation, is not a threat to Poland in geopolitical terms. In fact, both sides will only gain from economic partnership; NATO membership for Poland adds a positive emotional tone to Polish-Russian relations. Despite Russia's negative attitude toward NATO enlargement in general, it is more concerned with the upcoming second wave of enlargement rather than the first one. Preoccupied with its internal political and economic situation as well as near-

abroad conflicts, Russia does not represent any legitimate threats to Poland, and consequently, Poland's membership is only partially justified by this reason alone.

However, as a full NATO member Poland has and will attract more attention in the EU. Given the complexity of US-EU relations, Poland can and should use this membership as a bargaining tool. First, enlargement of NATO has been very popular among NATO members where Germany played a critical role in shaping the NATO debate in Europe. Stephen Larrabee, Corporate Chair in European Security at RAND, thinks that "...in contrast to the first round [of enlargement], there is no strong European leader on whom the U.S. can rely to do the heavy lifting. In the first round, Germany played a critical role in shaping the NATO debate in Europe."[4]

Economic Overview

Economic structure

Under its previous, centrally planned economy, Poland was overburdened by heavy industry and underdevelopment of the service sector. Consumer-oriented industry was nonexistent and overall production was characterized by little innovation, wastefulness and pollution. Despite industrialization Poland retained its agricultural sector that was almost entirely privately operated by small farmers but also suffering from inefficiencies that resulting in uncompetitiveness.

The post-communist transformation changed the structure of the economy. Industrial production and agricultural output fell in relation to GDP. The service industry then grew robustly adapting to the pattern of the developed market economies. These shifts are evident in all the indicators of economic structure: GDP, employment, sales. These changes also have had important spatial dimensions. Industrial output fell from almost 42% in 1988 to 24% in 2001, while the service sector continued to grow to almost 65% in 2001. Within the services sector marketed services grew especially quickly, particularly private business and real estate, which accounted for 13% of GDP in 2001. In this respect, Poland has adapted quickly to the economic patterns of the developed market economies.

Economic shift away from industry was expected to cause the demise of the heavy industry regions of the country, especially in Upper Silesia. However, Upper Silesia survived the economic transition without social upheaval, partly because of the extremely rapid growth of the

private sector and the relatively slow pace of restructuring in heavy industry. Conversely, the north-east and other areas that were dominated by state farms have suffered from the demise of the agricultural subsidies and continue to have the highest levels of unemployment.

Agriculture remained more resistant to structural change, giving Poland a distinctive employment pattern in which agriculture retained immense social and political importance. Around 26% of the workforce is employed in the agricultural sector whereas 95% of it is subsidized and operates under a special farmer system unique in Europe.[5] By contrast, in most of the Western Europe agriculture is an insignificant employer. The importance of agriculture also poses a particular challenge to Polish accession to EU despite the fact that its value added to the GDP has declined sharply from 13% in 1988 to 3.3% in 2001. Although Poland will receive EU funds for restructuring of the agricultural sector, dramatic decline in farm employment is inevitable and more funding might be required to handle social problems in this sector.

Another important dimension of the economic structure is the private sector. Formerly characterized by state-owned economic structures, the development of private industry is particularly important for Poland as it transitions toward a free market economy. Thus, the private sector contribution to GDP rose from 18% in 1989 to 72% in 2001.[6] The private sector also accounts for 98% of the foreign trade. Employment in the private sector outside of agriculture rose from 14% in 1989 to 63% in 2001. Foreign Direct Investment (FDI) plays a minor role in the economy where foreign firms accounted for around 4% of the employment and nearly 6% of GDP in 2001.

Economic policies outlook

Trends: 2004 will see an expansionary budget that contains cuts in business taxes and a significant increase in the budget deficit. Concerns about the rapid increase in public debt – Poland has a constitutional limit on public deficit of 60% of GDP – have forced the government to draw up a politically sensitive program of spending cuts. Debt worries will also increase the pressure for much more rapid progress in privatization in 2004-2005, although receipts in 2003 are likely to be less than half of the Zl 9bn (US$ 2.3 bn) initially targeted for that year.

Fiscal policy: A state budget deficit of 4.8% of expected GDP (Zl 38.7 bn) is projected for 2003, and the outturn for the first nine months of the year suggests that the target will be achieved. The outlook for the public finances in 2004 and 2005 is more worrying. Spending is set to increase

sharply as Poland's entry to the EU in May will impose extra costs on government spending. On the revenue side, the rate of profit from taxes will be reduced to 19% in 2004 in an effort to encourage faster invest-ment growth. The proposed state budget for 2004 has a headline deficit of Zl 45.5 bn. On the European System of Accounts definitions used in the EU, the government expects the deficit to increase from 4.2% of GDP in 2003 to 5.7% of GDP in 2004.

This deficit figure assumes strong economic growth (5% in 2004), but does not take account of the program of spending cuts for 2004-2007 proposed by the government. The clear risk is that many of the spending cuts will be postponed or watered down in the course of parliamentary debate and that economic growth will not be as strong as expected, so that the deficit turns out to be higher and to fall more slowly than the government is projecting.

Monetary policy: Despite the likelihood that inflation will under-shoot the end-2003 target of 3% and the absence of any significant inflationary pressures threatening the 2004 inflation target of 2.5%, the Monetary Policy Council (MPC) has left the key intervention rate un-changed at 5.25% since June 2003. The MPC is worried that the fiscal situation, and the acceleration in economic growth has reduced the pressure to cut rates. Monetary policy in 2004 will be determined by a new MPC, which takes office in early 2004. A majority of its members will be proposed by the SLD-dominated parliament and the MPC is therefore likely to take a more relaxed approach to policy, although the scale of government borrowing and worries about weakening the zloty will limit the scale of cuts in interest rates in 2004.

Preparedness for EU membership

As Central and Eastern European Countries' ("CEEC") biggest economy, Poland is under close scrutiny as accession approaches. Since the onset of transition, Poland has in many ways been the region's most successful economy: it was again growing by 1992, the first CEEC country to do so, and has seen sustained growth since then. By 2002, Poland's real GDP was 29% greater than in 1989 – the greatest rebound among all candidate transition countries, half of which still register real GDP below 1989 levels.

However since 2001 Polish economic growth has slowed signifi-cantly: growth in 2001 was 1.1% and in 2002 - 1.4%, the lowest in all candidate states. Declining domestic demand lay at the root of the problem. In particular, fixed investment fell by 9.8% in 2001 and 6.5% in

2002.[7] This is a worrying trend given the contribution of investment to the reorientation of Polish exports toward higher value-added, more capital and skill-intensive products that enabled Poland to significantly increase its penetration of EU markets. Germany remains Poland's largest trading partner importing over 32% of Polish goods and exporting over 24% to Poland.

Although Poland has the region's largest stock of FDI, it lags behind other transition countries (listed second to the last after Lithuania) in terms of FDI per capita. This is an indication that foreign investors continue to find the Polish business environment difficult compared to its neighbors.

Polish problems have been intensified by a combination of over-expansionary fiscal policy and restrictive monetary policy, including high interest rates. These have subsequently been cut from February 2001 peak of 19% to 8% in August 2002. The government deficit, reinforced by low growth, increased to over 5% of GDP from around 2% in 1999. Measures taken in August 2002, including an amnesty on tax and social security arrears, state credit and tax deferral for small enterprises and additional state guarantees for enterprise debt, will intensify upward pressure on the budget deficit. In fact the deficit is expected to reach 5.3% in 2004 according to one Polish statistical agency.

The economic slowdown also helped push unemployment to 18% during 2002. However, not all Poland's employment problems are cyclical (some result from increases in the size of the working population, whereas others reflect certain labor market rigidities). In February 2002, some limited measures were taken to increase labor market flexibility. Stronger growth, the lagged effect of labor market reforms and ongoing industrial restructuring could begin to reverse the rising unemployment trend.

Slower growth has helped control the macroeconomic imbalances arising from strong domestic demand. The current account deficit has fallen from its peak of 7.5% of GDP to 3.8% in 2000. Inflation has fallen to a post-1989 low of 2.1% and is still falling – a factor that also helped reduce interest rates. Falling inflation has also been helped by currency appreciation. One of the encouraging features of the Polish economy is that, despite this appreciation and slowdown in its major markets, Polish exports, although inevitably weakening somewhat, still grew by almost 4% in 2002.

Although the world economy is beginning to recover from its recent slowdown, the economic conditions in Western Europe are likely to

improve only slowly. Real GDP growth in the EU, which takes 70% of Polish exports, was just 1% in 2002 and 0.6%. The German economy, Poland's main export market, is not likely to grow at all in 2003. According to the Economic Intelligence Unit, real GDP growth in the UE will gradually recover in 2004 and will return to trend only in 2005.[8]

CHALLENGES OF ACCESSION

STRUCTURAL CHALLENGES AND ACQUIS IMPLEMENTATION

As a result of accession negotiations, Poland will adopt the entire acquis of the EU with only a few transitional phase-ins, such as those pertaining to the sale of land and the movement of persons. Accumulated over a period of up to a half-century, acquis often represented the amendment or incremental adjustment of prior policy, and very often results from political negotiations among the member states and within the EU institutions.[9] Poland is committed to accept the entire acquis on May 1 and transform itself entirely with regard to both the processes and outcomes of policy across virtually every domain of policy. Poland will have to virtually fuse their own policy making structures and institutions with new processes of acquis no matter whether or not these processes bear little or no relation to its domestic policy-making processes and prior policy decisions.

Poland has agreed to accept this remaking of the state and its policy processes as the necessary price for the putative benefits of membership. Although the Copenhagen European Council in December 2002 concluded that Poland is ready to implement acquis, the practical matter of implementation still lies ahead. Given politically unstable situation in Poland, it is by no means apparent that coalition government will have the political capacity to adopt policies required by or consistent with the acquis in the face of domestic opposition. Nor is it apparent that it will have the administrative capacity to implement the acquis and the policies that follow from it.

Besides acquis implementation domestically, after May 1st the fifteen-member union will become a twenty-five-member union and thus substantially increase the bureaucratic load, complexity of policy-making processes, and number of policy choices within the EU. Ten new Commissioners will be added to the current team between May and November 2004, ten new member states will participate in the parliamentary elections of 2004 (this agreement goes back to Nice in December 2000),

ten new member states will participate in the next ICG as members, not as observers, and a new Constitutional Treaty will be signed after May 2004 accession date.

The EU has many internal issues to confront. Inherently this means that the EU may overestimate the chances of success of the candidate states' accession as well as its own capacity to deal with ten new accession states. According to Peter Norman, Giscard, one of the co-founders of European Council "... admitted...that a European Council with twenty-eight member states won't work. He now says the EU needs both the Commission and the council and 'perhaps a more original cooperation between them.' "[10]

Given that December 2003 EU Constitution meeting failed to present a workable constitution draft, it is a painful sign that the May enlargement will bring more wasteful arguments, power games and less cohesive decision-making, policy agreements and policy implementations. Current member states will be busy holding on to their spheres of power while the new member states will be striving to increase power-sharing while hoping to develop equal political relationships with the fifteen current member states based on compromise and civility.

Financing Enlargement

If the challenges of implementing acquis while also extending the economic reforms and dealing with the high levels of unemployment and structural imbalances in the economy were not enough, Poland will also confront a challenge of financing the costs of adjusting to membership. Financial arrangements finalized during the Copenhagen European Council meeting in December 2002 offered terms far less generous than those provided in the earlier enlargements.

Poland will be required to make full payment on various funding resources as of May 1 and will not receive, as Greece, Spain, and Portugal did upon their accession, a partial reduction of payments in the first several years of membership.[11] Moreover, Poland will not receive lump-sum compensatory payments from the budget over several years similar to those received by Austria, Finland, and Sweden from 1995 to 1998. Commenting on the results of the Copenhagen European Council meeting in December 2002, Peter Ludlow noted "the Danish Presidency...the candidates were repeatedly told in the run-up to the Copenhagen meeting that they should expect 'no more money'."[12]

Given its domestic situation, Poland was particularly dissatisfied with these results. As the largest country in this accession wave, Poland

was always the toughest negotiator. Before the Copenhagen European Council in December 2002 the political situation in Poland deteriorated to the point where EU skeptics in coalition with other groups put pressure on the Miller government by accusing it of selling out Poland vital interests. Consequently, the Polish government toughened its position by arguing that the macroeconomic environment in the country would deteriorate if the financial package remains unchanged. Poland needed at least 1 billion euros to escape macroeconomic destabilization. According to Leszek Miller, this is the amount of money needed to help the Polish government survive cash flow pressure immediately following the recession.

After the German Chancellor's remark with regard to Poland's importance in this enlargement and further associated negotiations, the settlement came to 108 million euro available immediately to Poland for border control in addition to minor adjustments in milk quotas.[13] Out of these funds 100 million euro was the "old" funds reallocated from the Structural Funds that were not available to Poland for several years and 8 million euro in new funds.

In addition to requiring full payment of revenue obligations and providing no budgetary compensation, the EU will provide Poland considerably less in appropriations under the Common Agricultural Policy (CAP) than Poland would have received if it were treated in the same way as EU members in the 2004 to 2006 period. In fact, in January 2002, the European Commission proposed an appropriations schedule that, in effect, deprives the new member states of full participation in the CAP until 2013. A major component of CAP is the reimbursement of direct payments to farmers made by the member states in the previous year. The Commission proposed that Poland and other candidate states receive no reimbursement in 2004 for the direct payments they made in 2003, that they receive reimbursement in 2005 for payments in 2004 equivalent to 25% of the amount they would normally receive as members, and that they receive reimbursement in 2006 for payments in 2005 equivalent to 30% of the amount they would normally receive. That figure would gradually increase over the following seven years until finally reaching 100% in 2013.

The conclusions of the Brussels European Council in October 2002 reflected the importance of CAP reform for the EU. According to Peter Ludlow, "In his pre-Council press conference, the Danish prime minister remarked... sympathy with those that wished to reform the EU's agricultural policy. CAP reform should not however be allowed to become yet another precondition of enlargement...the business of this Council...was

to make the conclusion of the enlargement negotiations possible...."[14] The net contributors to CAP direct payments have taken a hard line approach regarding direct payments to the candidate states. Among 4 net contributors, Germany took the firmest position when Chancellor Schroeder announced his opposition to direct payments until after the budget negotiations in 2006. He went even further by announcing that Germany could not increase contributions to EU budget in general. The Netherlands too was quite firm in its position. Ever since it became a net contributor in the 1990s, it has taken a harder approach on this issue due to internal political instability. The culmination of its position happened when the Dutch Parliament almost succeeded at postponing accession of Poland, Latvia, Lithuania and Slovakia.[15] The remaining two contributors, Sweden and the UK, are more flexible but hardened their positions recently.

During the Brussels European Council the Commission, determined to proceed, secured the short- and long-term structure of financial assistance for the candidate countries. As per the Franco-German Agreement, the near- and long-term structure of the CAP direct payments during the period 2007-2013 would not exceed 2006 levels agreed upon in Berlin in 1999 with the increasing portion of these funds going to the candidate states. CAP phased direct payments starting in 2004 would remain at levels previously agreed upon levels in Berlin in 1999.

The Commission claimed that such a scheme is necessary to avoid creating disincentives that would delay the restructuring of agriculture – a process that involves eliminating many small, marginal farms and shifting labor our of that sector. In addition, such a scheme is undoubtedly convenient for the EU given the budgetary ceiling. At the same European Council the Commission also agreed to decrease, virtually without any comment or objection, availability of the structural and cohesion funds to the candidate member states by reducing commitment on the total amount from 25.5 billion euros to 23 billion for the period 2004-2006. A number of countries,[16] led by Spain, tried to argue against reduction of the benefits they derive from the cohesion and structural funds.

Whether reflection of economic wisdom or political convenience, the scheme will not only treat the candidate states as less than full members of the EU, but also will deprive them of a substantial amount of revenue. As a result, while attempting to restructure the agricultural sector and the entire economy, developing administrative capacity, fighting unemployment, structural imbalances, and high deficit, Poland

will find itself having to divert funds that could otherwise be used for these purposes to make payments that current member states would have reimbursed.

Public Ambivalence about Accession and Enlargement

As daunting as these challenges are, another challenge is largely political in character. As the Polish government endeavors in implementing acquis, reforms and dealing with financial situation, it will find its capacity to act effectively constrained by the considerable ambivalence about enlargement that exists in many of the current member states and in Poland itself.

The Brussels European Council in December 2002 and most recent events related to the EU constitution reflect a growing ambivalence among current member states toward upcoming enlargement. A direct measure of the extent of ambivalence about or opposition to enlargement in the current member states is found in the most recent December 2003 Eurobarometer survey. The results of this survey revealed three interesting changes.

First, although Denmark, Greece, Spain, and Portugal remain the most active supporters of the upcoming enlargement, their support decreased as they try to protect their vital interests in the EU, especially when it comes to Common Agricultural Policy ("CAP") and financial aid package. Spain and Portugal continue to receive substantial appropriations under CAP that puts them in direct competition with Poland whose economy is overburdened by underproductive and inefficient large agricultural sector. This is a sensitive issue for both sides; Poland has to position itself so that its well established relations with Spain and other small states within EU are not threatened by negative developments related to CAP appropriations.

Second, the net contributors to CAP became more ambivalent over the last year and a half toward upcoming May enlargement. This is not surprising given the results of December 2002 Brussels European Council meeting where the Commission approved less advantageous CAP appropriations terms for the ten candidate states in comparison with those during the previous enlargements.

Third and not surprising, large and senior member states such as Germany, UK, and France have shown even more ambivalence toward upcoming EU enlargement. This is an interesting fact since the number of small states will increase by ten in May when CEEC joins EU. Unquestionably, the balance of small states vs. big states will have new dynamics.

On this point, Peter Ludlow points out the importance of the seniority membership and further reflects that "...the size of a country matters. Big states do not rule and, as the debate... illustrated, even a position sponsored by all five big states can be blocked. Large states leaders nevertheless start with significant advantages which even... small state champions rarely challenge."[17] This point further emphasizes the fact that Poland, as a new member of EU, should learn to exercise patience and persistence in attaining its goals.

In Poland the support for EU membership declined from 1996 to 2001 while rising slightly in 2002.[18] Karen Henderson argues: "By the late 1990s...Poland was the first candidate state in which Euroscepticism took root."[19] Ethnically homogeneous and the largest accession state, Poland has a strong sense of nationalism that has been nurtured by a historical dependence on Prussia and Russia. After over fifty years of communism and dependence on the Soviet Union, Poland has gradually developed pro-Western views and eagerly joined NATO in 1998 to escape eastward dependence.

After the initial excitement and projected bright future as an EU member faded with its 1994 application, Poland has yet remained largely pro-EU. However, the start of membership negotiations signaled increase among EU skeptics primarily for two reasons. First, the existence of conservative Catholicism with a strong traditional family status throughout Poland clashes with the liberal ideals of Western Europe. The second reason relates to the importance of agriculture for the Polish economy. Poland is the only Soviet-bloc state whose agriculture remained largely private and remains a vital part of the GDP. As negotiations progressed Poland's demands for agricultural subsidies clashed with EU protectionism over the agricultural sector.

CONCLUSION

In general, the economic performance of Poland has been fair, given its unpromising internal and external environment. The problem lies in the fact that it is a small open economy in which economic growth largely is generated externally, that is through exports. Unlike current member states that are small economies, Poland does not have a stable economic performance, a long-term record with democratic rule, corporatism, or even appropriate economic aid from EU funds. Many sectors still require major improvements in the quantity and quality of infrastructure to enable them to take further advantage of its integration with the EU and to help it address its wide internal regional disparities.

Poland's position within EU is unlikely to change in the near future.

Given internal EU predicaments, Poland will have to defend its position through consensus. "We are ready for compromises and to seek mutually acceptable solutions, but we will not give in for the sake of short-term interest or peace of mind," Polish Prime Minister Leszek Miller said on television over the weekend.[20] This is a strong statement that shows Poland's seriousness to defend its position in the EU. Given contentious issues surrounding EU constitution and finances, Poland will have to learn to be patient.

Enlargement entails adjustments on both sides where EU needs to provide adequate adjustment for an incoming shock of ten new members that needs to be expressed in terms of profound institutional restructuring within EU. According to George Blazyca, Poland is disappointed in EU leadership that views enlargement as a one-way street. Blazyca believes that "....adjustment strategy should not simply be viewed as a unilateral imposition of existing EU legislation."[21]

How much time will this process take and how much pressure will the EU exert on Poland and vice versa? Poland is in position to exert a fair amount of influence in order to defend its interests. As long as a constituency provides domestic support for the Polish government, Poland should be able to follow its present course. Unfortunately, Poland will not be viewed as an equal among other EU member states in the short-term. The long-term situation might change depending on how much influence Poland can successfully exert in the EU. Ambivalence of its position translates directly from the unpredictability of the balance of power within EU and within Poland itself. A predictable domestic situation will improve the Polish situation within the EU. Now is the time for the Polish government to act.

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NOTES

[1] Blazyca, George, p. 206.

[2] Spiteri, Sharon.

[3] Aggarwal, Vinod K., p. 64.

[4] Stephen Larrabee.

[5] Rybinski, Rrzysztof, p. 10.

[6] The Economist Intelligence Unit "The Country Profile 2003: Poland," p. 28.

[7] Johnson, Debra, p. 196.

[8] The Economist Intelligence Unit 'Country Report: Poland', p. 3-4.

[9] Cameron, David R, p.25.

[10] Norman, Peter, p. 8.

[11]   Cameron, David R., p. 33.

[12]   Ludlow, Peter, Briefing Note No. 10, p. 7.

[13]   Ludlow, Peter, Briefing Note No. 10, p.10.

[14]   Ludlow, Peter, p. 2.

[15]   Ludlow, Peter, p. 8.

[16]   Cohesion countries are Spain, Portugal, Greece and Ireland.

[17]   Ludlow, Peter, p. 21.

[18]   Commission, Candidate Countries Eurobarometer.

[19]   Henderson, Karen.

[20]   Mahony, Honor "Poland and Germany to Discuss Constitution."

[21]   Blazyca, George, p. 207.

Beyond Fortress Europe

REASONS AND IMPLICATIONS FOR THE EU's EXCLUSION OF UKRAINE, BELARUS AND MOLDOVA FROM THE EU ACCESSION PROCESS

<div align="right">Sarah Giles</div>

This essay examines EU relations towards those states in the east that are outside the EU accession process. Long been forgotten, Ukraine, Belarus and Moldova represent significant neighbours of the EU that require careful policies of reform in order to promote political and economic development, and therefore greater security across Europe.

INTRODUCTION

This paper analyses the relations between the EU and the three European ex-Soviet states excluded from the upcoming EU enlargement processes – Ukraine, Belarus and Moldova – focusing on the reasons for and implications of their non-membership. There are significant consequences for states excluded from EU enlargement, which is fundamentally transforming Europe in terms of trade relations, economic prosperity, political stability and democracy, and border and immigration policies. This is especially true for Ukraine, Belarus and Moldova because they each have a history of substantial political and economic relations with other states within the region. The EU's construction of an external border through the Schengen Agreement[1] especially delineates 'insiders' from 'outsiders'. Accordingly this paper will ask: Why has the EU excluded Ukraine, Belarus and Moldova from EU enlargement? What are the implications of their exclusion? How are relations developing between these states and the EU, and how might the EU develop a strategic foreign policy towards this region?

This essay focuses on how divisions between the EU and the 'outsid-

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ers' – Ukraine, Belarus and Moldova – may be forming. It also examines the issue of Russian relations in this process because of the overwhelming influence that Russia continues to exert on ex-Soviet states[2]. It contends that each of the governments of the three states are approaching relations with the EU very differently: Moldova has broken most overtly from Soviet structures; this demonstrating the greatest commitment to cooperate with the EU; Belarus is seeking to reintegrate with Russia; while Ukraine is increasingly cooperating with western actors while at the same time is constrained by Russian relations. This essay concludes that one of the most significant factors determining whether these states seek integration into EU structures is the existence of foreign policy options beyond Russia. It is divided into three sections; the first examines the EU accession process in Eastern Europe exploring reasons why the three states were not included in upcoming enlargement; the second examines individually the relations of the three states with the EU, focusing on how each state has responded to EU negotiations and upcoming enlargement; the third examines the future implications of non-membership and how the EU might respond to the disjuncture between membership and non-membership of states in the region.

While the danger of creating new divisions between the EU and the 'outsiders' is critical, both for those states within and those outside the EU, this issue has been given relatively little attention by scholars, even as it is increasingly becoming a concern for the EU as accession draws nearer. Yet to date there remains a high level of ambiguity surrounding EU relations towards ex-Soviet states, with a lack of consensus over the long-term ambitions of EU enlargement in Eastern Europe. Of the three states, the EU has dealt with Ukraine most comprehensively; Ukraine represents a crucial actor in the process of post-Soviet democratization because of the retention of its independence from Russia[3]. Yet Belarus and Moldova, termed by Löwenhardt (2001) as 'forgotten countries'[4], have largely been neglected in policymaking arguably because they do not represent vital interests to the EU (particularly in terms of economic interests), although their merits are further undermined by domestic problems of corruption and political exploitation. This paper endeavors to examine the topic from a broad and comparative regional approach, relying upon the relatively limited resources available, such as the official EU documents outlining EU policy towards these states, information published by a group of scholars from the Glasgow School[5], and recent academic journals of post-Soviet studies.

The changes wrought by the end of Cold War have completely

transformed the political environment of Europe. Yet after the initial peaceful transition period, new fears have begun to arise over new divisions being drawn between East and West, in which the expansion of NATO and the EU has signaled the latest process in the geopolitical reorganization of Europe[6]. In the near future, Europe will witness the accession of ten new countries (mostly former communist states) to the EU and seven former communist countries to NATO[7]. The EU enlargement to take place in May 2004, barring any unforeseen obstacles to negotiations, represents an extraordinary development in East-West relations that was quite inconceivable during the 1980s. EU enlargement is thus part of a complex process in which states across the continent are reconstituting their relations. The dynamic relations emerging between the EU and European states can be understood as operating on three different political trajectories: these involving the first-wave accession states, then the other acceding states, and finally the newly defined 'outsiders'. Such relations will become more pronounced with the construction of the Schengen border.

EU enlargement is critical for the states of Central and Eastern Europe because of the potential it brings for increased peace and prosperity across the region. Non-membership implies a greater risk of undemocratic government and economic hardship, particularly as those states included in the accession process move forward[8]. The benefits of membership include increasing political security and economic development, institutional reforms especially within the judiciary and state bureaucracy, the development of a welfare state, and the potential for EU transfer payments through the policy of structural and cohesion funds. Yet apart from Ukraine, Belarus and Moldova, the other European states outside the first enlargement have been accounted for in the EU's negotiations: Romania and Bulgaria have been set a preliminary date to enter in 1997; and the Balkan states signed the Balkans Stability Pact (July 1999) that anticipates eventual membership through EU initiatives in the region; Turkey's status continues to present an anomaly but there have been concerted efforts made by the EU to improve dialogue with Ankara. Therefore the exclusion of Ukraine, Belarus and Moldova from EU enlargement, although not particularly surprising in view of their political and economic shortcomings, nonetheless creates a stark impression of new divisions being drawn across Europe.

THE EU ACCESSION PROCESS

The EU enlargement process has been driven by two principle factors: by states assertively seeking membership and by the EU itself through active policies of negotiation. Therefore both these conditions must exist for a state to embark on the EU accession process. In terms of the first condition, only Moldova has indicated a degree of commitment to EU accession, whereas reform has been mixed in Ukraine although it has displayed aspirations for EU membership and Belarus has actively sought unification with Russia most notably through reintegration into Soviet economic structures[9]. Yet in all three states, certain political parties are supported politically and economically by the EU, which is important for creating a proactive environment advocating EU membership. This development is undermined however by the limited nature of party commitment to the electorate in these three states, where only a fledging process of democracy is present[10].

In terms of the second condition, it is important to note that when states first apply for EU membership, they are either set on route to EU accession, or their application is rejected and they will not continue negotiations. For this reason, it is significant that the EU has neither denied nor encouraged membership applications of Ukraine, Belarus and Moldova. This strategy of non-commitment is particularly evident in the case of Ukraine, where progress towards EU membership has been put on hold until after the 2004 enlargement[11]. This ambivalence in EU policy towards Ukraine has caused a great sense of frustration and alienation, being relegated to a 'no man's land'. Similarly, the fact that the EU did not adopt Common Strategy towards Moldova and Ukraine, as it did for Ukraine and Russia (June 1999)[12], produced considerable resentment; particularly for Moldova that had overt designs for EU membership. In June 2001 Moldova was included into the Balkans Security Pact, which renewed hope for eventual inclusion although once again the EU was careful not to make any commitments[13]. More recently, in April 2003, EU leaders at a meeting in Luxembourg expressed their commitment to Ukraine and Moldova as possible EU candidates.

It may be argued that lack of an official strategy gives the EU more potential for future negotiation (although ambivalence is frustrating for the states concerned and carries the potential risk for awkward future misunderstandings and accusations of betrayal). Following the ambivalent approach of the EU towards Ukraine, Belarus and Moldova, it appears that the dual conditions for accession – pro-activity by both the

applicant state and the EU – are interdependent; namely the EU discourages a state to apply for membership, and therefore the state will not actively seek EU membership. This is important because it enables a delay in the extraordinarily complicated task of assessing the membership eligibility of these states for membership. A crucial aspect of EU accession negotiations is the issue of democracy. In the case of the Eastern border this largely depends on the long-term ability of Russia to induce reform. Russian foreign policy is also significant in ensuring the continuing independence of the ex-Soviet states. The EU's Partnership and Cooperation Agreements with Ukraine (June 1994), Belarus (March 1995)[14] and Moldova (November 1995)[15], however, have played a significant role in the democratizing and development process, particularly through the TACIS (Technical Assistance to the Commonwealth of Independent States) aid program[16].

Scholars are increasingly recognizing the influence of the EU as a powerful actor in instigating democratization and institutional reform within the domestic arenas of acceding states[17]. The degree of EU leverage is crucial in determining domestic political change, such as whether states follow a 'nationalist' or 'liberal' pattern of development, whereby a liberal agenda is more conducive for accession to EU membership, as Vachudová (2001) has identified in her research on the EU enlargement process[18]. The key variable of Vachudová's thesis explaining whether democratizing states follow a liberal or nationalist pattern is whether strong opposition to communism exists. The EU operates by sponsoring parties opposed to communism, with the intention of securing election success for those parties that support EU accession and will abide by democratic and market-orientated liberal policies in order to achieve the criteria for membership. In the case of Ukraine, Belarus and Moldova, the EU has only displayed minimal interest (passive leverage) in supporting liberal parties, and therefore unreformed communist parties have filled the power vacuum. However, it is difficult to categorize these states within a democratizing framework because they are all still occupied with elementary state-building exercises[19].

Russian relations are particularly important for the EU in its pursuit of enlargement to the East. The EU must navigate careful diplomatic strategies when negotiating with other Eastern European states in order not to alienate Russia with its close historical links in the region, especially towards the three countries in question. President Putin has emphasized the importance of constructing productive East-West relations, expressing concern over the establishment of new dividing lines

across the continent that have been so recently erased[20]. This notion of a divide is particularly apparent through the issues of immigration and visa requirements created by the Schengen Agreement, as well as through fears about Eastern European states gradually reorientating their trade towards the EU and away from the East[21]. Engaging in relations with the EU is also important for Moscow in order to achieve political credibility, and Russia significantly benefits through economic assistance, whereby EU aid and trade agreements represent crucial instruments in the economic transition of Russia[22]. Particularly for this reason, Russia has not attempted to block EU enlargement[23].

Nevertheless, Russia remains a dominant power in Ukraine, Moldova and Belarus because of their heavy dependency on Russian trade[24], and it therefore wields a high degree of leverage on their foreign policies. After the collapse of the Soviet Union, at the beginning of the 1990s these states joined the Commonwealth of Independent States (CIS) and their historic allegiance to Soviet structures was reinforced. The 1995 Commission report on EU-Russia relations recognized this development, envisioning that the EU, including the acceding states, would remain separate from Russia and that most of the ex-Soviet states would retain close relations with Moscow[25]. Yet more recently, for Ukraine and Moldova CIS membership has been superseded by their new focus on economic cooperation within GUUAM (Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova Group), an organization less dependent on Russia (and Soviet structures)[26]. Moldova in particular has resisted Russian economic hegemony by developing alternative trading partners in the region, although the Ukrainian economy remains closely linked to that of Russia. Conversely, Belarus has sought greater economic integration with Russia[27].

While meeting the requirements of EU accession is a meritocratic affair, instituted by the criteria of the *acquis communautaire*, which require a functioning market economy and the ability to withstand competitive market forces, there are important political prerequisites for membership that are not so quantifiable. Although a state will not be allowed to join the EU until it has met the economic criteria, setting a state on the route to EU membership in the first instance is therefore largely dictated by political considerations, particularly democracy, stability and human rights, but also geopolitical factors. For instance: Ukraine's large economy positions it favorably against other poor states of Eastern Europe that are acceding to the EU, although undoubtedly a large gulf remains between its attainment of a functioning market

economy. In any case, the arguments against EU membership for Ukraine, Belarus and Moldova are more complex, involving problems of political instability, crime, and unsettled identity with the explosive issues of ethnicity. These states are located on the fault-line between the East and West, 'a locus where conflicts are inherently more dangerous than elsewhere in the world'[28].

There is evidence of anti-democratic governance in all three states, and crime and corruption are increasing across the region. Sultanism is evident in Belarus with Lukashenko's dictatorship[29], and Ukraine and Belarus have been accused by the international community of selling illegal arms to 'rogue' states such as Iraq. The government in Moldova has no control over the Trans-Dniestria region, in which a hotbed of corruption, prostitution and an illicit drug trade operate.[30] National identities are unsettled in all three states, a result of the recent geopolitical transition of the Soviet empire, and distinctions between ethnic and ideological identities remain poorly defined and understood[31]. Both Moldova and Belarus are border territories that have been displaced in the past – Belarus between Russia and Poland, and Moldova between Russia and Romania, and a number of disputes have emerged with the reassertion of ethnicity by certain groups[32]. Furthermore, Belarus and Moldova are incredibly underdeveloped with outmoded economic structures and declining economic performance. Consequently these three states do not represent particularly attractive candidates for membership of the EU.

It is important to note, however, that former Soviet status is not in itself an obstacle to EU membership, as demonstrated by the inclusion of the Baltic states in EU accession negotiations. This was due to the political proactivity of both the Baltic states and the EU throughout the 1990s; the Baltic states demonstrated an assertive commitment to EU membership and did not join the CIS, and there was active support by the EU in these states for liberal political parties and through development programs such as PHARE[33]. Crucially, the Scandinavian states of the EU also sponsored the accession of the Baltic states by emphasizing their 'northern dimension'. Another aspect to the divergent trajectories of these two different groups of states during the 1990s is that the economies of Ukraine, Belarus and Moldova are more intertwined with that of Russia, whereas historically the Baltic states had alternative trading connections in northern Europe. Therefore the existence of foreign policy alternatives apart from Russia is vital. This may also be demonstrated by considering how Moldova's alternatives – partly determined

by its large resident Romanian population – are increasingly integrating Moldova economically, with Europe with ensuing implications for Moldova's political relations with the EU.

THE FUTURE FOR EU ENLARGEMENT

THE CONSEQUENCES OF EXCLUSION FROM THE EU

There are grave consequences for states excluded from the EU, most evidently in terms of economic prosperity but also indirectly through geopolitical implications, such as illegal immigration, cross-border crime and political instability. EU market protectionism is a crippling barrier to trade for outsiders because it involves restrictions on agricultural produce, which is an especially detrimental policy to states like Moldova that are excessively dependent on agriculture. Foreign direct investment also tends to be diverted away from the periphery and towards EU members, increasing the differences in economic development for insiders and outsiders. The situation is further exacerbated for Ukraine, Belarus and Moldova because of the sheer difference in size between Soviet markets and those of the EU[34]. There is another dimension of economic exclusion in terms of cross-border trade, whereby former bilateral trading relationships are disrupted through restrictions to entry for non-EU citizens imposed by Schengen. Where prosperous border trade once existed unimpeded by national borders such as between Poland and Ukraine[35], stringent passport controls and visa requirements now increasingly delineate the boundaries of 'fortress Europe', heavily impacting the livelihoods of shuttle traders and border dwellers.

The construction of a hard border also has important consequences for the movement of people seeking work and refuge. Although mass resettlement in the EU of immigrants from the East has not materialized as once envisaged, transit and short-term migration is increasing especially towards 'third countries', that is those Eastern European states within the EU accession process[36]. The problem is that these states lack the resources to absorb migrants and therefore may push asylum seekers towards neighboring states in which even fewer resources are available and where less humane immigration policies exist. For those states excluded from EU enlargement there are few incentives to cooperate with the EU over immigration and asylum[37]. It is also a problem for the long-term economic growth of those states losing their populations, particularly Moldova[38] and Ukraine[39]. As Grabbe (2000) perceives, extending

Schengen eastwards implies a trade-off between the benefits of freer movement within the EU against the cost of preventing passage from the East[40].

The Schengen border also holds significant implications as a discriminatory division between populations that share ethnic origins and close cultural connections. This issue is particularly contentious in a region where the locations of many ethnic groups span borders. For instance, since the EU began negotiations with Romania in 1999 there has been a surge of ethnic Romanians living in Moldova applying for Romanian citizenship. Löwenhardt et al. (2001) suggest that if this development continues the EU will be forced to admit Moldova jointly with Romania because of the numbers of Moldavians holding dual citizenship[41]. Likewise, the existence of ethnic Hungarians living in Ukraine is problematic for the accession of Hungary. For this reason, there has been a souring of relations between Ukraine, Belarus and Moldova and bordering European states. As Grabbe (2000) perceives, for those states on the periphery of an expanding EU, Schengen is foreign policy and the situation will only degenerate with the construction of a hard impermeable border[42].

Exclusion for Ukraine, Belarus and Moldova is especially problematic because they are not faced with the eventual possibility of membership and therefore are not granted any substantive incentives for reform. Partly for this reason democratization and development of the state apparatus has been minimal. Support for nationalist parties may be strengthened where they campaign on issues of rights for ethnic minorities and anti-Western sentiment, a trend that has become increasingly evident in Ukraine and in Belarus[43]. Furthermore, states with extremist governments in power tend not to apply for EU membership and there is more possibility for migrants[44]. Yet although the EU desires stability along the new frontiers it has thus far not been prepared to secure this stability by engaging closely in the domestic policies of states in the region.

EU Policies towards Ukraine, Belarus and Moldova

During the 1990s, the EU launched an ambitious agenda to assist the democratic and economic transitions of former Soviet states, establishing a framework of cooperation through the PCAs involving the TACIS program (Technical Assistance to the Commonwealth of Independent States). These policies have been successful in building diplomatic relations. Yet with Russia receiving the bulk of financial aid there have

been minimal developments in Ukraine, Belarus and Moldova[45]. Entering into these treaties and agreements with the EU, however, demonstrates some degree of commitment to reform and therefore is an important step towards improving relations[46]. Nevertheless, there remains much uncertainty in East-West relations as to how EU enlargement will impact on the region. The EU has to be extremely careful not to alienate those states excluded from the process, which increases instability in the region with the related consequences of migrants, ethnic tensions and crime. There has been a degree of pressure from other actors, particularly the US, NATO as well as other Eastern European states, especially Hungary and Poland, which are directly impacted by issues concerning the EU's borders[47], and thus the EU is increasingly realizing the need for a constructive approach towards Ukraine, Belarus and Moldova.

Scholars have drawn attention to a number of areas in which the EU should engage more actively, in order to reduce ambiguities and improve relations with 'outsiders'. Above all, the EU needs to develop a common foreign policy towards all these states, incorporating cooperation and extending trade agreements. Following a functionalist-type argument, economic integration and prosperity gives rise to political stability[48]. The EU also must help to restructure economies and welfare systems, a critical task in ex-communist societies where these liberal economic structures did not formerly exist. Border controls and asylum policies are likewise new issues for these states and a sensitive approach should be adopted in order to deal with the highly contentious issues of ethnicity. In general, immigration policies need to be reconsidered; streamlining of entry requirements is important, but attention should also be paid to the special relationships between certain states. For instance, Poland has advocated inexpensive and multi-entry visas for citizens of the Ukraine traveling to Poland[49]. Greater support for liberal-orientated politicians is another step required in order to promote democracy within the region.

Garnett and Lebenson argue that EU support for stability in the border region does not require large amounts of financial resources or deployment of military forces but rather the 'endorsement of the positive trends that are springing up from the soil of the former USSR'[50]. These trends involve the domestication of Russia (including the implementation of civil society) and the increasing multilateral linkages formed by former-Soviet states amongst one other and elsewhere, in which there is potential for the EU to exercise real leverage through institutions. Where the EU disregards contentious issues in the region or imposes discrimi-

natory policies, the significant developments that are emerging are undermined, as is the credibility of the EU. This weakens the integrity of those elites supporting EU relations, who are vital for future developments[51]. Furthermore, there may be a necessity to intervene later, when there are higher human and economic costs. For instance, Trans-Dniestria has been noted as containing the potential for a Balkans-type conflict[52]. Increasing crime and terrorism are issues to which the EU needs to pay particular attention.

Another issue the EU should address is how NATO enlargement is also creating new divisions in Europe with the recent series of expansions. The reality is that within these states this process serves to heighten 'anxieties about becoming a vulnerable buffer between two belligerent blocs'[53]. An influential argument for improving relations in this region is that the offer of enlargement itself perhaps represents the most powerful tool of the EU on foreign policy[54]. If taken seriously the process of EU accession becomes prevalent in all aspects of domestic policymaking and is constructive for economic progress with the market reforms of the *aquis communitaire* complying closely with those recommended by economists for development. At the very least, there should be greater support for the independence, democracy, and territorial integrity of these states. Part of a constructive policy to prevent the reassertion of divisions involves the creation of a permeable rather than fortified border[55]. These processes of reform would be achievable were the EU to increase market access with other interim rewards for these states, alongside a two-step process of strengthening pro-reform groups while weakening rent-seeking elites. However, the problem to date, regarding lack of reform, has been that the desire to promote development in former Soviet states has involved linking aid with issues that conform to the priorities of the West[56].

CONCLUSION

Following the hypothesis that ex-Soviet states of Eastern Europe are more likely to integrate into European structures when they have alternative foreign policy options apart from Russia, Moldova is the state most likely to achieve EU membership. Certainly Moldova has demonstrated the most commitment to the process with the largest number of EU cooperation agreements and the highest percentage of its exports directed at the EU market, followed by Ukraine and then Belarus. Whereas for Ukraine and Belarus, Russia is the exclusive 'other', for Moldova there

are two significant 'others', Russia and Romania (Löwenhardt et al. 2001). Economic dependency on Russia has been one of the major reasons for lack of reform in all these states, but by creating complex networks of multilateral relations there is an increased possibility for sustained development and also democracy, since credibility and the existence of political stability are central to a state partaking in international cooperation agreements[57].

The EU is one international body in Eastern Europe that has induced reform. The upcoming accession in 2004 of ten states to the EU represents an incredibly powerful example of how an international actor may influence the democratization and market transition process. Yet, as demonstrated by the cases of Ukraine, Moldova and Belarus, this influence may only penetrate where there is a desire for engagement both from the EU institutions and from within the state itself. Since the EU's genuine interest in these states has been minimal – patchy at best and nonexistent at worst – there has recently been a renewed focus of these states towards traditional Soviet allies. This development has been advanced by the protracted nature of negotiations with the EU, which has fuelled a sense of hopelessness in Ukraine and Moldova. A major problem in EU relations with these states is that there is lack of mutual understanding whereby both sides have a limited knowledge of one another and are unable to approach negotiations on the same terms. As Moroney despondently perceives, 'Ukraine is goal-orientated, the EU process-orientated. Ukraine views full membership as the end goal, the EU sees Ukraine as merely one component in its eastward enlargement and the process itself as a means of encouraging applicants to modernize, reform, and implement democratic principles'[58]. Taking into account the major factors influencing the relations of these states with the EU, the resulting picture is a divergent pattern of development based on the different conditions that exist within each state:

1. Ukraine: There is an inability to extricate the economy from that of Russia, a process further undermined by the corruption of rent-seeking elites; therefore the number of international agreements is limited. It is difficult for the EU to negotiate fully with Ukraine because of Ukraine's relationship with Russia and the anti-democratic nature of the Ukrainian government, and consequently there has not been an assertive approach made by the EU. The lack of a coherent policy from the EU has further impeded the EU's relations with Ukraine. Ukraine has attempted to reform, but without external guidance transition has been stalled and reform is slow.

2. Belarus: Lukashenko's Presidency is a major reason for undemocratic government and lack of economic reform. By vilifying all foreign policy options apart from those of Russia and pro-Soviet structures, Lukashenko has seriously limited the possibilities for EU negotiations. He rejects any chance that EU assistance could be linked with political and economic reform within Belarus. Economic failure is masked by Russian patriarchy.

3. Moldova: Increasing networks of interdependence are being created through the relations established both with post-Soviet states (such as GUUAM) and importantly with Europe (assisted by strong bilateral cooperation between Moldova and Romania). The EU has expressed an interest in cooperating with Moldova, extending trade agreements and policies to aid political reform, and has not been obstructed by Russia due to the lack of Russian interests in the region. Moldova has responded constructively to these efforts and worked within the framework, for instance by safeguarding minorities. The result is an increased orientation of Moldova towards the EU although the Trans-Dniestria issue significantly hinders further developments.

Although all three states are positioned on divergent trajectories in terms of their relations with the EU, they remain distinct outsiders. There are crucial consequences for this exclusion, whereby a new 'in-between' Europe may be reviving. Upcoming enlargement may serve to further widen the differences between East and West through disparities in accessibility to labor and capital markets. This is a distressing development, where so much effort has been made across Europe during the last decade to overcome the divisions of the Cold War[59]. Disparity-linked problems are already arising, most evidently in terms of illegal immigration, cross-border crime and political instability. The phenomenon of corrupt regimes is contagious and threatens the EU with or without fortress borders.

This region should be therefore recognized as a crucial and integral part of Europe, rather than as a peripheral borderland. Accordingly, the EU should engage more closely with these governments and develop coherent strategies alongside EU policy towards Russia in order to achieve stable and prosperous conditions in states soon to be the EU's neighbors. Prospects for economic development largely depend on access to the European single market, which is in fact a strong shared interest for all parties involved, and political stability would be aided by a stronger presence of the EU within the region. Presently the EU tends to view the region through the dichotomy of inclusion or exclusion. In-

stead, a new approach is required that would establish a clearly defined and constructive commitment towards the region. The problem to date is therefore two-fold, involving first the considerable domestic weaknesses within Ukraine, Belarus and Moldova, and their particular asymmetric relations towards Russia, and secondly the shortcomings of international actors in inducing greater reform, of which perhaps the EU holds greatest responsibility.

NOTES

[1] The Schengen Agreement was created in 1985, whereby all EU member states agreed to construct a strong external border around the EU and to implement uniform entry requirements on citizens from the same countries. These requirements tended to be more restrictive than the national policies that they replaced, and various visa conditions were imposed on citizens of Ukraine, Belarus and Moldova. See Grabbe, H & Hughes, K. 1998 *Enlarging the EU Eastwards* (London: Pinter for the Royal Institute of International Affairs).

[2] See Smith, G., Law, A., Bohr, A. & Allworth, E. 1998 *Nation-Building in the Post-Soviet Borderlands: The Politics of National Identities* (Cambridge: Cambridge University Press).

[3] Bojcun, M. 2001 'Where is Ukraine? Civilization and Ukraine's Identity' in *Problems of Post-Communism* Sep/Oct 2001 V.48 I.5.

[4] See Löwenhardt, J. 2001 'Two Forgotten Countries: Belarus and Moldova', paper for *Annual Conference of the British Association for Slavonic and East European Studies*, University of Cambridge (7-9th August 2001).

[5] J. Löwenhardt, M. Light, S. White, R. Hill and I. McAllister are scholars from the Glasgow School that have written a number of papers focusing on the states that will constitute the EU's new border. See www.gla.ac.uk/icees/outsiders.html.

[6] See Balmaceda, M. 1998 'Ukraine, Russia and European Security: Thinking beyond NATO expansion' in *Problems of Post-Communism* Jan/Feb 1998 V.45 I.1.

[7] NATO recently extended membership out to Estonia, Latvia, Lithuania, Slovenia, Slovakia, Romania and Bulgaria (November 2002) to join by 2004, alongside the incorporation of the Eastern European states, Czech Republic, Hungary and Poland in 1999. See www.nato.int.

[8] See Moravcsik, A. & Vachudová, M. A. 2002 'National Interests, State Power, and EU Enlargement' in *East European Politics and Society* (forthcoming).

[9] See D'Anieri, P. 1997 'Dilemmas of Interdependence: Autonomy, prosperity and sovereignty in Ukraine's Russia policy' in *Problems of Post-Communism* Jan/Feb 1997 V.44 I.1.

[10] See White, S., McAllister, I. & Light, M. 2002 'Enlargement and the New Outsiders'

in *Journal of Common Market Studies* 2002 V.40 I.1.

[11]   See Baronin, A. 'The EU aims not to let Ukraine in and at the same time not to keep it out' *European Policy Centre*, http://www.theepc.be/challenge/challenge_detail.asp?SEC=challenge&SUBSEC=issue &SUBSUBSEC=issue2 &SUBSUBSUBSEC=coretopic4&REFID=254 (accessed 20/11/02).

[12]   A Common Strategy involves establishing a common EU foreign policy towards particular states or regions that are considered significant to the EU's interests.

[13]   See Löwenhardt, J. 2001 'Two Forgotten Countries: Belarus and Moldova', paper for *Annual Conference of the British Association for Slavonic and East European Studies*, University of Cambridge (7-9th August 2001).

[14]   Note that the PCA was not actually instituted in Belarus due to objections from the EU over the lack of democracy in Belarus ('The EU's relations with Belarus' http://europa.eu.int/comm/external_relations/belarus/intro/index.htm (accessed 22/11/02)).

[15]   PCAs involve improving relations of non-member states towards the EU through various levels of political dialogue, as well as facilitating the development of a free-trade area through trade and investment within the non-member states.

[16]   Technical Assistance for the Commonwealth of Independent States (TACIS) involves supporting the transition to market economy and democracy through aid programs.

[17]   See Epstein, R. 2002 'Why do States Comply? International Institutions, Domestic Resonance, and the Denationalization of Banking and Defense Planning in Postcommunist Poland' University of Denver (forthcoming). She argues that the effect of international institutions on state policy is critical; the EU's involvement gives rise to domestic resonance, operating as a discourse, which institutionalises external strategies for reform.

[18]   See Vachudová, M. A. 2001 'The Leverage of International Institutions on Democratizing States: The European Union and Eastern Europe' in *RSCAS Working Paper* N.2001/33 (Fiesole: European University Institute).

[19]   See Löwenhardt, J., Hill, R., Light, M. 2001 'A wider Europe: The view from Minsk and Chisinau' in *International Affairs* July 2001 V. 77 I.3.

[20]   See White, S., McAllister, I. & Light, M. 2002 'Enlargement and the New Outsiders' in *Journal of Common Market Studies* 2002 V.40 I.1.

[21]   See Light, M., White, S., & Löwenhardt, J. 2000 'A Wider Europe: The view from Moscow and Kyiv' in *International Affairs* Jan 2000 V.76 N.1.

[22]   Russia is economically dependent on the EU; the EU currently receives 40% of Russia's exports and provides 38% of its imports. EU imports in Russia are also likely to increase after enlargement. See Light, M., White, S., & Löwenhardt, J. 2000 'A Wider Europe: The view from Moscow and Kyiv' in *International Affairs* Jan 2000 V.76 N.1.

[23]   See Ustina, M. 1997 'Russia and Belarus: Elusive integration' in *Problems of Post-Communism* Sep/Oct 1997 V.44 I.5.

[24]   See Löwenhardt, J., Hill, R., Light, M. 2001 'A wider Europe: The view from Minsk

and Chisinau' in *International Affairs* July 2001 V. 77 I.3.

[25] See Commission 1995 report, *The European Union and Russia: The Future Relationship* COM (1995) 223.

[26] GUUAM's members are Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova. GUUAM emphasises creating self-determination for post-Soviet states particularly through reducing dependency on Russian energy supplies.

[27] See Löwenhardt, J., Hill, R., Light, M. 2001 'A wider Europe: The view from Minsk and Chisinau' in *International Affairs* July 2001 V. 77 I.3, pp. 613.

[28] See Löwenhardt, J., Hill, R., Light, M. 2001 'A wider Europe: The view from Minsk and Chisinau' in *International Affairs* July 2001 V. 77 I.3, pp. 608.

[29] See Eke, S. & Kuzio, T. 2000 'Sultanism in Eastern Europe: The socio-political roots of authoritarian populism in Belarus' in *Europe-Asia Studies* May 2000 V.52 I.3.

[30] See Chinn, J. 1997 'Moldavians: Searching for identity' in *Problems of Post-Communism* Mar/Apr 1997 V.44 I.3

[31] See Szporer, M. 2000 'Borderland Identities or Steering a Sinking Ship?' in *Demokratizatsiya: The Journal of Post-Soviet Democratization* Fall 2000 V.8 I.4.

[32] See Janos, A. 2000 *East Central Europe in the Modern World: The Politics of the Borderlands from Pre- to Postcommunism* (Stanford: Stanford University Press).

[33] PHARE was an economic reconstruction policy implanted across Central and Eastern Europe during the 1990s, involving trade and cooperation agreements with food aid and balance-of-payment loans.

[34] See Vachudová, M. A. 2001 'The Leverage of International Institutions on Democratizing States: The European Union and Eastern Europe' in *RSCAS Working Paper* N.2001/33 (Fiesole: European University Institute).

[35] There are strong border connections between Poland and Ukraine, yet the tightening of the border in 1997 produced a dramatic effect on the economies of the border region with a decrease of about 30% in trading. See Grabbe, H. 2000 'The sharp edges of Europe: Extending Schengen eastwards' in *International Affairs* July 2000 V.76 I.3.

[36] Transit and short-term migration involves residing in another country temporarily until it becomes possible to migrate to another. See Vachudová, M. A. 2000 'Eastern Europe as Gatekeeper: The immigration and asylum policies of an enlarging European Union' in P. Andreas & T. Snyder (eds.) *The Wall Around the West: State Borders and Immigration Control in North America and Europe* (Lanham, MD: Rowman & Littlefield).

[37] See Vachudová, M. A. 2000 'Eastern Europe as Gatekeeper: The immigration and asylum policies of an enlarging European Union' in P. Andreas & T. Snyder (eds.) *The Wall Around the West: State Borders and Immigration Control in North America and Europe* (Lanham, MD: Rowman & Littlefield).

[38] In Moldova a third of the working population are estimated to be working abroad, mostly illegally. See *East European Constitutional Review* V.9 N.4 Fall 2000 p.26.

[39] In Ukraine 10-15% of the population have left in the last decade, although many to Russia. See *East European Constitutional Review* V.9 N.4 Fall 2000 p.26.

[40] See Grabbe, H. 2000 'The sharp edges of Europe: Extending Schengen eastwards' in *International Affairs* July 2000 V.76 I.3.

[41] See Löwenhardt, J., Hill, R., Light, M. 2001 'A wider Europe: The view from Minsk and Chisinau' in *International Affairs* July 2001 V. 77 I.3.

[42] See Grabbe, H. 2000 'The sharp edges of Europe: Extending Schengen eastwards' in *International Affairs* July 2000 V.76 I.3.

[43] See Pavliuk, O. 1999 'The European Union and Ukraine: The need for a new vision' policy paper, *EastWest Institute* July 1999.

[44] See Vachudová, M. A. 2000 'Eastern Europe as Gatekeeper: The immigration and asylum policies of an enlarging European Union' in P. Andreas & T. Snyder (eds.) *The Wall Around the West: State Borders and Immigration Control in North America and Europe* (Lanham, MD: Rowman & Littlefield).

[45] The criterion for distributing EU aid involved population and GDP, as well as commitment to reform and success of earlier programs of reform. See White, S., McAllister, I. & Light, M. 2002 'Enlargement and the New Outsiders' in *Journal of Common Market Studies* 2002 V.40 I.1.

[46] See Burant, S. 2001 'After NATO Enlargement' in *Problems of Post-Communism* Mar/Apr 2001 V.48 I.2.

[47] See Burant, S. 2001 'After NATO Enlargement' in *Problems of Post-Communism* Mar/Apr 2001 V.48 I.2.

[48] See Bremner, I. & Taras, R. (eds.) *New States and New Politics: Building the Post-Soviet Nations* Cambridge: Cambridge University Press.

[49] See 'Ukraine: Poland promises favorable visa regime once it joins EU', http://rferl.org/nca/features/2002/07/03072002162727.asp (accessed 25/10/02).

[50] See Garnett, S. & Lebenson, R. 1998 'Ukraine joins the Fray: Will peace come to Trans-Dniestria?' in *Problems of Post-Communism* Nov/Dec 1998 V.45 I.6, pp.7.

[51] See Vachudová, M. A. 2001 'The Leverage of International Institutions on Democratizing States: The European Union and Eastern Europe' in *RSCAS Working Paper* N.2001/33 (Fiesole: European University Institute).

[52] See Garnett, S. & Lebenson, R. 1998 'Ukraine joins the Fray: Will peace come to Trans-Dniestria?' in *Problems of Post-Communism* Nov/Dec 1998 V.45 I.6, pp.7.

[53] See Light, M., White, S., & Löwenhardt, J. 2000 'A Wider Europe: The view from Moscow and Kyiv' in *International Affairs* Jan 2000 V.76 N.1, pp.11.

[54] See Morav´sik, A. & Vachudová, M. A. 2002 'National Interests, State Power, and EU Enlargement' in *East European Politics and Society* (forthcoming).

[55] Grabbe argues, 'it is more politically expedient - not to mention cheaper - to announce visa requirements than to deal with the complexities of intelligence-led policing, negotiations of multinational coordination between law enforcement agencies,

an investigation in the infrastructure that would be necessary for EU-wide crime management strategies'. See Grabbe, H. 2000 'The sharp edges of Europe: Extending Schengen eastwards' in *International Affairs* July 2000 V.76 I.3.

[56]   See Resler, T. 'Dilemmas of Democratization: Safeguarding minorities in Russia, Ukraine and Lithuania' in *Europe-Asia Studies* Jan 1997 V.49 I.1.

[57]   See Dawisha, K. & Parrott, B. 1997 (eds.) *Democratic Changes and Authoritarian Reactions in Russia, Ukraine, Belarus and Moldova* Cambridge: Cambridge University Press.

[58]   See Moroney, J. 2001 'Frontier Dynamics and Ukraine's Ties to the West' in *Problems of Post-Communism* Mar/Apr 2001 V.48 I.2, pp.5.

[59]   See 'Between Two Worlds' in *Economist*, V.363 N.8279 (6/29/02).

Immature?

THE TRANS-NATIONAL POLITICAL PARTIES AND PARLIAMENT AT EU LEVEL

Julia Speht

A reassessment of the age of the European Parliament could theoretically put the EU as a political system on a par with other new democracies in transition. Applying such theories of transitology through the comparative politics paradigm to analyze the EU might offer a more appropriate benchmark for studies into institutional developments, particularly of trans-national agents such as the new EU level parties. By considering the characteristics of the EU, this essay evaluates the merits of a transition-comparison with reference to several aspects of the EU: institutions; actors; civil society and legitimacy. The discussion considers the implications and problems of this new approach.

INTRODUCTION

In 2002 a clutch of academics celebrated the European Parliament's (EP) fiftieth birthday with a round of reviews on the parliament's progress[1]. These reports catalogued the usual, recognised developmental leaps enjoyed by the EP in various treaty reforms; shifts in legislative procedures; increased policy mandates; and growing inter-institutional influence in recent decades.

However, while acknowledging without doubt the vast recent progress, this essay contests the cosmetic age of the supranational parliament at EU level. Instead it will argue that the EU's democratic life did not begin before its first free, fair and direct elections in 1979, thus making the real age of the EP barely 25 years. With this relatively young institution, and party structures little more than twelve years old, a reassessment of the EU's characteristic development and its worthy

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comparison for analytical purposes is well overdue. Holistic analysis reveals the inconsistency of existing perspectives, proposing instead an innovative comparison based on the EP's characteristic youth. This offers a more systematic and appropriate framework for explanations of the EU, EP and party behaviour. Not unlike the EU, new democracies could be described as systems in a state of 'flux'. Furthermore, the uneven 'backwards' development of elite policy-driven mechanisms at the expense of democratically participatory organs, reflects both types of new system.

ANALYTICAL MODELS OF THE EU & EP: AN IMPERFECT FIT

The development of, and academic research into, the EU's parliament presents a strange paradox: The EP is considered to have existed for almost half a century and developed politically in that time. However, on the thorny issue of that persistent offender, the 'democratic deficit', the apparently middle-aged parliament is reminded of its ever-decreasing voter turnout; lack of public participation - and even identity - by its citizens; its ongoing difficulties to demonstrate a source of democratic legitimacy; and its elite-driven party culture. As Christopher Lord puts it, 'the EU has gone further towards satisfying the elite coherence condition for developed political parties than the electoral connection. The next task is to explain this pattern of uneven development[2].'

Explanations for this imbalanced party development can broadly be divided into two camps: those within the International Relations (IR) School and those from Comparative Politics. The former dismiss political parties as 'domestic creatures' and point instead to the rising culture of interest organization and mediation at the EU-level which appears to have blossomed 'where parties [have] fail[ed]' according to policy network analysis. The second set however - the comparativists - have spread their analyses much wider, by following Simon Hix's call in the early 1990s for a more systematic application of the comparative politics paradigm to replace the 'hardly coherent, motley collection of work' which previously treated politics at the EU-level. His vision was to consider the internal politics of the EU as though 'not inherently different to ... any other democratic system[3]'. The comparativists have since sketched their multiple visions over a very broad canvas: diverse comparisons have stretched from parliamentary to pluralist to presidential systems; from federations to consocational confederations to decentralized polities.

Although existing EU research appears to have reached an uneasy consensus on the usefulness of this comparative politics framework relying heavily on traditionally 'state level' political theories, few agree on precisely which democratic model should be best applied wholesale to the emerging EU. The diversity of comparisons stems from the EU's multi-level governance procedures and constant evolution, as well as the vast heterogeneity of the component member states and their institutional arrangements. The type of democratic regime selected to provide an appropriate analytical model depends variously on the concept of democracy chosen; which institutional model selected, and whether one accepts that the EU is truly *sui generis,* mirrors a pre-existing state or is a hybrid of the two. The dichotomy between the comparative and IR approaches characterized most EU studies of the 1990s[4]. In 1994 Hurrell and Menon quoted Sbragia to neatly summarize the uneasy consensus of the period. 'Although the EC is unique [in terms of other democratic political systems] analysis is more likely to suffer from studying it in isolation from other systems than from using the comparative method in less than ideal circumstances[5].' The focus of this theoretical exchange was primarily institutional-orientated, occasionally policy-specific, but rarely investigated agents such as parties. The discussions around the EU's institutional arrangements revealed competing visions for wholesale template-matching models from existing regimes. Furthermore, these displayed a prescriptive nature, since academic debate clearly overlapped with and impacted upon, internal political discussions for future institutional reforms.

Parties Without a Polity?

This has a knock-on effect for discussions about EU level parties – these transnational bodies were born at Maastricht, in the sense that they were attributed legal recognition, embodied in the following treaty article:

> Political parties at the European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.
>
> (Article 138a, TEU 1992).

The definition of a 'trans-national party at the EU-level' refers to the

network of political actors from a plurality of EU member-states[6] that collectively form over-arching umbrella organizations along ideological party family lines. These transnational parties remain plagued by a central paradox: while they have evolved into highly efficient political machines capable of co-coordinating up to twenty-five national member parties to influence EU policy decisions, the vital contradiction remains that the wider voting public is largely unaware of their existence. The parties' failure to secure adequate democratic legitimacy to support their political mandate is borne in an ever-decreasing turnout in European parliamentary elections, which has now reached an all-time low with current figures[7] falling below 50% and is compounded by the perception of a growing 'democratic deficit' between institutional mandates at EU and national levels which threatens their continued existence.

Additional limitations to their behavior include their lack of competitive behavior lack of public support and mobilization and lack of influence over policy.

Although they appear to represent separate theoretical debates, the above points are in fact linked. If we consider the EU to be essentially a non-parliamentary arena, then we are stating its uniqueness and its reliance on mere output legitimacy given the weakness of representative structures, such as political parties. In this *sui generis* arena, non-parties (alternatives such as interest groups) aim to fulfill traditional party roles. This would contrast with the alternative vision, one of a parliamentary democracy at the EU level, based upon input legitimacy through traditional representative and participatory channels, such as political parties etc. Between the two, there exists a continuum, which allows for pluralistic overlap; combination theories of legitimacy, a presidential style Congress and consocational negotiations.

More recent academic debates in the late 1990s and early 2000s responded to increasing concerns over the democratic deficit, and political discussions turned their attention to the issue of legitimacy provision. Again, the polarized position of the main protagonists slot into the jigsaw of existing theoretical models: those who advocated the need for (and current lack of) input legitimacy, find their views reflected in comparativists' theories, with pure comparison in this framework, rejecting the *sui generis* label. This clearly contrasts with those who find themselves justifying the EU's provision of output/performance legitimacy, just as their (neo) functionalist predecessors did before them.

IMPERFECT FIT

Many existing institutional models seem unsatisfactory because the EP's relative youth causes it to measure up frustratingly against mature parliamentary benchmarks. Hence the contention between parliamentary and presidential models does not get to the real nub of the problem, given that in essence the real issue is one of age, not of institutional type. So if the EU and its parliament do not fit any [1]of the conceptual models or templates on offer, we shall move away from template-borrowing, and instead re-consider the essential characteristics of the emerging EU polity. By identifying relevant existing counterparts, we may gain useful insights in a more general comparative sense than wholesale model 'match and fit' attempts. This more open approach benefits from all the advantages offered by the comparative framework, namely that every component of institutional design and political analysis is available for a unique compilation of elements into a novel - yet not *sui generis* - system (since each feature does exist elsewhere, but not in this combination). Hence we are not expecting a 'perfect fit' from wholesale model borrowing for an emerging union in flux, but rather an imperfect hybrid of political systems.

1. EU CHARACTERISTICS

While identifying the EU's most characteristic components is undoubtedly a subjective task, it remains a worthy one, if only to move beyond the paralyzing *sui generis* label. One excellent earlier attempt to reduce the EU to a straightforward comparison in this way was carried out by Tsebelis. He convincingly argued [with reference to the so-called 'democratic deficit'] that the EU's deficit of democracy came solely from its federal nature, and was in fact characteristic of all federal-type regimes, in no way related to the EU element of the system. Instead the problem is related to the 'compounding effect' of federation on the concept of representation, as originally stated by Elazar and Riker. Further, in this scenario, political parties remain crucial to the representation process as the link between individuals and the decision-making elite. By a similar token, this essay shall endeavor to move beyond the EU label, and extract comparative components that reflect the regime's typical characteristics.

2. Relative Youth

As the parliament of the supranational EU, the EP's development 'acts as a barometer for the progress of the whole system'[8]. One of the main, perhaps most salient features of the EP is its relative youth and continuing development: Despite the recent indications of a mid-life crisis, the EP is not actually fifty years old. True, the Assembly of the European Coal and Steel Community (ECSC) was created in 1952, and is technically the predecessor of the current EP, however the original ECSC assembly was a component of an international organization, not the parliamentary legislator of an emerging political system. These two distinct phases must be separated for analytical purposes: comparative analyses of the EU as a political system cannot include its earlier behavior as an inter-governmental organization.

Evolution from the ECSC to the adoption of the EP's current name occurred in 1962, but as Lodge explains, 'the member states did not follow suit until the 1980s'[9] given that throughout the 1970s it was considered little more than a relatively impotent assembly. Thus the EP's recognition as a parliament can be traced back to its first direct elections, held in 1979.[10] This re-adjustment brings the EP's real age to little more than maturity - 25 years old - and half that of the official birthday celebrations. As the electoral element that legitimises the supranational institutions, this also resonates for the age of the 'political system' of the EU. Thus, we are investigating a new democratic polity with a young parliament, and embryonic parties, which were not created until as late as 1992, and thus barely twelve years old.

There are several implications that stem from this assertion. First, the fragile legitimacy of the new system and institutions; second, the reluctance of the general public to participate and feel identity with this new system; third, the erratic and imbalanced developments within institutions and the party system; and fourth the insecure self-image of the EU's immature institutions. These limitations appear both unsurprising and inevitable, given that neither formally nor informally can we truly consider the EP to be equivalent to the long-established and stable parliamentary democracies of most West European member states. Rather, it shall be demonstrated that the EU's weak performing party system is a product of its 'relative youth' in a newly democratised [and not yet consolidated] political regime. Thus a more fruitful comparative approach will here outline useful theoretical insights from other newly emerging democracies. This reflects the very essence of compara-

tive politics approaches, to compare like with like in order to gain some useful insights from different experiences in parallel situations.

3. New Democracies

Even an adoption of the political terminology of new democracies provides us with two clearly distinct phases of development for any newly emerging democratic policy: transition and consolidation. A series of classifications put forward by Jeff Haynes distinguish these as follows: 'Transition' - from the first free and fair elections; and 'Consolidation' - when the democratic institutions are not just established, but also valued and loved[11].

In this sense, arrival at a state of consolidated democratic legitimacy could be recognized when the institutions of government are accepted by politicians and ordinary citizens alike – i.e. when they 'learn to love it'. Therefore a 'democratic consolidation' of the EU could foresee a phase of long-term stable democracy in a strengthened legitimate regime, as distinct from its 'transition' phase where controversy might still surround regime type/organization/shape; and no consensus yet reached as to the accepted legitimacy of its structure. This could reflect the current stage of development of the EU as an emerging new regime type. While the EU may be considered as a political system in mid-transition, it has by no means yet fulfilled the normative criteria required for a consolidated regime.

4. Fragile legitimacy

In 2002 Rohrschneider's groundbreaking article boldly called for a more open-minded approach to comparative applications from 'new democracies' to the EU[12], exploring patterns of citizens' appraisal of the representative process and the consequences of this evaluation of EU support. He claims that ' by linking the emerging EU-order to the democratic transition literature, we assess whether a central lesson from democratic transitions among nation-states can be transferred to an evolving supra-national regime'. On this key issue of 'whether these patterns from central Europe (or other countries) can be applied to the EU' he points out that 'one might contend that the EU is a 'system-in-progress'. He confirms that 'several patterns ... broadly parallel those revealed by analyses in Central Europe... this similarity provides a compelling case for the generalizability of this process...' concluding that this offers significant implications for future potential problems arising from

EU Enlargement.

The pertinence of the bold exposure of the overlap between transition and EU analyses has the effect of opening a Pandora's Box. Now that the image of the EU as a newly emerging polity can be related to other newly democratized regimes, then parallels can be drawn on a multitude of similar processes, elements, and stages of development. While rare, a few other academics have made similar theoretical observations on the relevance of such a comparison, such as Lambert & Hoskyns'[13] argument in favor of the EP's 'transition' from consultation to cooperation to co-decision and Lodge's claims that in justification of the direct elections, 'democratization became a leitmotif'[14]. Even an adoption of transitology terminology befits the young parliament in this new democracy. This is juxtaposed with important findings by Gabel and by Tyler who demonstrated that support (in terms of legitimacy and acceptance) for a political regime is often matched by compliance with system requirements, and that these two are causally linked. Translated into EU behavior and support mechanisms, it could be argued that 'compliance' with EP democratic functions means participation in EP elections. Thus low turnout could be understood to reflect low support for the EP as an institution and the EU as a political system, if we were to refer to the EU as the 'fourth wave' of European democratization.

Richard Rose points to the functional benefits of increased accountability as a factor for increasing popular support: 'if governors are not ready to be held accountable to the electorate [or to the law], then popular support will be lower and rightly so.[15]' The implication behind this statement, which refers to 'New Europe',[16] is that the consequences of increased democratic accountability would provide functional ('performance' or output based) efficiency as well as increasing democratic legitimacy. This implies synthesis, or at least an overlap between the two theories of legitimacy. Similarly Schmitt & Thomassen demonstrate considerable 'dynamic' (functional) representation from voters' preferences to elites' policy positions[17]. On 'grand' policy directions and the issue of how much integration, this representation is strongest; only on the detailed policy points was representation found to be lacking. But this inevitably begs the question: where representation is found to be functional, is this acceptably democratic?

5. Reluctant Civil Society

Bielasiak's analysis of consolidated democracies demonstrated that there existed a widespread consensus as to the requirement of a strong

party system to provide institutional stability and representation of citizens' preferences[18]. However, controversy surrounds the extent of these roles, from 'the beginning of democratization' according to Kitschelt's 1999 analysis, or 'a long-term process of uncertainty and chaos'[19]. Bielasiak states firmly that the 'extent of participation in the electoral process is a validation of the new party system...the assumption is that greater engagement in electoral choice enhances governance' (p.7). By comparing the progress of new democracies against those of existing and established ones, he asserts that, 'a basic right associated with democratization is the population's ability to participate fully in the political process' (p26). He confirms that 'political participation can be an important indicator of the quality of democracy, in so far as it delineates the inclusiveness of political practices and the accountability of government' (p.26). However, he accompanies this with an important reservation, relying upon Dahl's definition of polyarchy[20]: that a categorical distinction is made between voting and non-voting forms of political participation. 'Of course this does not signify that voting turnout is equated with democracy; free political competition assured by civil guarantees is necessary for meaningful participation, and other non-voting forms of participation are important venues for democratic expression (p.26).

This point is fundamental: while the 'amount' of participation is vital for new democracies, it is not measured by voting practices alone. This is presumably based upon the reluctance of new citizens to participate in, and become attached to, voting practices. Instead, greater value is attached here to other forms of participation. Given the volume of academic research to bemoan the ever-decreasing voter turnout for EP elections (and the apparent disillusionment and unattachment this reveals towards the EU as an emerging system) this wider definition of participation criteria is excellent news for the EP. Perhaps, after all, alternative avenues of participation may reveal different results for participation? As in new democracies, the problem with EP elections was not the EP at all, but elections *per se*. Indeed, in Bielasiak's assessment of new democracies, he states that mass participation, 'at the very least' defines the social and political groups that engage in the minimal practice of politics that need to be taken into account by an elite interested in political longevity. He concludes by re-asserting that in particular, in the third wave of democratization, where 'the dominant ideological norms around the globe create extensive pressures for at least the semblance of electoral democracy' yet despite this broad ideal, the empirical practice

falls short. Further, this is elaborated upon by Birch's attempts to explain several well-known characteristics of the mechanics of representation in the new democracies of CEE[21]. In particular, she refers to the well documented popular apathy, or 'demobilization', resulting from several years of enforced mobilizations, thus leading to suspicion regarding organized collective action, as an obstacle to political mobilization.

The second such characteristic refers to poor linkage and levels of party identification, due to lack of experience as well as weak grass-roots organization. The final characteristic is the high level of fluidity and volatility in party systems, electoral performance and fractionalization of weak parties. This small catalogue of generalizations aimed to indicate some of the problems most commonly faced in the CEE region during transition. The two main consequences for the functioning of representative mechanisms were according to this analysis, on the one hand, declining levels of political participation, and on the other hand, weak and volatile party systems.

6. WEAK SELF-IMAGE OF INSTITUTIONS

The Swiss Consocational-confederation model does reflect all the elements required of and relevant to the EU: the parliament is not the ultimate authoritative decision-making power; parties are elite-dominated, cartelized non-competitive and highly de-centralized, and not the forum for cleavage-based civil society conflict accommodation. Although these challenges are typical of both the EU and Swiss party system, there are very few other examples of this type of party system. Vasovi´ argued convincingly that in fact it is exactly this form of 'polyarchical or consocational democracy' that is proposed as the appropriate systemic arrangements for newly emerging party systems in de-centralized, quasi-confederations which are appearing in central and eastern Europe, e.g. former Yugoslavia, etc.

This demonstrates - as ever - that the EU is not the only new confederal system to emerge in the last twenty years. Unsurprisingly it shares many characteristics with its counterparts of the same era. One such view is the suggestion that this immaturity perpetuates a need amongst MEPs to justify their existence and activities by acting in consensus to build the legitimacy and credibility of their fragile institution, ensuring '..the projection of a strong image vis-à-vis other EC or national institutions..' according to Bardi[22]. Within the consolidation literature, a debate contends which evolutionary framework would be most supportive, pure parliamentarism or pure Presidentialism. This is reminiscent of

the same debate visible at EU-level as to which institutional arrangements would be most 'supportive' or 'suitable' for long-term development and consolidation. Stepan & Skach highlight several empirical tendencies observed in new democracies, including: 'greater ability to rule (with majorities) in a multi-party setting; lower propensity for executives to 'rule at the edge of the constitution'; and greater tendency to provide long party-government careers, which add loyalty and experience to political society'. And finally, the system overall 'increases the degrees of freedom politicians have as they attempt to consolidate democracy'[23].

In a review of the third wave of democratization Rose & Chin point out the irony of 'democratization backwards', i.e. introducing free elections before establishing such basic institutions as the rule of law and civil society. They warn that completion of the democratic process is not the only option in this situation, but that governments could instead choose to persist indefinitely as a 'broken-back' democracy, with free elections but deficient in the rule of law, civil society and/or accountability (p.333). The parallel concerns of systemic preferences and advantages may be significantly applied to institutional considerations of the EU, given that direct elections were introduced in 1979 when many citizens only accepted the European Community as a constructed economic market, and did not recognize the political union. This concept stretching makes a useful contribution to the discussion: could it (also) be the case that the parliamentary arrangements established (and so characteristic, yet so characteristically 'young') at the EU level, may in fact provide several systemic advantages, as outlined in the case of transition institutions?

7. Imbalanced Development of Institutional Actors

The notion that specific institutional arrangements may produce systemic advantages is confirmed by research focusing on new political movements (Greens, regional parties, etc) and studies following the second and third waves of democratization, such as Rose's which catalogues the progress of what Paul Lewis called 'emerging proto-parties' in his 1998 analysis. The distinct characteristics of first, second, and third wave democracies may offer some useful implications to further our understanding of the emergent parties of the fourth wave – the EU.

Various – individual and comparative – analyses have shown a surprising pattern in the organizational development of parties emerging in the new democratic regimes. The defining characteristics of these parties differ from those in established democracies 'by degree only'

according to van Biezen[24] in the sense that these innovative organizations
reflect all the characteristics of Katz & Mair's ultimate, modern-day
State-collusive, low membership, uncompetitive, cartel party[25]. The new
democracy equivalents meet these criteria, yet sooner, and in a more
exaggerated form than the mature parties which formed the basis of the
original Katz & Mair assessment, these newer parties appear to embody
the cartel party *par excellence*. Van Biezen surveys Southern and East-
ern European parties to compare and catalogue their characteristics,
which include: (1) State collusion, established and institutionalized from
the outset; (2) Limited relations with civil society are not the primary, or
secondary, concern; (3) with electoral success becoming the predominant
goal of parties whose creation, and funding sprang from parliamentary
groups. Thus, membership is no longer a question of any relevance,
since these newer democratic parties offer very few benefits to very few
members, thus (4) blurring the boundaries of membership, now consid-
ered a superfluous luxury. (5)Heavily dependent on the state, and (6)
swiftly active in Government, their (7) staff are professional elites, replac-
ing activists from the membership.

The central criticism frequently made of EU-level parties is that they
are severely limited in their capacity for competitive electoral behavior.
This is borne in their consensual policy approaches, grand voting coali-
tions and pact-like behavior. Interestingly, pact-making of this nature is
common in transition democracies, and, according to Encarnación, 'have
a favorable impact in ushering in democracy'[26]. This is consolidated by
O'Donnell & Schmitter's observation that, 'where [pacts] are a feature of
the transition...they enhance the probability that the process will lead to
a viable political democracy'[27]. In this context then, a re-evaluation of EU
level pact-like behavior by EU parties becomes not only standard for a
transition regime, but even desirable. This extreme party picture repre-
sents a Darwinian evolutionary streamlining of the original genetic
model. Analysts such as van Biezen and Lewis describe the "evolutionary
leap" achieved by these new parties; jumping straight to the "cartel"
phase, born directly into the political environment which mature West-
ern European parties have been adapting to gradually, and painfully, for
decades. In this sense, parties at the European level could also be de-
scribed as "leapfrogging", as they reflect many of the characteristics on
this list, in particular, those suggested by Perkins (1996) who emphasized
the (8th characteristic); the growing importance of the electronic media
for new linkless parties. He showed how modern media replaced mem-
bership, and refers to their "leapfrogging" of the painful generations of

mass membership mobilization jumping straight to the much easier (9th characteristic) task of mobilizing voters.

    To date, the citizens of the EU have only been invited to approve of political decisions *ex-poste*[28]. A more direct democracy, but more consultative type of democratic approach would ensure *ex-ante* decision-making influence too. But would this not be precisely the role of actors involved in trans-national political parties? As such, the 'added value' of political party involvement would also therefore encompass an element of quality of democracy in terms of opportunistic timing: the consultative 'early bird' to catch the elusive worm. Qualitatively, *ex-ante* political influence is considered to be of greater political value than *ex-poste*. This is the strength of transnational party activity, and another advantage it can offer. Just as in new democracies, it is easier to establish output legitimacy first as a pre-cursor to input legitimacy, as this provides a kind of functional demonstration of the democratization-consolidation phases of development of the system. Hix refers to the 'EU's upside-down political system[29]' which can be seen to mirror Rose's original expression of 'democratization backwards'. Similarly, while the EU may well reflect other confederal states, it is by no means unique. Rather, its de-centralized confederal model is in fact the blueprint offered to newly emerging democracies in the CEE.

8. IMPLICATIONS

    This short essay proposes a rejection of the usual wholesale conceptual template borrowing, in favor of 'pick and mix' notion of comparative analysis of each element of the EU regime based upon its unique characteristics. This creates a unique combination of elements, not a *sui generis* regime *per se*. Further, this study advocates a rejection of the existing academic dichotomy between its two oldest and entrenched positions. Rather, it is argued that the EP ought to be reassessed in the light of its real age since transition to democracy. As the only democratically elected institution, this has implications for the democratic age of the EU, and in essence puts the EU on a parallel with other new democracies. This invites a comparison of the EU system with theories and evidence from analysis of new democratic regimes. This novel comparison is more realistic, more appropriate, less demanding and lifts academic debate out of the mire of directly opposing visions for the EU. Instead we find useful insights from analysis of new regimes which may further our understanding of the EU, in particular these highlight the fragile legitimacy of the new regime and state; the reluctance of civil

society to participate; the insecure self-image of emerging institutions; the erratic and imbalanced development of institutional actors; and the resistance of international recognition for the new regime's legitimacy.

9. CONCLUSIONS

This essay demonstrates that the EU and EP fit neither existing theoretical visions perfectly, and thus an alternative perspective is proposed which calls for a re-assessment of the real age of the EP (and therefore, 'democratic age' of the EU system). By demonstrating the EP's relative youth, its immaturity and insecurity is used to explain conceptual solutions to the three theoretical dilemmas. Thus, a theoretical framework for comparative analysis of the EU to other new democracies is elaborated, in order to better serve the analysis of the emerging party organizations at EU level and place their behavior alongside conventional party development.

This re-classification of the EU as a new democracy and its parliament as an emerging elected body with young parties provides a benchmark from transitology for worthy comparative analysis. Comparative assessments of institutional developments within the EP and progress evaluations of the new trans-national parties no longer bemoan the fact that developments are below par for Western Europe. Rather, as with new democracies in transition states, revised normative expectations allow for credible development along the themes discussed here. The EU – as a political system – appears to have developed at much the same rate and in much the same way as other new democracies. The persistent cry of the "democratic deficit" may have been premature, for an emerging democracy still very immature.

ABBREVIATIONS

CEE	Central & Eastern Europe
ECSC	European Coal & Steel Community
EP	European Parliament
EU	European Union
IR	International Relations
MLG	Multi Level Governance

NOTES

See Simon Hix, Tapio Raunio, & Roger Scully, "Fifty Years On: Research on the European Parliament" Journal of Common Market Studies, Special edition on the European Parliament at 50 (February 2003).

[2]   See Christopher Lord, "What role for parties in EU politics?" The Journal of European Integration, vol. 24(1) (2002) 39-52.

[3]   Simon Hix, "The Study of the EC: The challenge to comparative politics". West European Politics, vol.17:1 (1994) 1-30.

[4]   For the wider debate on the defense of the IR vision of EU integration see Hurrell and Menon (1994); Stone Sweet (1998); Moravscik (1999) and Hoffman (1996). Or Hix (1994; 1995; 1999); Scully (1998; 1999); Sbragia (1996) or Bardi (1994; 1996) for the Comparativists argument. Few academics occupied the middle ground, suggesting that the EU's unique MLG arrangements created alternative policy/decision making procedures in different areas (see Scharpf 1998, 1999; Caporaso 1996, 1998; Putnam 1998).

[5]   Anthony Hurrell & Arnaud Menon, "Politics Like Any Other? Comparative Politics, International Relations and the Study of the EU" in West European Politics, Vol.19 (2) (1996). 386-402. p.398

[6]   The criterion designated in the Nice Treaty, 2001, suggests 'at least one-third of member states' as a sufficient indicator to represent trans-nationality.

[7]   At the last EP elections held in June 1999, the average voter participation rate across all the member states was recorded as below 50%, including several states for whom voting remains compulsory.

[8]   See Luciano Bardi, "Conclusions" in Katz & Mair, "Party Development in West Europe" (London: Routledge, 1994) p.256

[9]   Juliet Lodge, "Federalism and the European Parliament" in Publius: the Journal of Federalism, vol.26(4) (1996). P.63-79.

[10]   This is further reflected in the '50 years anniversary' piece on the EP written by Simon Hix, Tapio Raunio & Roger Scully (2002) which includes a graph that plots the proliferation of academic books and journal articles to focus on the EP, plotted against

time with a starting date of 1965 (thirteen years beyond the date of the claimed 'birth' of the EP) when the first few publications were noted. Furthermore, the first real sign of life (in other words, the first ten publications in total) was not achieved until 1976. This graph was intended to demonstrate pictorially the ebb and flow of EP research over the decades. Instead, it indicates that the real bulk of academic research on the EP, like the bulk of 'parliamentary activity' of the previously labeled assembly itself, can all be traced to the last twenty five years.

[11]   J. Haynes, (Ed.) "Towards Sustainable Democracy in the Third World". (Palgrave: UK, 2001).

[12]   R. Rohrschneider, "The Democracy Deficit and Mass Support for an EU-Wide Government". American Journal of Political Science, 46 (2) (2002).p463-475.

[13]   J. Lambert & C. Hoskyns, "How democratic is the European Parliament?" chapter 5 in Democratizing the European Union, Issues for the 21st Century. Hoskyns and Newman (Eds) (Macmillan press, 2000).

[14]   Juliet Lodge, (1996) ibid, p.75

[15]   Richard Rose, "How People View Democracy. A Diverging Europe". The Journal of Democracy, Vol. 12 (1) (2001) p.94-106.

[16]   Where 'New Europe' refers to emerging newly democratized regimes between transition and consolidation.

[17]   H. Schmitt & J. A. Thomassen, "Dynamic Representation. The Case of European Integration" European Union Politics. Vol 1 (3) (2000) p.318 - 339.

[18]   J. Bielasiak, "On the Institutionalization of Party Regimes in Emerging Democracie" Working paper published by the Centre for the Study of Public Policy: University of Strathclyde. (2001) SPP351.

[19]   Richard Katz & Peter Mair, "Changing models of party organization and party democracy: the emergence of the cartel party". Party Politics (1) (1995), p.5-28.

[20]   R. Dahl, A Preface to Democratic Theory. (University of Chicago press, 1956).

[21]   Susan Birch, "'Elections and Representation in Post-Communist Eastern Europe". pp. 13 -35 in Klingemann, H-D. (Ed), Elections in Central and Eastern Europe: The first wave, (Edition sigma: Berlin, 2000).

[22]   Luciano Bardi, (1994) Ibid, p.367-8.

[23]   A. Stepan & C. Skach, "Constitutional Frameworks and Democratic Consolidation. Parliamentarism versus Presidentialism". World Politics.Vol 46 (1) (1993).

[24]   Ingid van Biezen, "Patterns of Party Development in New Democracies" prepared for the Workshop on Causes and Consequences of Organisational Innovation in European political parties ECPR Joint Session, Grenoble, 6-11 April 2001.

[25]   Richard S. *Katz,(Ed) Party Governments: European and American Experiences.* (Berlin: Walter de Gruyter publishers, 1987). p 1-27.

[26]   O. Encarnacion, "Civil Society and Consolidation of Democracy in Spain" Political Studies Quarterly Vol. 116. No.1 (2001.)

[27] G. O'Donnell, G. & Philippe Schmitter, Transition from Authoritarian Rule: Tentative Conclusions about Uncertain democracies, (Baltimore: Johns Hopkins University Press, 1986)

[28] In terms of the EU, we could say that the EP elections present the opportunity for *ex-poste facto* decision-making by the citizens, given that the original decision has already been taken by their representative elites.

[29] Simon Hix, "Elections, Parties and Institutional Design: A Comparative Perspective on European Union Democracy" West European Politics, Vol. 21(3) (1998) p.19-52.

Curtailing Human Rights on the Moon: Facility 1391

Hannes Opelz

For several years now, Israel has been running a secret detention center, known as "Facility 1391", where a number of detainees have been held in unclear circumstances. After the NGO HaMoked filed a number of petitions regarding the enforced disappearance of Palestinians, the State Attorney's Office had to recognize the existence of the secret prison before the Supreme Court of Israel. This study presents the known facts about the covert detention site and attempts to show, in light of both international and domestic law, how the conditions of incarceration and the interrogation methods used by the General Security Service at Camp 1391 constitute grave violations of human rights.

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"I kept asking them where I was," said Bashar Jadala. "The soldiers told me that I was on the moon, and that no one knew where I was... Sometimes they would tell me I was in space". As for Raab Bader, the reply was much the same: "One interrogator said a submarine, and many times the answer was that we were in space or outside the borders of Israel". When Sameer Jadala asked where he was, someone told him: "In Honolulu". The moon, a submarine, a no-man's-land, indeed, beyond all boundaries, into space. Or perhaps even some exotic

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island, as exotic, one might say, as Guantanamo Bay.

These metaphors of utter isolation and seclusion all point to a special place of detention in the heart of Israel. It is called Facility 1391; much less a name than a mere number enclosed in concrete walls. Indeed, names and those to whom they belong disappear behind the rampart of secrecy that surrounds Israel's covert detention site. Camp 1391 does not exist, or at least it has been removed from maps, from roadside signposts and from aerial photographs. Camp 1391 does not exist, or at least it did not *officially* before the State Attorney's Office had to recognize, after a number of petitions on the disappearance of Palestinians had been filed by the NGO HaMoked in Jerusalem and conferred upon Israel's Supreme Court, that "Facility 1391 is located within a secret army base that defense officials use for various classified needs"[1].

In the following study, I will attempt to explain, first by looking at the known facts about Facility 1391 and then by examining the numerous violations of human rights at Israel's secret prison in light of both international legal instruments, domestic laws and other relevant non-binding documents, that the prevention of human rights violations is served by the prohibition of prolonged incommunicado detention and the abolition of secret detention sites.

THE KNOWN FACTS ABOUT FACILITY 1391

The three Palestinians mentioned above, Raab Bader and Bashar and Sameer Jadala, and a number of other Palestinians, all of whom were imprisoned at Facility 1391 in 2002, are in fact the second generation of detainees to be deprived of their liberty at Israel's secret prison. According to the State Attorney's Office "*the detention facility does not serve as a detention facility in the conventional sense, but is intended, as a rule, for special cases, and for detainees who are not residents of the [occupied] territories*"[2]. In effect, the "special cases" were Iraqi defectors, Syrian intelligence officers and Lebanese who were suspected of membership in Hezbollah. Some of those detained had been previously abducted at Israel's initiative and directly transferred to Camp 1391, such as Sheikh Abd al-Karim Obeid (a spiritual leader to Hezbollah) and Mustafa Dirani (security chief of the Shi'ite movement Amal), seized in 1989 and 1994 respectively. The aforesaid Lebanese were held as "bargaining chips" for the missing Israeli air force navigator Ron Arad. The practice of abduction was conducted in particular during the Israel Defense Forces' 18-year presence in Lebanon, when intelligence agencies were

especially active across Israel's northern border.

We now know that Camp 1391 has been operating since at least two decades and is an Israel Defense Forces (IDF) facility located in the center of a military base that belongs to one of the secret units of the Intelligence Corps (Unit 504). It was only later, after the start of the second intifada, that, "as the result of the shortage of detention sites," claimed the State Attorney's Office, "[the] facility was used, *temporarily*, by the General Security Service [GSS], and [that] detainees who resided in the territories were held there [and] interrogated"[3]. In addition, the State Attorney's Office submitted to the Supreme Court an important document, according to which then defense minister Binyamin Ben-Eliezer signed, on April 16, 2002, an order declaring facility 1391 "a military prison"[4].

When asked why the prison is kept secret and for what particular purpose individuals are imprisoned there, the State Attorney's Office's response was: "reasons of state security"[5]. Before analyzing the consequences of the Israeli secret detention place on human rights and its lawfulness in both the international and domestic legal contexts, we shall briefly explore how prisoners are treated at Facility 1391, paying special attention to the conditions of their incarceration and the interrogation methods by the GSS. Due to a number of affidavits given by persons who were detained at the secret facility[6], the possible details of Israel's covert detention site have gradually been exposed. As the following information springs from witness accounts, a certain amount of exaggeration or unreliability should not be discounted. However, as the testimonies of many of the detainees show a remarkable congruence, I believe it is possible to infer the details of some of the procedures in Facility 1391. My account of the facts below reflects various relevant documents filed by the Supreme Court of Israel (essentially comprising petitions by HaMoked and responses to them by Israel's State Attorney's Office representing Israel Defense Forces), as well as Aviv Lavie's study "Inside Israel's secret prison" in *Haaretz Magazine* (22 August 2003), Chris McGreal's account "Facility 1391: Israel's secret prison" in *The Guardian* (14 November 2003) and Jonathan Cook's article "Is 'Facility 1391' Israel's version of Guantanamo Bay?" in *The Daily Star* (15 November 2003).

At the time of arrest, the detainees' hands are bound (some testify that their legs are shackled), their heads are covered with an opaque sack, on which dark sunglasses are placed, and they are thrown onto the floor of an army vehicle, while a thick blanket is placed over their bodies. The

detainees are then led into the facility blindfolded to prevent them from knowing where they are; when they ask the incarcerators about their whereabouts, they are usually told: "on the moon", "in a submarine", "in a grave", "outside of Israel", "in space", "on another planet", etc. Although they are given pants and a shirt (usually of disproportionate size) upon arrival at the facility, the detainees are often naked during interrogations.

The cells are about 2 x 2 meters in size (though some measure 1.25 x 1.25) and made entirely of concrete on the inside. The walls are painted black and there are no windows or any source of external light, except for a narrow slit in the metal door of the cell. A concrete platform serves as a bed, with a damp mattress and blanket. On the wall is an orifice, a kind of pipe through which water flows, the tap of which is controlled by soldiers outside the cell. Below the water source is a hole in the floor, which the detainees use to relieve themselves. However, in some cells, especially those used for detainees under interrogation, there is no place to go to the toilet; the prisoners have to use a large plastic bucket, which is emptied once every few days. In addition to the general filth and stench in the cells, the majority of the detainees report much abuse relating to showers[7].

There are ventilation openings in the upper part of the cells, but the main testimony to their existence is the noise they make when they are turned on. A lamp casts a dim light 24 hours a day; the detainees have no way to tell night from day. In addition, a number of detainees testify that they are often deprived of sleep, either because of excessively long interrogations or by the pounding on the cells' doors by soldiers day and night. As for food, soldiers bring a dish three times a day, often placing it on the toilet can. The procedure is that before the soldier enters, he knocks at the door, at which point the prisoner must place a black sack on his head and turn around with his hands raised. Contact with jailers is generally kept at a minimum and the prisoners, as a rule, are prohibited to communicate with others[8].

As for the methods of interrogation, they vary from one detainee to another. The most shocking account is perhaps that of Mustafa Dirani. Upon arriving at the said detention site, Dirani, who had already been interrogated immediately after his abduction in the vehicle bringing him to the camp, was put into a cell, after which an interrogation followed that lasted for the next five weeks. Among the chief interrogators were the commander of Unit 504 and a major who introduced himself as George. According to Dirani, during the interrogation, the latter called in

four of the soldiers who were doing guard duty in the facility and one of them allegedly raped Dirani at George's orders[9]. In another instance, Dirani said in an affidavit that George himself had inserted a wooden stick in his rectum. Reports by journalists who interviewed the detainees suggest that sexual abuse or threat of sexual abuse was repeatedly used at the detention site. In her investigative report "Inside Israel's secret prison", Aviv Lavie recounts the testimony given by an interrogator at the facility (pseudonymed T. N.) which confirmed George's customary practice consisting in threatening the detainee with rape. "The intention," reported T. N., "was that the stick would be inserted if the subject did not talk"[10].

Affidavits put together by HaMoked also mention other methods of physical mistreatment during interrogations, such as punches to the face, violent shaking and sitting in the "shabah" position (i.e. sleep deprivation combined with position abuse, whereby the detainee is kept sitting or standing in a painful position). Furthermore, some methods used by interrogators involved threats to the relatives of the prisoners. For example, one detainee was told that his son would stay in the worst stench-filled cell if he did not confess. Another was told that his wife and mother were arrested. Still another internee of Camp 1391 testifies that they brought a picture of his father in prison clothes and threatened to imprison and torture him, while also making threats relating to his brother and uncle[11].

Finally, the detention period at Facility 1391 is indefinite. Some detainees were held for days (such as Raab Bader), some for months (such as Sameer Jadala) and some for years (such as Sheikh Obeid and Mustafa Dirani).

THE RIGHTS INFRINGED AT FACILITY 1391

FREEDOM FROM TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

"Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule". Thus are the words of General Comment 21(4) of the Human Rights Committee in 1992. It will generally be agreed that one of the most (if not *the* most) fundamental freedoms, no matter where we are, is the freedom from torture and other cruel, inhuman or degrading treat-

ment or punishment. Indeed, this is not only made clear, as early as 1948, by article 5 of the Universal Declaration of Human Rights but also by article 7 of International Covenant on Civil and Political Rights (ICCPR) which underlines that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Before Israel signed and ratified this Covenant in 1992, it had also become a party, in 1991, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) adopted in 1984, which not only called for the *protection* against torture but also the *prevention* of torture, as stipulated in article 2(1) of the convention: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in *any* territory under its jurisdiction" (my italics). That is, no matter the location of Facility 1391, Israel is liable to prevent torture in all territories under its jurisdiction[12]. To be sure, the secrecy of the military base where the detention place is located and the so-called "classified needs" do not in any way allow for any form of torture to occur; this is implied by article 2 of CAT which states that "no exceptional circumstances whatsoever, whether a state of war or a threat, internal political instability or any other public emergency, may be invoked as a justification of torture".

In the case of Facility 1391, there is no doubt that, should the allegations be true, the sexual abuse or threat of such abuse, the brutal shaking and other forms of beatings, as well as the painful "shabah" position, are clear violations of Israel's obligations of the protection against, and the prevention of, torture under the aforesaid international treaties. Moreover, the specific threats relating to the detainees' relatives made by the interrogators at Camp 1391 are clearly intended to impair the detainees' capacity of decision and to force them to confess. Such coercion is unquestionably a form of "mental" pain or suffering, as defined in article 1 of CAT. This was confirmed by the Human Rights Committee's General Comment 20(5), which stressed that "the prohibition in article 7 [of ICCPR] relates not only to acts that cause physical pain but also acts that cause mental suffering to the victim".

Surely, another form of acute mental distress is the state of total isolation, which forbids any human contact with the outside world and even within the detention facility; this is in fact a system of means used by the interrogators to break the detainees and eventually have them confess. According to psychiatrist Dr Yekuakim Stein who has thoroughly studied the effects of complete seclusion during detention (the conclusions of which have been submitted by HaMoked in one of its petitions to

Israel's High Court), the conditions at 1391 are a form of psychological torture which the professional literature refers to as "DDD" (debility, dependency, dread). Debility is rendered by "extreme fatigue or illness"; dependency by a "situation or an atmosphere in which the detainee is completely dependent on his interrogator for everything"; dread by the "fear of death, torture, punishment, harm to relatives, never being able to return home, isolation, being forgotten"[13]. All these elements, argues HaMoked, are present in the ill-treatment of the prisoners of Camp 1391. This is made particularly clear by the combination of sensory deprivation (i.e. no daylight in the cells) and sleep deprivation (i.e. during interrogations).

Article 16 of CAT states that "each Party shall undertake to prevent in *any* territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1" (my italics). The conditions of incarceration at Facility 1391 do not satisfy the protection against, let alone the prevention of, cruel, inhuman or degrading treatment or punishment. For example, as described above in the known facts about the facility and as emphasized in descriptions set forth in the affidavits, prisoners have to undress completely in front of mocking soldiers and they often remain naked and handcuffed during interrogations. Along with sexual humiliation, another infringement on their physical privacy is the degrading conditions of the cells, which hardly reach the minimum standards of personal hygiene. Indeed, some detainees are forced to wallow in their own feces, causing unbearable stench because they are compelled to remain with their excrements in a small cell for days on end[14]. This is far from the basic requirements for personal hygiene, which were called for, as early as 1955, in the Standard Minimum Rules for the Treatment of Prisoners[15].

Any analysis of the abuse of power on detainees at Facility 1391 which would not take into account the context of the Israeli-Palestinian conflict would, of course, be incomplete. This is why, before moving on to the other rights infringed at Israel's secret detention site, we shall briefly turn to international humanitarian law. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is embodied in the four 1949 Geneva Conventions, which Israel has signed and ratified in 1951. Article 3, which is common to all four conventions, reads:

> In the case of *armed conflict not of an international character* occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, *detention*, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in *any place whatsoever* with respect to the above-mentioned persons:
>
> (a) *violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture*;
>
> (b) *taking of hostages*;
>
> (c) *outrages upon personal dignity, in particular humiliating and degrading treatment*;
>
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples...
>
> Geneva Conventions, I, II, III, IV, article 3 (my italics)

The acts of torture and cruel, inhuman or degrading treatment or punishment, which, according to numerous affidavits, occur at Facility 1391, are thus in clear violation of international humanitarian law.

It is not the purpose of this paper to enter the long debate on the applicability of the Geneva Conventions to the occupied territories; however, it is worth noting that Israel has claimed at various occasions that the Geneva Conventions are not applicable in the context of the war on Palestinian terrorism; in other words, terrorists and potential terrorists cannot be considered prisoners of war. Since Palestinian terrorists, the Israeli government maintains, do not belong to an internationally recognized state, they do not enjoy the status of prisoners of war once they are captured. According to the State of Israel, they are "illegal combatants", much like the US' so-called "enemy combatants" at

Guantanamo Bay. Indeed, there is no doubt that both Israel and the US have used these expressions in order to curb some of their obligations under international humanitarian law.

However, despite the Israeli government's argument for the non-applicability of the Geneva Conventions to the occupied territories[16], thereby depriving some of its detainees, who are either terrorists or alleged terrorists, of the prisoner-of-war status, its authorities are by no means entitled to place their prisoners in conditions which are cruel and degrading and which, due its secret location, increases the likelihood of acts of torture, since the freedom from torture and other cruel, inhuman or degrading treatment or punishment are internationally recognized as absolute and non-derogatory rights. Besides, even if Israel does not recognize the applicability of the Geneva Conventions to the occupied territories, the rules led out in article 3 of all four of the Geneva Conventions, according to the International Court of Justice (ICJ), "constitute a minimum yardstick (...) and they are rules which, in the Court's opinion, reflect (...) 'elementary considerations of humanity' ". The ICJ also underlined that the Geneva Conventions "are in some respects a development, and in other respects no more than the expression, of [the fundamental general principles of humanitarian law]". In addition, the ICJ has acknowledged that, as defined in article 1 (also common to all four of the Geneva Conventions), to "respect" the Conventions and to "ensure respect" for them "in *all* circumstances" is "an obligation [which] does not derive only from the Conventions themselves, but from the general principles of humanitarian law" (my italics)[17]. Therefore, the Geneva Conventions, at least insofar as articles 1 and 3 are concerned, seemed to have attained the status of customary international law.

This is why, along with the undisputed applicability of the absolute non-derogatory nature of torture in human rights law, the acts of torture and other cruel, inhuman or degrading treatment or punishment, which, according to numerous affidavits, have occurred at Facility 1391, are blatant violations of the fundamental and general principles of international humanitarian law and thus of customary international law, which is binding upon all states.

THE RIGHT TO RECOGNITION AS A PERSON BEFORE THE LAW AND THE RIGHT TO LIBERTY AND SECURITY OF THE PERSON

If any right is as absolute as the freedom from torture, it is the right to recognition as a person before the law. The right was codified and

made legally binding by article 16 of ICCPR. There is no doubt that as much as the likelihood for acts of torture to occur at a secret detention place is high, so must it be for the suppression of the right to recognition as a person before the law. Since there is no form of international monitoring system at places like Facility 1391, there is no incentive for the Israeli authorities responsible for the detention site to allow for appropriate legal procedures; quite the opposite, the incentive is to extract information from their detainees (by the means described above) as quickly as possible, in particular in situations concerning terrorist activities, such as a "ticking bomb" situation. To be sure, when interrogators of the GSS are facing potential terrorists, they are likely to prolong interrogations and delay legal procedures, since to face the bureaucratic burden of law is a hassle they much rather avoid as it holds back the interrogation and inquiry process.

Sheikh Obeid, for example, was never tried or accused of any crime during his entire time in custody at Camp 1391. This leads us to article 9 and 14 of ICCPR. Article 14(1) states that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law". Needless to say, this right can hardly be exercised in the conditions implied by the said covert detention site. Article 9 discusses the right to liberty and security of the person: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody"[18]. The entire article is essential for two reasons; the first is that all the rights it contains are violated at Facility 1391 (in particular, the right to be informed, at the time of arrest, of the reasons for the arrest[19], the right to meet with an attorney[20], the right to take proceedings before a court and the right to compensation in the case of an unlawful arrest[21]); the second, hardly surprising for it is directly related to the first reason, is that Israel has derogated from its obligations under article 9 of the Covenant (I shall return to the question of derogations below).

CONTACT WITH THE OUTSIDE WORLD

As I am of the belief that the Geneva Conventions are applicable to the occupied territories, these latter shall be used to show that the right of a detainee to contact the outside world, as much as the right of the outside world (e.g. relatives, friends, NGOs) to contact the detainee are

internationally protected. I have already mentioned the infringement of the right of prisoners at Facility 1391 to see a legal counsel. Yet, also of importance is the right of the prisoner to contact his relatives. This provision is led down in articles 106, 107 and 108 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (the Fourth Convention). Here is the first of the articles just mentioned:

> As soon as he is interned, or at the latest not more than one week after his arrival in a place of internment, and likewise in cases of sickness or transfer to another place of internment or to a hospital, every internee shall be enabled to send direct to his family, on the one hand, and to the Central Agency provided for by Article 140, on the other, an internment card similar, if possible, to the model annexed to the present Convention, informing his relatives of his detention, address and state of health. The said cards shall be forwarded as rapidly as possible and may not be delayed in any way.

> Geneva Convention IV, article 106

Israel's secret detention place clearly violates this provision, as none of the detainees are allowed to communicate with their families, just as their families are unable to contact them since they do not know their whereabouts.

The obstruction of communication with prisoners also extends to highly respected non-governmental organizations like the International Committee of the Red Cross (ICRC)[22]. Indeed, even after having discovered the existence of the secret detention place and after having requested to visit it, access to Camp 1391 was denied; as Aviv Lavie points out, "it is the only detention facility that the state prevents the International Red Cross from visiting"[23]. Needless to say, this is a violation of the Geneva Convention Relative to the Treatment of Prisoners of War (the Third Convention), of which article 126 stipulates that

> [delegates of the ICRC] shall have permission to go to *all* places where prisoners of war may be, particularly to places of internment, imprisonment and labour, and shall have access to *all* premises occupied by prisoners of war (…). They shall be able to interview the prisoners, and in particular the prisoners' representatives, without

witnesses, either personally or through an interpreter. [They] shall have full liberty to select the places they wish to visit. The duration and frequency of these visits shall not be restricted. Visits may not be prohibited except for reasons of *imperative military necessity*, and then only as an *exceptional and temporary measure*.

<div align="center">Geneva Convention III, article 126 (my italics)</div>

Israel could invoke "reasons of imperative military necessity", as the secret detention site is located in a military base and as the visits may jeopardize national security. However, the text is clear: "then only as an exceptional and temporary measure". Months, if not years, cannot be considered a "temporary measure".

THE FREEDOM FROM ENFORCED DISAPPEARANCE AND THE NEGATIVE DOMINO EFFECT

With the above in mind, it should be clear by now that all the conditions of Facility 1391 point to a well-known situation: enforced disappearance. To be sure, the forced disappearance of persons like (to mention but a few) Sheikh Obeid, Mustafa Dirani, Hashem Fahaf, Raab Bader, Mu'ataz Shahin, Sameer Jadala, Bashar Jadala and Mohammed Jadala, all of whom were suspected of having direct or indirect links with terrorist organizations[24] and have been incarcerated at some point or another at the secret detention place, enforced disappearances such as these, I say, constitute in themselves one the gravest violations of human rights. The reasons for this is that enforced disappearance is a typical case of what one might call a negative domino effect in human rights violations, i.e. the infringement of a comprehensive right which necessarily brings about the violation of other rights directly or indirectly connected to it.

Although the freedom from enforced disappearance is not yet considered an explicit human right (indeed, it is surprising that it is not the subject of an *ad hoc* convention which would prohibit it in all circumstances), the violation of this freedom at Camp 1391 automatically and negatively dominoes on the other rights discussed above, e.g. the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and the security of the person, the right to recognition as a person before the law, the right to a fair trial and a public hearing, the right of detainees to contact the out-

side world, etc. Should one examine in more depth the negative domino effect of the violation of the freedom from enforced disappearance, the list would no doubt be much longer than the foregoing. This bears witness to the interrelation and interdependency of human rights in general, evoked in the 1993 Vienna Declaration and Program of Action on Human Rights.

The history of the freedom from enforced disappearance is in itself fascinating and would be the subject of another study; here we shall only partly retrace some of the main aspects underlying its development. In fact, one wonders why it took so long before one recognized that the absolute prohibition of prolonged incommunicado detention is fundamental to the human rights regime. Although a great deal of binding and non-binding documents implicitly suggest that secret detention sites, and thus prolonged incommunicado detention, should be prohibited[25], there is still no legally binding instrument that abolishes the practice of covert detention centers. Indeed, only lately do we find soft human rights law actually referring to the matter, as article 10 of the 1992 Declaration on the Protection of all Persons from Enforced Disappearance: "Any person deprived of liberty shall be held in *an officially recognized place of detention* and, in conformity with national law, be brought before a judicial authority promptly after detention. Accurate information on the detention of such persons and *their place or places of detention* (...) shall be made promptly available to their family members [and] their counsel" (my italics). In 1998, a Draft International Convention on the Protection of All Persons From Forced Disappearance, modeled on the above-mentioned 1992 Declaration, attempted to abolish prolonged incommunicado detention and secret detention sites (though it did not specifically refer to either expressions).

It was really not until the Rome Statue of the International Criminal Court (ICC), which Israel signed (but did not ratify) in 1998, that the problem of enforced disappearance had finally drawn attention and had been dealt with (albeit not in a comprehensive manner). The result, however, was a clear and unambiguous definition (which is a godsend in international law):

> "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information

> on the fate or whereabouts of those persons, with the in-
> tention or removing them from the protection of law for
> a prolonged period of time.
>
> International Criminal Court Statute, article
> 7(2)(i)

What appears to be going on at Facility 1391 perfectly embodies this definition. However, the ICC Statute clearly underlines in article 7(1) that this practice constitutes a "crime against humanity" only if it is "part of a widespread and systematic attack directed against any civilian popula- tion". Yet if Facility 1391 is only one among several of Israel's secret prisons, as has been suggested by some journalists[26], then one can hardly be surprised that Israel has not ratified the Statute (though there are numerous other obvious reasons why Israel has not yet ratified the ICC Statute).

DEROGATIONS

In light of international law

The entire account above on the breach of human rights at Camp 1391 assumes, of course, that Israel has agreed to all the legally binding rules set out in the various instruments discussed. However, this is not the case, or at least only in part. When Israel signed ICCPR in January 1992, it availed itself the right of derogation from certain articles of the Covenant and has submitted a declaration regarding its derogation, as required by article 4(3). In effect, as Israel has proclaimed the state of emergency in May 1948 which "has remained in force ever since", this situation, explained the Israeli government, "constitutes a public emer- gency within the meaning of article 4(1) of the Covenant". The State of Israel averred that it has therefore "found it necessary, in accordance with the said article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defense of the State and for the protection of life and property, including the exercise of powers of arrest and detention". In these circumstances, Israel concluded that "insofar as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision"[27].

We have already discussed the provisions found under article 9, namely the right to liberty and security, which includes the right to be informed, at the time of arrest, of the reasons for the arrest, the right to

meet with an attorney, the right to take proceedings before a court and the right to compensation in the case of an unlawful arrest. All these rights, which are fundamental for minimum detention conditions, have been derogated in the name of national security.

Although there is no question that Israel faces a tremendously complex and delicate situation in its conflict with the Palestinian people and has legitimate security concerns which it must support with solid anti-terrorist measures, in no circumstances can it ignore its general obligations not only to "respect" and to "observe" (the words employed in article 55(c) of the UN Charter) human rights and fundamental freedoms, but also to ensure the protection against, and the prevention of, human rights violations. In fact, the lawfulness of Israel's response must be weighed in accordance with the principle of proportionality. In the case of Facility 1391, the secret activities of which the IDF justified by "reasons of state security"[28], it is difficult to accept, especially in light of the violation of the absolute rights to freedom from torture and recognition everywhere as a person before the law, that the conditions of incarceration and the methods used by the GSS interrogators vis-à-vis the detainees (whatever their criminal offenses may be) at the secret detention site in question can be justified as a proportionate response to the violence and threats of violence to which Israel is subjected.

Indeed, article 4(2) of ICCPR clearly states that no derogations may be made from, among others, articles 7 (on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment) and 16 (on the right to recognition everywhere as a person before the law). Both of these provisions are *ius cogens* rules and are thus non-derogatory. The excessive degree to which it has (albeit lawfully) derogated from its obligations under article 9 of ICCPR has dangerously led Israel to secretly derogate from the non-derogatory articles directly linked to a situation in which the rights provided by article 9 are denied. From the point of view of state derogations, this situation testifies yet again to the negative domino effect of human rights violations.

In terms of domestic law

It is not the place here to discuss in detail Israel's domestic law in order to decide whether or not Facility 1391 is in breach of the national legal system. In fact, on December 1st, 2003 the Supreme Court of Israel (in the case of HaMoked vs. State of Israel *et al.*) has issued an *order nisi* regarding the secrecy of the physical location of the facility and required the State Attorney to explain within forty-five days the reason for the

secrecy. However, there has been no ruling as to the lawfulness of the secret detention site.

At any rate, as one of HaMoked's petition clearly demonstrates, a great deal of the rights discussed in this study are protected by national law[29]. Whether or not they can be waived for reasons of national security and self-defense is of course another matter. In effect, I will briefly show what are the possible arguments the IDF could use for derogating from its obligations in regard to civil and political rights.

Although Israel's Basic Law of 1992 on Human Dignity and Liberty expressly states, in section 5, that "there shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise", one cannot help but highlight the fact that these rights are overridden by other sections. For instance, section 8 reads: "There shall be no violation of rights under this Basic Law *except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required [or by regulation enacted by virtue of express authorization in such a law]*" (my italics)[30].

Section 12 of the Basic Law of 1992 seems to leave an even greater margin of action to state authorities with regard to derogations: "This Basic Law cannot be varied, suspended or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance (...), *emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required*" (my italics). In truth, the "proper purpose" is the state of emergency and the "period required" lasts since 1948.

Furthermore, the derogations above do not only concern the right to liberty and security of the person, since the Basic Law of 1992 also mentions, in section 2, the right to life, body or dignity of any person as such; that is, "violation of the life, body or dignity of any person" can, in extreme circumstances (such a state of emergency), be derogated. In fact, after examining the 1999 Supreme Court Judgment Concerning the Legality of the GSS' Interrogation Methods, one notices that Israeli domestic law proves to have a rather significant derogation-like nature as regards also torture and cruel or inhuman degradation or treatment. Indeed, even though the judgment prohibits any acts of torture by the GSS interrogators (including methods such as hooding, the "shabah" position, the playing of loud music, etc.), the judges of the Supreme

Court left some leeway for the interrogators, since they held that "a GSS interrogator may (...) potentially avail himself of the 'necessity' defense", which means in short that "the Attorney may instruct himself with respect to the circumstances under which charges will not be brought against GSS investigators, in light of the materialization of the conditions of 'necessity'"[31]. In addition, the 1999 Judgment also deals with the question of a terrorist "ticking tomb", suggesting that, at least during the year before the judgment came into force, "the GSS could employ exceptional methods in those rare cases"[32].

Finally, the Judges of the Supreme Court allowed for a loophole for the legal reintroduction of torture: "The question of whether it is appropriate for Israel – in light of its security difficulties – to sanction physical means in interrogations, and the scope of these means – which deviate from the 'ordinary' investigation rules – is an issue that must be decided by the Legislative branch, which represents the People"[33].

Therefore, as the account I have given above of Israel's derogations under its own laws reveals, a rather large margin of action is given to interrogators or other intelligence and security personnel to potentially refrain, during administrative detention, from respecting and protecting some of the most fundamental human rights.

PREVENTING AND ABOLISHING PROLONGED INCOMMUNICADO DETENTION

In July 2001, the Special Rapporteur on Torture wrote in his report:

> The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. The international standards (...) are conceived of as often unwelcome exceptions to the general norm of opacity, merely the occasional ray of light piercing darkness. What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty. Of course, there will have to be regulations to safeguard the security of the institution and individuals within it, and measures to safeguard their privacy and

dignity. But those regulations and measures will be the exception, having to be justified as such; the rule will be openness.

<div align="right">Report of the Special Rapporteur on Torture (A/
56/156), July 2001, pp.9-10</div>

This is, of course, utopia; but it is hardly more utopian as was Jean-Jacques Gautier's proposal to create an international body, with broader powers than those of the ICRC, that could inspect *all* places of detention, not only prisons and prisoner-of-war camps. Gautier's prophecy has, in part, been fulfilled. I am thinking not only of the powers conferred upon the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment established in 1987 by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), but also of those given to the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recently set up (December 2002) by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT OP). In fact, the monitoring mechanisms of human rights proposed by these two conventions are perhaps the first and most important step toward the prevention of torture and degrading treatment in detention places. Indeed, the 21st century, as Mary Robinson pointed out, is the century of *prevention*, and not merely of respect for, and protection of, human rights and fundamental freedoms.

But monitoring systems are, unfortunately, not enough. For the reasons that this paper has attempted to describe and underline, the prevention of prolonged incommunicado detention is served first and foremost by the abolition of secret facilities of detention, since enforced disappearance and prolonged incommunicado detention, argued the above-quoted Special Rapporteur on Torture, are *in themselves* "a form of prohibited torture or ill-treatment"[34]. I am not the first (nor shall be the last) to advocate this necessary prohibition. Indeed, Sir Nigel Rodley stated, in 2001, that "torture is most frequently practiced during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay"[35]. Similarly, Manfred Nowak, in his report submitted to the Commission on Human Rights in 2002, requested "the absolute prohibition of any form of incommunicado detention [and] the absolute prohibition of secret places of detention"[36]. In February 2003, still another report of the

Intersessional Open-ended Working Group on Civil and Political Rights underlined as its number-one rule for its program regarding the prevention of human rights violations: "[The] prohibition of incommunicado detention and of secret places of detention"; the report added that "the participants considered that this prohibition should be absolute"[37]. It is noteworthy to observe, however, that the call for the *absolute* prohibition of incommunicado detention seems somewhat unfeasible, for is not the first phase of any detention before contact with the family or legal counsel incommunicado detention? This is why I prefer to use the formulation of '*prolonged* incommunicado detention'.

At any rate, another crucial method to combat torture and inhuman or degrading treatment would be to elaborate a comprehension international convention on the protection of all persons against enforced disappearance (which, in fact, is currently being discussed at the UN Commission on Human Rights), modeled on the 1998 Draft International Convention on the Protection of All Persons From Forced Disappearance. This convention would not only declare that "State Parties guarantee that any person deprived of liberty shall be held solely in an officially recognized and controlled place of detention and be brought before a judge of other competent judicial authority without delay, who will also be informed of the place where the person is deprived of liberty", but would also directly refer to incommunicado detention and secret places of detention, thereby abolishing them. Ideally, there would be no possibility for derogations from states' obligations to protect against and prevent prolonged incommunicado detention and covert facilities of incarceration.

As a result, to prevent prolonged incommunicado detention, countries like Israel (which I have used here as a case study, but which, I am aware, is only one instance among many) must not only sign CAT OP and install more rigorous domestic detention monitoring systems (as, for instance, Austria has done), but must also (in the best of worlds) become a party to a future internationally binding convention abolishing in clear terms prolonged incommunicado detention and secret incarceration facilities.

Secondly, one has to acknowledge that the existence of conditions of detention and methods of interrogation such as those found at Facility 1391 are not altogether surprising when one bears in mind the following three factors: (1) the reservation Israel has placed on article 20 of the Convention against Torture (in accordance with article 28), which allowed for the Committee against Torture to "make a confidential inquiry"

on indications that torture is being systematically practiced in a State Party's territory, which "may include a visit to its territory"; (2) the derogations from article 9 of ICCPR and from the rights enshrined in Israel's Basic Law of Human Dignity and Liberty; and (3) Israel's position regarding the non-applicability of the Geneva Conventions on occupied territories.

Naturally, I suggest (though unrealistically, of course) that Israel abandon both its derogation from the aforesaid provisions under ICCPR and its reservations on article 20 of CAT. More importantly, it must recognize the application of the Geneva Conventions on the occupied territories. Finally, one hopes that it will abolish all forms of torture (or, as the Supreme Court calls it, "physical pressure"), no matter the circumstances and despite the state of emergency.

"The degree of civilization in a society can be judged by entering its prisons..." Thus we go on quoting Fyodor Dostoevski's famous adage from The House of the Dead. *But in cases like Facility 1391, one cannot even judge the prison's degree of civilization, as we are not permitted to enter. Perhaps the phrase should be: the degree of civilization in a society can be judged by its openness in regard to its prisons. Indeed, to protect against, or better, to prevent, violations of human rights, one has to penetrate all places of detention set up by states. Only in uncovering, in Antonio Cassese's words, "their shameful parts"[38] can one hope to abate the stench of feces and of state sovereignty that permeates the walls of secret prisons like Facility 1391.*

NOTES

[1]   See response of the Commander of the Israel Defense Forces in the West Bank represented by the State Attorney's Office (Ministry of Justice) to Petitioners B. Jadala, M. Jadala and HaMoked (Center for the Defense of the Individual) and Petitioners Shahin and HaMoked (hereafter response to petitions HCJ 10327/02 and HCJ 8696/ 02), in the Supreme Court sitting as the High Court of Justice, 9 June 2003, section 8, 3.

[2]   See response to petitions HCJ 10327/02 and HCJ 8696/02, section 9, 3.

[3]   *Ibid.*, section 11, 3.

[4]   *Ibid.*, 9.

[5]   See response of the State of Israel *et al.* represented by the State Attorney's Office (Ministry of Justice) to Petitioner HaMoked (hereafter response to petition HCJ 9733/ 03), in the Supreme Court of Justice sitting as the High Court of Justice, 28 November 2003, 2.

6   Testimonies were made not only by the above-mentioned Bader, the Jadalas, Obeid and Dirani, but also by a number of other prisoners who have been detained at the secret detention place in 2001, 2002 and 2003. For more details on the affidavits collected by HaMoked, see petition by HaMoked vs. State of Israel/Israel Defense Forces/General Security Service/Israel Police Force/Commander of the detention facility known as "Facility 1391" (hereafter petition HCJ 9733/03), in the Supreme Court sitting as the High Court of Justice, 30 October 2003.

7   See petition HCJ 9733/03, section 34, 16-17.

8   *Ibid.*, sections 30-38, 14-17.

9   See Lavie, "Inside Israel's secret prison", *Haaretz Magazine*, 22 August 2003, 7.

10   *Ibid.*, 8.

11   See petition HCJ 9733/03, sections 39-41, 17-18.

12   Cf. article 11 of CAT.

13   See petition HCJ 9733/03, sections 54-57, 24-26.

14   *Ibid.*, section 42, 18.

15   This text underlines that prisoners "shall be provided with water and with such toilet articles as are necessary for health and cleanliness". See in particular Rules 15-16 of the Standard Minimum Rules for the Treatment of Prisoners.

16   Recently, the UN General Assembly has again categorically refuted Israel's argument for the non-applicability of the Geneva Conventions to the occupied territories, cf. A/RES/58/97, 17 December 2003.

17   See Case concerning Military and Paramilitary Activities in and against Nicaragua, Judgment Merits, International Court of Justice, paragraphs 218-220, 27 July 1986.

18   See also Universal Declaration of Human Rights, articles 9-11.

19   In his testimony, Sameer Jadala avers having asked his interrogators: "Why I am here? What do you want from me?" He was never told the reasons for his arrest. Cf. McGreal, "Facility 1391: Israel's secret prison", *The Guardian*, 14 November 2003.

20   When Sameer Jadala was finally brought to a court after interrogators could not extract any information from him at Camp 1391, he was asked by a judge whether he had a lawyer; Jadala replied by asking the judge how he might suppose he could appoint a lawyer when he did not even know where he was. Cf. McGreal, "Facility 1391: Israel's secret prison", *op. cit.*, 14 November 2003.

21 None of the detainees mentioned in this study have been compensated for their unlawful arrest and detention.

22   One should note in passing that Israel is generally very reluctant to open its detention centers to international delegates from the UN. The Special Rapporteur, John Dugard, of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied by Israel since 1967, is "denied access to Israeli prisons and detention centers" to this day. See Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian

Territories Occupied by Israel since 1967: Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine (E/CN.4/2004/6), September 2003, p.13.

23 See Lavie, "Inside Israel's secret prison", *op. cit.*, 2.

24 All three Jadalas were suspected by the GSS to be linked some way or another with Hamas. They were later released without any formal judgment. See McGreal, "Facility 1391: Israel's secret prison", *op. cit.*, 14 November 2003.

25 See, for instance, article 23 of the third Geneva Convention III (1949): "Detaining Powers shall give the Powers concerned, through the intermediary of the Protecting Powers, all useful information regarding *the geographical location of prisoner of war camps*" (my italics); Principle 16 of the Body of Principles for the Protection of All Persons Under any Form of Detention or Imprisonment (1988): "A detained or imprisoned person shall be entitled to notify (...) members of his family (...) of his arrest (...) and *of the place where he is kept in custody*" (my italics).

26 See, for example, Cook, "Is 'Facility 1391' Israel's version of Guantanamo Bay?", *The Daily Star*, 15 November 2003.

27 For Israel's communication to the UN Secretary-General on the provisions from which it has derogated, see Office of the United Nations High Commissioner for Human Rights, Status of Ratifications of the Principal International Human Rights Treaties, <http://www.unhchr.ch>.

28 See response to petitions HCJ 10327/02 and HCJ 8696/02, section 8, 3.

29 See petition HCJ 9733/03, section 72, 33-35.

30 Square brackets enclose the 1994 Amendment to section 8.

31 See Summary of the 1999 Judgment Concerning the Legality of the GSS' Interrogation Methods, 19. Cf. <http://www.court.gov.il>.

32 *Ibid.*, 19.

33 *Ibid.*, 19.

34 See report of the Special Rapporteur on Torture (A/56/156), July 2001, 5.

35 *Ibid.*, 11.

36 See report by Manfred Nowak on Civil and Political Rights, Including Questions of Disappearances and Summary Executions (E/CN.4/2002/71), January 2002, 35-36.

37 See report of the Intersessional Open-ended Working Group on Civil and Political Rights, Including the Question of Enforced or Involuntary Disappearances, with Mr Bernard Kessedjian as Chairperson-Rapporteur (E/CN.4/2003/71), February 2003, 14.

38 Cassese, *Inhuman States: Imprisonment, Detention and Torture in Europe Today*, Polity Press, Cambridge, 1996, 5.

Inequality is Fatal

A HUMAN RIGHTS PERSPECTIVE ON AFRICAN WOMEN AND HIV

Kelly Jones

Human rights abuses in Sub-Saharan Africa are increasing the risk of HIV transmission to women and girls throughout the region: an overview of rights violations and relevant international law.

"Gender inequality is at the heart of the [AIDS] epidemic... We must address power imbalances if we seriously want to tackle this global challenge. It is not simply a matter of justice and fairness. In this case, gender inequality is fatal."

Noeleen Heyzer, Executive Director for UNIFEM

INTRODUCTION

When AIDS made its first appearance on the world stage, it was largely associated with homosexual men and intravenous drug users. These assumptions, at that time, were well founded in epidemiological statistics. Women, especially married or sexually monogamous women were fringe cases of HIV infection. Today, women of all lifestyles, including teens and young girls are at the heart of this epidemic and now account for nearly 50% of cases worldwide. Clearly the rate of infection is increasing at a much faster rate among women than men.

This is particularly true in Sub-Saharan Africa, the only region of the world where the incidence of HIV in women exceeds that of men (58% of all cases). In some of the most severely affected countries, women in the 15-24 year age bracket alone constitute a staggering 66% of infections. By the year 2020, the female mortality in Sub-Saharan Africa

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will peak at 30-34 years of age, whereas for men it will be a full ten years higher.[1]

To what can one attribute this increased rate of infection among women? Biological as well as socio-cultural factors make women more susceptible to transmission. But most importantly, as this article will demonstrate, it is the violation of the basic human rights of women that is putting them at higher risk. Throughout the world, and particularly in Sub-Saharan Africa, women have long been denied some of their most fundamental rights as humans. The resulting diminished social and economic standing and lack of power over their own bodies greatly increase the risk of transmission. And while certain rights violations directly increase women's vulnerability to HIV, every instance in which a woman is denied her rights devalues her as a person, weakens her sense of self-ownership, and thereby further reduces her ability to protect herself from infection. Key issues to be examined here regarding the denial of human rights are violence against women, marriage and reproductive rights, land and property rights, the use of wives as property, economic gender inequality, access to education, and political participation. The obligations of States under relevant international instruments to protect the human rights inherent to these issues will be discussed in conjunction with the overarching responsibility to protect the right to health.

The Problem with Tradition

There are innumerable issues present throughout Sub-Saharan African countries that contribute to an increasing incidence of HIV in women. Some of the most pressing include land tenure, education, reproductive rights and gender based violence. The plethora of human rights violations which give rise to these issues are also interrelated and often inseparable. In many cases, the arrow of causation points in both directions. In considering virtually any systematic violation of women's human rights in this region, issues such as African cultural traditions and customary law always arise. Before examining specific violations in detail, a brief look at the place of African tradition in the context of this issue is appropriate.

African culture and traditional practices are often cited as

sources for rampant disregard of women's rights in Sub-Saharan Africa. Scholars and practitioners point to customary law and its ability to undermine modern governments' attempts to create gender equality. For example, the International Human Rights Law Group states,

> "Customary laws, cultural practices and traditional norms are used to justify the disinheritance of widows and invoked to override statutory or constitutional provisions for women that may provide them with a legal right to inherit. In Nigeria, for example, customary law settles approximately 80 percent of land disputes at the expense of women's rights."[2]

As will be illustrated below, it is true that laws such as prohibition of female inheritance, the payment of bride price and other marriage laws now contribute to the prevalence of HIV in women. However, an examination of historical record shows us that these "customary laws" are not the traditional African customs they are assumed to be.

In the efforts of the colonialists to create a standard, legal, social order in the African colonies, traditional customs were codified into "customary law." But this legalization was by no means accurate and unbiased. The customs were passed from the male leaders of the African communities, filtered through the cultural lens of the colonialists, combined with customs from neighboring but often very different tribes, and written into law as the "traditions of the indigenous peoples." Not only did this process greatly bias these laws, but in addition, what were once fluid cultural norms became rigid legal codes unable to adapt to changing social circumstances.

For example, *lobola* was a tradition of gifts given from a man's family to the family of his bride, intended to create a broad network of reciprocal social relations. This often created a safety net for women to escape failed marriages and was in no way considered a commercial transaction. The codification of this practice made it legally mandatory rather than a socially beneficial norm and set a precedent for the use of cash in place of traditional gifts. The result was commercialization and objectification of women, severely limiting their social protection within the community.[3]

Because human rights are universal and not culturally relative, one cannot use traditional culture to justify human rights violations. And while there certainly remain cultural practices that violate women (i.e.

female genital mutilation), it is important to realize that, in general, customary law was *not*, in fact, originally in conflict with women's human rights. Therefore, a sweeping condemnation of traditional African culture in favor of women's human rights is not appropriate.

SEXUAL VIOLENCE AND ABUSE

RAPE AS A TOOL OF WAR

The issue of rape and sexual violence is extremely prevalent in the war-torn areas of Sub-Saharan Africa. In Eastern Congo, rape has been widely used as a tool of war since 1996, and most heavily in recent years. Military forces use sexual violence towards women to demonstrate power over the opposing forces and to punish dissidents. Rape can increasingly be attributed to police and other power figures who, like the troops and militia, generally enjoy impunity.[4]

The situation is similar in other conflict and post-conflict areas, such as Sierra Leone where it is estimated that one in eight women have suffered sexual violence at the hands of rebel, pro-government or even peacekeeping forces. The violent acts include rape, sexual torture, sexual mutilation and forced abortions, using a variety of weapons including metal rods, sticks and branches, and boiling oil. Women are beaten, caged, and threatened with death as a means of forcing them into sexual slavery.[5]

These atrocities are obvious violations of women's human rights according to widely accepted international law. Every person's right to liberty, security, and/or integrity of person, regardless of his or her sex is guaranteed by the United Nations' International Covenant on Civil and Political Rights (ICCPR), Article 9, as well as the Charter of the African Commission on Human and People's Rights (ACHPR), Articles 4 & 6. Additionally, protection from slavery, torture, and cruel, inhuman, or degrading treatment are guaranteed by the ICCPR, Articles 7 & 8, as absolute rights without option of derogation, and are protected by ACHPR, Article 5, as well. The Statute of the International Criminal Court, approved by the General Assembly of the UN in 1998, cites sexual slavery, forced pregnancy, forced sterilization and other forms of sexual violence as crimes against humanity or war crimes, equaling them to torture and genocide.[6] While many human rights instruments allow derogation from protecting certain rights during times of national emergency, certain absolute rights must be observed at all times.[7] This statute

puts freedom from such sexual violence in the category of absolute rights that, under no circumstances, may be violated.

Rape and sexual slavery put women at high risk of HIV transmission for several reasons. First, abrasions and tearing which are far more common in forced rather than consensual sex increase the portals of entry for the virus. Also, the likelihood is very high that the perpetrator will be HIV positive. Sierra Leone has a 7% infection rate in its adult population, but troops and militia have an infection rate of 42%. More drastically, 60% of militants in Eastern Congo are infected, compared to 7.2% of the total population.[8] In Sub-Saharan Africa armed troops usually have infection rates two to five times higher than the civilian population, and up to fifty times higher during periods of conflict.[9]

In addition, women are generally unwilling to report rape or seek medical attention due to the heavy social stigma and unlikelihood of punishment for the perpetrator. When women do seek aid few medical facilities or practitioners are available and most have relatively high costs. In many conflict areas, the system of health services that was available disappears as a result of the war.

The impact of this crisis on women's rates of infection is clear. In Bakavu, Congo, 54% of women are HIV positive compared to a drastically lower rate of 32% of men.[10] In Sierra Leone, women account for 60% of documented cases of HIV.[11] Yet it is only recently that the significance of conflict-related sexual violence has been recognized as creating situations in which almost nothing is being done to prevent infection and promote the recovery of victims.

SEXUAL VIOLENCE IN THE FAMILY

Certainly not limited to conflict areas, sexual violence against women is prevalent throughout Sub-Saharan Africa. In most countries in this region, there are no laws against marital rape, which is common due to imbalance of power relations in marriage. Young women are also at high risk of sexual abuse. In Zambia, girls are up to six times more likely to be infected than boys. Often occurring within the family unit, sexual abuse is particularly hard to combat, as it is frequently unreported due to cultural taboos of speaking about rape or incest. Orphaned girls are also at risk, as they may have to rely on distant relatives who demand sex in return for school fees or other financial support. Sometimes, as a result of the AIDS epidemic, boys are allowed to sexually abuse their sisters as a way to "keep safe within the family."[12] In addition, the victims of abuse

are increasingly younger; likely a result of a common myth that sex with a virgin will cure one of HIV.

The UN Committee on the Elimination of Discrimination Against Women has established that violence against women violates the principle of nondiscrimination and equality enumerated throughout the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the UN General Assembly in 1979.[13] Such violence, even within the family, constitutes the same violations of liberty and security of person as mentioned above. Additionally, sexual child abuse violates Article 34 of the UN Convention on the Rights of the Child (CRC) that protects the child from all forms of sexual exploitation and sexual abuse.

These issues obviously put women at an elevated risk of HIV transmission. Rape and abuse, even when the perpetrator is a domestic partner or family member, not only biologically increase risk, but also psychologically reduce a women's sense of self-ownership and her ability to negotiate safe sex in the future. In addition, there is evidence that in 'HIV discordant' couples, in which the man is HIV positive and the woman is not, there is an even higher prevalence of violence and rape.[14] As Noeleen Heyzer, Executive Director of UNIFEM stated on World AIDS Day, 2003, "Only when we recognize the interrelationship between violence against women and HIV/AIDS can we tackle both pandemics and reverse their progression."[15]

MARRIAGE AND REPRODUCTIVE RIGHTS

Marital rape, as mentioned above, is part of a greater issue of overall imbalance of power in marriage. African women, often raised to be obedient and subservient to men, are chained to their subordinate status, unable to assert themselves. According to Spike Peterson and Anne Runyan in *Global Gender Issues*, there exists a pervasive gender dichotomy that divides women and men into life-givers and life-takers, thereby putting power in the hands of the men. Traditional views of gender roles as soldier or mother, protector or protected, and aggressive or passive translate into batterers and victims, and powerful and powerless.[16] The image of men as powerful is exacerbated by men's superior entitlements to ownership, child custody, and power to dissolve marriage.

Women's powerlessness in marital relations has huge implications for their ability to protect themselves from HIV. Reproductive rights,

first defined in the 1994 Cairo Programme of Action from the UN Confer-
ence of Population and Development, state that reproductive health
includes the capacity to enjoy a satisfactory sexual life without risk, and
the freedom to decide whether or not to have children, when, and how
often.[17] While directly specified in CEDAW Article 16(1)(e), these rights
are also descendants of the right to found a family, as guaranteed in
ICCPR, Article 23(2), that goes beyond contraception, gestation and
delivery, and extends to planning, timing and spacing births to protect
the health of the child and the woman.[18] This obviously requires that
women have access to information on and methods of family planning as
well as the ability to acquire contraception. A woman's right to informa-
tion is delineated in Article 9 of the ACHPR, and is laid out in detail as a
right to information and counseling on family planning in Article 19 of
CEDAW. Additionally, the Platform for Action from the UN's 4th World
Conference on Women stated that the right to liberty and security of
person stated in the ICCPR, Article 9, carries with it the obligation to
provide women with control over their sexuality so that they can decide
freely and responsibly matters related to sexual and reproductive health
free from coercion, discrimination or violence.[19]

Yet despite the binding nature of reproductive rights under three
major conventions that have been ratified by most Sub-Saharan Africa
States (ICCPR, ACHPR and CEDAW), women's human rights in the
sexual and reproductive sphere are stripped from them and placed
completely in the hands of their husbands. Women are certainly not
afforded the right to enjoy a sexual life without risk. There exists a
general perception of a marital obligation for unprotected sex. When
women are unwilling to comply, sex is often forced upon them under
threat of eviction, abandonment, or violence.[20] The International Center
for Research on Women reports that less than 25% of Zambian women
believe they can refuse sex with their husband even if he has been un-
faithful and is infected.[21] This lack of self-ownership or empowerment in
marriage makes women unable to negotiate condom use. In fact, of
women infected while in long-term, stable relationships, 80% are in-
fected as a result of their partner's infidelity.[22]

The imbalance of power in favor of the husband also strips women
of their right to decide whether to have children, when, and how often.
Though perhaps seemingly unrelated to HIV transmission, it may in fact
have quite an impact on a woman's risk factors. Certain types of contra-
ception, such as condoms, greatly reduce the risk of transmission; but
women in Sub-Saharan Africa rarely have enough equality in their

marriages to make the decisions about family planning on which the use of such contraception hinges. Additionally, according to a Human Rights Watch report, husbands often prevent women from attending clinics to learn about family planning, where they may also learn about and be tested for HIV.[23] Women unable to learn about their options for birth control are not being afforded their right to information and are thereby less empowered to protect themselves from transmission.

Due to established gender roles and women's subordinate status in marriages, men have commandeered ownership and control of women's reproductive and sexual rights. The result is a higher risk of HIV transmission for women through lack of condom use in marriage and reduced access to information on family planning and protection from HIV.

Women Without Property

Closely tied to the imbalance of power in marriage is the issue of land tenure and property ownership. In many Sub-Saharan Africa countries, women are not allowed to hold property in their names, and have no right to land tenure. A woman may have the right to use land (secondary land tenure), but even this is based on her connection to her husband, and she cannot lend, sell, or heir the property that she uses. In addition, her secondary land tenure may be revoked based on divorce, widowing or failure to have sons.[24] Any claim that a woman might have to belongings, her home, or the land on which she lives only exists through her husband. Upon the dissolution of a marriage, or the death of a husband, a woman may be stripped of all her belongings and evicted from the land on which she has spent her life working.

In Zimbabwe in 1997, Venia Magaya, a 52-year-old seamstress was evicted from her home in Harare by her half-brother. Although the community court had designated her the heir after her father's death, the younger half-brother appealed to the magistrate court and won. Magaya appealed to the Supreme Court and lost by a unanimous decision based on 'customary law' that only men can inherit property. Supreme Court Justice Gibson Muchechetere said of the case, "Women's status is basically the same as that of a junior male in the family."[25]

In Kenya, following the death of a husband, a woman is only allowed to remain on her land if she is either inherited by her brother-in-law (as discussed in the following section *Women as Property*), or "cleansed" by having sex with a social outcast to break her connection with the deceased partner. If a woman refuses both of these, she is expelled from

her land to live in a slum and scavenge or prostitute herself for survival. Following a divorce or separation, a woman can lose not only her land, but the entire household, plus any money, livestock, or valuables she may have.[26] The case is similar in Zambia, where tradition dictates that the husband's family take responsibility for his land after his death; origi- nally a way of taking care of his widow. In modern times this tradition has morphed into "property grabbing," in which the widow is often evicted and the family lays claim to everything, including the children.[27]

In some cases, modernization is hindering rather than helping the situation. In parts of East Africa, movements toward land titling and registration are reducing the few traditional rights that women have had to land through their marriage. Once the land is officially registered in a man's name, the few situations in which widows could have retained their land are nullified since women are not allowed to inherit property.[28] In Kenya and Rwanda, the rising number of women marrying without bride price creates many 'unofficial' unions. In these situations, women lack the official right to secondary land tenure, and may be "chased away" at any time.[29] Even in societies where women can traditionally own and heir land, this issue is increasingly relevant. For instance, Zambia's Akan people are increasingly ignoring the tradition of heiring to daughters and are instead passing on land to sons.[30]

In countries that do legally provide for female ownership, there is little hope for women to realize this right. When women attempt to secure their right to ownership in court, they are typically sent to courts of "customary law" where they are denied an overwhelming 80% of the time.[31]

On a most basic level, this violates the human right to own property as protected by not only the UN Universal Declaration of Human Rights (Article 17) but also by the ACHPR (Article 14), in which it is "recognized and guaranteed without distinction...such as...sex" (Article 2). Addition- ally it is a gross violation of the right to be protected against discrimina- tion as laid out in many human rights instruments including the ICCPR (Article 26), as well as the ACHPR which provides for equality before the law and protection from discrimination against women (Articles 3 and 18.3). More specifically, CEDAW (Article 15) dictates not only equality before the law, but additionally the right to conclude contracts and administer property. Finally, the inability to own property also consti- tutes a violation of marital rights. ICCPR (Article 23(4)) guarantees equal rights as to marriage, as well as during and at the dissolution of marriage. The Human Rights Committee, the UN body created to moni-

tor the implementation of the ICCPR, has commented, in particular, that women should have equal inheritance rights to those of men upon the death of a spouse.[32] Again CEDAW is even more specific, stating that states both spouses have the same rights as to ownership, acquisition, enjoyment and disposition of property (Article 16(h)).

The violation of these rights with respect to land tenure in Sub-Saharan Africa is creating a significant increase in women's vulnerability to HIV transmission. Certainly women reduced to abject poverty who, in desperation, turn to prostitution are in the greatest danger. Other options of "cleansing" and wife-inheritance, discussed below, are obviously risky alternatives as well. In addition, if a woman knows that leaving her husband will rob her of everything, she is much more likely to stay in an a marriage where domestic violence, lack of bargaining power for protected sex, or outright rape may be greatly increasing her risk of transmission. Though lack of property rights may seem unrelated to the AIDS epidemic, it contributes to other issues such as wife inheritance, ritual cleansings, and economic and social insecurity that directly put women at risk. In areas where land tenure issues are most prevalent, HIV infection rates are six times higher in young women than young men.[33]

WOMEN AS PROPERTY

The issue of wife inheritance mentioned above is not only a question of land tenure, but points to a much greater problem of the view of women as property. In many Sub-Saharan Africa countries, the traditional practice of giving a dowry upon engagement for marriage is no longer the token of appreciation it once was, but has become so commercialized as to be called "bride price." Once used to strengthen familial ties, it now amounts to literally purchasing a bride as property. This analogy persists not only before, but also during and after marriage.

The concept that a wife has been purchased significantly increases domestic violence as a woman may be beaten or otherwise punished for unsatisfactory behavior. Women, once purchased, may be unable to leave violent or unsuccessful marriages unless the bride price is repaid by her family. This is obviously highly unlikely considering the financial situation of many families in the developing areas of Sub-Saharan Africa.

Following the death of a husband, the fact that his family (all of whom contributed to the bride price) now "own" the wife, combined with the traditional view that a woman should have a husband, creates a situation in which the widow is taken as a wife or second wife by the

deceased's brother, cousin, or uncle, etc. Originally a system created to protect a widow and her children from becoming homeless or without a breadwinner, today it has become a way for the men to lay claim to a woman and do with her as they please.[34] If a woman is unwilling to be taken by the next-of-kin, she may be ostracized socially and economically or evicted from her land as discussed above.[35]

These practices violate international human rights laws protecting consent to marriage,[36] equal rights as to marriage,[37] and equality before the law.[38] The Human Rights Committee has specifically interpreted the equal right to be a person before the law (ICCPR, Article 16) as prohibiting the inheriting of women as property by the family of a deceased husband. It has also stated that "equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is inadmissible discrimination against women. Consequently it should be defiantly abolished wherever it continues to exist."[39]

These violations are placing women at increased risk of infection. Women trapped in violent marriages, often subject to marital rape, are in danger as discussed above (*Sexual Violence and Abuse*). The issue of wife inheritance combines this potential for domestic violence with the increased sexual exposure to a second husband, often practicing polygamy. Consequently the tradition of wife inheritance is playing a large role in the spread of HIV in Sub-Saharan Africa.

THE ECONOMIC FACTOR

The economic marginalization of women and girls is a violation of many rights guaranteed by the UN's International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the General Assembly in 1966, and is contributing to the increased prevalence of HIV and AIDS in women. Both legal and de facto restrictions on women's employment exist in Sub-Saharan Africa, often relegating women to non-monetary sectors of the economy. This may impede a woman's right to economic independence, further locking her into a potentially dangerous relationship.

Employment restrictions may also force unmarried women, as well as those driven to poverty through land tenure or marriage issues, into prostitution. The dangers of this lifestyle are immense. Beyond the risk present in the sheer number of partners, is a common practice for men to pay more for unprotected sex. The result is extremely high infection

rates of sex workers. Compared to a 22% infection rate in the general adult population of Zambia[40], sex workers have an infection rate of over 68% .[41] An overwhelming majority of women working in this industry do so out of economic despair. As Tomas Philipson and Richard Posner point out in their 1995 article "The Microeconomics of the AIDS Epidemic in Africa," "efforts to lessen the economic inequality between men and women in Africa could, by reducing the incidence of prostitution and strengthening the ability of women generally to bargain for safe sex, reduce the spread of the disease."[42]

The impact of poverty on girls is hazardous as well. The concept of "sugar daddies" places a young woman in the arms of an older man in exchange for gifts, often as basic as food for her family. This problem is so prevalent that it is often included in AIDS education programs as a serious danger. These men, who frequently enjoy multiple partners, are seeking younger and younger girls as a result of the spread of HIV. The risk for these young women is apparent, teenage girls are infected at rates five to six times higher than their male counterparts in many Sub-Saharan Africa countries.[43] Girls are also at risk when they are orphaned or flee from terrible domestic situations. Ending up either with distant relatives or living on the street, these girls are at risk of abuse, rape and prostitution.

While measures could be put in place to prevent these dangerous situations, violations of economic and social human rights place women and girls at continued risk. An equitable right to work, as guaranteed in the ICESCR, Article 6, and the ACHPR, Article 15, and provided as well by the right to protection from discrimination in ICCPR Article 26 and ACHPR Article 18(3), would allow women to work towards economic independence thereby fostering the freedom to make decisions about their own protection from HIV. An adequate standard of living including food, clothing and housing, as protected by ICESCR Article 11 and CEDAW Article 14(2)(h), as well as social insurance as required by ICESCR Article 9 would prevent the need for women to stay in dangerous relationships for economic reasons or turn to prostitution for survival. With respect to girls at risk, ICESCR Article 10.3 and CRC Article 34 prohibit the sexual abuse or exploitation of children, including prostitution. If girls were afforded these rights of protection from exploitation, as well as their right to State protection and care as orphans (CRC, Article 20), then the rape and abuse of street children, prevalence of child prostitution, and exploitation of girls by sugar daddies would not contribute so substantially to the spread of HIV.

FIGHTING BACK

In addition to the substantial effects of the violations of women's human rights discussed here, other factors also contribute to women's infection with HIV by limiting their ability to fight for the recognition of these rights. A key example of this is discrimination in education. Within Sub-Saharan Africa, there seems to be acceptable gender equality in schooling up to level four (about age 8). However, beyond this point, female attendance is drastically lower than that of males for a variety of reasons. Often, when there is not enough money for school fees, families will choose to send only boys to school. When there is an ailing family member, as is increasingly the case with the AIDS epidemic, a girl is kept home to care for the invalid. In Zimbabwe, 70% of children pulled out of school for this reason are girls, with studies showing that they are increasingly called upon to become the primary caregiver of the household.[44] In addition, if a girl becomes pregnant she is not allowed to return to school, even after the birth, whereas if the father of the child is a student, his education remains uninterrupted.[45]

Women's lack of access to equal education, especially in the primary years, violates a number of international human rights conventions. The ACHPR simply states the right to education for every individual (Article 17). The ICESCR in Article 13 protects equal rights to education for all, and in Article 14 guarantees compulsory primary education. Article 10 of CEDAW does the same, additionally including in section (h) a provision for the reduction of female student dropout and the creation of programs for girls and women who have left school prematurely.

In addition to restricted access to education, women are also not afforded their right to participate in the State polity. As Shirin Rai points out in her article "Women and the State in the Third World," women in developing countries are separated from the State for many reasons. When States do not provide the healthcare, education, child-care and employment protections that Western welfare States do, women have far less interaction with the government. Information dissemination about the events in State politics is varied and unreliable so women tend to be unaware of areas of State legislation that may affect them. And lack of infrastructural power creates situations in which said legislation may never be fully implemented. For all these reasons, the State figures only marginally in the lives of Sub-Saharan Africa women.[46] Even for women who do desire to become involved, there are often legal restrictions on women holding office, or even voting.

The ICCPR, Article 25, protects the right to take part in the conduct of public affairs, to vote and be elected, and to have equal access to public service. The ACHPR also ensures the right to participate freely in one's government and public service (Article 13). CEDAW, Article 7, ensures a woman's equality in political and public life as well, and Article 8 protects her right to represent her government internationally. Both legal restrictions, as well as *de facto* psychological separation from the State prevent women from fully realizing these rights of participation.

Women's restricted access to education and limited participation in politics are profoundly hindering their fight for equal rights and the campaign against HIV/AIDS. While education is shown to directly reduce the likelihood of contracting the virus, more importantly it provides women with knowledge of their rights, empowerment for decision-making, and the ability to achieve economic independence, all of which impact infection rates exponentially. When women are denied these opportunities, they are even less likely to participate in politics or activism to better their situation. Pervasive sexism and "customary law" remain strong, as women are not educated concerning their rights. Without the proper education, economic stability, infrastructural support and availability of information, women see their options for recourse with the State and their ability to achieve change as very limited.[47] According to Human Rights Watch, even those that try to fight are often ignored by their governments and traditional leaders who refuse to "interfere with traditional culture."[48] If women are not empowered to demand their human rights, the violations will continue and will consistently create higher levels of HIV infection.

STATES' OBLIGATIONS

It is now clear that the rampant spread of this epidemic is closely tied to violations of the human rights of women. States cannot make progressive strides toward abating this disease without fulfilling their obligations to protect these rights.

Within the international instruments mentioned here, each guarantee of a right is accompanied by obligations of the State not only to respect the right and create the infrastructure and institutions that make full realization of the right possible, but also to protect citizens' rights from being violated by others. According to international law, States are held accountable for rights violations by private citizens if the State fails to prevent the violation or carry out a proper response with due dili-

gence.

States are obliged to ensure that all laws governing property, inheritance, education, public service, and marriage and reproductive rights are non-discriminatory and to abolish all existing laws, regulations, customs and practices that discriminate. These include, *inter alia*, wife inheritance, sexual obligation in marriage, prostitution, property rights, and restrictions on employment and political participation. States must also criminalize all violations of bodily integrity committed by an intimate partner or otherwise, such as abuse and rape as well as implement the infrastructure to enforce such legislation. Judicial systems need to be made aware of the issues facing women and must abide by impartiality so that violated women have proper recourse and perpetrators are punished. Regulatory agencies must be created to ensure that common discriminatory rules are abolished such as the requirement of a husband's permission for a woman to attend a reproductive or HIV clinic, or the expulsion of pregnant girls from school.

Yet legislation, criminalization and regulation are not enough.

Often it is necessary, as stated in CEDAW, Article 5, to "modify the social and cultural patterns of conduct" to eliminate all practices based on the idea of inferiority of either sex. This is particularly relevant to the rights violations discussed here and may include widespread information campaigns to create awareness, promotion of new ideals of equality, and other behavior modification tactics. As the UN Special Rapporteur on Violence against Women stated, truly protecting women from violence will require, inter alia, the documentation of incidences, education and training of State personnel, and funding of shelters and other direct services.[49] Awareness and education campaigns will also be necessary to change cultural perceptions of the balance of power in marriage, women's rights to their reproductive health, and the concept that women are not property to be bought, sold, or inherited.

In some cases States may be obliged to provide goods and services beyond such awareness and social change programs. For instance, in order to promote certain economic rights, States must implement, progressively and to the best of their abilities, social welfare and food programs, shelters for orphans, and employment programs for women to facilitate their economic independence that is so crucial to their protection. Only when States fulfill these responsibilities, along with the legal and social awareness obligations, will they begin to realize the ability to protect the most crucial right in the face of HIV, the right to health.

OBLIGATION TO PROTECT AND PROMOTE HEALTH

Because the human rights violations discussed here contribute to HIV infections, each violation is also an affront to the right to health. The human right to health is delineated in several major international instruments. The ACHPR, Article 16, enjoins States Parties to take necessary measures to protect the health of their peoples so that every individual can enjoy the best attainable state of physical and mental health, the right to which is guaranteed also by ICESCR, Article 12. Section 2(c) of this Article specifically obliges States to take steps to prevent, treat and control epidemic, endemic, occupational, and other diseases. Additionally, CEDAW requires States Parties to ensure equal access to health care for men and women, including family planning and pregnancy services, granting free services when necessary (Article 12). The UN Committee on Economic, Social and Cultural Rights, the monitoring body of the ICESCR, interpreted the right to health within the context of HIV/AIDS to include the availability, acceptability, and accessibility of health care centers, goods, services, and functional public health programs.[50] States are clearly obliged to create the conditions necessary to assure women's access to healthcare and health education that are so vital to combating the spread of HIV in women. The Commission on Human Rights, one of the six major functional commissions of the UN, even calls upon States to pursue policies that would promote the availability of pharmaceutical products related to HIV/AIDS as a fundamental part of promoting the right to health.[51] Presently, even the wealthier Sub-Saharan Africa countries, such as South Africa, fail to provide the anti-retroviral prophylaxis that is crucial particularly for victims of rape.[52] But again, legislation and the availability of supplies is not enough. In order to truly combat this epidemic as is mandated in these instruments, States must ensure that women have access to health information, as well as training health professionals to respond to marginalized groups, promoting and supporting institutions providing counseling, and disseminating information concerning harmful traditional practices.

All of the State's obligations to respect, protect and promote women's human rights are clear precursors to each State's responsibility to ensure the health of its citizens. Certainly protecting health requires promoting social determinants of good health such as gender equity[53]. Efforts to control the AIDS epidemic hinge on States fulfilling all obligations related to women's human rights. Only when women achieve a

fuller realization of their rights will they be able to defend themselves against the spread of HIV and AIDS.

CONCLUSION

Women are often viewed as transmitters of the HIV virus, either as prostitutes or through mother-to-child transmission. In this way, their vulnerability to infection based on their status as women and their human right to health become invisible. Only recently has it come into international focus that *HIV/AIDS is a women's human rights issue*. The Havana Declaration 2003, published during the International Forum on HIV/AIDS/STDs in Havana, Cuba, concluded that even after 20 years of the AIDS epidemic, a human rights perspective still has not been included in public policies. The Declaration calls on governments to integrate a human rights framework in dealing with the HIV/AIDS epidemic[54]. Within this framework, we see that the need to end discrimination and violence against women is crucial to national strategies of preventing and fighting AIDS.[55] Political, educational and economic marginalization of women, sexual exploitation of women and girls, inequality in marriage and property rights, and violence in all its forms are pushing the female population of Africa directly to the center of the AIDS crisis. Only when States recognize the importance of and fulfill their obligations to women's human rights will they have the tools to truly combat this increasingly fatal epidemic.

NOTES

Title quote: UNIFEM, "UNAIDS Partners with UNIFEM to Halt Spread of HIV/AIDS Among Women and Girls," press release, 2001. Available online at http://www.unifem.org/pressreleases.php?f_page_pid=6&f_pritem_pid=61 (accessed January 27, 2004).

[1] All preceding statistics are from 2001 as cited by International Center for Research on Women, "HIV/AIDS and Development," http://www.icrw.org/strategicareas/hivaids/hivaids_info.htm (accessed December 7, 2003).

[2] See International Human Rights Law Group, "IHRLG Women's Inheritance Rights in Africa Initiative," http://www.hrlawgroup.org/initiatives/inheritance_rights/default.asp (accessed December 7, 2003)

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⁴   See Human Rights Watch, *The War Within the War: Sexual Violence Against Women and Girls in Eastern Congo,* (New York: Human Rights Watch, 2002). Available online at http://www.hrw.org/reports/2002/drc (accessed December 16, 2003).

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⁶   See United Nations, *Rome Statute of the International Criminal Court*, (UN Doc. A/ CONF.183.9*, 1999) http://www.un.org/law/icc/statute/romefra.htm (accessed December 20, 2003). See also Ana Elena Obondo, *Sexual and Reproductive Rights,* Women's Human Rights Net by Association of Women in Development, http:// www.whrnet.org/docs/issue-sexualrights.html (accessed December 7, 2003).

⁷   The ICCPR (Article 4) states that, in times of public emergency, the States Parties "may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation." However, no derogation is allowed from certain articles, for example, those concerning the right to life, freedom from torture, or recognition as a person before the law. Most international conventions and convenents allow derogation on certain articles and not on others. Rights protected by non-derogation clauses are "absolute rights," which States Parties are obliged to protect under any circumstances.

⁸   Statistics are from the end of 2001, as sourced by UNAIDS, *Report on the Global HIV/AIDS Epidemic*, 2002 as compiled by Avert.org, "HIV and AIDS Statistics in Africa," http://avert.org/subaadults.htm (accessed December 20, 2003). Adults in this report are defined as men and women aged 15-49. This age range captures those in their most sexually active years. Since population structures differ greatly from one country to another, especially for children and the upper adult ages, the restriction of 'adults' to 15-49 has the advantage of making different populations more comparable.

⁹   See Human Rights Watch, *The War Within the War,* and Human Rights Watch, *We'll Kill You if You Cry.*

¹⁰   *ibid.*

¹¹   UNAIDS, *Report on the Global HIV/AIDS Epidemic*

¹²   See Human Rights Watch, *Suffering in Silence: The Links Between Human Rights Abuses and HIV Transmission to Girls in Zambia,* (New York: Human Rights Watch, 2002). Available online at http://www.hrw.org/reports/2003/zambia/ (accessed December 8, 2003).

¹³   Committee on the Elimination of Discrimination Against Women, "General Recommendation No. 19," (CEDAW, 1992), Para. 6, http://www.un.org/womenwatch/ daw/cedaw/recomm.htm (accessed January 28, 2004).

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27   See Human Rights Watch, *Suffering in Silence.*

28   See Leslie Gray and Michael Kevane, "Diminished Access, Diverted Exclusion."

29   *ibid.*

30   *ibid.*

31   International Human Rights Law Group, *IHRLG Women's Inheritance Rights in Africa Initiative.*

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33   See Human Rights Watch, *Double Standards.*

34   See Human Rights Watch, *Just Die Quietly*.

35   See Human Rights Watch, *Suffering in Silence*.

36   ICCPR Article 23(3); ICESCR Article 10(1); CEDAW Article 16(1)(b)

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Salvadoran Effectiveness

A COMPARISON OF HUMAN RIGHTS MONITORING INSTITUTIONS FOR MULTINATIONAL CORPORATIONS IN EL SALVADOR

Steve Arons

Several institutions exist in El Salvador to monitor and enforce compliance with human rights standards by multinational corporations (MNCs). However, their effectiveness varies strongly as they differ in terms of legitimacy, resources and sanctioning power. Comparing these institutions, the article comes to the conclusion that many of them are largely ineffective. The most effective one is a special Salvadoran institution, GMIES, created on the basis of a voluntary agreement between MNCs and NGOs, which combines NGO independence with MNC cooperation.

Multinational corporations (MNCs) and the foreign direct investment they make are popular in many developing countries. According to conventional wisdom they bring technology, employment and capital. But their impact on society is not always as benign as some would have it. More often than not, they also bring human exploitation, environmental pollution and social dislocation. Most disturbingly, they sometimes commit human rights violations. The need to monitor and enforce compliance with international human rights standards is therefore imperative. Today, many different monitoring and enforcement mechanisms exist. While each performs the same function, they do so under different organizational principles. Their effectiveness is a matter of ongoing debate. It is this effectiveness that the present study wishes to assess.

El Salvador is an interesting test case. Accused of turning a blind eye to severe human rights violations committed by MNCs, it has pioneered several specific monitoring arrangements for MNC behavior to ensure the respect of human rights at the workplace. These arrangements have

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been in place at least since the civil war was concluded over a decade ago, and results are starting to emerge. Some interesting conclusions can be derived from this data.

MNCs UNDER INTERNATIONAL HUMAN RIGHTS LAW

This study is based on the notion of international human rights standards as defined in relevant multilateral treaties. But this presents an obvious problem: MNCs are not subjects of traditional international law. For most of its existence, international law has been strictly limited to the regulation of state interaction. It was made by states for states, and MNCs had no place in it. Why, then, do many scholars believe that today international human rights standards are, or at least could be, legally binding upon MNCs?

There are three possible answers to this question. The first one is straightforward: international law does *not* apply to MNCs. If any obligation at all, MNCs only have an indirect one. The obligation bearer is the state, not the MNC. This straightforward answer comes at a price, though. It precludes taking action against a MNC on behalf of international human rights because it only permits action against a state. If the state fails to enforce those rights there is no alternative remedy. Under this scheme, state inaction implies inaction in general.

This answer is mistaken, however, because it ignores the sea change which has occurred in international law. Beginning after the Second World War, the international community has recognized the need for universal law-making to effectively deal with the increasingly complex global environment. Today, many different entities fall under the purview of international law, e.g. insurgents, international organizations and, the most recent development, even individuals. As MNCs become more and more powerful, making it increasingly difficult especially for small and weak states to enforce laws against them, it has become clear that they, too, must be subjected to international law. A second answer to the above question therefore proposes that international law does apply directly to MNCs.[1] However, this view is a minority position; the majority of international law scholars rejects it for lack of sufficient precedent and treaties.[2] The overwhelming consensus so far is that "hard" international law is not applicable to MNCs.

These leaves open a third answer. It uses the notion of soft law,[3] which certainly contains many instances indicating an increased responsibility of MNCs towards their host communities. For example, the UN Sub-Commission on the Promotion and Protection of Human Rights, the

main think tank and document drafting body for the UN Commission on Human Rights, recently adopted the "Draft Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights." While this document does not yet create legal obligations for MNCs, it does demonstrate the conviction of the world community that MNCs have internationally valid moral obligations. Although MNCs are not yet *obliged* to adopt international human rights as guidelines for their foreign operations, they are strongly *urged* to do so. It follows that the human rights standards ratified by a country do apply in a certain sense to MNCs operating on its territory. They form the basic principles that the people of a host country may rightfully expect the MNC to uphold.

EFFECTIVENESS OF HUMAN RIGHTS MONITORING INSTITUTIONS

El Salvador is party to various international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Additional Protocol to the American Convention on Human Rights, which all include specific provisions for employment and working conditions.[4] Applicable human rights standards—applicable in the sense described above—therefore undeniably exist. Despite these obligations, though, human rights violations by MNCs are a pervasive phenomenon in El Salvador. Salvadoran *maquilas*, i.e. low-wage textiles assembly plants, are regularly singled out for bad working conditions, the prohibition of unionization, women's exploitation and the persistent occurrence of child labor.[5]

As a result, El Salvador has experienced a considerable growth in the number of institutions charged with monitoring and enforcing international human rights standards at the workplace. Today, there are many: the labor department, trade unions, NGOs, etc. This wealth of competing institutions is certainly a sign of progress compared to the situation prevailing before. People looking for redress for human rights violations committed against them now have a real probability of finding it. On the other hand, it is evident that each institution will have particular strengths and weaknesses. Not every institution is equally helpful, and some may not be helpful at all. The question of which institutions are most effective arises.

The conceptual answer to this question is quite easy: the most effective institutions are those offering the quickest and most comprehensive remedy to human rights violations. This effectiveness depends on a host of different factors. Its most important elements are legitimacy, resources and sanctioning power.[6] *Legitimacy* is a measure of the acceptance an institution enjoys among the population. If an institution is accepted people have trust in it. It is thus a function of the institution's mandate, composition and professionalism. Where acceptance is lacking, people will be unwilling to seek help from the institution. The institution will not function because it is unwanted. Adequate financial and human *resources* must be sufficient to meet the set goals. If they are deficient, the institution lacks the necessary means to process the incoming demands and make appropriate decisions. It will not function because it is overtaxed. Finally, an efficient institution must have the power to enforce its decisions (*sanctioning power*). Without power, its pronouncements are empty. The institution will not function because it is irrelevant.

To find the empirical answer to the question of effectiveness in the case of El Salvador the existing institutions have to be held against the standard set by the defined criteria. More precisely the analysis has to answer the following questions: What institutions to monitor MNC behavior exist in El Salvador? How do they work? And, finally, do they help, i.e., are they accepted, do they have adequate funds, can they enforce?

Broadly speaking, the existing institutions fall into two categories: state and non-state institutions. The state maintains two institutions that deal with the enforcement of human rights standards at the workplace: the ministry of labor as part of the executive branch on the one side, courts as part of the judicial system on the other.[7] Non-state institutions can be divided into three types: trade unions, civil society movements and an independent monitoring body established by voluntary agreement. The following section assesses each of these in turn.

HUMAN RIGHTS MONITORING INSTITUTIONS IN EL SALVADOR

LABOR DEPARTMENT

The ministry of labor is in charge of the implementation of general labor standards. It may receive complaints from employees alleging

human rights violations and can decide to intervene on the employees' behalf. But for several reasons it is obvious that the protection it affords is insufficient. First, the labor department is not a human rights institution. According to its own website, its mandate is to create an environment of harmonious labor relations through adequate regulation.[8] Although one of its main tasks accordingly is the setting and implementation of labor standards, human rights play only a minor role in the overall work. Nor does the website mention human rights anywhere else. Without a clear mandate to promote, and even lesser so to enforce human rights, the labor department lacks the expertise to effectively monitor MNCs. In absence of mandate and expertise, it cannot have legitimacy.

This finding is buttressed by the evident lack of will on the labor department's side to act in the few cases where people do seek its assistance. Inspections conducted by the department are infrequent, superficial and cursory. Labor inspectors regularly refuse to meet with workers, and government acquiescence in face of the breach of labor laws is common. They simply lack the will to confront powerful MNCs. In a major study on the issue, Human Rights Watch cites a Salvadoran Supreme Court justice as saying: "The *maquila* is very much protected here ... The Ministry of Labor is very political ... It does not apply the law but politics."[9] Other organizations are equally critical of the ministry of labor. The IDHUCA, a leftist research institute, cites several cases of proven negligence on the ministry's side and concludes: "The facts speak for themselves. They show that [President] Francisco Flores and his cabinet have only one mission: sell El Salvador in foreign markets as the place where *maquilas* offering high output can be set up. ... As a result they do not care about insecurity and other bad working conditions for their people."[10] Finally, the failure of the labor department also comes down to a lack of adequate resources. It employs only 27 labor inspectors, few of whom are trained enough to discharge their function in accordance with their duty.[11] The labor department therefore lacks legitimacy and resources. It is hardly surprising that no effective protection through

monitoring is forthcoming on this basis.

JUDICIAL SYSTEM

A state's judicial system, represented by the courts, judges and attorneys, is the natural complement to the executive, as represented by the labor department in the case of MNC monitoring. It is designed to

prosecute perpetrators of crimes and offer their victims the means to redress when the protective measures introduced by the state were unable to prevent the crime from happening. The judicial system, therefore, should be the first—and ideally the only—addressee when systematic human rights violations occur.[12]

The Salvadoran judicial system, however, is notorious for its weakness.[13] Judges are neither independent, nor do they a have a high work ethos. Impunity for criminals, "especially for persons who were politically, economically, or institutionally well connected," continues to be widespread.[14] Unsurprisingly, then, the judiciary is reluctant to take up cases against MNCs as each of them wields considerable political influence. To make matters even worse, in 2003 the credibility of the Salvadoran judicial system was further tarnished during the public disclosure of an enormous fraud scheme which had allowed many practicing lawyers to obtain their licenses without the necessary qualifications.[15] Although well-equipped in terms of sanctions and resources, its legitimacy is at a record-low. Consequently, it does not afford sufficient human rights protection.

TRADE UNIONS

Trade unions are probably the most common way of enforcing human rights at the workplace. They certainly are the oldest. Although trade unions have not always seen themselves as human rights defenders—their more limited view of labor rights has prevented them from easily adopting a human rights strategy—they have always been at the forefront of the human rights struggle by virtue of their form and function: they are composed of workers and therefore have a natural interest in good working conditions. Moreover, their long traditions as well as a high degree of organization and professionalism have turned them into a strong social force. It seems that trade unions are well placed to function as monitors of MNC behavior.

This seems particularly true with respect to El Salvador, which is rich in trade unions. A cursory research yielded the following list: National Union of Salvadoran Workers (UNTS), National Federation of Salvadoran Workers (FENASTRAS), Social Security Institute Workers Union (STISSS), Association of Telecommunications Workers (ASTTEL), Unitary Federation of Salvadoran Unions (FUSS) and Treasury Ministry Employees (AGEMHA). The fact book *Regional Surveys of the World* lists another 13 unions.[16] But the number is misleading. Trade unions in general and Salvadoran trade unions in particular have several decisive

flaws severely inhibiting their qualification for monitoring work.

The most important weakness derives directly from the unions' unique strength. Having self-interest in the enforcement of human rights makes them susceptible to biased judgment and to politicization. In fact, many Salvadoran unions maintain close links, personal as well as ideological, to the radical-left party FMLN, the political successor to the former guerilla movement. In a society that still suffers from the hatred left by 10 years of civil war this can be an insurmountable obstacle to professional monitoring. The resulting lack of legitimacy not only impairs the unions' work because most companies see them as enemies; it also makes it easy for employers to undermine the unions' positions in public.

Moreover, trade unions are usually composed of the employees of a specific factory or company, unless the union has achieved a very high degree of centralization and professionalism. This means that the victims of human rights violations are their own defenders. While this may also pose a credibility problem it is above all a problem of anonymity. In many cases, the victims of human rights violations do not want to fight their employees openly out of fear of retaliation. Human rights advocacy can only be successful if the witnesses and victims can reasonably expect not to experience even more severe harassment as a result of their denouncement.

Additionally, human rights are only one, and probably not even the most important, concern of trade unions. Their first concern is the attainment of higher wages and better working conditions in general. Human rights violations in the workplace are an extreme. The normal work of a trade union takes place in other fields. Most importantly, though, trade unions cannot be more than a complementary mechanism for enforcing human rights at the workplace in El Salvador for the simple reason that one of the most frequently violated human rights at the workplace is the prohibition to form trade unions.[17] Obviously, it is impossible to enforce the right to existence when it is precisely that right which is being denied.

Although trade unions in El Salvador are relatively powerful—in 2003 the country's health system was virtually shut down for months because of a STISSS strike—they lack legitimacy. Their politicization and their focus on other issues prevent them from becoming the main mechanisms in MNC monitoring and human rights enforcement at the workplace.

CODES OF CONDUCT AND GMIES

Firms worry about damaged reputations, which can strongly influence customer choice, and they fear possible disruption of the production chain arising from workers' dissatisfaction. Bad working conditions can cause both. Consequently, many companies, especially MNCs that supply markets with socially-sensitive customers, have begun to adopt so-called voluntary codes of conduct. By receiving a certification that working conditions at the plants comply with defined standards, those companies hope to allay concerns about their production facilities.

While a rare phenomenon only a short time ago, codes of conduct have become common and accepted in El Salvador.[18] One critical Salvadoran NGO wrote in 2000: "Five years ago, most of us considered voluntary codes of conduct only an attempt of the corporations to lift their image or avoid state regulation. In a very short period of time the debate about the codes has shifted from an emphasis on social responsibility and entrepreneural self-regulation to the negotiation of concrete obligations …"[19] Today, then, most observers—both on the employers' as well as the NGOs' side—agree that codes help to implement certain standards. This consensus notwithstanding, it has become clear that most of a code's success depends on its specific design. Not every code is a solution, nor can codes of conduct be the only solution. In a very broad study, the US Labor Department concluded: "Corporate codes of conduct are a new and promising approach that can contribute to the elimination of child labor in the global garment industry. […] It is important to keep in mind, however, that codes of conduct are not a panacea."[20]

The doubts expressed by NGOs that MNCs may use codes of conduct as smokescreens to stave off criticism stem from two main sources. First, many NGOs argue that the standards required by the codes fall far below what is normally considered necessary to ensure a safe working environment. Second, certification is frequently undertaken by private firms from outside the country. It thus attracts accusations of bias because the firm seeking certification also pays the auditors, and accusations of lacking cultural sensitivity because the auditors come from abroad.[21] Collusion and half-hearted controls are therefore an often-heard accusation leveled at monitoring organizations.

MNCs active in El Salvador—either with their own plants or through subcontractors—have signed a range of different codes of conduct, most importantly *WRAP* (*Worldwide Responsible Apparel Production*) and the *FLA Workplace Code of Conduct*.[22] Firmly based in standard human

rights documents, particularly ILO conventions, they establish compara-
tively strict parameters regarding child labor, discrimination, harass-
ment, freedom of association and work hours, among other things. By far
the most important factor determining a code's success in the Salvadoran
context, therefore, is the way it is enforced. The issue really hinges on the
question of who conducts on-site visits and subsequently certifies the
company's compliance with the code.

In this respect, El Salvador has become a pioneering case. In 1995, a
Salvadoran subcontractor of *The Gap*, *Mandarin*, and NGOs cooperated
to settle a particularly severe case of labor rights violations. As a result,
an independent monitoring agency, GMIES (*Grupo de Monitoreo
Independente de El Salvador*) was created in March 1996 to ensure the
correct implementation of the agreement concluded by *Mandarin*.[23]
GMIES is composed of four Salvadoran human rights groups, three of
which are Catholic organizations. Since its creation, GMIES has increas-
ingly taken on new tasks. Today, it monitors the activities of *Liz
Clairborne* and *The Gap*, two of the largest US apparel manufacturers, in
their various Salvadoran plants. Additionally, GMIES has set up training
programs to ensure the professionalism of its monitors and it has initi-
ated a regional outreach program to share best practices across Central
America.

GMIES has attracted widespread attention due to its unique setup.[24]
Instead of relying solely on either external auditors or internal monitor-
ing, it combines active MNC participation with outside monitoring
activity and thus represents a "hybrid" approach to MNC control.[25]
Furthermore, it consists of human rights NGOs rather than private
auditing firms, giving it increased acceptance and legitimacy among the
workforce. It thus represents a serious attempt by the MNC to actively
engage with the local civil society without relinquishing too much of
control over the monitoring process. This lends credibility to the reports,
written by an independent organization, while it protects the monitored
companies against excessive interference.

The results of GMIES have been reassuring so far. It has issued
various reports on company compliance with the standards defined in
the applying codes of conduct. The reports are written on the basis of
extensive interviews conducted at the production facilities of the partici-
pating companies, *The Gap* and *Liz Clairborne*. Moreover, the reports do
not hesitate to detail specific breaches of the code. The first report com-
piled for *Liz Clairborne* is not only publicly available, it also exposes
grave deficiencies in its plants and accuses the company of procrastina-

tion in the fulfillment of its contractual obligations to allow GMIES staff onto its premises. In fact, *Liz Clairborne* is in breach of 10 out of 17 criteria checked by GMIES, including discrimination, sexual harassment and freedom of association.[26]

Despite these positive findings it is not easy to assess the effectiveness of GMIES. First, it is not clear how much the monitored companies feel compelled to ameliorate working conditions when GMIES exposes violations of the codes. At this point, a reaction by *Liz Clairborne* is still pending. Should it decide to eliminate the criticized deficiencies, GMIES will have won an important victory that will set a precedent for the whole region. However, should the company decide to remain passive or, worse still, to withdraw from the agreement with GMIES as a reaction to the strict monitoring, GMIES will suffer a decisive setback. Second, GMIES still operates on a very small scale. So far, it only monitors two companies, one of which was particularly willing to cooperate due to the extraordinary media attention its case had attracted. While positive, therefore, the results of GMIES' work are from representative. Overall, then, GMIES seems a promising approach. It combines the strength of NGOs, their independence and credibility, with the easiest solution to effective monitoring: MNC consent.

Non-Governmental Organizations

Finally, there are NGOs. They monitor MNCs not *because* they were asked to do so but *despite* the fact that they were not. Deeply suspicious of a company's sincerity when subscribing to a code of conduct, they believe it is impossible to rely on what companies and auditing firms tell them. Instead they rely on what they see and find out themselves. In El Salvador there is a considerable number of NGOs actively trying to force MNCs into compliance with human rights standards. They operate both within (e.g. *Movimiento de Mujeres Melida Anaya Montes*, MAM, *Comite de Despedidos y Desempleados de El Salvador*, CODYDES) and outside of El Salvador (e.g. *National Labor Committee*, NLC, *Maquila Solidarity Network*, MSN).

One crucial function of NGOs without an official monitoring role assigned to them is the public exposure of human rights violations. Many human rights violations at the workplace go unreported and therefore unnoticed. NGOs can offer safe addresses for reporting violations in the absence of alternative, i.e. more formal, communication channels. Following up on such reports, NGOs may be able to uncover persistent violations, publicize them and thus help to stop them, as the case of

Mandarin cited above demonstrates. It was only through the persistent action of NLC that *Mandarin* was moved to agree to the creation of GMIES, because its chief client, *The Gap*, feared negative repercussions from the media focus on working conditions in the Salvadoran plant. Moreover, this case not only demonstrates that NGO action may help end human rights abuses; it also shows that such action can be a first and decisive step towards the introduction of more formalized monitoring mechanisms.

NGOs that work outside a formalized framework also have an important early-warning function. Professional auditors only take action when they are authorized to do so. NGOs, by contrast, authorize themselves. In a certain sense, their action can be preventive. In an ideal case, the NGO draws attention to cases of potential human rights violations, which are then prevented because the responsible company decides to act. It is undoubtedly true that *maquilas* would be much less of an issue today if NGOs such as NCL and MSN had been less outspoken about them. And their relentless work continues. Only recently, for example, NLC published a comprehensive—and scathing—report indicting a Salvadoran subcontractor of two major apparel MNCs for serious labor rights violations.[27]

NGOs in El Salvador also provide important services to victims of human rights violations. For example, MAM helps victims to find the right person to report human rights violations to, and occasionally offers legal assistance.[28] Nevertheless, these services are quite limited. NGOs have a permanent financial problem. The government is usually reluctant to fund organizations which are likely to criticize it. Party support is not a solution either. Parties have considerable resources at their disposal, but in a polarized country such as El Salvador, support by a party invariably leads to politicization. NGO independence suffers, and the NGO can be easily discredited as partisan.[29] The funding problem can also lead to a lack of expertise as the low salaries paid by NGOs may attract more idealistic than professional employees. As a consequence, many MNCs do not respect NGOs as serious actors, and even less as partners. The MNCs refuse to cooperate with them and thus severely obstruct their monitoring capabilities.

Thus, while NGOs make an invaluable contribution to the promotion and enforcement of human rights at the workplace, their shortcomings are obvious. Human rights work today is inconceivable without NGOs. But having neither mandate nor sanction power, and suffering from permanent under-funding, they lack the necessary legitimacy and

power to function as effective MNC monitors.

CONCLUSIONS

Obviously, none of the institutions existing in El Salvador is perfect—or else there would be no human rights violations by MNCs. Some do offer a certain amount of protection, though, and they do so more effectively than others. First of all, it is evident that the state institutions afford insufficient protection against human rights violations at the workplace. They neither monitor nor enforce to a degree that would make additional, non-state institutions superfluous. In fact, the state institutions in El Salvador are so ill-equipped for this function that there is little hope they will ever be in a position to discharge them. The perennial problem of too much MNC power in too small a state with too much corruption makes the mobilization of enough political will to seriously address the issue next to impossible.

Fortunately, there are complementary institutions in El Salvador which help to fill the void. The first group comprehends the most powerful non-state, non-MNC actors, trade unions. Their resources make them likely candidates for monitoring and enforcement work. But despite this advantage, they are often unqualified because of their lack of neutrality and preoccupation with issues other than human rights. Nor are NGOs always capable of discharging their function in a satisfactorily fashion. Lack of resources, lack of power and non-acceptance from the MNC side severely hampers their work.

Although it may still be too early for a final judgment, the experience of GMIES seems to indicate a certain success. Its exemplary combination of NGO credibility with MNC collaboration makes it the most effective among non-state monitoring institutions, and indeed among Salvadoran human rights monitoring and enforcement institutions in general. As long as the state of El Salvador is unwilling to effectively enforce human rights, MNC compliance with human rights standards remains a matter of choice and persuasion. Therefore, MNC consent remains a main ingredient in the implementation of human rights at the workplace, and the GMIES approach remains the best option currently available.

NOTES

[1] See International Council on Human Rights Policy, *Beyond Voluntarism. Human Rights and the developing international obligations of companies* (Versoix:

International Council on Human Rights Policy, 2002), p. 74; Mahmood Monshipouri, Claude E. Welch and Evan T. Kennedy, "Multinational Corporations and the Ethics of Global Responsibility: Problems and Possibilities," *Human Rights Quarterly* 25, 4 (November 2003), p. 967.

2   For a particularly influential opinion, see Ian Brownlie, *Principles of Public International Law*, 5th edition (Oxford: Oxford University Press, 1998).

3   Soft law is not legally binding in a strict sense. Rather, it is composed of authoritative declarations that represent the combined convictions of the world's political leaders.

4   See Miguel F Canessa Montejo, *Los Derechos Laborales en el Sistema Interamericano de Protección de los Derechos Humanos* (San Jose: CODEHUCA, 2001); International Confederation of Free Trade Unions, *Internationally Regcognised Core Labour Standards in El Salvador. Report for the WTO General Council Review of Trade Policies of El Salvador* (Geneva: ICFTU, 2003); International Labor Organization, *Fundamental Principles and Rights at Work: A labour law study* (Geneva: International Labour Office, 2003).

5   See e.g. William H. Meyer, *Human Rights and International Political Economy in Third World Nations* (Westport, CT: Praeger Publishers, 1998), p. 201; Jennifer Bickham and Ronald Koegken, *Mujeres y Maquilas* (San Salvador: Fundación Heinrich Böll, 2000), p. 7; Amnesty International, *El Salvador. Regional Summary of the Amnesty International Report 2003* (London: Amnesty International, 2003), available online at: http://web.amnesty.org/report2003/Slv-summary-eng; U.S. State Department, *Country Reports on Human Rights Practices 2002. El Salvador* (Washington, D.C.: U.S. State Department, 2003), available online at: http://www.state.gov/g/drl/rls/hrrpt/2003/27897.htm.

6   These criteria are similar to those used by the ICHRP in International Council on Human Rights Policy, *Performance and Legitimacy: National Human Rights Institutions* (Versoix: ICHRP, 2000), p. 6.

7   Carolina Quinteros, Gilberto García, Roberto Góchez, and Norma Molina, *Dinámica de la Actividad Maquiladoras y Derechos Laborales en el Salvador 1998* (San Salvador: Centro de Estudios del Trabajo / Centro de Solidaridad AFL-CIO, 1998).

8   Ministerio de Trabajo y Prevision Social. 2004. *Misión y Visión*, available online at: http:// http://www.mtps.gob.sv/mision.htm

9   Human Rights Watch, *Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights* (Washington, D.C.: Human Rights Watch, 2003), p. 19.

10   Instituto de los Derechos Humanos de la Universidad Centro Americána "José Cañas" (IDHUCA), *Maquilas, dengue y diarrea: salud!* (San Salvador: UCA, 2002), available online at: http://www.uca.edu.sv/publica/idhuca/salud

11   Human Rights Watch, p. 18.

12   Human rights violations may occur accidentally. For reasons of efficiency, it may be better to seek redress through other mechanisms in such cases.

13   El Salvador's underdeveloped judicial system is the most important criticism raised by the U.S. State Department in its most recent Human Rights Report. U.S. State Department, *El Salvador.*

14   Ibid.

15   Instituto de Derecho Humanos de la Universidad Centroamericana "José Cañas" (IDHUCA), *Balance de los Derechos Humanos 2002* (San Salvador: UCA, 2003), available online at: http://www.uca.edu.sv/publica/idhuca/balance

16   Europa Publications, *Regional Surveys of the World. South America, Central America and the Caribbean*, 9ᵗʰ ed. (London: Europa Publications Limited, 2001), p. 956.

17   See Quinteros et al., p. 35; Human Rights Watch, pp. 30-66.

18   In 2001, the OECD recorded 246 codes of conduct worldwide while the Global Reporting Initiative, a pro-corporate responsibility NGO, estimated that more than 2,000 companies worldwide subscribe to such codes. Gary Gereffi, Ronie Garcia-Johnson, and Erika Sasser, "The NGO-Industrial Complex," *Foreign Policy*, July/August 2001, p. 57.

19   Bob Jeffcott and Lynda Yanz, "Códigos de la Responsabilidad Empresarial al Deber Social," in Silke Helfrich, ed., *Códigos de Conducta y Monitoreo en la Industria de la Confección* (San Salvador: Fundación Heinrich Böll, 2000), p. 1.

20   U.S. Department of Labor / Bureau of International Labor Affairs, *The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?* (Washington, D.C.: U.S. Department of Labor, 1996), p. 12.

21   G. Pascal Zachary, "Who Monitors?" *Business for Social Responsibility Magazine*, November 2002, p. 12.

22   Available online at http://www.fairlabor.org and http://www.wrapapparel.org

23   For a detailed account see GMIES, *Primer Informe Publico del Grupo Monitoreo Independiente de El Salvador* (San Salvador: GMIES, 1997); Norma Molina and Carolina Quinteros, "El Monitoreo Independiente en El Salvador," in Silke Helfrich, ed., *Códigos de Conducta* (San Salvador: Fundación Heinrich Böll, 2000),

24   Most of it was probably caused by a New York Times front-page feature on April 24, 2001, that raised awareness of Mandarin and GMIES to the world level.
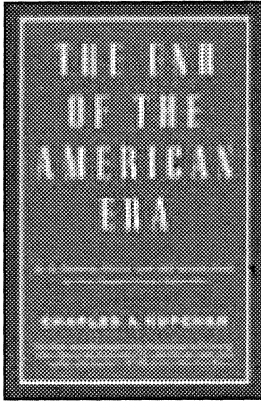
25   Zachary, p. 12.

26   GMIES, *Verificación del cumplimiento de la normativa laboral y el código de conducta de Liz Claiborne Inc.,en tres naves de una empresa en El Salvador* (San Salvador: GIMES, 2002), p. 13.

27   National Labor Committee, *Hanchang Textiles / Oriental Tex, El Salvador* (New York: NLC, 2003).

28   Norma Molina and Carolina Quinteros, p. 31.

29   The cited NYT article, for example, attributes some problems in the functioning of GMIES to the involvement of too many NGOs with too many ties to the former guerilla movement FMLN.

The End of the American Era

BY CHARLES KUPCHAN

Reviewed by Ania Kielbratowska

The end of the Cold War provoked the publication of a number of works attempting to come to grips with the new global order. Charles Kupchan's most recent book not only surveys the existing literature, but also provides an interesting voice in the debate over the future fault lines of international politics.

In line with neo-realist theory, Kupchan believes that "the defining element of the global system is the distribution of power". We live in a unipolar world, dominated by the United States. This unipolarity guarantees a degree of stability within the international system - no other power can even contemplate challenging the US. America's primacy, however, is being gradually undermined. Kupchan refers to two powerful trends, which in his mind make the demise of American hegemony inevitable. The first is that US primacy is waning because alternative centres of power are slowly emerging. With the Cold War a distant memory, the European Union no longer needs the American security umbrella. European integration has moved beyond its merely economic stage to encompass military issues. European Union's recent independent peace-keeping mission in Macedonia shows that the European Union is flexing its muscle on the international stage.

US predominance is ending also because of a shift in American foreign policy. Isolationism and unilateralism are both on the rise. America's ambivalent engagement in Kosovo and the frequent calls from Washington urging Europeans to share more of their own security burden testify to isolationism. The withdrawal from the Kyoto agreement and the refusal to be bound by the ABM treaty show that unilateralism is also becoming a dominant element in American foreign policy. Contrary to conventional wisdom, the September 11th terrorist attacks have the potential of leading to a further American retrenchment, rather than a new engagement. Since "a stingy internationalism combined with a prickly unilateralism is a lethal mix", Kupchan calls for a new brand of "liberal internationalism". The US must manage the transi-

tion to multipolarity in a way that preserves the stability of the international system.

For all his book's breadth of political reference and his masterful command of historical detail, Kupchan fails to make a convincing case. The reasons that he gives for the inevitability of the waning of American hegemony are ill-conceived. The European Union is far from the cohesive and unified entity that Kupchan makes it out to be. Rather, it is riddled with internal division. Some European nations supported the American invasion of Iraq, while others fervently opposed it. The setback over the European constitution at the recent Brussels summit demostrates that further European integration will not just painful, but by no means inevitable either. In the wake of the summit France and Germany signalled their willingness to enhance cooperation in some areas, regardless of whether other member states decide to follow suit. Enlargement is bound to reinforce these divisive tendencies. All this means that a rapid reaction force, planned to be established by 2003, so far remains within the realm of abstraction.

Kupchan also overstates the likelihood of further political integration. European citizens are supposedly overwhelmingly in favour of a closer union. Most Europeans, however, cherish strong national identities which are unlikely to give way to a feeling of European belonging. A European *demos* that would be necessary for the creation of democratic European-level institutions simply does not yet exist.

Kupchan's claim that we are witnessing America's retreat from the world stage is seemingly more compelling. George W. Bush came to power on an isolationist ticket, promising to withdraw American troops from the Balkans and pledging the construction of a missile defence shield. The failure to obtain the endorsement of the UN for the intervention in Iraq also bears the semblance of unilateralism. Opposite trends, however, are also pervasive. The commitment of $15 billion to the fight against the AIDS pandemic, as well as the active participation of the US in the drawing up of the Middle-Eastern "road map" tesify to a continuing American willingness for engagement. September 11th has compelled Americans to take a deeper interest in international affairs; the number of young Americans applying for positions with the state department, as well as the intelligence services, is on the rise. Most importantly, the terrorist attacks on the World Trade Centre shattered the belief of American's in their own invulnerability and led them to intervene twice in two years – in Afghanistan and Iraq. The dominance of unilateralist

tendencies is questionable as well. Prior to its intervention in Iraq, the United States secured a UN resolution (1441), recognizing that Saddam's regime posed a threat to international security. The military operation itself, as well as the subsequent nation-building activities, involved the participation of a number of countries, including the UK and Poland. Thus, while Kupchan identifies some crucial developments which support his thesis, the broad range of counter-evidence demostrates that neither America's withdrawal from the international stage nor the emergence of a unilateralist tendency in its foreign policy are irrevocable trends.

    In conclusion, Kupchan's highly readable and thouroughly researched work is far too sweeping in its conclusions to be regarded as a fully accurate analysis of the future balance of power in international politics.

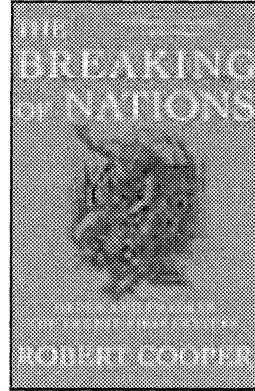# The Breaking of Nations: Order and Chaos in the Twenty-first Century

BY ROBERT COOPER

Reviewed by Richard Tite

Robert Cooper – former aide to Tony Blair and now senior EU diplomat - has written a fizzing policy novella: in one hundred and seventy pages of insight and argument he packs in a re-classification of the international system, a coaching manual for foreign ministers, and makes a bold contribution to the transatlantic debate. Like Bob Kagan's 'Power and Paradise', the tract that first popularized and re-energized the debate on the differences between Europe and America, it seduces the reader through its economy of phrase, broad scope and pithy observations. Cooper's book, again like Kagan's, started life as a series of shorter policy briefs and articles that enjoyed a wide audience in political circles, until the publishers convinced the author he was onto a good thing.

He begins by offering a new schematic to help order the confusing post-Cold War international system, now that the guiding 20th century principles of imperialism and bi-polarity have evaporated. States can today be bundled into three categories: the pre-modern, the modern and the post-modern. These categories broadly correspond to the ideas of Hobbes, Clausewitz and Kant. In the pre-modern world we find failed states such as Afghanistan and Somalia. These states, where violence and disorder reign have become a threat to the developed world through the privatization of violence, allowing the power of radical and criminal groups to grow. Modern states still retain the use of force and are prepared to use it against others and reject violations of their sovereignty. The post-modern states, essentially the EU, are those in which the distinction between domestic and foreign policy is breaking down. They have rejected war in favor of integration and charted a 'third-way' for achieving security beyond hegemony or the balance of power. This framework allows us to get to grips with the complexity of the international landscape and understand the breadth of security responses required to navigate it.

The second essay offers five maxims for the practice of 21st century diplomacy. The first, and most useful of the maxims, is the seemingly simple notion that foreigners are different. Behind this lies the idea that

we must make a greater effort to understand foreigners, since the greatest threats the west faces will come from cultures that are understood the least. The second, third and fourth maxims argue that identity is the core value of states and peoples; that domestic politics has become the main driver of change in the international system, and that it is still hard to change state behavior. The final maxim is a call to 'enlarge the context', a phrase that is borrowed from Jean Monnet. The idea is that the key to resolving intractable foreign policy issues is to redefine and expand the identities of those involved. Cooper argues that others could solve their problems by becoming more like the EU. This is an optimistic assertion to say the least, since the experience of the EU is highly contingent and idiosyncratic, and is an unlikely model to export round the globe. The value this essay adds to the book is questionable and it sits uncomfortably between the sharp analysis of the first section and the bold prescriptivism of the last. Cooper is at his best when offering visions of world order, not career advice to fellow diplomats.

The third essay focuses on the transatlantic relationship and is the most prescriptive in tone. It opens with the realist observation that the US is shaping the history of our times due to its preponderance of power. Although the same values underpin their approach the EU and US to the international order, clear differences over strategy and policy flow from the asymmetry of power: the US is prepared to use its hegemonic position to seek security while the EU seeks to foster a Kantian society of law-abiding states beyond its borders through negotiation and bargaining. While Kagan finds a lack of hard power as determining the European position, Cooper turns the argument on its head: the multilateralism of the EU is a function of it eschewing fighting as an instrument of international politics. Yet, with one eye on the future, he envisions the European position as dynamic rather than static. If it is to have greater influence on the US, it must now set about accruing more power of the old-fashioned 'modern' sort: effective armed forces.

> "If a higher degree of integration of European forces brought both greater interoperability and greater deployment, and if this could be combined with genuinely integrated policies (as is beginning to be the case in the Balkans), Europe would go some way to answering Robert Kagan."

However, while he finds the US at fault for not fostering a sense of

legitimacy commensurate with their power, he assumes that the EU – with its multilaterialist tendencies – will find such legitimacy easier to come by than its transatlantic cousin, if and when it becomes a serious 'hard' power.

The Breaking of Nations provides an excellent framework for thought about the international system and about how the transatlantic relationship can re-shape itself in the face of new challenges. Cooper's vision is a mix of a defensive realism in the face of pre-modern threats, liberalism concerning the necessity of legitimating force through law and a humanistic optimism on spreading the post-modern security paradigm. This hybrid position is born of a career spent as a diplomat, not an academic. The temptation while reading this book is to find fault in every loose analogy and unsubstantiated claim, but this would miss the point. The essence of this work is – to use management jargon - 'horizon scanning' and 'the big-picture', instead of rigor and systematic exposition; its value is in its intuitive vision rather than its academic weight.

American Empire

BY ANDREW J. BACEVICH

Reviewed by Kevin Croke

From its title, *American Empire* looks like another angry polemic that George W. Bush's aggressive foreign policy has recently provoked. But it's actually much more ambitious than that. International Relations professor and former U.S. Army officer Andrew Bacevich offers a lively and intriguing, yet ultimately unconvincing, deconstruction of the whole of post-Cold War U.S. foreign policy. His thesis is that American policy during this period has been based on a single vision: a consistent and bipartisan effort to create an integrated and open world economy dominated by the United States. To this end, he provides a *tour d'horizon* of U.S. policy since the end of the Cold War, challenging conventional wisdom in two ways. He first rejects the idea that post-Cold War foreign policy has consisted of crisis management without grand strategy, and second, refutes the notion that Presidents Bush, Clinton, and Bush have had significantly different approaches to the world. Rather, he sees them each as having followed a distinctive and consistent "strategy of open-ness," characterized by ever-increasing economic integration, an "end of history"-inspired commitment to transform the world along American lines, and the maintenance of American military hegemony.

Bacevich finds the roots of this strategy best explained in the works of two seminal revisionist historians of U.S. foreign policy, Charles Beard and William Appleman Williams, who both called attention to the economic motives behind American expansion, and debunked what Bacevich calls "the myth of the reluctant superpower." In their view, domestic concerns have always driven foreign policy. Above all, the insatiable domestic demand for prosperity has led the U.S to pursue ever-widening global influence, in search of more markets and invest-ment opportunities.

The strategy of openness, he argues, is not at all new; its roots go as far back as the beginning of the 20th century. The fall of the Berlin Wall was less a turning point than an opportunity to finally implement the strategy of openness, free of Cold War constraints. The first President Bush, though perceived as a sober realist, began to implement this

strategy, but it was President Clinton, at once more articulate and less a prisoner of the Cold War mentality, who put their shared strategic vision into words. Openness, he argued, was both the *sine qua non* of economic growth, and a vital precondition for national security: membership in the global economy would turn states away from war and towards trade and other peaceful forms of competition. The current Bush administration, Bacevich contends, changed very little of Clinton's policy upon entering office. Their rhetoric may have promised a new approach, but their policy, and above all the globalist worldview that shaped it, was unchanged, at least in their first year in office.

Through his analysis of presidential rhetoric and policy choices, Bacevich provides a fairly convincing case that something like this "strategy of openness" exists and influences policy. Yet there's a substantial hole in his argument: he never quite explains the terrible flaws that he sees in this strategy, or what the alternatives are. That the U.S. seeks to open overseas markets to investment in order to increase domestic prosperity is not in itself shocking. Nor is it a surprise to most people that, despite Wilsonian rhetoric, Pentagon policymakers seek to maintain military dominance. Clearly Bacevich thinks there is a compelling case that this American expansionism is harmful to the United States and to the world. But he never spells it out. If American dominance of the world economy is bad, what would be a better policy course? Plenty of coherent critiques of the Washington Consensus exist, but Bacevich declines to offer one. What would a wiser U.S. security strategy look like? He warns vaguely of "blowback," exhibit A being the CIA-funded mujaheddin who transformed themselves into al-Qaeda terrorists. But this is a mere few pages at the end of a 244-page book. It's not enough.

Bacevich at his best is a sharp and knowledgeable critic of a number of trends—the militarization of foreign policy, the dissonance between public will or interest and official goals, the collapse of the tradition of American anti-militarism. But too often his examples seem shoe-horned into his thesis—to argue that the war in Kosovo was fought for the strategy of openness is a stretch; at the very least it ignores the parallels (documented by writers such as Samantha Power and Michael Ignatieff) that key administration policymakers drew with their earlier failure to stop ethnic slaughter in Bosnia. Likewise, the argument that George W. Bush's foreign policy is more or less the same as both his father's and Clinton's looks somewhat less than convincing at the moment. Even more curiously for a book published after Sept. 11, he criticizes Clinton's national security officials for exaggerating the threat of catastrophic
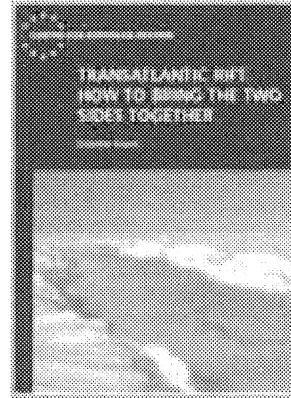
terrorism in the 1990s. "In the 1990s, terror did pose a danger to Americans and their interests;" he argues, "but then, so, too, did lightning and food poisoning."

American Empire, then, is less a coherent theory of America's role in the world than one perceptive observer's impressions of a decade of foreign policy entanglements. His realist warning against overstretch is timely and important. But in the end, his argument fails to convince, because after excoriating the status quo at great length, Bacevich has nothing to offer in its place.

Transatlantic Rift: How to Bring the Two Sides Together

BY *CHARLES GRANT*

Reviewed by Frederick Hood

In this concise, eminently pragmatic pamphlet[1], Charles Grant of the Centre for European Reform (CER) argues that the present transatlantic rift has come about due to long-standing performance gaps between the United States and the European Union in the fields of economics, politics and military capabilities. In consequence, the recent diplomatic wrangle over Iraq was not so much the cause of the rift as the catalyst. Having identified these causes of the malaise, he proceeds to offer policy recommendations to the two opposing camps on how they might best resolve their differences, both through the exercise of national foreign policies and through a series of bilateral compromises. Finally, he focuses on the 'entente glaciale' between London and Paris, proposing that an agreement by these two capitals on how best to deal with the United States will provide the key to establishing a cooperative relationship between the two blocs that will best serve the common interest.

Grant succeeds in his endeavour, when making policy recommendations towards the further integration of European Union member states and explaining the benefits that such integration would garner to them as a result. Though some of his recommendations face steep odds of ever being implemented (such as his assertion that Qualified Majority Voting should be applied to EU Common Foreign and Defence Policy,) most are feasible. This is not surprising considering Grant's deep understanding of the European Union and its processes, gleaned from his directorship of the CER – a think-tank that proclaims itself to be 'pro-European but not uncritical.' He therefore succeeds where other commentators have failed – too often scholars write about transatlantic relations without understanding that from a European perspective there are many competing visions of what these relations should be, without a centralised system for uniting them. Yet, at the same time, it is this beneficial focus on the process of European integration that reveals the essential flaw in Grant's argument. For though European integration must seem sensible

to European policy makers wishing to receive more respect from the United States, Grant fails to   iently explain why a unified European foreign policy would be beneficial to the United States.

He certainly tries. In his introduction, Grant states that:

> For all their evident flaws, the Europeans still have considerable international clout and are the most like-minded countries that the US is going to be able to work with. (p.14)

Later, in his policy recommendations to the Americans, he similarly states that:

> Americans should reflect on the history of the past half century, and consider why a whole series of US leaders – from Dean Acheson, to John Foster Dulles, to JFK, to George Bush Senior to Bill Clinton – have contributed so much to European integration. (p.57)

Yet such a reliance on history as the justification for American support for further European integration rings hollow, especially in the light of Grant's concluding remarks. An *entente cordiale* between London and Paris would, according to Grant, end the rift between 'New' and 'Old Europe' and create a 'Europe which can act autonomously, and which, on matters of vital importance, is capable of opposing the US.' (p. 106) Does, or has the US ever desired this? One could perhaps argue that certain elements of the Kennedy Administration did, notably Undersecretary of State George Ball, but even he predominantly desired British entry to the European Communities merely as a counterbalance to de Gaulle's France.[2] As for George Bush Senior, at the '2+4 talks' over re-uniting Germany, he explicitly rejected French calls for a more autonomous and coordinated European defence. Clinton may have taken a more indulgent view, but he was neither unopposed in Congress, nor totally uncritical. Finally, in the post 9/11 world, it is unlikely that even a Democratic President would allow any European opposition to the execution of the 'war on terror.' To recommend that the US cease exploiting the rift between 'new' and 'old' Europe is, therefore, to recommend that the US knowingly go against its own national interests. In light of his assertion that an EU CFSP should develop 'not out of idealism, but from a cool analysis of ... respective national interests,' (p.73)

Grant's logic comes across as inconsistent.

In a similar manner, Grant's recommendations for bilateral compromises are not entirely coherent. Though his suggestions are eminently sensible, he does not state how they might be achieved. For example, he recommends that US and EU states meet to discuss the 'principles of intervention,' and 'though they might not agree, they would at least understand each other better.' Well, that has already occurred in the Security Council debates prior to the Second Iraq War, and surely this would further splinter inter EU opinion in a manner Grant deems inimical to further political integration. Similarly, the recommendation that the management of the global economy should be insulated from security issues is immensely reasonable, but unlikely given that economics is a key diplomatic tool for the US and *the* diplomatic tool of the EU. Finally, Grant fails to realistically address the lack of forums in which these issues might be discussed. He is mentions the annual EU/US bilateral meetings as a potential forum, but given the usual lack of a coherent EU policy position for the Commission to present on behalf of the member states, it is unlikely that these summits would serve Grant's purposes.

In conclusion, Grant's pamphlet fails to provide any concrete solutions for extracting the Atlantic community from the present quagmire. That is not to say that the exercise of writing the pamphlet was a futile one. For though failing to provide a realistic strategy through which compromises might be reached, Grant does lay out with exceptional clarity the complexities of each side's position. Were his book required reading of all policy makers involved in implementing transatlantic relations, there would at least be better understanding between the two sides and some of the awful diplomatic gaffes committed during the run up to the invasion of Iraq might have been avoided.

Notes

[1] Grant, C., *Transatlantic Rift: How to bring the two sides together*, London, CER, 2003, 114 pages.

[2] Ball, G. *The Past has Another Pattern*, New York, Norton, 1982.